2018 - Problem Ten

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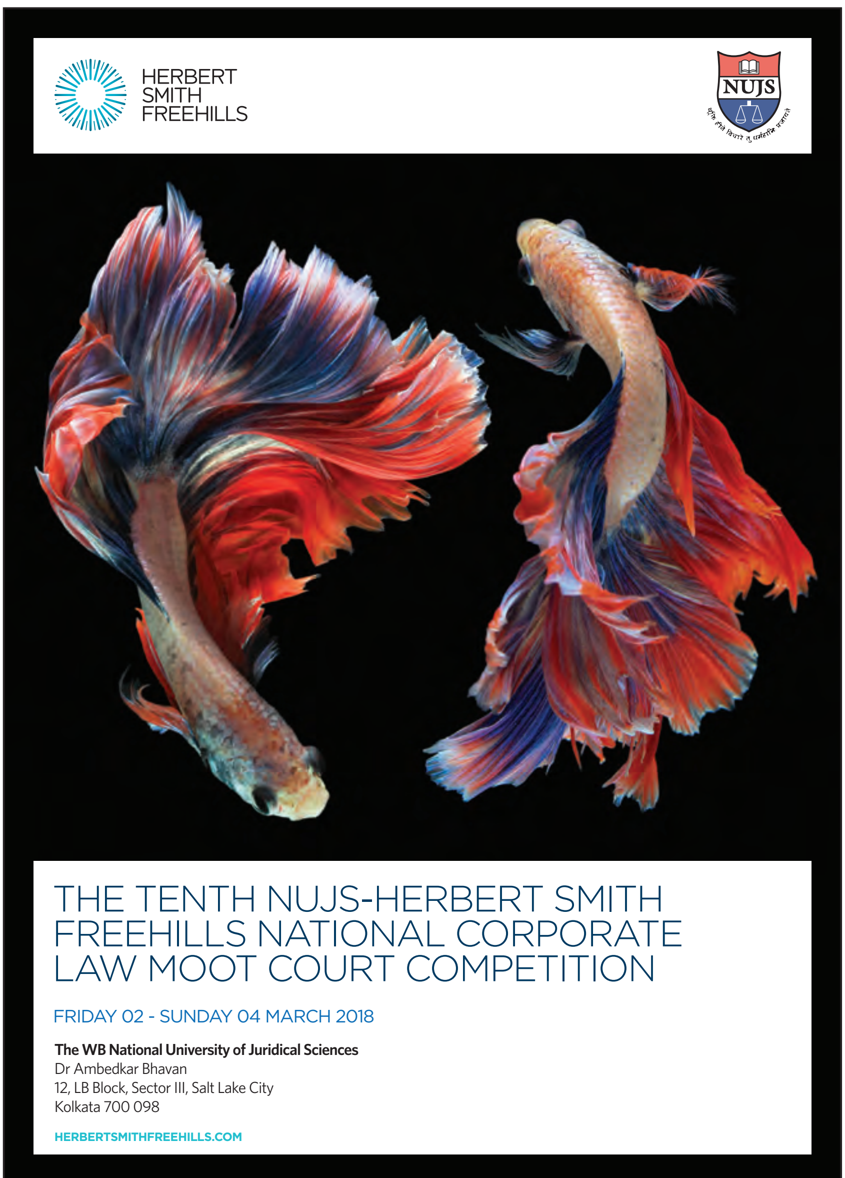

Overview

At the time of publication, the Tenth NUJS-HSF National Corporate Law Moot Court Competition has yet to take place

Before The National Company Law Appellate Tribunal New Delhi

Mr. Ramanna Gowda, Mr. Krishnan Iyer, Twenty Point Partners Private Limited & 100 Other Shareholders of Mysore Jasmine Silk Manufacturing Limited (Appellants) v. New Town Designs Limited, Mysore Jasmine Silk Manufacturing Limited, Mr. Sagar Gowda, Ms. Vinodini Gowda,Mr. Siddappa & Mr. Raj Mathur (Respondents)

1. Mr. Ramanna Gowda's family has been a doyen of the silk industry in South India for decades. Hailing from Ramanagara, a town outside Bangalore and famous for its sericulture, the Gowda family have established themselves as the leading private player in the design, manufacturing and marketing of the Mysore silk apparel. In 1990, Ramanna took charge of the business upon the death of his father. He then decided to institutionalize the business, which was more or less run loosely until then. He was ably assisted by his two children, Mr. Sagar Gowda and Ms. Vinodini Gowda. Being the older between the two, Sagar completed a degree in textile design from the University of Minnesota. At the time, Vinodini was pursuing her MBA from the University of Melbourne, from which she later graduated.

2. Soon after the death of his father, Ramanna established a partnership firm M/s. New Town Silks in which each of he and his children were equal partners. Relying upon Ramanna's vast understanding of the business and industry and the qualifications and international experience of his children, the business began flourishing. The designs developed by New Town Silks and the products it manufactured witnessed significant demand domestically and from overseas. The silk apparel designed and manufactured by New Town Silks was sold in nearly 15 countries with the annual revenue in the 1990s averaging Rs. 25 crores.

3. Around 1998, the Gowda family decided on a massive expansion plan given the growth in the business of the firm and the rising popularity of Mysore silks around the world. They intended to establish a state-of-the-art design studio in Bangalore to design silk apparel, and also a hi-tech manufacturing facility in Channapatna, a town located in the silk belt outside of Bangalore. It was clear that, despite their success, the family needed outside funding support to embark on their ambitious plans. They contacted Mr. Basavaraju, a senior director with the National Bank of Mysore (**NBM**), who was also a close friend and confidante of the Gowda family. Being well- versed in financial matters relating to manufacturing enterprises, Mr. Basavaraju offered to arrange for bank loans through

NBM. But, he also strongly advised the family to approach a well-known equity investor (such a private equity fund), which will not only make an equity investment in the company, but would also support the venture and its business through its expertise and business contacts at the international level. This sparked considerable interest in the younger Gowdas who were keen to involve an international investor. Consequently, Mr. Basavaraju introduced the Gowda family to Mr. Krishnan Iyer, a veteran in the private equity industry in Singapore, who was the managing director of Twenty Point Partners Private Limited, a leading Asia-focused private equity firm with specialization in the textile industry.

4. After several rounds of discussions, Krishnan demonstrated a keen interest in the business of New Town Silks and was keen to take the funding proposal forward. Twenty Point's analysts conducted a business due diligence, which valued New Town Silks' business at about Rs. 100 crores. However, Twenty Point's lawyers advised that the organizational structure of New Town, a partnership firm, was inappropriate for a private equity investment. Twenty Point and its lawyers drew up a reorganization plan which involved the migration of the existing business of New Town into a two-tier corporate structure. Accordingly, the Gowda family established two companies, namely New Town Designs Limited and Mysore Jasmine Silk Manufacturing Limited. Being the parent company, New Town was owned initially by Ramanna (80%), Sagar (10%) and Vinodini (10%) either by themselves or their respective nominees. Mysore Jasmine was established as a wholly owned subsidiary of New Town, with six shares held by six nominees each. This structure was necessitated on account of Twenty Point's proposal. Twenty Point was keen to ensure that the design studio and the manufacturing facility were kept as separate businesses housed in different entities. This would provide greater flexibility not only in attracting further investments in each business separately, if required, but also for easy exits for the investors.

5. After some negotiations between the parties, the Gowda family, Twenty Point, New Town and Mysore Jasmine entered into an Investment Agreement on May 9, 2000, by which Twenty Point agreed to take up a 5% stake in New Town for an aggregate sum of Rs. 5 crores. The key terms of the Investment Agreement are set out in **Annex A**. All the terms set out in Annex A were also appropriately incorporated into the articles of association of New Town and Mysore Jasmine respectively, except that the section pertaining to "Dispute Resolution" was incorporated in the articles of association of New Town but not Mysore Jasmine. Other than these provisions, the articles of the company followed Table A of Schedule I of the Companies Act, 1956. After the necessary regulatory approvals were obtained, Twenty Point made its investment in New Town on July 15, 2000 and it became a 5% shareholder of the company. Due to some minor rearrangement of shareholdings in the Gowda family that was undertaken prior to Twenty Point's investment, the resultant shareholding was held by

Ramanna (75%), Sagar (10%), Vinodini (10%) and Twenty Point (5%). The company had only one class of shares, namely equity shares. While Ramanna was appointed the executive chairman of both companies, Sagar and Vinodini were both appointed executive directors. Sagar oversaw the operations while Vinodini managed finance and marketing.

6. The idea behind bringing Twenty Point into the Gowda ventures was not merely financial. As is evident, the amount infused by Twenty Point was not immensely significant. On the other hand, it is their expertise and network within the textile industry and, more specifically, silk business that was the main attraction for the Gowdas to bring them in. Soon, with the help of Twenty Point, the Gowdas managed to obtain connections and make inroads into the fashion industry in Paris, Milan, London and New York and acquire direct access to haute couture houses in those fashion capitals. Through this expansion, New Town and Mysore Jasmine began attracting significant business. As for further financial inputs, Mysore Jasmine obtained a loan of Rs. 25 crores for setting up the manufacturing facility in Channapatna. The loan was secured by a fixed charge over the land and other property situated on the facility, and also by a floating charge on the raw materials, inventory and book debts.

7. Over the next five years, the two companies witnessed a steady growth trajectory and they became major players in the fashion industry in the world, both for design and manufacturing of silk fabrics. Accompanying this astronomical growth was the need for further capital for expansion. The Gowdas began contemplating various options for raising capital. They obtained the advice of PeerCap Advisors Limited, an Indian leading investment bank. PeerCap recommended that Mysore Jasmine embark upon an initial public offering (**IPO**), especially given that most of the capital needs were for that company. Accordingly, Mysore Jasmine appointed various advisors who began conducting due diligence and drafting the red herring prospectus. After obtaining the necessary clearance from the Securities and Exchange Board of India (**SEBI**), Mysore Jasmine successfully concluded its IPO in December 2005 raising Rs. 300 crores for the issue of 25% shares to the public on a post-diluted basis. As part of the governance overhaul for the IPO, Mysore Jasmine appointed on its board four more directors who were independent of management and the promoters of the company. It was decided that Ramanna will continue as the chairman of Mysore Jasmine.

8. During the years in the lead up to the IPO and thereafter, Ramanna and Krishnan began developing a close professional bond. Ramanna sought Krishnan's counsel on all important matters relating to the business of both New Town and Mysore Jasmine. After all, it was the resources that Krishnan put behind Twenty Point's investment that led to the opening of various doors for Gowda's businesses that then thrived. In fact, Krishnan too had strongly recommended that Mysore Jasmine be taken public. He did so even at the cost of Twenty Point not being able to exit in the IPO, given that Twenty Point's investment was in the parent company, i.e., New Town. Krishnan believed in the overall growth prospects of both companies that would lead to higher returns in the future. He reposed immense faith and trust in the abilities of the Gowdas to use their lead in the design, manufacture and export of Mysore silks to be able to gain greater glory. The Gowdas in turn reciprocated through their hard work and dedication, and steered the company towards greater success in the following years. Mysore Jasmine also became a stock market darling, and its stock price skyrocketed over a period of time. Additional facilities were established in Kanchipuram in Tamil Nadu and in Varanasi in Uttar Pradesh to manufacture and export the local specialty silk apparels from those regions, thereby expanding the company's business beyond Mysore silks. These expansion efforts were just about enough to meet the growing demand, especially from the Indian diasporic communities around the world. Ramanna was a satisfied man, and was especially proud of what his children had helped him attain. He even wrote a will bequeathing all his property equally between Sagar and Vinodini.

9. As the business of the two companies grew, Sagar and Vinodini shot into prominence more widely in the Indian industrial scene. Sagar became the chairman of the Textile Manufacturers' Association of India and Vinodini the chairman of the Federation of Industrial Commerce. They were also quite popular in the speaking circuit and were involved in a great deal of philanthropic and charitable efforts. Sagar got married to Ms. Sowjanya, who is the daughter of a longstanding politician and Member of Parliament from Mandya, Mr. Siddappa.

10. While the children were on the ascendancy, the father's interests in business affairs started waning. By 2010, he contemplated plans for semi-retirement, principally because he reposed complete faith and confidence in the abilities of Sagar and Vinodini to not only maintain the business, but also take it to a new level altogether. He expressed his intention to scale down his involvement, and wanted to alter his formal position in Mysore Jasmine to that of a non-executive chairman. During the annual general meeting of that company in 2010, a resolution was passed by the shareholders of the company to modify Ramanna's position from that of executive chairman to non-executive chairman. From that year, Ramanna began to fulfill his dream of travelling with his wife to various exotic destinations around the world. He would spend considerable

amounts of time away from the affairs of the company, but he always arranged his itinerary such that he was present for the periodic board and shareholders' meetings of both New Town as well as Mysore Jasmine.

11. Even during his stay in Bangalore, he spent fixed hours on company matters, and vowed never to work after office hours. He was available in the company offices from 11am to 6pm, and was known to spend his evenings at the President's Club. Arising from his trip to Scotland, he had taken a liking to single malt whiskey. Fueling this habit further was Krishnan's initiation of Ramanna to additional and more prominent varieties of the beverage from Japan and Taiwan. One cannot deny that Ramanna's newly acquired habit had some tangential impact on his professional attitude. For example, he refused to attend important customer meetings on a couple of occasions when they could be scheduled only in the evenings. One time, Sagar had no option but to arrange for a meeting between Ramanna and a customer from Milan at the President's Club during the evening hours over some single malt, wherein Ramanna's inebriated demeanour can only be said to have been somewhat beneath acceptable levels of decorum. Although none of these had any adverse impact on the business transactions or even prospects of the companies, these incidents considerably embarrassed Sagar and Vinodini.

12. These were the first signs of some rumblings within the family. Although Sagar and Vinodini hitherto constantly obtained Ramanna's blessings on all key decisions involving both the companies, they now began to embark upon various efforts on their own. At most, they reported these decisions to Ramanna, either at board meetings or privately. Oddly enough, Ramanna did not initially react to this change of attitude given his own decreasing interest in the affairs of the companies. While there was some friction between the father and the children at a professional level, it had not penetrated to the personal domain as they continued to enjoy the normal filial bonding. They lived together, as they always did, as a joint family in their common villa in an exclusive enclave in Bangalore that they purchased about a decade ago.

13. It was in early 2012 that Ramanna contemplated further distancing himself from the affairs of New Town and Mysore Jasmine. This was driven partially by his realization that he was turning out to be hindrance to the business and his children's fortunes than adding much value. He decided to gift his shares in New Town to his children in equal proportion, and to step down from any formal position in the companies. It was during a round of drinks at the President's Club with Krishnan that his plans received some refinements. Krishnan strongly counseled Ramanna against exiting fully from the company. On October 29, 2012, Ramanna gifted 72% shares in New Town to Sagar and Vinodini, with each of them obtaining

36%. The transfer of these shares was duly registered in the books of New Town on the same day. Relying upon Krishnan's counsel, Ramanna decided to continue with his position as a director and chairman (albeit now in a non-executive capacity) on New Town, largely so that he could continue to oversee major decision-making at the parent company level, although he was not to be involved in the day-to-day affairs of the company.

14. However, Ramanna decided to relinquish his directorship in Mysore Jasmine. Accordingly, Sagar was appointed as the chairman of Mysore Jasmine. Largely owing to sentimental reasons, Ramanna was conferred the title of Mentor-in-Chief in Mysore Jasmine, and was also given access to an office in the company premises. Ramanna continued to occasionally visit various facilities of Mysore Jasmine and meet the employees, with whom he was extremely popular as he was considered a father figure. He is also known to have helped several employees out of his personal funds to meet dire financial needs such as emergency medical treatment for family members. He also arranged to distribute (again from his personal funds) a box of sweets and a new pair of silk clothing to each employee for Ugadi, the local new year festival. Ramanna, however, decided to maintain his position as a non-executive chairman of New Town so that he could continue to oversee major decision-making at the parent company level, although he was not to be involved in the day-to-day affairs of the company.

15. Trouble began brewing in May 2014 when Sagar and Vinodini placed a proposal before the board of Mysore Jasmine to commence the business of a silk exchange. Being in the nature of a commodities exchange, the business would involve allowing traders to deal in silk fabric and silk products on the exchange. The plan was to permit all types of futures, options and derivatives in silk to the extent permitted by the law. An added attraction of the exchange was that payments could be accepted by way of cryptocurrencies such as bitcoins, to the extent that they were not illegal. This business of "Silxchange" was the brainwave of Vinodini, who roped in her classmate from Melbourne, Mr. Raj Mathur, to spearhead the effort. As soon as a board meeting was convened for May 22, 2014 with the Silxchange item on the agenda, Krishnan telephoned Vinodini and expressed his displeasure regarding this development. He was of the strong opinion that this business was rather risky, and that he would not vote in favour of this proposal at the board meeting given his fiduciary commitments as a director of Mysore Jasmine. He also immediately contacted Ramanna to vent his feelings, only to realize Ramanna's shock as he had not been privy at all to any of the discussions regarding the proposal. It appears that Sagar and Vinodini deliberately decided to keep Ramanna out of the picture.

16. Nevertheless, the proposal was put before the board of Mysore Jasmine, and was passed by the affirmative vote of all the directors, except Krishnan, whose fervent dissent was recorded in the minutes of the meeting. The discussion on the Silxchange proposal lasted exactly

20 minutes, which included a presentation by Raj. No members of the board except for Krishnan asked any questions or raised objections. Later in the year, Silxchange Limited was established as a wholly owned subsidiary of Mysore Jasmine, and Raj was appointed as its CEO, and Sagar and Vinodini as its other directors. Mysore Jasmine invested Rs. 50 crores in the share capital of Silxchange Limited.

17. True to Krishnan's apprehensions, Silxchange had a rocky start. It encountered several regulatory and operational issues in its first year of operation, including a technical glitch that halted trading for four days, an inordinately long period of time in the business. This severely damaged the reputation of Silxchange. Moreover, in December 2015, one of the traders of futures in silk defaulted to the tune of Rs. 75 crores, which triggered panic and consternation among all the traders on Silxchange. Upon further scrutiny, it was found that several members had falsified their books of account and inventories, thereby leading to fraudulent trading on Silxchange. All of these led to investigation by SEBI which, on February 18, 2016, ordered a stop on trading on Silxchange. SEBI also passed an order against all directors of Silxchange from participating in the commodities markets or the securities markets.

18. During SEBI's investigation, it was also found that Vinodini had, while discussing the proposal to set up Silxchange, received an anonymous letter purportedly from a member of his finance team that Raj had previously been the CEO of a derivatives company in Australia, and that proceedings (including criminal actions) were pending against him in that country for having defrauded certain derivatives traders on transactions undertaken by the derivatives company. Vinodini confronted Raj with this information, but Raj brushed it aside as being utterly false and maintaining that this may have been instigated by someone who wants to keep Raj out of Silxchange. Taking Raj's word for it, Vinodini did not pursue the matter any further and did not consider it significant enough (especially as it was uncorroborated) to bring it to the attention of the board of Mysore Jasmine. It turns out subsequently that Raj had some regulatory actions pending against him, although they did not involve criminal proceedings.

19. With this, the Gowdas suffered a deadly blow as their reputation took an instant beating. Some of the traders who were affected on Silxchange were also customers of New Town and Mysore Jasmine, and they refused to conduct any further business with these companies. All of these had a material impact on the topline of the two companies. Moreover, Mysore Jasmine had to infuse an additional amount of Rs. 25 crores into Silxchange Limited to meet some immediate financial obligations. However, this was still insufficient to address all the financial issues that now confronted Silxchange.

20. Sometime during May 2016, Mysore Jasmine's problems were compounded. It received legal notice from a consumer association in the United States (**US**). It was found that the silk fabric in a particular batch of textiles that was exported by Mysore Jasmine to the US contained a chemical that caused severe rashes on wearers of such apparel. Some of them required emergency treatment and hospitalization that required them to expend considerable sums of money. In addition, they suffered severe physical and mental trauma, for which they demanded to be appropriately compensated. Eventually, a couple of months later, several of the victims appointed legal counsel in India and filed civil suits against Mysore Jasmine in courts of appropriate jurisdiction for claims totaling Rs. 500 crores. These developments affected the company's prospects in a significant manner. There was a considerable fall in the business and orders placed for the silk fabrics manufactured by Mysore Jasmine. Individual customers, retail chains and fashion houses grew wary of the company's products and wanted to steer clear of any potential liabilities out of selling the silk fabrics. By way of a domino reaction, the stock price of the company catapulted to about 30% of its price from a year ago, as investors began fleeing the counter. The telephones of Sagar and Vinodini did not stop ringing as they were pestered for comments and reassurances from customers, investors and the pesky business media. Moreover, the relevant regulatory authorities commenced investigation and inspection of various manufacturing facilities belonging to Mysore Jasmine.

21. Soon after the chemical contamination scandal broke out, Mr. Shailesh Bhat, the chairman of the audit committee, ordered an internal investigation into the matter. It transpired that the silk fabrics in question were in fact manufactured by Ranganatha Silks Limited, a company that was owned by Siddappa and his family. Around May 2013, Mysore Jasmine entered into a contract manufacturing arrangement with Ranganatha Silks. This was because Mysore Jasmine was unable to meet the prevailing export demands, and needed additional manufacturing capacity. The investigation uncovered the root cause of the defects. Ranganatha Silks utilized sub-standard chemicals in the silk dyeing process. The chemical component (locally sourced) was available at a quarter of the cost of the chemical (imported from Japan) that was typically utilized at the manufacturing facilities owned by Mysore Jasmine. The internal auditors also reviewed the pricing mechanism and other contractual terms and conditions in the arrangement between Mysore Jasmine and Ranganatha Silks and found nothing out of the ordinary.

22. In the meanwhile, Ramanna found all of these a bit too much to handle. As a stickler for propriety and quality, he would never have allowed either the Silxchange venture or the contract manufacturing arrangement with Ranganatha Silks. Over dinner one evening in June 2016, he confronted Sagar and Vinodini and decided to express his free and frank opinion. He poured scorn on both of them for their irresponsible behaviour in managing the

affairs of New Town and Jasmine Silks, for belying the considerable faith that investors, creditors, customers and employees had reposed on them, and also for ruining the family reputation that had been built up through decades of hard work. Unable to withstand the tirades of a man who was clearly past his prime and out of touch with reality, Sagar refused to be harangued by his father's interference in the business. During the heated discussion that evening, Sagar uttered some words that he would later repent: "Old man, you have lost your sanity". Utterly humiliated, Ramanna not only rushed out from the dinner that evening, but he also decided the next morning to move out of the family home with his wife and into a farmhouse he owned outside Bangalore. He also relinquished the title of Mentor-in-Chief that he held in Mysore Jasmine, by tendering his resignation from that position. He was also deeply hurt by Vinodini's conduct in playing a mute spectator during the sequence of events and thereafter. It almost appeared as if she was unwilling to break ranks with her brother on matters relating to the business.

23. Although at a personal level he was forced to endure disgrace at the hands of his own children, Ramanna was determined to act with composure on the professional side. He was keen to ensure that the company and its stakeholders do not suffer at the hands of his "inept" progeny. In order to determine the future course of action, he decided to embark on a trip with his wife to Singapore in early July 2016, primarily to meet with Krishnan and discuss matters with him, but also to spend a few days at a yoga retreat in Bali so that he could recharge himself emotionally. During their meeting in Singapore, Krishnan advised Ramanna to remain steadfast in his convictions, and to even try to wrest control of the companies from his children. More so, Krishnan communicated his full-fledged support of Ramanna in whatever steps he wished to undertake. He was also able to make similar commitments on behalf of Twenty Point as an institution. After all, Twenty Point was an investor operating with a lengthy horizon in mind, and was determined to ensure the long-term success of the company, which in turn would generate the returns the firm was looking for.

24. In the meanwhile, a Machiavellian plot was being hatched in Bangalore. Sagar and Vinodini convened a meeting of the board of directors of New Town by giving two days' written notice to be held on July 12, 2016. The purpose of the meeting (which was set forth in the agenda papers) was to (i) remove Ramanna as the chairman of New Town, (ii) to appoint Siddappa and Raj as directors of New Town, and (iii) to convene a shareholders' meeting of the company to remove Ramanna and Krishnan as directors of the company and to amend the articles of association of the company so as to delete the articles under the head "Board Composition" that were incorporated from the Investment Agreement, as extracted under Annex A.

25. Sagar and Vinodini operated with great astuteness in convening the meeting. They had become aware through the farmhouse staff that Ramanna and his wife were to be at the yoga retreat in Bali from July 10, 2016 to July 13, 2016. This was a fortuitous window of opportunity because participants at the Bali retreat were to be strictly "unplugged" from the rest of the world for the duration of the programme. No email or cellphones were allowed, and the retreat staff monitored all telephone calls made to the venue, and only medical emergencies or deaths were treated as exceptions. As was the usual practice, the notice for the board meeting of New Town was sent to the directors by email. Krishnan was devastated to receive the notice, and frantically tried to contact Ramanna, but to no avail. Krishnan determined that it would be prudent for him to immediately board a flight to Bangalore and make it to the meeting without further ado. As notified, the board meeting of New Town was held in Bangalore on July 12, 2016. The meeting began by noting the absence of Ramanna. Sagar assumed chairmanship of the meeting, and commenced proceedings. Despite strong protestations from Krishnan, all the resolutions proposed as aforesaid were passed with the requisite majority. An extraordinary general meeting (**EGM**) of the shareholders of New Town was convened for August 16, 2016.

26. In a parallel set of events, Sagar convened a board meeting of Mysore Jasmine to be held on July 15, 2016. The purpose of the board meeting was to convene an EGM to remove Krishnan as a director of the company and to amend the articles of association of the company so as to delete the articles under the head "Board Composition" that were incorporated from the Investment Agreement, as extracted under Annex A. Again, despite the objections of Krishnan, the resolution was passed as it received the affirmative nod of all the other directors of Mysore Jasmine. The EGM of Mysore Jasmine was to be convened on August 16, 2016. The draft notice placed before the board meeting contained serious allegations against Krishnan. In justifying his removal, the board of Mysore Jasmine noted that Krishnan had failed to uphold his fiduciary responsibilities as a director. In taking sides in a family battle, he had fettered his discretion by taking into account factors that were hostile to the business interests of the company. He was also accused of passing on information about matters discussed at the board meetings of Mysore Jasmine (including copies of agenda papers) to Ramanna and also to his employer Twenty Point. In fact, the board of directors have reason to believe (albeit not conclusively) that some of the sensitive information (such as pricing and customer information) that Krishnan shared with Twenty Point may have been used by the private equity firm to build up industry knowledge that they then used in their investments in other textile firms in India. The draft notice also informed shareholders that the management of Mysore Jasmine had filed a complaint with SEBI regarding the Krishnan's questionable conduct, and that the board was confident that SEBI would redress any grievance. Astounded by these allegations, which he found to be false and baseless,

Krishnan immediately approached his lawyers, who issued a defamation notice against Mysore Jasmine and all its directors (except for Krishnan himself). The notice sought that Mysore Jasmine withdraw the allegations made in the EGM notice. Unperturbed by the legal threat, the Company Secretary of Mysore Jasmine sent out to the notice of the EGM to the stock exchanges and also individually to the shareholders. Neither has SEBI concluded on its investigation, nor has Krishnan taken any further steps to pursue his defamation claim.

27. Upon release from his sanctuary of solitude in Bali and learning of the events that had transpired in his absence, Ramanna jetted rapidly back to Bangalore. Along with Krishnan, he quickly consulted a team of lawyers to decide on a legal strategy. He perceived two goals in the strategy: first, to save the companies from their despair and, second, to save himself from being ousted from New Town. Krishnan too shared these perceptions, which effectively conflated the goals of Ramanna, Krishnan and Twenty Point, who would all act in tandem. Based on the advice of the lawyers, Ramanna wrote on July 20, 2016 to the boards of New Town and Mysore Jasmine requesting them to reverse any decisions taken at their board meetings in the preceding week, and also asking them not to proceed with the EGMs of both companies scheduled for August 16, 2016. Krishnan and Twenty Point too wrote similar letters to the companies.

28. Ramanna's letter, however, had an additional request. He asked that, in the interests of transparency and corporate governance, the contract between Mysore Jasmine and Ranganatha Silks be disclosed to the public, including so that shareholders and other stakeholders are aware of the roles, responsibilities and liabilities of both those companies in light of the damages claims by several US customers. Pat came the reply from New Town and Mysore Jasmine on July 22, 2016 denying the various requests. As for the disclosure of the contract between Mysore Jasmine and Ranganatha Silks, the Company Secretary of Mysore Jasmine reiterated that the internal audit had confirmed that the contract was entered into on the basis of normal commercial terms, and that there was nothing extraordinary in it. Moreover, Mysore Jasmine had appointed a leading US law firm to conduct a legal audit of the contract and its terms, and the law firm had given the company a clean chit. The Company Secretary's reply stated that Mysore Jasmine had no obligation under law to disclose either the contract, any details pertaining to it or reports of the internal audit or the US law firm. He argued that disclosure would be counterproductive and inimical to the interests of the company.

29. A day before the letters went out to New Town and Mysore Jasmine, the trio of Ramanna, Krishnan and Twenty Point had acquired an aggregate of 1% shares in Mysore Jasmine from the stock market. Of this, Ramanna acquired nearly all of the shares, except 100 shares each that were acquired by Krishnan and Twenty Point. Incidentally, Ramanna's 70th birthday would fall on August 16, 2016, the same day that the EGMs of both the companies were scheduled. Ramanna was keen to reward some of the employees of the companies who were loyal to the Gowda family for more than 25 years; and there were 100 such employees. This, he wished to do so on his birthday as part of the celebrations and as a mark of recognition to their loyalty and hard work over the years. However, given the unseemly turn of events, he decided to reward the employees immediately and, on July 25, 2016, he transferred 100 shares of Mysore Jasmine each to the 100 identified employees. Those employees were thrilled to receive this recognition. Although for some of the employees the monetary benefit from the shares seemed meaningless given the languishing nature of the stock, it was the sentiment that appealed to them more. Whatever the reaction may have been, the shares were credited into all of their demat accounts by July 30, 2016.

30. Surely enough, Sagar and Vinodini were quickly updated on this development, and they smelt a rat. They responded to what they believed was a gimmick by Ramanna to elicit employee support in a brewing family corporate battle. They in turn identified 30 young and upcoming star employees within the firm, and decided to offer 100 shares each in New Town to those employees. Between them, Sagar and Vinodini equally transferred shares such that 100 shares each of New Town were placed in the hands of those 30 employees. No offer was made to the other shareholders of New Town when these transfers were effected. Given that the shares of New Town were held in certificate form, the shares were transferred by physically delivering the share certificates and transfer forms to those employees. The transfers were approved at a quickly convened board meeting of New Town (that Ramanna and Krishnan refused to attend as they believed the transfers were illegal), and the names of the 30 employees were entered in the register of members of New Town on August 1, 2016.

31. All this while, efforts were being undertaken on the periphery to resolve the issues surrounding the key shareholders of New Town and Mysore Jasmine in an amicable manner. Krishnan spearheaded the efforts, and he sought to rope in Basavaraju and even the family's spiritual master, but to no avail. The principal goal was to seek more time through a postponement of the two EGMs scheduled to be held on August 16, 2016, which would leave more time for an amicable solution. However, Sagar and Vinodini were unwilling to budge, and they were steadfast in their resolve to proceed with the meeting. Ultimately, by early August, it was clear that no resolution was in sight.

32. On August 7, 2016, Ramanna, Krishnan and Twenty Point initiated proceedings before the National Company Law Tribunal, Bangalore Bench (**NCLT**) against New Town, Sagar, Vinodini, Siddappa and Raj. In parallel, Ramanna, Krishnan, Twenty Point and the 100 employees who recently became shareholders of Mysore Jasmine initiated proceedings before the NCLT against Mysore Jasmine, New Town, Sagar and Vinodini. In both the actions, it was alleged that the respondents' conduct was oppressive to the petitioners. In the case of New Town, the petitioners sought that all actions taken at the board meeting dated July 12, 2016 and any actions that may be taken at the EGM scheduled for August 16, 2016 (as specified in the notice for the meeting) must be declared null and void. In the interim, the petitioners sought an injunction from the NCLT to prevent the EGM from being held on that date. As far as Mysore Jasmine is concerned, the petitioners sought that all actions taken at the board meeting dated July 15, 2016 and any actions that may be taken at the EGM scheduled for August 16, 2016 (as specified in the notice for the meeting) must be declared null and void. In the interim, the petitioners sought an injunction from the NCLT to prevent the EGM from being held on that date. The petitioners also sought for a direction from the NCLT asking Mysore Jasmine to publicly disclose the detailed terms of the contract between it and Ranganatha Silks. They also sought a relief that the articles of association of New Town and Mysore Jasmine ought not to be amended without the prior approval of the NCLT.

33. The interim application to consider whether the EGMs should proceed came up for hearing on August 10, 2016. The NCLT refused to intervene or to pass any interim order. Accordingly, the EGMs of New Town and Mysore Jasmine were held on August 16, 2016 and the resolutions proposed therein were passed by a substantial majority. All the petitioners in the petitions above dissented, but their voting power was evidently insufficient to veto any decision taken at the meetings.

34. While the petitions were pending before the NCLT, the board of New Town convened a shareholders' meeting to be held on October 31, 2016 to consider a proposal for reduction of capital of the company. Under the plan, New Town would reduce its capital by repurchasing the shares held by Ramanna and Twenty Point, thereby effectively evicting them from the company. At the shareholders' meeting, all the shareholders of New Town were present, with all of them voting in favour of the capital reduction, except for Ramanna and Twenty Point, who dissented. After the passage of the resolution, New Town filed a petition before the NCLT seeking its sanction to the scheme of reduction of capital. At a hearing of the scheme of capital reduction, Ramanna and Twenty Point vehemently objected to the scheme. They argued that the company had not followed the proper procedure for seeking the approval of the shareholders for the said reduction. Moreover, the valuation report obtained by the company that showed a share value of Rs. 25 per share of New Town significantly undervalued the company. The price was based on the valuation conducted by the statutory auditor of New Town. In the meanwhile, Ramanna and Twenty Point were able to obtain another chartered accountant's report that indicated that the value of each New Town share was Rs. 30. The NCLT has yet to hold a final hearing on the company petition pertaining to the capital reduction of New Town, which remains pending.

35. The earlier petition pertaining to New Town (filed on August 7, 2016) was amended to reflect the intervening development concerning the reduction of capital, arguing that the actions were demonstrative of the reprehensible conduct of the company and its majority shareholders. The hearings on the petitions took place in March and April 2017. The respondents in both the company petitions challenged the maintainability of the petitions, and questioned the locus standi of the petitioners. However, by agreement of the parties, the NCLT decided to hear the maintainability issues and the merits together. After hearing all the parties at length on the question of maintainability, the NCLT held that both petitions were maintainable. In the case of New Town the NCLT granted a waiver and in the case of Mysore Jasmine it held that the petitioners were competent to bring the action. But, on the merits of the case, the NCLT found no reason to intervene, and hence dismissed both the petitions.

36. Against the order of the NCLT, the petitioners in the two petitions have preferred appeals before the National Company Law Appellate Tribunal (**NCLAT**). Due to the significant overlap, the NCLAT has decided to hear both the petitions together.

Annex A

Extracts from Investment Agreement dated May 9, 2000

1. Definitions and Interpretation

1.1 Definitions

In this Agreement (including in the recitals hereof and Schedules hereto), the following words and expressions shall have, where the context so permits, the following meanings ascribed to them:

"**Company**" means New Town Designs Limited;

"**Investor**" means Twenty Point Partners;

"**Subsidiary**" means Mysore Jasmine Silk Manufacturing Limited;

3. Governance

3.1 Board Composition

(i) The board of the Company and the Subsidiary shall each comprise 4 (four) directors. Of these, one (1) director shall be nominated by the Investor. The remaining three directors shall be Mr. Ramanna Gowda, Mr. Sagar Gowda and Ms. Vinodini Gowda, unless otherwise agreed among the three of them.

(ii) Mr. Ramanna Gowda shall be the chairman of the Company and the Subsidiary for life, provided that this right shall cease to apply either the Company or the Subsidiary, as the case may be, if it is listed on a stock exchange.

(iii) In the event that either the Company or the Subsidiary were to be listed on a recognized stock exchange, then the company so listed may be entitled to appoint additional directors as required to comply with corporate governance requirements imposed by law and the listing regulations. However, notwithstanding the listing of either the Company or the Subsidiary, right of the persons specified in Section 3.1(i) to continue as directors shall remain unabated.

5. Transfer of Shares

5.1 Restriction on Transfer of Shares

No shareholder of the Company or the Subsidiary shall transfer any shares held by it to a third party without complying with the provisions of this Section 5. Any attempt to do so shall be void ab initio.

5.3 Right of First Refusal

In the event that any of the shareholders (the **Selling Party**) desires to sell, pledge, encumber or otherwise deal with the shares it holds in the Company or the Subsidiary, as the case may be, it shall first make an offer to the other shareholders of the Company (the **Receiving Parties**) at a proposed price (the **Offered Price**) and give the Receiving Parties a period of 28 days to determine whether they wish to purchase those shares or not. In the event the Receiving Parties decide to purchase the shares, then the Selling Party shall sell the shares to the Receiving Parties (in proportion to the shares held by them in the Company or the Subsidiary, as the case may be, at the relevant time) at the Offered Price. If the Receiving Parties decline the offer or do not respond within the period of 28 days, then the Selling Party shall be free to sell the shares to any other person at the Offered Price.

5.7 Listing

Nothing contained in this Section shall apply to either the Company or the Subsidiary, as the case may be, once its shares are listed on a recognized stock exchange.

12. Dispute Resolution

12.3 Arbitration

Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre (**SIAC**) in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (**SIAC Rules**) for the time being in force, which rules are deemed to be incorporated by reference in this clause.

The seat of the arbitration shall be Singapore.

The Tribunal shall consist of a sole arbitrator to be appointed by the Shareholders and the Company.