



8TH

NLIU NATIONAL
CORPORATE LAW MOOT

2019

MOOT PROPOSITION

NATIONAL LAW INSTITUTE UNIVERSITY,
BHOPAL

~8th NLIU NATIONAL CORPORATE LAW MOOT~

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

C.P. No. 666 (PB) / 2019

Daedalus Capital

Crete Partners

Homer

...Petitioners

Versus

PantheonWorkspace Solutions Private Limited

Icarus

Minotaur Capital

Minos Ventures

Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry
(represented through Secretary)

... Respondents

And

CP 5678 (IB) / PB / 2019

PantheonWorkspace Solutions Private Limited

... Petitioners

Versus

Troy Fintech Solutions Private Limited

Odysseus (interim resolution professional)

Reserve Bank of India

... Respondents

1. Mr. Icarus is a celebrated figure in the entrepreneurial domain in India. He is widely considered as one of the most respected names in the startup industry in India and South Asia and credited with bringing the term “*startup*” in common parlance India. His successful ventures such as Swapdeal and Foodkart are household names today and are market leaders in their respective segments of e-commerce and food delivery industry.
2. Icarus started his journey from humble beginnings as a bright middle-class boy who went on to graduate from the Indian Institute of Technology, Kanpur – one of India’s preeminent institutions on a scholarship. There he made several other friends of similar interests and they started experimenting with various business ideas that dealt in technology-based solutions. After a couple of unsuccessful venture four friends started a company called Swapdeal, which grabbed the attention of the then nascent private equity/venture capital (PE/VC) industry and quickly attracted interests from Indian and foreign PE/VC investors. After running Swapdeal for 5 years, the co-founders sold off their entire shareholdings in Swapdeal at an unheard amount of USD 5 billion and gave India its first unicorn.
3. Icarus and two co-founders started another tech-based startup called Foodkart shortly thereafter which again became the most sought-after investment for PE/VC firms. With considerable experience under their belt in negotiating with investment firms, the three co-founders had most of the well-known firms as investors in their company and took it to multi-billion-dollar valuation and once again, spun it off at huge profits. The others retired, but Icarus continued to be involved closely with the evolving startup industry and was quickly seen as the poster boy of the Indian startup success story. Icarus took up an advisory position with several PE/VC firms and became mentor to many successful Indian startups in the years to come.
4. After spending 10 years in such mentoring roles, Icarus started another venture, albeit individually, called PantheonWorkspace – ushering in a new concept of co-working spaces in the country. PantheonWorkspace had a business model based on long-term leases from commercial real estate owners, redesigning the space in extremely aesthetic manner modifying it to suit modern business needs, and then sub-leasing it out through short-term leases to

corporates, startups and individual professionals. This business model found particular favor with the startup culture and millennial generation. Icarus leveraged his name and connections in the startup industry to invite them to set up offices in PantheonWorkspace and soon it became a buzzword for the go-to offices for any well-to-do startup in India.

5. PantheonWorkspace quickly garnered the attention of Indian and foreign PE/VC firms and achieved unicorn status within 12 months of inception. PantheonWorkspace counted amongst its investors some of the most renowned angel investors and private equity firms. They leveraged their deep connections to the startup industry and corporates to provide some of the first few clients to move offices to PantheonWorkspace. One of the most impressive factor of PantheonWorkspace's business model was that they could cater to almost every type of customer, and they did so by dividing their office space into a number of seats and then leasing out offices based on customers' requirements on the number of seats – from Fortune 500 companies requiring office space for 500 people, to novice startups with teams of a dozen people, and even freelancers who just want some space and an internet connection to operate.
6. In typical fashion of venture capital funded startups, PantheonWorkspace garnered very large amounts of capital through equity dilutions in multiple series of investments. Using this large pool of funds at its disposal, PantheonWorkspace quickly took up long term leases in several cities and within 2 years of inception PantheonWorkspace had its presence in 55 locations in 23 cities. Soon PantheonWorkspace became synonymous with co-working industry and attracted other new companies also in this industry. But due to their outsized investment in the sector, they were much ahead of any competitor and was the market leader for co-working space solutions.
7. After working in this manner for another year, the investors started initiating discussions with Icarus for taking the company public through an IPO. This would be a significant moment for Icarus as taking a company public was his long cherished dream which he could not do so with this previous two ventures. After detailed deliberations with the investors and other shareholders, the month of July 2019 was selected as an approximate date to target filing the draft red herring prospectus (**DRHP**) with SEBI, with the final prospectus and IPO within 3-6 month of SEBI approval of the same. Legal Counsels and Bankers to the Issue were accordingly

appointed for the company and instructed to begin due diligence and begin preparing the DRHP.

8. While the news of the company going ahead with the IPO made waves throughout the country, and was seen as a watershed moment for the Indian startup industry, news began to come out with problems in the IPO process. There were rumours that the company was grossly overvalued, and the current valuation with which it intended to launch the IPO – INR 2,10,000 crore (USD 30 billion) – was something that the public markets would never deem rational. Apart from this, smaller issues of questionable related party transactions, nepotism in the company, dubious accounting methods and a flawed business model was threatening to overshadow the IPO process. A number of articles written in financial newspapers had called into question the entire business model of PantheonWorkspace as an unprofitable one and shone light on the PantheonWorkspace as an example of gross overvaluations done by PE/VC firms to justify their outsized investments into startups.

9. In the midst of all this public scrutiny, PantheonWorkspace Solutions Private Limited filed its DRHP with SEBI on 7 July 2019. SEBI did not approve of the DRHP and responded with detailed comments on several aspects. In the meanwhile, public outreach and pre-IPO roadshows conducted by PantheonWorkspace also gave a similar feedback that there were certain systemic problems with the company and its business model. To highlight and discuss these concerns, and SEBI's comments on the DRHP, an Extraordinary General Meeting (**EGM**) was convened on 19 August 2019. At the EGM, the following items were discussed –
 - i. The valuation of the company was highlighted by certain minority investors as one that was universally acknowledged as grossly above the appropriate number that the company ought to have been valued at. These minority investors – Daedalus Capital and Crete Partners – who were the first angel investors in the company levelled accusations against the PE firms – Minotaur Capital and Minos Ventures for artificially inflating the valuation to justify their investments, and against Icarus personally for inducing investments in the company and enriching himself and his own image.
 - ii. SEBI's comments on the profitability of the company was discussed at length. Since the SEBI (Issue of Capital and Disclosure Requirements) Regulations 2018 mandated a company undergoing an IPO to have an average operating profit of at least INR 15 crores during the

preceding 3 years, it was alleged that the concept of “community-adjusted EBITDA” was fraudulent and intended to defraud SEBI and ensure that PantheonWorkspace showed profit whereas it was undergoing losses. The minority investors levelled accusations against Minotaur and Minos for enforcing their views on the company to ensure their quick exit from a loss-making company, despite there being no such profits.

- iii. Minority investors questioned certain related party transactions which the company had not made adequate disclosures of the same as per applicable law, and alleged that these were detrimental to the company while being grossly beneficial to the related parties. These transactions were for several locations which PantheonWorkspace had leased out from entities that were owned and/or controlled by Icarus and his wife and wife’s brother. It was alleged that though these transactions were charged at usual rates and commercial terms that PantheonWorkspace otherwise leased locations from, however there were more economically sound and attractive commercial locations available in these cities, and that these leases were made without adequate disclosures as per applicable law. It was highlighted in the meeting that these transactions effectively made it a conflict of interest situation, and that these transactions must be re-examined and any vote on approving these transactions must be made after excluding the related parties’ relevant shareholdings while computing the percentages under the Companies Act, 2013. Further, Icarus had also taken a short-term loan amounting to INR 50 crore from the company at a low interest rate of 1.5 percent, which was highlighted by the minority investors as another instance of conflict of interest by availing cheap capital from the company at almost negligible rate of interest. Icarus had replied that all these above transactions were given appropriate board approval and only then were entered into by the company.
- iv. Minority investors highlighted a transaction dated 5 January 2019 at the EGM involving sale of the PantheonWorkspace trademark by Icarus to the company for a sum of INR 25 crore. This was alleged as an extortionate transaction that must be avoided by the company as it unjustly benefited Icarus at the expense of rest of the shareholders.
- v. SEBI had highlighted a questionable concept of “community-adjusted EBITDA” for calculating profit-loss of the company and making it eligible for the IPO. As per the DRHP filed by the company –

“While not a key financial measure, we supplement our results by evaluating community adjusted EBITDA. We define “community adjusted EBITDA” as net loss before income tax (benefit)

provision, interest and other (income) expense, depreciation and amortization expense, stock-based compensation expense, expense related to stock-based payments for services rendered by consultants, income or expense relating to the changes in fair value of assets and liabilities remeasured to fair value on a recurring basis, expense related to costs associated with mergers, acquisitions, divestitures and capital raising activities, legal, tax and regulatory reserves or settlements, significant non-ordinary course asset impairment charges and, to the extent applicable, any impact of discontinued operations, restructuring charges, and other gains and losses on operating assets.”

SEBI gave a comment that these comprehensive adjustments to the EBITDA in fact negated all possible expense that the company had to undertake, the result of which is that any and all losses are excluded from the calculations, including all expenses related to acquisition and remodeling of properties, which is effectively the main business of the company.

- vi. One of the biggest points highlighted in the EGM was the sale of 150,000 shares by Icarus within 10 months of filing the DRHP by exercising his option and earning an approximate INR 15 crore. This was alleged to have a negative impact on the potential retail and institutional investors who could not be expected to be induced to invest in the IPO of the company by a person who himself had sold shares just prior to same.
 - vii. Minority investors called for removal of Icarus as Chairman and CEO from the company as they no longer had any faith in his capabilities to carry out the duties effectively and in good faith. However, this vote for removal of Icarus as Chairman is subject to the articles of association of the company (the articles of association stated that Icarus was the chairman of the company for perpetuity and the position of chairman could only be vacated in two circumstances – (a) death, or (b) voluntary retirement), and was not further argued upon in the meeting after the majority investors Minotaur and Minos reassured the minority investors of his capability to carry on the functions.
 - viii. The minority investors were assured by Icarus and the majority investors – Minotaur and Minos that their concerns would be taken care of and SEBI’s comments will be duly addressed in the next DRHP that will be filed with SEBI.
10. After the EGM took place, Icarus and the majority investors Minotaur and Minos went on a publicity campaign to reassure the public of the economic strength of their company and in Icarus’ capability to carry on as the chairman and CEO of the company which he founded. However, at the same time another company that Icarus founded was creating problems for

them. Icarus had started another venture with a couple of other entrepreneurs – Paris and Hector called Troy Fintech Solutions Private Limited, a financial-technology based company (fintech company), starting a new mode of banking channel for consumers. Troy was registered as a Non-Banking Financial Company with the RBI and operated on a virtual marketplace-business model which brought together individuals and firms for disbursing short-term loans and credit to other individuals and firms. This was a new concept in India at that time which opened a huge pool of capital for individuals and small businesses to tap into apart from banks which were the traditional source of credit for the Indian corporate and individual sector at the time. This also attracted the attention of RBI and they brought appropriate regulatory framework for such fintech NBFCs.

11. Troy was immediately hailed as a masterstroke by the media and common people began using it to avail loans in short 1-2 days' periods while passive retail investors and MSMEs started lending on the platform to earn attractive rate of interest from these loans as creditors. With technology-based verification of credentials of both the borrower and creditor and no collateral requirements given the small value of loans, Troy removed all middle men from the process and stopped the age-old business of *sabukars* in India who used to charge astronomical interest rates on hefty collateral. Instead, Troy effectively became an intermediary in the process, and used to charge a percentage of each loan disbursed and availed on the platform from the lender and the borrower and charged fees for such verification process to earn its revenue. Troy quickly attracted the interest of PE/VC investors who took it to multi-billion-dollar valuation in matter of 18 months.
12. While the first 24 months of the company were blockbuster, with Troy becoming one of the rare startups to become profitable in such a small period of time, recent events in India had made this business model difficult. Just as recession and slowdown was beginning to set in the Indian economy, Troy started facing a paucity of lenders as a credit crunch began to set in India. While the demand for credit became higher and higher, lenders with available funds invested their funds in safer areas like gold, and the need for these fintech startups began to wane. To ensure continued profitability, Troy brought a new product on its platform called Trojan Horse – a short-term bond that lenders could purchase from Troy and Troy would then sell Trojan

Horse product to borrowers on its platform at a slightly higher rate, thereby making profit on the difference in the rates of interest.

13. The Trojan Horse product was an instant success and brought lenders and borrowers back to the platform. The next 6 months were very profitable for the company. However, in the middle of this, an activist investor Achilles sent a letter to RBI that the product Trojan Horse was in contravention to the RBI regulations governing Troy which prohibited such NBFCs from lending. RBI issued a show-cause notice to the company and ordered seizure of all activities related to these products till the issue is resolved. While the company complied with this and was in constant touch with RBI to assuage their concerns that Trojan Horse product did not amount to lending and that Troy was in fact an intermediary, this had a disastrous effect on the company's business. There was an immediate outflux of capital from the platform and lenders and borrowers started rescinding their loan contracts. As a result, there was an immediate impact on Troy's balance sheet and the profitable company started posting losses. To help tide over this, Icarus asked his other company – PantheonWorkspace to extend a short-term loan at a low rate of interest (2.5 percent p.a.) to Troy for ongoing day-to-day finances. This magnitude of the loan – INR 3500 crores (USD 500 million) – was such that it had a material bearing on both the companies' workings.
14. While this loan was granted without due approvals necessary for such a related party transaction, once there was vehement opposition by the minority investors Daedalus and Crete as it being unduly detrimental to PantheonWorkspace (which was itself not profitable); a meeting of the Board of Directors and shareholders of PantheonWorkspace was convened to give the necessary approval to the transaction as an exceptional situation on a post-transaction basis. Daedalus and Crete did not raise any objection to the legal validity of such a post-dated approval of the related party transaction at that time in the minutes of the meeting of either the Board/shareholders' meeting.
15. After the EGM took place, corporate insolvency resolution proceedings were initiated against Troy at the Principal Bench, National Company Law Tribunal, New Delhi by PantheonWorkspace as the creditor after pressure from the minority investors. This petition was opposed by the RBI on two counts – (a) that the investigation undertaken by RBI pursuant to

the show-cause notice issued and reply given were still pending, and hence it fell under the definition of “dispute” which meant that the insolvency petition cannot be entertained until the dispute had been settled, and (b) that Troy fell under the definition of a “financial service provider” and hence was excluded from the ambit of the Insolvency and Bankruptcy Code, 2016. PantheonWorkspace had brought the insolvency petition to help realize its loan since it wanted to shore up its own balance sheet prior to undertaking the IPO and saw the outcome of the insolvency process as crucial to the IPO filing. In Icarus’ view, Troy was not a financial service provider, and a mere NBFC license does not on its own make an entity as a financial service provider. Other lenders of the corporate debtor sought to designate the transaction as a preferential transaction because of the connection of Icarus as founder of both the companies and sought to declare it to be avoided for the purpose of the CIRP.

16. The NCLT admitted the petition and ordered the appointment of Odysseus as Interim Resolution Professional. This order is being challenged by RBI and Icarus.
17. Daedalus and Crete also brought an action for oppression and mismanagement against Icarus and the majority investors Minotaur and Minos. They alleged that the company had undertaken several questionable transactions with related entities that were directly or indirectly linked to the founder Icarus, especially on the issue of the loan being granted by PantheonWorkspace to Troy, given that the validity/invalidity of the related party loan transaction also impacts the insolvency petition (especially the validity/invalidity of the post-approval granted for the loan transaction). Further, the sale of trademark PantheonWorkspace to the company for an exorbitant amount was claimed as unjust enrichment of Icarus at the expense of the shareholders. Daedalus and Crete also alleged that the act of PantheonWorkspace using the concept of “community adjusted EBITDA” was fraudulent on part of Icarus and the majority investors Minotaur and Minos to simply fulfil SEBI’s criteria for only a profitable company to be allowed to do an IPO. Further, Daedalus and Crete also alleged that the valuation of the company calculated using such concepts used by the majority investors and Icarus was also an action with an intent to defraud the public and other potential institutional investors, and that an independent valuer must be appointed to provide accurate valuation of the company. They also sought to restrain the company from proceeding with the IPO until the company has assured SEBI and the shareholders of its profitability.

18. Further, Daedalus and Crete sought removal of Icarus as chairman and CEO as in their opinion he was no longer fit serve the company. They sought that he must only retain position as a shareholder and director in the company. Daedalus and Crete also sought that the related party transactions must be avoided and/or appropriate directions must be given in this regard for each such individual transaction – including seeking a court-appointed independent director to serve on the board. They also alleged that the relevant clause in the articles of association that declared Icarus as chairman for life was invalid as per the Companies Act, 2013 and sought it to be declared void along with any appropriate directions that the Tribunal might give.
19. Another righteous minority angel investor and one of PantheonWorkspace’s earliest shareholder – Homer – has also joined Daedalus and Crete in their action. Homer has alleged that the business model of PantheonWorkspace is merely that of a real estate company of leasing and sub-leasing commercial property. There is no input of a technological nature that could allow it to claim itself as a technology-based company as it had mentioned numerous times in its DRHP filed with SEBI (SEBI has also given similar comments to usage of such terminology by PantheonWorkspace). Further, Homer has alleged that due to this tag of “technology company” assigned to PantheonWorkspace, the company had registered itself as a startup company and was able to take benefit of the exemptions available to a startup company. As per Homer, PantheonWorkspace does not fall under any of the criteria mentioned for recognition as a “startup company”. According to Homer, this was a fraudulent act made with a deliberate intent to defraud current investors in the company and induce future investors to make invest in the IPO of the company thinking it’s a tech-based startup. Since this action can have implications on tax liability and other statutory dues that may be levied on PantheonWorkspace in the event Homer’s action succeeds, the NCLT has also made the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry as a party.
20. The Principal Bench NCLT admitted the above petition and proceeded to list it for daily hearing on merit. The majority investors and Icarus resisted all these allegations (except for the limited issue of the loan granted to Troy, where the majority investors found favour with the minority investors) and seek the NCLT to dismiss the petition. The NCLT bench has decided to hear the two matters together on the limited issue of action relating to admitting the corporate insolvency

proceeding initiated by PantheonWorkspace against Troy due to the related party transaction of loan being granted to Troy alleged as unjust enrichment of Troy at the expense of PantheonWorkspace by the minority and majority investors. The other issues in the petition relating to the action of oppression-management have been listed for hearing right after the insolvency petition. Icarus also plans to resist this action of the NCLT to hear these two petitions (for the limited issue as mentioned above) together and plans to challenge the maintainability of the same, along with challenging the respective allegations on merits in both the petitions.

21. Troy and Icarus are being represented by the same legal counsels for the insolvency petition. Icarus, Minotaur, Minos and PantheonWorkspace are represented by the same legal counsels (except for the limited issue as mentioned above where Minotaur and Minos have a separate stand from Icarus), while Daedalus, Crete and Homer are represented by another team of common legal counsels.
22. The NCLT Bench has listed the matter for hearing on 7 December 2019 and has requested the parties in each petition to formulate issues as well for the ease of the Tribunal and everyone present.

The problem has been drafted by Mr. Rohan Kohli, Graduate of NLIU, currently an associate at Trilegal; Mr. Rishabh Sinha, Graduate of NLIU, currently a senior associate at Trilegal also provided critical inputs to the drafting of the proposition.

Teams are forbidden from contacting and/or attempting to contact them for any purpose relating to the Moot. Teams found in violation of this shall be immediately disqualified, and the participating institution may be blacklisted from participating in the Moot.