1st TNNLU

NATIONAL INSOLVENCY MOOT COURT COMPETITION, 2025

PRELIMINARY & QUARTER FINAL ROUNDS: (22ND & 23RD FEBRUARY, 2025 (ONLINE)

SEMI-FINAL & FINAL ROUNDS:
15TH MARCH, 2025 (OFFLINE)

MOOT PROPOSITION

MOOT PROPOSITION*

Background of the Country: Republic of Vinland

1. Vinland is a modern, progressive nation with a thriving entrepreneurial ecosystem supported by a strong legal framework. The country actively promotes the growth of Micro, Small, and Medium Enterprises (MSMEs) through streamlined policies, government incentives, and a focus on sustainability. Vinland's business landscape is characterized by innovation, inclusivity, and accountability.

2. Key legislation in Vinland includes:

a. MSME Promotion and Development Act, 2006 ("MSMED Act"): Establishes a comprehensive framework for MSMEs, providing financial incentives, simplified registration, and support for innovation. Thorfinn is a registered entity under the provisions of the Act.

b. The Vinland Companies Act, 2013: Regulates corporate entities, ensuring transparency, accountability, and fair-trade practices.

c. Insolvency and Bankruptcy Code, 2016 ("IBC"): Consolidates the legislations pertaining to insolvency of corporate entities and individuals and regulates the insolvency resolution of corporate entities and individuals.

The above legislations are pari materia to the legislative framework of India.

Thorfinn Innovations Private Limited's journey into corporate insolvency resolution process

3. Thorfinn Innovations Pvt. Ltd. ("Thorfinn") is a dynamic medium enterprise under the MSMED Act, specializing in smart lighting solutions and energy-efficient products. The company's name, "Thorfinn" reflects its commitment to illuminating lives through technology and innovation. It has gained recognition for creating products that cater to urban and rural markets while adhering to sustainable practices. Thorfinn, a family-owned business was registered as a medium enterprise in 2019. The business of Thorfinn was severely hit during the Covid-19 pandemic, leading to financial distress, mounting debts and operational challenges.

**This Moot Proposition was drafted by Ms. Shwetha Vasudevan, Advocate, Madras High Court.*

4. On an application preferred by a financial creditor of Thorfinn, the Vinland Company Law Tribunal ("VCLT") admitted an application under Section 7 of the Vinland Insolvency and Bankruptcy Code, 2016 ("IBC") and one Mr. Sven Peters was appointed as a Resolution Professional ("RP") of Thorfinn on 15.01.2023. Thus, on 15.01.2023, Corporate Insolvency Resolution process ("CIRP") commenced against Thorfinn. Thorfinn is hereinafter referred to as the Corporate Debtor ("CD").

<u>Promoters of Thorfinn Innovations Pvt. Ltd.:</u>

a. Lucius Castus: The (Former) Managing Director and promoter of the CD. Mr. Lucius has built Thorfinn from the scratch. The innovative business idea of Thorfinn is purely his brain child. In fact, Mr. Lucius has settled his personal properties in favour of the CD while it was incorporated, and Mr. Lucius and the CD are joint title holders to the properties held by the CD. In fact, the registered office premises of the CD is owned jointly by Mr. Lucius and the CD.

b. The other promoters and former directors of the CD are Mr. Loki Olson, Mr. Rasmus Gunnar, Ms. Helga Borg, and Mr. Artorius Thorkell.

5. This structure for Thorfinn presents a credible and adaptable company that aligns with Vinland's progressive economic policies while maintaining a strong focus on sustainability and innovation.

6. Though the CD was subjected to CIRP. Mr. Lucius believed that the CD, if revived in the CIRP process, would have substantial potential for effectively contributing for sustainable development in the future. Hence, Mr. Lucius was very keen on floating a resolution plan for the CD, using all his personal assets which would enable him to pay off the debts and revive the CD back on track.

<u>Submission of the resolution plan</u>

7. The resolution plan was presented by Mr. Lucius and Mr. Loki as the resolution applicants. The resolution plan was very optimal and the Committee of Creditors of the CD also approved the plan with 100% majority. The resolution plan contemplated substantial pay outs to financial creditors and the operational creditors, including tax dues. The resolution plan also appointed the RP as the monitoring authority with liberty to approach the VCLT for liquidation in the event of failure of the implementation of the resolution plan.

8. In the period up until the approval of the resolution plan, certain incidents transpired. Since Mr. Lucius was in control of the management of the CD from its inception, the manager of the company reported to him about certain pending dues arising under the Income Tax law and the Goods and Services Tax ("GST") laws. On 14.01.2023, Mr. Lucius cleared certain income tax dues and dues arising under GST laws, aggregating to INR 30,00,000/- from the CD's coffers and believed this is a payment in the course of the business, though it causes a substantial crunch in the cash flow.

9. On 16.01.2023, Mr. Lucius had also handed over a cheque signed in his capacity as the Director, for INR 20,00,000/- to his accountant to encash the cheque and have the payments made towards tax dues. This payment instruction was issued apprehending attachment of the properties of the CD for tax dues, and especially since Mr. Lucius holds 50% of the title in the registered office premises of the CD.

10. But the accountant encashed the cheque only on 06.04.2023 and made the payment of INR 20,00,000/- for meeting tax dues using suitable portal access. However, on 31.03.2023 before the payment of INR 20,00,000/- was made, the RP had already collected, collated, and frozen the list of amounts owed to each of the creditors. The list was final and not revised thereafter.

11. The fact of payment of INR 50,00,000/- came to the knowledge of the RP after the resolution plan stood approved. Hence as against the payments made, the RP in his capacity as the monitoring authority immediately filed two applications before the VCLT, namely:

(a) Application challenging the payment of INR 30,00,000/- as a preferential transaction considering the unusual and excessive nature of the payment, and

(b) An application challenging the payments made after CIRP admission date as a breach of moratorium. The said applications were resisted by Mr. Lucius on the ground that these payments were in the ordinary course of business. Mr. Lucius in fact attempted to argue that these were crown debts and merits payment *de hors* and is thus neither a preferential transaction, nor breach of the moratorium.

12. As a consequence of the allegation of preferential transaction, the RP filed yet another application pressing for liquidation citing that the promoter has lost the *locus* to submit the resolution plan on account of the restriction contained in Section 29A(g) of the IBC.

13. In the alternative, to controvert the situation, Mr. Lucius pressed for a modification of the terms of the payout contained in the resolution plan and filed an application for a modification of the resolution plan, as the approved resolution plan contained clauses which permitted the plan to be modified (Annexure-I). The plan allocated INR 9,00,000/- to the demands arising under the Income Tax law and the GST laws after a substantial hair-cut. However, considering Mr. Lucius had already paid out INR 50,00,000/-, he filed an application to modify the resolution plan to account for the prior payments and sought for a set off, on the pretext that any demands beyond INR 9,00,000/- will stand extinguished by virtue of clause 12 of the resolution plan set out in Annexure-I herein. In fact, in an earnest attempt to modify the resolution plan, Mr. Lucius has already obtained the written consent of the members of the erstwhile Committee of Creditors for the proposed modification.

14. The RP, being a necessary party to the plan modification application, resisted the application on the ground that VCLT cannot modify the resolution plan once approved, and thus pressed for liquidation citing failure of implementation. Mr. Lucius vehemently relied on Section 39(3) of the IBC, along with the inherent powers of VCLT and the fact that the plan itself contemplated clauses empowering modification, to support his modification application. Mr. Lucius took a view that the approved plan containing the modification clause is binding and thus modification is legally permitted. Nevertheless, the RP filed an application to liquidate the CD citing failure to implement the resolution plan.

15. In the interim, since the business of the CD was also being conducted by the RP, the turnover limits increased to an extent that the CD ceased to be a Medium Enterprise. The limits increased on the date on which the resolution plan was submitted. Albeit, few hours after the submission of the plan. This change in turnover had occurred during the time when the plan approval application was pending before the VCLT. This fact however was realised after the resolution plan was approved by the VCLT. The RP was thus of the view that the CD ceased to be an MSME entity on the date of approval of the plan by the VCLT, and thus Mr. Lucius and Mr. Loki were not eligible to submit the Resolution plan as it is barred under Section 29A of the IBC and pressed for liquidation.

16. Multiple applications were taken up together for adjudication by the VCLT. A summary of the proceedings is set out in Annexure-II herein. The orders passed by the VCLT was appealed before the Appellate Tribunal i.e., VCLAT. Subsequently against the orders passed by VCLAT, the Resolution Professional preferred appeals before the Hon'ble Supreme Court of Vinland. The Hon'ble Supreme Court has tagged all the matters to be taken up together for deciding the following issues in *Sven Peters v. Mr. Lucius & Anr. in Civil Appeal No. 51/2025*

a. Whether the Resolution plan submitted by the Promoters will be valid in the eyes of law in the light of change in the turnover limits of the CD?

b. Whether in the light of Clause 12 of the resolution plan, any tax demand beyond INR 9,00,000/- stand extinguished and that the payments made to the tax department merits to be set aside?

c. Whether the resolution plan proposed by the promoter can be modified after the VCLT has accorded its approval, invoking the inherent powers of the VCLT?

d. Whether the transactions in the present case can be a preferential transaction warranting the disqualification of the promoters and are the promoters guilty of breach of moratorium?

The parties are free to frame further issues.

Annexure - I

Extract of resolution plan submitted by Mr. Lucius and Mr. Loki

12. Statutory Dues

12.1 The statutory dues stand crystallised as on the last date on which claims are collated. The following amounts are payable to specifically in relation to Income tax dues and dues arising under the GST laws.

Sl.	Nature of the dues	Dues as crystallised (INR)	Payout as per plan (INR)
1.	Demands under Income Tax law	25,00,000/-	3,00,000/-
2.	Demands under GST laws	85,00,000/-	6,00,000/-
TOTAL PAYOUT			9,00,000/-

12.2. The Resolution plan does not contemplate any payments beyond the aforesaid amounts. Income Tax and GST demands beyond INR 9,00,000/- stands extinguished by virtue of this resolution plan, upon approval.

14 Approval of Resolution Plan:

14.1 This resolution plan as approved by the Adjudicating Authority shall be binding on the corporate debtor and its employees, members, creditors, [including the Central Government, any State Government, or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan.

14.2 The binding resolution plan, as approved by the Adjudicating Authority, may be modified by the resolution applicants in the interests of giving full effect for implementation of the terms of the resolution plan, for the Corporate Debtor being an MSME entity and its resolution is paramount.

Annexure - II

Summary of the proceedings before VCLT and VCLAT

Sl.	Application	VCLT's order	VCLAT's order
1.	*Preferred by the Resolution Professional challenging the payout made before CIRP admission as preferential transaction.*	*No case of preferential transaction made out*	*Held that the same is not a preferential transaction.*
2.	*Preferred by Mr. Lucius and another, seeking for modification of the resolution plan.*	*Allowed*	*Allowed*
3.	*Preferred by the Resolution Professional challenging the payment made after CIRP admission date as breach of moratorium.*	*Upheld the set off, and hence, dismissed the breach of moratorium application.*	*Upheld the set off, and hence, dismissed the breach of moratorium application.*
4.	*Preferred by the Resolution Professional seeking liquidation of the CD, citing change in plan, and change in the locus as a medium enterprise.*	*Application Dismissed*	*Appeal Dismissed on the ground that the plan already stood approved and in interest of the CD being an MSME.*