



The
NUALS
Moot

Preliminary Rounds - 7th, 8th, 9th February

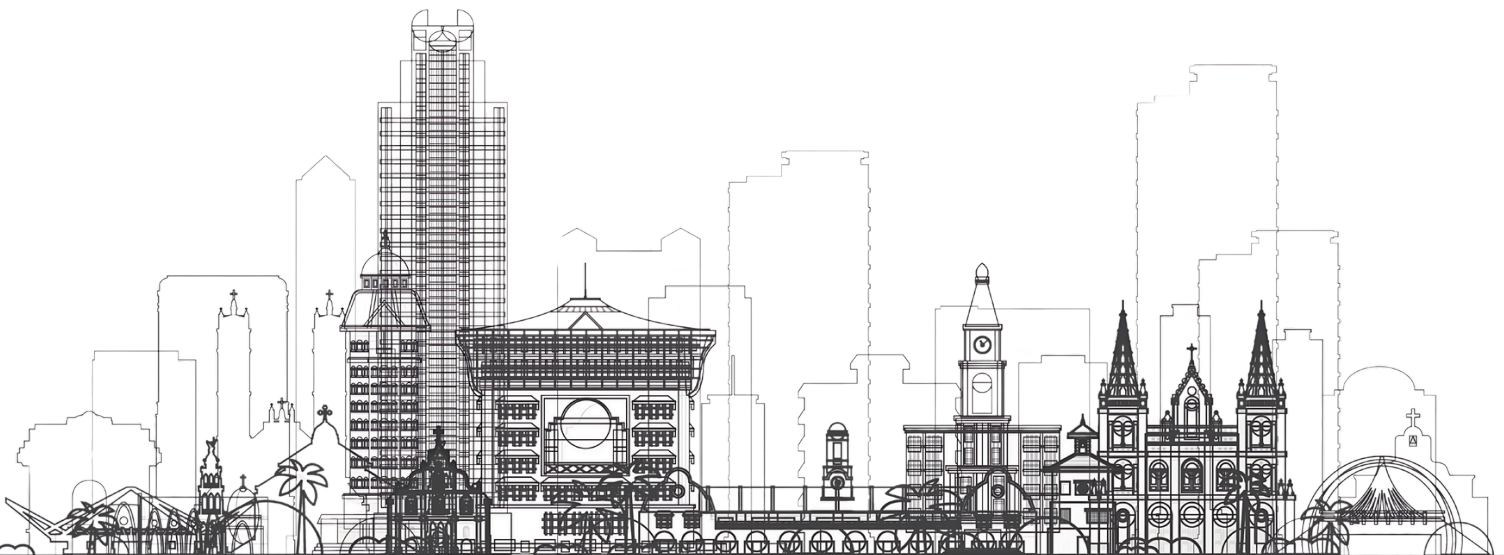
Online

Grand Finals - 23rd February
at NUALS Campus

The NUALS Moot PROPOSITION

FIAT JUSTITIA RUAT CAELUM

Organised by NUALS Moot Court Society



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Statement Of Facts:

1. Olympus Holdings SA ("Olympus") is a multinational electric utility company incorporated in Spain, primarily engaged in the generation, distribution, and trading of electricity through renewable energy. Olympus Holdings is reputed worldwide for its specialisation in clean energy, including onshore and offshore wind, hydro, solar photovoltaic, and battery storage. Over the last forty (40) years, Olympus has expanded its operations worldwide and has an international presence in North America, South America, Europe, and Africa. Olympus Holdings SA is subject to the Themistea-Spain Double Taxation Avoidance Agreement ("DTAA") dated 12th January 1995.
2. Ares and Hephaestus Industries ("AHI Limited"), a public-limited company established in the early 1990s, is the dominant player in the area of generation, distribution, and trading of electricity in Themistea. It has significant operations across major metropolitan cities including Athens, Thessaloniki, and Sparta within the territories of the Republic of Themistea. AHI Limited operates through a network of 15 power plants across Themistea, serving over 10 million customers. Apart from Ares Hydro Industries International Limited and Hephaestus Solar Renewables International Limited (both based out of Hong Kong) providing renewable energy services under the brand name "Helios", the shareholding pattern of AHI Limited as of January 2022 was as follows: - Prometheus Investments (Holdings) Limited (through Mauritius subsidiaries): 65% - Hephaestus Solar Renewables International Limited: 15% - Themistean Public Shareholders: 12% - Foreign Institutional Investors: 8%.
3. By early 2022, Olympus wanted to enter the Themistean market and was looking forward to acquiring majority shares in a Themistean entity to expand their ever-growing footprint. Prior to this proposed acquisition, Olympus obtained necessary clearance from the Competition Commission of Themistea ("CCT") under Section 6(2) of the Competition Act, 2002, given that the combined turnover of the entities exceeded the prescribed thresholds.
4. During the course of due diligence, it was elaborated that Prometheus Investments (Holdings) Limited, based out of the Cayman Islands held three subsidiaries in Mauritius - Prometheus Energy Holdings Ltd, Prometheus Power Infrastructure Ltd, and Prometheus Renewables Ltd (collectively "Mauritius SPVs") - which collectively held the Sixty-Five (65) percent stake in AHI Limited. These Mauritius SPVs were established between 2010-2015 and were eligible for benefits under the Themistea-Mauritius DTAA. The controlling stake in Prometheus Investments (Holdings) Limited was ultimately held by Ares Hydro Renewables International Limited, a company domiciled and based out of the Cayman Islands. The Mauritius SPVs sole business activity was holding shares in AHI Limited, with no other substantial business operations.

5. Multiple agreements were executed between the parties, culminating in a Share Purchase Agreement governed by English law, executed between Olympus Holdings and Ares Hydro Renewables International Limited on 24.04.2024 to procure the entire share capital of Prometheus Investments (Holdings) for a total consideration of US\$ 5 Billion (approximately Rs. 41,500 Crores at the prevailing exchange rate). The valuation was determined by an independent valuer in accordance with internationally accepted valuation methods and in compliance with FEMA regulations. The necessary FDI approval was obtained from the Department for Promotion of Industry and Internal Trade ("DPIIT") under the automatic route, as the renewable energy sector permits 100% FDI.
6. On 15.05.2024, three weeks after the completion of share transfer and necessary regulatory filings, the Income Tax Department issued a show cause notice to Olympus Holdings questioning why tax was not deducted at source under Section 195 of the Income Tax Act, 1961, and as to why capital gains were not paid by way of advance tax, amongst other contentions. On 30.06.2024, after reviewing Olympus's response, the Department passed an order declaring its jurisdiction to tax the capital gains arising from the indirect transfer of Themistean assets (specifically, the underlying power plants, infrastructure, and customer contracts of AHI Limited, valued at approximately Rs. 35,000 Crores). The tax demand was calculated at Rs. 5,000 Crores based on the difference between the acquisition value and the fair market value of the underlying Themistean assets, applying the applicable rate of 40%, plus surcharge and cess.
7. On 15.07.2024, Olympus Holdings approached the High Court of Athens seeking to quash the order of the Income Tax Authority under Article 226 of the Constitution of Themistea. The High Court, in its judgment dated 30.08.2024, upheld the tax department's jurisdiction primarily on three grounds:
 - a) The transaction's dominant purpose was to acquire Themistean assets.
 - b) The Mauritius SPVs lacked commercial substance beyond shareholding.
 - c) The value of Themistean assets exceeded Rs. 10 Crores and constituted more than 50% of Prometheus Investments' total value, triggering Section 9(1)(i) of the Income Tax Act.
8. On 15.09.2024, Olympus Holdings approached the Hon'ble Supreme Court of Themistea under Article 136 of the Constitution of Themistea. Despite the availability of arbitration provisions under the Share Purchase Agreement, Olympus chose to pursue constitutional remedies given the public law nature of the dispute.

- a) Whether the Income Tax Authority possesses the territorial and subject-matter jurisdiction to impose capital gains tax on an offshore transaction between two non-resident entities, when the substantial value of transfers of a foreign company is derived from assets situated in Themistea, particularly in light of the principles of territorial nexus and sovereign jurisdiction under international tax law?
- b) Whether the threshold requirements for the application of the doctrine of "lifting of corporate veil" are satisfied in the present case, and if so, whether such application is justified in matters of taxation where the transaction structure involves multiple layers of foreign holding companies whose primary asset is shareholding in a Themistean entity?

Note:

- For the purposes of this moot proposition, the laws of Themistea, including but not limited to the Double Taxation Avoidance Agreement (DTAA), Foreign Exchange Management Act (FEMA) Regulations, Income Tax Act, and other relevant statutes, shall be in *pari materia* with the corresponding Indian legal frameworks.

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- All rights to this moot proposition are exclusively reserved by the NUALS Moot Court Society.
- The proposition is drafted by Mr. Aditya Venugopalan, Senior Associate at Veritae Legal Cochin.
- Any attempt to contact the proposition drafter shall constitute automatic grounds for disqualification from the competition.