
TEAM A1

BEFORE THE HON'BLE SUPREME COURT OF INDIA

Lifeline LimitedAPPEALENT

VS

Swasth Life Limited & others.....RESPONDANT

UPON THE SUBMISSION OF HON'BLE CHIEF JUSTICE AND HIS COMPANION
JUSTICE OF SUPREME COURT OF INDIA

MEMORENDUM OF BEHALF OF APPEALENT

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STATEMENT OF JURISDICTION

The Hon'ble Supreme Court is with jurisdiction, to hear the present matter under Article 133 of the Constitution of India

Article 133: Appellate jurisdiction of Supreme Court in appeals from High Court in regard of civil matters.

1. An appeal shall lie to supreme court from any judgment, decree or final order in a civil proceeding of high court in territory of in India if the High court certifies under Article 134 A
 - (a) That the case involves a substantial question of law of general importance.
 - (b) That in the opinion of high court the said question needs to decided by the supreme court.
2. Notwithstanding anything in Article 132, any party appealing to Supreme Court under clause (1) may urge as one of the ground in such appeal that a substantial question of law as to interpretation of this constitution has wrongly decided.

STATEMENT OF FACTS

Jeevani limited is a listed company incorporated in 1990 under company's act 2013 & its registered office in New Delhi. Jeevani is one of leading pharmaceutical manufacturing industry & sold product in india and some countries of asia & europe & usa.

Lifeline limited another listed company & incorporated under companies' act 2013 having registered office in mumbai. Company dealing in food business it's popular in india and traded internationally. Lifelines decided enter in to pharmaceutical sector. Lifeline approached jeevani for possible partnership to venture into this sector & November 2011 both initiated for merger.

On 27th January 2012 they decided to merge. Jeevani decided to transferred all assets & liabilities to lifeline.(the "scheme") was prepared for jeevani and three ("the promoter") who are major 18% shareholder jeevani sell entire stake to lifeline however this sale affected from sale agreement on 23rd march 2012. Agreement was inter alia it regards disclosure of information by parties & also that all intangible properties includes r&d and ipr's right vested to lifeline. On 5th march 2012 scheme finalized and filed before bombay stock exchange for approval but not approved.

On 30th march 2012 jeevani & lifeline filed an application under sec.391 of (the company act 1956) for approval of scheme by hon'ble delhi high court. Hon'ble judge mandate order of chapter 5 for meeting of creditor. Jeevani issued a notice of meeting in local and english newspaper contains term of proposal and explaining effect. Meeting held and resolution passed by majority. Scheme was approved by hon'ble delhi high court on 5th July 2013. Life line separately approach bombay high court under same provision for approval of scheme and it approved & no challenged.

Prior public announcement by jeevani certain creditor (foreign lenders) had invoked arbitration before arbitral tribunal hong kong, against jeevani. It was initiated for payment under agreement providing financial assistance to jeevani. On 27th july 2010 award was passed in against jeevani and jeevani her to pay amount in stated in arbitral award. Till no enforcement of this foreign award has filed.

In early august 2013 foreign lender of jeevani made application to recall order on 5th july 2013 before delhi high court. They contended they not received any notice of scheme and not able attend meeting and requested to set aside scheme. Jeevani said foreign are not creditor no notice was required. Hon'ble delhi high court judge dismissed application of foreign lender and also by divisional bench. This order now before Supreme Court and pending argument.

After merger newly lifeline continued operation with erstwhile jeevani, which includes supplying of drug to usa. However lifeline received notice from food drug administration (the fda) for providing drug below par quality. On investigation by fda it was found that drug produced by jeevani at indian plant before merger. Lifeline filled a suit against promoters before delhi high court for breach of contract on 23rd march 2013, for compensation and for wrongful gain and

unjust enrichment by way of defrauding and misrepresentation to bona fide purchaser i.e. Lifeline. Lifeline also alleged fact of pending investigation was concealed by promoters with mala fide intention to ensure that they get inflated share price. The promoter contended that Delhi High Court has no jurisdiction as agreement on 23rd March 2013 between the parties had clause. However Lifeline said no arbitration clause.

The extracts of relevant clause from the share sale agreement as relied by promoters are stated below:-

Governing law

1.1 This agreement shall be interpreted and contracted according to Indian law.

Dispute resolution

2.1 Decision of empowered committee comprising of 3 executive level personnel of company shall be final and binding and conclusive on parties to agreement upon all issues & questions.

2.2 The parties shall endeavor to amicably

Jurisdiction

3.1 All disputes touching upon subject matter shall be subject to jurisdiction of Delhi High Court.

The Hon'ble single judge of Delhi Court has jurisdiction. This order has been challenged in appeal by promoters to Division Bench High Court of Delhi. The single judge erred in its decision and that constitutes an arbitration clause and accordingly referred the dispute to be decided in terms of agreement. Aggrieved by order of court, Lifeline approached the Supreme Court of India and matter is pending for argument.

In the meanwhile, after merger to increase profit, Lifeline decided to introduce a new life-saving drug named "Novel" into the market. This drug was manufactured with active R&D which was property of Lifeline after merger. New drug awaited in market as it was cheaper than other life-saving drugs including "Inventive" which is presently premier in market. This drug was sold by ("Swasth") a sister concern of promoter erstwhile Jeevani. Swasth in 2010 assigned absolute right to few of developed and completed R&D projects and IP rights of Jeevani. Before Lifeline launched drug Novel, Swasth filed suit for infringement of its IP rights in Delhi Court that new "Novel" was substantially similar to its drug and Swasth obtained interim injunction. In the meanwhile, Swasth launched a similar cost drug, large chunk in market after withdrawing interim injunction.

Based on above, Lifeline filed application before Competition Commission of India ("the CCI") alleging that Swasth was abusing its dominant position by indulging in bad faith litigation. CCI made Lifeline was prima facie passed order & direction directing CCI to investigate report directed awaited.

Swasth being aggrieved by order of CCI filed a writ petition making party in Delhi High Court. Upon hearing Lifeline, CCI and Swasth the court held CCI made prima facie finding and directed

For investigation, as no adverse effect is caused to Swasth and it found no reason to interfere and dismissed writ petition. On appeal, divisional bench also dismissed by single judge and accordingly Swasth has come before Supreme Court against order.

Given fact litigation involves same parties arising out of same transaction and also request of counsel's appearing in matter, the Supreme Court exercising its power has tagged matter together.

STATEMENT OF ISSUES

1st ISSUE

Whether the foreign lender application is maintainable?

2ND ISSUE:

Whether court have jurisdiction for breach of contract by promoters?

3RD ISSUE:

Whether IPRs right is violated?

4TH ISSUE:

Whether Investigation by Competition Commission of India is maintainable?

SUMMARY OF ARGUMENTS

Whether the foreign lender application is maintainable?

It is humble submitted that the foreign lender application is not maintainable because they not according 391 of company act 2013 approval of foreign lender not required.

Whether court have jurisdiction for breach of contract by promoters?

It is humble submitted that there is Arbitral clause in the sale agreement and dispute has to solve by arbitral proceeding no jurisdiction of court is there.

Whether Intellectual Property right is violated?

It is humble submitted that my client has R&D and IPRs right which was assigned by Jeevani on 2010 my client right is violated.

Weather Investigation by Competition Commission of India is maintainable?

It is humble submitted that my client right is violated no investigation maintain by Competition commission of India also its violation of court's decision.

ADVANCED ARGUMENT

WHETHER THE FOREIGN LENDER APPLICATION IS MAINTAINABLE?

My Client and Jeevani has filed an application under Section 391 of the Companies Act, 1956 for initiating the process of approval of the Scheme by the Hon'ble Delhi High Court. The Hon'ble Company Judge in accordance with the mandate of the Companies Act ordered for a meeting of the creditors to be convened. Jeevani issued a notice of meeting to its creditors by publishing an advertisement in a local English language newspaper and local language newspaper containing the terms of the proposal and explaining its effect. A meeting of the creditors to whom notice was sent, was accordingly held and resolutions supporting the Scheme were passed by a vote of majority. Thereafter the Scheme was also approved by the Hon'ble Delhi High Court on 5th July 2013. My Client separately approached the Bombay High Court under the relevant provisions of the Companies Act for approval of its scheme of arrangement. Same was approved by the Bombay High Court. At last the foreign lenders are not creditors of the Company and no notice was required to be sent to them according to provision for approving the scheme. So application is not maintainable because it passed by court according **chapter 5th and section 391** of company act 391.

(1) The provisions of sections 34 to 36 (both inclusive) shall apply to—

(i) The issue of a prospectus by a company incorporated outside India under

Section 389 as they apply to prospectus issued by an Indian company;

(ii) The issue of Indian Depository Receipts by a foreign company.

(2) The provisions of Chapter XX shall apply mutatis mutandis for closure of the

Place of business of a foreign company in India as if it were a company incorporated in

India.

WHETHER COURT HAVE JURISDICTION FOR BREACH OF CONTRACT BY PROMOTERS?

On 27th January 2012 My Client and Jeevani is decided to merge and all assets and liabilities is transferred to me. The scheme was prepared with Jeevani and also decided that the three promoters of Jeevani who are also majority shareholders in the company would sell their entire promoter shareholding i.e.18% of their stake in Jeevani to me.

On 23rd March 2012 a sale agreement was made between promoters and me. Agreement contained specific representations as regards disclosure of information, by either of the parties, which may be vital to the transaction which the parties were entering into.

After merger My Client started supplying generic drugs to the United States of America. However soon after, I received notices from the US Food and Drug Administration for providing drugs of below par quality and in violation of the requisite production parameters set out by the FDA.

After further investigation by FDA it declares that drugs produced by Jeevani at its plants in India and before merger.

So with malafide intention there is Breach of contract by promoter for wrongful gain and unjust enrichment by way of defrauding and misrepresenting of fact while entering into agreement. I My Client is bonafide purchaser suffer from heavy loss from act which was done by my opposite party. And there is jurisdiction of court which was mentioned in agreement clause so damages has to provide to me according to **section 73 (Compensation of loss or damage caused by breach of contract) of Indian contract Act 1872 as well as Section 17 and 447(1) of The Companies Act, 2013 as follows: “**

“Fraud” in relation to affairs of a company or anybody corporate, includes (a) any act,(b) concealment of any fact(d) any such act or omission as the law specially declares to be fraudulent.

WHETHER IPRS RIGHT IS VIOLATED

On 27 January 2012, My Client and Jeevani decided to merger and on 30th march 2012 scheme for merger is finalized. There was sale agreement between Jeevani And me on 23rd march 2012. It was specifically provided that agreement includes the all intangible properties including Intellectual Property Rights and Research & Development Right and it would become property of me and all right accruing from is vest with me.

And My Client has Right on manufacturing of life saving drug “Novel” because My Client purchased from Jeevani at time of merger and all swasth which was get injuncion is unjust because it’s a sister concern of promoters of Jeevani it was abusing its dominant position by indulging in bad faith litigation. And promoter charged under fraud under Section 17 and 447(1) of The Companies Act, 2013 as follows: “

“Fraud” in relation to affairs of a company or anybody corporate, includes (a) any act,(b) concealment of any fact(d) any such act or omission as the law specially declares to be fraudulent.

**WEATHER INVESTIGATION BY COMPETITION COMMISSION OF INDIA IS
MAINTAINABLE?**

Swasth launched a similar cost effective drug in the market, cornering a large chunk of the market, after which it withdrew the case against My Client and the interim injunction was vacated. In intention of Swasth was totally wrong and malafide because Swasth wanted sale their drug in the similar cost of my drug in considerably cheaper than other lifesaving drugs in the market, including the drug “Inventive” presently being the premier drug available in the market. so its bad competition practice which swasth has done against me by taking interim injunction by the court in which fraudulently promoter concealed the fact regarding Intellectual Property Right right at time of sale agreement. So Swasth has charged **under section 4 of Competition Act, 2002.**

4. Abuse of dominant position.-

1. No enterprise shall abuse its dominant position.
2. There shall be an abuse of dominant position under sub-section (1), if an enterprise,-
 - a. directly or indirectly, imposes unfair or discriminatory-
 - i. condition in purchase or sale of goods or service; or
 - ii. Price in purchase or sale (including predatory price) of goods or service.

Explanation.-For the purposes of this clause, the unfair or discriminatory condition in purchase or sale of goods or service referred to in sub-clause (i) and unfair or discriminatory price in purchase or sale of goods (including predatory price) or service referred to in sub-clause (ii) shall not include such discriminatory condition or price which may be adopted to meet the competition; or

b. limits or restricts-

i. production of goods or provision of services or market there for; or

ii. technical or scientific development relating to goods or services to the prejudice of consumers;
or

c. indulges in practice or practices resulting in denial of market access; or

d makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or

e. uses its dominant position in one relevant market to enter into, or protect, other relevant market. Explanation.-For the purposes of this section, the expression-

a. "dominant position" means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to-

i. operate independently of competitive forces prevailing in the relevant market;

ii. affect its competitors or consumers or the relevant market in its favour;

b ."predatory price" means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors. Regulation of combinations

PRAYER

WHEREFORE IN THE LIGHT OF FACTS STATED, ISSUES RAISED, AUTHORITIES CITED, ARGUMENTS ADVANCED, IT IS MOST HUMBLY PRAYED BEFORE THIS HON'BLE COURT THAT IT MAY BE PLEASED TO:

- (1) TO UPHOLD THE APPEAL BY FOREIGN LENDER.**
- (2) TO PROVIDE DAMAGES FOR BREACH OF CONTRACT.**
- (3) TO GIVE DECISION ON BASIS OF FACT FOR FRAUD INJUNCTION.**
- (4) TO MAINTAIN APPLICATION WHICH WAS MADE UNDER CCI.**

**Pass any other order that it deems fit in interest of Justice, Equity and Good Conscience.
All of which is respectfully submitted.**

And for this, the Appellant as in duty bound, shall humbly pray:

COUNSELS ON BEHALF OF APPEALANT