

MOOT PROBLEM – 4

IN THE SUPREME COURT OF INDIA

In the matter of-

MAHA SURYA TRUST & ORS. ... Appellants

Versus

TENJIKU SPACE IMAGING INC. ... Respondent

1. Tenjiku Space Imaging Inc. (TSI) is a company incorporated under the Indian Companies Act, 1956 which has its shareholding spread amongst the government of India (31%) and private holding (69%). The Board of TSI consists of 7 directors, including Mr. Mike who is a nominee director in the company and Mr. Jay Pandit who is the managing director and also is a government official. The most prominent figure within the company is Mr. Shyamalan, who though is a shareholder with only 4% and a director, he is credited to be the force behind the company-both in terms of managing of the affairs and maintaining the technological leadership of the company.
2. TSI controls a constellation of 7 earth observation satellites, namely, Taran-2,3,5,7,8,9 & 11 orbiting in elliptical polar orbits with a nominal mean altitude of 847 kms. TSI had the capability to receive electro-magnetic signals from these satellites and process the data into discernible detailed imagery of earth locations. In 2008 TSI obtained patent of a new technology which enabled them to provide live imagery of a particular location upto 5000 hours at very affordable prices. The Taran series of earth observation satellites are compatible with this new technology. TSI also announced that in 7 to 8 months they will be ready with another system called, Unit Aman, capable of processing data into discernible detailed imagery. Unit Aman is already contracted to be sold to NoveltyImagers Inc.
3. On 23rd January, 2011 the Government of Vanar issued tender to monitor the flooding in the Nammalwar river. The All Natural Resources Management Co. Pvt. Ltd.(ARMC)

having its registered office in the capital of Vanar was awarded the tender for two years starting from 1st June, 2011 after a detailed process of tendering. Mr. Lobo, an independent director on All Natural Resources Management Co. Pvt. Ltd. announced the following:

“I am elated at the appointment of a monitoring agency to monitor the flooding in the Nammalwar river. This is a positive measure to mitigate loss due to flooding every year.”

4. The All Natural Resources Management Co. Pvt. Ltd. contracted TSI to provide uninterrupted data imagery over two locations. These locations include two river bends across the Nammalwar river which are flanked by steep mountainous terrain on either side which makes access to this area difficult. A link to the live feed was made available to All Natural Resources Management Co. Pvt. Ltd.

5. On 5th July, 2011 TSI lost control over the live feed due to some technical snag and the frame froze at 8:00 a.m. Despite many efforts the engineers on duty could not revive the live feed till 8:20 a.m. wherein it was decided to call an emergency meeting. At this emergency meeting, attended by all Directors on the Board except Mr. Mike, the Chief Technical Manager suggested that the quickest way to bring the live feed on is (Method-1) to sync the current system with the new Unit Aman, and reboot the entire system; which should not take more than 30 minutes. In the alternative, (Method-2) the engineers could follow the set procedure to bring the system on, however, there was no guarantee on time with this method. Method-1 would mean that to re-sync to the original system the company would have to incur a minimum cost of Rs. 75 crore. Further, there is risk of jeopardizing the contract with NoveltyImagers Inc. for sale of Unit Aman, as it would cost nearly Rs. 100 crore to bring Unit Aman to the configurations demanded under the contract. Considering the costs involved the Board decided with a dissent from Mr. Shyamalan to follow Method-2. It took the engineers nearly 2 hours to bring the live feed on. No separate information was sent to All Natural Resources Management Co. Pvt. Ltd.

6. When the live feed was restored a landslide was noticed at one of the river bends. Huge boulders of rock had fallen over from the flank north of the river bend impairing the flow of water. TSI immediately informed All Natural Resources Management Co. Pvt. Ltd. regarding the landslide. By the time All Natural Resources Management Co. Pvt. Ltd. could inform the government and some mitigative measures taken pressure developed at the other end of the river at the Nammalwar Dam. A part of the dam gave way flooding a new upcoming township, Vrindavan Homes, and submerging the Maha Surya temple, an important place of worship for the Suriyau sect who for centuries have held the Maha Surya temple as their most sacred site for centuries. Due to a Court order access to both these sites had been cut off temporarily till 15th July, 2011 and there was no loss of life.
7. There was huge public outcry due to the incident, particularly, due to the submerging of the Maha Surya temple. In the month of August every year Maha Surya temple witnesses great revelry due to the Surya festival and this compounded the public anger. The investors and stakeholders of Vrindavan Homes expressed outrage and a demand was placed on the authorities to compensate them for the loss. There was scathing criticism of All Natural Resources Management Co. Pvt. Ltd. for its failure to monitor the landslide and alert the authorities. At this stage TSI issued a public statement, announced via its director, Mr. Mike:

“We are sad at the turn of events. Despite our best efforts the live feed took some time to restore...a couple of hours. This was an event *force majeure* and our sympathy is with the all stakeholders of the new township. We assure the public that the best judgment was employed by our company to maintain the live feed and will continue to take every step to prevent recurrence of such events.”

8. Soon the details of the emergency meeting was leaked to the media by an unknown source and public anger mounted against TSI, particularly Mr. Mike. There was severe criticism of the judgment exercised by TSI and different sections of civil society denounced the decision of the Board as a naked act of capitalism.
9. When the water receded, apart from settlement of mud deposits remarkably there was no damage to the temple structure. TSI offered to pay for the cleaning of the temple as a goodwill gesture but stated unequivocally that the same is not an admission of liability in

any way. Accordingly, with permission from the government of Vanar TSI began cleaning operations. However, as the month of August approached the Maha Surya Trust increasingly became impatient regarding the possession of the temple. TSI had employed substantial resources at the temple for cleaning purposes and was unwilling to either hurry up the cleaning process or hand over the site with the cleaning equipments. In addition, certain prominent members of the Suriyau community demanded monetary value from TSI for cleaning instead of letting TSI clean. TSI repeatedly made its stand clear that the cleaning activity is a good will gesture and not admission of guilt of not taking due care. In a statement released by Mr. Jay TSI announced:

“While TSI respects the emotions of the Suriyau community it is made clear that TSI is cleaning the Maha Surya temple as a goodwill gesture and not as admittance of guilt. Even if the Surya festival is not organized this year it can be organized at some later date in the year or even next year. And TSI will not be hurried to hand over the premises midway through the cleaning process and no monetary compensation will be given to the trust for remainder of the cleaning process.”

10. This fanned the rage of some sections of the Suriyau community and the trust issued several statements stating this is in violation of their fundamental rights.
11. The government of Vanar set up an enquiry against the incident. A committee headed by a Retired Judge of the High Court of Vanar was commissioned which opined *inter alia* that the reason for the landside was illegal mining in the north side of the flank. The report named Vinda Mining Co. responsible for the illegal mining in the area. Incidentally, Mr. Lobo is a nominee director on the Board of Vinda Mining Co. The report also stated negligence as the reason for the loss and stated that liability falls upon All Natural Resources Management Co. Pvt. Ltd. as the Government had imposed the duty to monitor flooding upon them.
12. In the meanwhile, the trustees of the Maha Surya temple, Maha Surya Trust, moved the Hon’ble High Court of Vanar against TSI seeking directions in writ proceedings against TSI for [a] being dispossessed of their access to the temple [b] payment of cost of cleaning of the temple, and [c] damages on account of inability to host the Surya festival.

TSI challenged the maintainability of the writ petition. The Hon'ble High Court of Varanasi dismissed the writ petition as non-maintainable vide order dated 7th December, 2011.

13. Alternatively, a civil suit was filed by the investors and stakeholders of the Vrindavan Homes in the Hon'ble Delhi High Court against TSI and all the directors individually for failing to exercise due care in preventing the occurrence of loss to them. TSI submitted that no liability falls on either TSI or any of its directors. The Hon'ble Delhi High Court dismissed the suit vide order dated 22nd December, 2011.

14. Aggrieved by the said orders the Maha Surya Trust and Vrindavan Homes alongwith stakeholders appealed to the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India has issued notice to TSI and its directors to respond to these proceedings and tagged both the matters together. The questions for determination are broadly stated as follows:

- (i) Whether the writ petition is maintainable and Maha Surya Trust entitled to any writ remedy?
- (ii) Whether the Maha Surya Trust is entitled for payment of cost of cleaning of the temple and for damages on account of inability to host the Surya festival against TSI?
- (iii) Whether any liability can be fastened upon the directors of TSI?
- (iv) Whether TSI is liable to compensate Vrindavan Homes alongwith its stakeholders?
