



1st RMLNLU - KOCHHAR & CO. ARBITRATION MOOT COURT COMPETITION, 2023

MOOT PROPOSITION

24 - 26 March, 2023



MOOT PROPOSITION

1. George Roy was a self-made millionaire. Through sheer dint of hard work, he built a successful business empire comprising of construction and real estate development, manufacturing IT hardware, transport and logistics and tourism. His business and assets were spread in his home state of Devanagar and the neighbouring Kantaka and Simhabad. These three states are a part of Chakravarsh, a federation of 24 states sharing a common set of commercial, civil and inheritance laws.
2. George was married to Celina Roy and blessed with 6 children:
 - I. Jai Roy (son)
 - II. Cathy Roy (daughter)
 - III. Henry Roy (son)
 - IV. Colin Roy (son)
 - V. Anita Roy (daughter)
 - VI. Susie Roy (daughter)
3. All the children were married and had their own children. However, George's favourite was Jai's eldest son Jerry as he was the eldest among the grandchildren. George was 91 and friends and well-wishers were advising him to settle his estate and businesses on his children so that there is no controversy after his lifetime.
4. A meeting of all the family members was called for. Along with the family members, Joe Palmer, the chartered accountant of George's group of companies, George's nephew Neil Jonas who was himself a very successful businessman and Rajat Sinha, a family friend were also present. The meeting was called to discuss the division of George's estate and the companies which comprised of the following:

List of companies:

1. The flagship company Jomato Constructions Pvt. Ltd. that was in the business of real estate development and construction of IT parks and residential condominiums.
2. Mimico Tech Pvt. Ltd., that was in the business of manufacturing IT hardware.
3. C-Thru World Travels Pvt. Ltd., specialising in tourism, ticketing and foreign exchange.

4. Movenpack Pvt. Ltd., that was carrying on the business of logistics and transport.

List of immovable properties:

1. The family house named the “Roy Villa”, a sprawling property with the land measuring about an acre and a 15000 sq.ft. villa-style house having 8 bedrooms with a garage that could accommodate 6 cars, servant quarters, etc., situated in the heart of Simhabad city.
2. Agricultural wet lands of about 30 acres situated on the outskirts of Devanagar with a farm house.
3. A multi-storeyed apartment complex with 6 residential duplex apartments in Simhabad
4. An IT Park in the software hub of Simhabad.
5. Government approved residential layout spread over an extent of 10 acres in the fast developing outskirts of Devanagar.
6. Agricultural dry lands measuring 12 acres in Kantaka.
7. Ancestral house and adjoining farmland measuring 2 acres in Devanagar.
8. Government-approved housing plots in an extent of 10 acres of land in Kantaka.

Joe Palmer submitted a valuation report of the companies and the other assets which was as follows:

S.No.	Asset	Value (in Chakravarsh rupees i.e. CNR)
1.	Jomato Constructions Pvt. Ltd.	120 crores
2.	Mimico Tech Pvt. Ltd.	60 crores
3.	C-Thru World Travels Pvt. Ltd.	40 crores
4.	Movenpack Pvt. Ltd.	22 crores
5.	Roy Villa In Simhabad city	14 crores
6.	Agricultural wet lands measuring 30 acres with farm house situated in Hoshanpur village of Kantaka	16 crores
7.	Simhabad apartments (each apartment)	5 crores = 30 crores
8.	Simhabad IT Park	100 crores
9.	Devanagar residential layout	30 crores

10.	Agricultural dry lands situated In Ambasana village of Kantaka	12 crores
11.	Ancestral house and land Situated in Guntara village of Devanagar	8 crores
12.	Approved housing plots Situated in the newly developed township called Henkala in Kantaka	23 crores

5. Based on the above evaluation, and after several rounds of heated discussions, a Family Arrangement and Agreement (FAA) was signed on 27-06-2019 on the division of the assets between the sons and daughters of George Roy.

Important terms of the agreement dated 27-06-2019:

Schedule 1 – Share of Jai Roy:

- a) The entire business, assets and liabilities of Jomato Constructions Pvt. Ltd., having the net asset value of CNR 120 crores.
- b) Agricultural dry lands situated at Ambasana village of Kantaka valued at CNR 12 crores.

Schedule 2 – Share of Cathy Roy:

- a) Cash settlement of CNR 20 crores.
- b) Two Residential apartments in Simhabad valued totally at CNR 10 crores.

Schedule 3 - Share of Henry Roy:

- a) The entire business, assets and liabilities of Mimico Tech Pvt. Ltd. and C-Thru World Travels Pvt. Ltd., having the net asset value of CNR 100 crores.
- b) Ancestral house and land situated in Guntara village of Devanagar valued at CNR 8 crores.
- c) Approved housing plots situated in the newly developed township called Henkala in Kantaka valued at CNR 23 crores.

Schedule 4 – Share of Colin Roy:

- a) Simhabad IT Park valued at CNR 100 crores.
- b) Roy Villa in Simhabad city valued at CNR 14 crores.

- c) Agricultural wet lands measuring 30 acres with farm house situated in Hoshanpur village of Kantaka valued at CNR 16 crores.

Schedule 5 – Share of Anita Roy:

- a) Cash settlement of CNR 20 crores.
- b) Two residential apartments in Simhabad valued totally at CNR 10 crores.

Schedule 6 – Share of Susie Roy:

- a) Cash settlement of CNR 20 crores.
- b) Two Residential apartments in Simhabad valued totally at CNR 10 crores.

Schedule 7 – Share of Jerry Roy, son of Jai Roy:

- a) The entire business, assets and liabilities of Movenpack Pvt. Ltd., having the net asset value of CNR 22 crores.
- b) Devanagar residential layout valued at CNR 30 crores.

Schedule 8 – Share of Celine Roy (wife of George Roy):

- a) A corpus of Rs. 30 crores was to be created from the assets given to the sons, each son contributing Rs. 10 crores, and the same was to be deposited in fixed deposits with the interest accruing therefrom to be used by Celine Roy for her own upkeep and expenses. Celine Roy would have the right to direct the distribution of the corpus in any manner she desired by executing a Will during her lifetime.
- 6. It was further agreed that the cash settlement payable to the 3 sisters will be done from the shares of the 3 brothers, either by paying from the corpus of the companies allocated to them or from sale of full or part of any of the other assets allotted to their share.
 - 7. All shareholders in the businesses were to sign and hand over share transfer forms of the respective companies allocated to the other brothers and to Jerry Roy.
 - 8. The FAA also contained a dispute resolution clause which was worded as follows:

“The Parties shall endeavour to accomplish their respective obligations under this agreement at the earliest, but not later than 3 months from the date of signing this

agreement and shall ensure that the shares and the assets of each of the parties are transferred/allocated in full within the said period.

If any disputes or differences arise between the parties as regards any of the terms and conditions of this agreement, the parties shall firstly try to resolve it through mutual discussions, failing which the same shall be referred to mediation before Mr. Ram Manohar, a well-renowned mediator and senior advocate.

In the event that the mediation fails, the disputes shall be referred to a binding arbitration before a sole arbitrator to be appointed with the mutual consent of all the parties. The seat of arbitration shall be Simhabad. The award of the sole arbitrator shall be final and binding on all the parties. The costs of the mediation and arbitration shall be shared equally between the Second Party (Jai Roy), the Fourth Party (Henry Roy) and the Fifth Party (Colin Roy)."

Subsequent developments:

9. George Roy died on 20-07-2019 before the agreement could be implemented in full. Within 2 weeks of his death, Colin Roy issued a notice to the other family members questioning the FAA dated 27-06-2019 on the grounds that:
 - a. The valuation of the assets was done in an unfair manner that was favourable to Jai Roy. In this, he accused Jai and the auditor Joe Palmer of colluding with each other to undervalue the assets allocated to Jai and Henry and overvalue the assets allocated to him.
 - b. The inclusion of Jerry Roy alone, who belonged to the second generation, excluding the children of the other brothers and sisters, is unfair and therefore the allocation made in favour of Jerry Roy should be cancelled and that share should be allocated to him to make up for the overvaluation of his share.
 - c. He further alleged that George Roy, who was aged 91, was not in full possession of all his faculties due to his failing health and he was under the control and undue influence of Jai who was residing in the family house with his parents. Therefore, the FAA is vitiated.

10. Immediately thereafter, Colin filed a suit on the above grounds before the Additional Civil and Sessions Court, Simhabad, leading to complete chaos in the family. As the situation kept deteriorating, Neil Jonas and Rajat Sinha intervened and convinced the family members to go for mediation as agreed under the FAA. Colin agreed to withdraw the suit as he was advised that the suit was, in any case, not maintainable in view of the arbitration clause in the FAA.
11. The mediation took place online due to the outbreak of Covid and the consequent travel restrictions. After several sessions, an agreement was reached between the parties under which Jerry Roy agreed to give up the company Movenpack Pvt. Ltd., allocated to him in favour of Colin Roy in return for Colin Roy agreeing to accept the valuation of the assets given in the FAA and abide by the rest of the terms and conditions agreed in the FAA.
12. As there was no law on mediation at that point of time, Mr. Ram Manohar, the mediator, suggested that the mediation proceedings can be treated as conciliation proceedings under Part III of the Arbitration and Conciliation Act, 1996 of Chakravarsh (which is *in pari materia* with the Arbitration and Conciliation Act, 1996 of India) and the settlement agreement could be called as the Family Mediation and Conciliation Agreement (FMCA) in order to clothe it with enforceability as an “award on agreed terms” as defined under Section 30 read with Section 74 of the Arbitration and Conciliation Act. Accordingly, the said FMCA was signed on 18-08-2021. An arbitration clause was included in the FMCA on the insistence of the legal counsel appearing for Colin Roy and the same was as follows:

“This settlement agreement is agreed to and accepted by all the parties as final and binding with regard to the division of the estate of late George Roy between the parties herein. However, in case any disputes or differences arise between the parties solely with regard to the meaning or interpretation of any of the words, terms or clauses of this agreement, the same shall be referred to a binding arbitration before a sole arbitrator to be appointed by mutual consent. The award of the arbitrator shall be final and binding on all the parties. The arbitration shall be held in Simhabad.”

13. After the FMCA was signed, the Mediation Act, 2021 came into force in Chakravarsh on 28-10-2021. On 12-02-2022, Colin Roy filed an application under Section 11 of the Arbitration and Conciliation Act before the High Court of Simhabad, seeking the appointment of an arbitrator to arbitrate upon the disputes raised by him under the FAA dated 27-06-2019 and alleging that there was a fraud committed by Jai Roy and Joe Palmer in the valuation of the assets. He contended that the FMCA was *non est* in the eye of law in view of Schedule 2 of the Mediation Act, 2021 that declared fraud as a ground for excluding a dispute from mediation. The other family members contested this application stating that in view of the execution of the FMCA, the arbitration under the FAA would not be maintainable; that the Mediation Act, 2021 does not have retrospective effect; that the FMCA is in fact an “award on agreed terms” under the Arbitration and Conciliation Act, 1996. The High Court, however, allowed the petition and appointed the arbitrator with the direction that all issues pertaining to jurisdiction, validity etc. can be raised before the arbitrator.

The Arbitration:

14. The arbitrator entered upon the reference and the Respondents filed an application under Section 16 of the Arbitration and Conciliation Act challenging the jurisdiction of the arbitrator *inter alia* on the following grounds:
- a. That, the Claimant has invoked the arbitration clause under the FAA dated 27-06-2019, which was in the nature of a Med-Arb clause, and in view of the fact that the mediation was completed and the FMCA dated 18-08-2021 was entered into, the arbitration can be only under the arbitration clause of the FMCA.
 - b. That, the scope of the arbitration under the FMCA is restricted only to the “meaning and interpretation of the words, terms or clauses” of the FMCA, and therefore, the claims now made by the Claimant under the FAA are not maintainable as being outside the scope of the arbitration clause of the FMCA.
 - c. That, the ground raised by the Claimant under Schedule 2 of the new Mediation Act, 2021 that excludes the dispute from being mediated on account of fraud, cannot have a retrospective application as the Mediation Act came into force after the FMCA was entered into.

d. That, in any event, the FMCA is actually an “award on agreed terms” under the terms of Section 74 read with Section 30 of the Arbitration and Conciliation Act since the proceedings before the mediator were, in fact, conciliation proceedings and therefore the exclusion now claimed by the Claimant under Schedule 2 of the new Mediation Act would not be applicable.

15. The arbitrator rejected the contentions raised by the Respondents and dismissed the Section 16 application stating that his appointment is under the FAA dated 27-06-2019 and, therefore, he had the jurisdiction to arbitrate all the claims of the Claimant. After rejecting the jurisdictional challenge, the arbitrator heard both sides and passed an award allowing the claims made by the Claimant for the revaluation of all the assets and for the redistribution of the assets in accordance with the revaluation.

Challenge to award under Section 34 and appeal under Section 37:

16. Aggrieved by the award and the dismissal of the challenge application, the Respondents filed a challenge against the award under Section 34 of the Arbitration and Conciliation Act before the High Court of Simhabad. The High Court, however, refused to go into the legal questions raised regarding the maintainability of the arbitration proceedings and dismissed the challenge stating that no prejudice would be caused to the parties if the revaluation is done. The appeal filed under Section 37 of the Arbitration and Conciliation Act before the Division Bench of the Simhabad High Court was similarly dismissed.

Special Leave Petition before the Supreme Court under Article 136 of the Constitution of Chakravarsh:

17. The Appellants (Respondents in the arbitration) have now filed a Special Leave Petition under Article 136 of the Constitution of Chakravarsh (which is *in pari materia* with the Constitution of India) before the Supreme Court of Chakravarsh reiterating the grounds raised by them before the arbitrator. The Supreme Court admitted the SLP and in the Civil Appeal framed the issues given below.

Issues framed by the Supreme Court:

1. Whether the arbitration under the FAA dated 27-06-2019 is maintainable when the same has been replaced by the FMCA dated 18-08-2021 which itself contains an arbitration clause?
2. Whether the Mediation Act, 2021 has retrospective application? If so, in view of Schedule 2 of the Act declaring fraud as a ground for excluding mediation, whether the FMCA is *non est* in the eyes of law in view of the allegation of fraud raised by the Claimant?
3. Whether the FMCA, in view of the dual nomenclature used, is a mediated settlement agreement or is it an “award on agreed terms” as defined under Section 74 read with Section 30 of the Arbitration and Conciliation Act, 1996?

The Moot Proposition has been drafted by Mr. Jawad A.J. and Adv. Tariq Khan. Any attempt to contact them shall result in immediate disqualification.

The current Moot Proposition may not be used by any participant, or any other party, for any reason, including intra-school competitions, without the prior written consent of the Organising Committee.