Team Code -X

BEFORE THE HON'BLE

SUPREME COURT OF INDIA

IN THE MATTER OF:

Lifeline Limited And Others ……**APPLICANTS**

VERSUS

Jeevani Limited And Others……...**RESPONDENT ON**

SUBMISSION TO THE HON'BLE SUPREME COURT OF INDIA

MOST RESPECTFULY

SUBMITTED MEMORANDUM ON BEHALF OF THE APPELLANTS

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A. LIST OF ABBREVIATIONS

1. AIR – All India Reporter
2. SCC – Supreme Court Cases
3. Comp Cas – Company Cases
4. Bom–Bombay
5. Del – Delhi
6. C.C.I- Competition Commission of India
7. Hon'ble - Honorable
8. Pg. – Page.
9. V – Versus
10. L.R. – law reports
11. D.G - Director General
12. SC – Supreme Court
13. Vol – Volume
14. r/w - Read with
15. edn - Edition

B. BOOKS REFERRED

1. Anson's: Law of Contract, 25th edn , Oxford
2. Avtar Singh: *Contract & Specific Relief*. 10th edn, EBC
3. Mulla : Indian Contract Act , 2nd edn
4. Surendra Malik : S.C Words and Phrases,3rd edn

5. H.K Saharay : Words and Phrases under the Const.,2nd edn

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E. WEBSITES REFERRED

1. http://manupatra.com/

2. http://lexisnexis.in/lexisindia/

3. http://www.indiankanoon.org/

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3. Raja Bahadur Motilal Poona Mills ltd vs. State of Maharashtra (2003)1Bom CR 251
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5. Nagpur Golden Transport Co. (Regd.) v. Nath Traders (2012) 1 SCC 555

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7. Air Canada v. British Columbia [(1989) 59 DLR (4th) 161, Can SC]
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STATEMENT OF JURISDICTION

The Appellant has approached this Honorable Court under Article 136 of the Constitution of India, by way of special leave to appeal. Leave has been granted for filing appeal. The Appellant submits to the Jurisdiction of this Honorable Court.

STATEMENT OF FACTS

1. Jeevani Limited, herein after referred to as the 1st Respondent , is a listed public company incorporated in the year 1990 under the C.A,2013 with its registered office in New Delhi and it's equity shares are listed on the B.S.E. The 1st Respondent is one of the leading market players in the pharmaceutical manufacturing industry. In addition to holding a considerable market share in this sector in India, the 1st Respondent also had a global presence with its products being sold to many countries. Later in a statement made by the 1st Respondent in July, 2011 it was announced that in effort to meet the growing global demands of industry standards , increasing challenges of the oncoming competition in the market and reaching maximum profitability, the 1st Respondent was looking forward to opportunities for expansion in the market.

2.Lifeline Limited, hereinafter referred to as the 2nd Appellant , is another listed public company registered and incorporated under the C.A, 2013 having it's registered office in Mumbai. The 2nd Appellant , is a popular company in the Indian market as a major producer of food products and is known for its quality and variety of food products in India, they are also amongst the few Indian companies whose products are traded internationally. Realizing the huge potential in the pharmaceutical sector and only after establishing itself in the abovementioned market, the 2nd Appellant decided to foray into the pharmaceutical sector. The 2nd Appellant , approached the

1st Respondent for a possible partnership to venture into this sector. In and around November, 2011 both companies initiated negotiations for a possible merger.

3.After a lot of deliberations and negotiations , both companies on 27th, January 2012 decided to merge. It was decided that the 1st Respondent , would completely merge into the 2nd Appellant and all assets and liabilities of the 1st Respondent would be transferred to the 2nd Appellant . A scheme of arrangement (the "Scheme") ,for the 1st Respondent was prepared keeping this in mind. It was also decided that the three Promoters, herein after collectively referred to as the 2nd Respondent, who are also majority shareholders in the company would sell their entire promoter shareholding (18 percent) of their stake in the 1st Respondent to the 2nd Appellant . However this sale of stake was affected vide a separate sale agreement entered into on 23rd March 2012 between the 2nd Appellant and the 2nd Respondent. This agreement, inter alia , contained specific representations regards disclosure of information, by either of the parties, which may be vital to the transaction which the parties were entering into. It was specifically provided in this agreement that all the intangible properties including the active R&D and IPRs of the 1st Respondent would become the property of the 2nd Appellant and all rights accruing from it would vest wirlevant th the 1st Respondent.

4.The Scheme was finalized on 5th March 2012 and immediately thereafter the Scheme was filed before the B.S.E for its approval. However, the B.S.E did not approve it.

5.On 30th March, the 1st Respondent and the 2nd Appellant filed an application under s.391 of the C.A, 1956, for initiating the process of approval of the Scheme by the Hon'ble Delhi H.C . The Hon'ble Company Judge in accordance with the mandate of chapter V of the C.A, ordered

for a meeting of creditors to be convened. The 1st Respondent issued a notice for meeting of its creditors to 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 resolution supporting the Scheme were also passed by a vote of majority. Thereafter the Scheme was also approved by the Hon'ble Delhi H.C on 5th July 2013. All other relevant approvals were taken by the 1st Respondent. Around the same time the 1st Appellant, had approached the Bombay H.C under the relevant provisions of the C.A to get the Scheme approved and got the approval of the Bombay H.C.

6.Prior to the P.A being made by the 1st Respondent , certain creditors of the 1st Respondent mainly foreign banks ("foreign lenders") had jointly, invoked arbitration proceedings before a foreign arbitral tribunal constituted Hong Kong, against the 1st Respondent. The arbitration was initiated for payments to be made under a consortium agreement providing financial assistance to 1st Respondent entered into between the foreign lenders, herein after collectively referred to as the 1st Appellant, and the 1st Respondent. On 27th July 2010, a foreign arbitral award was passed in favour of the 1st Appellant against the 1st Respondent. Under this award the 1st Respondent was to pay the 1st Appellant the amounts as stated in the arbitral award. Till date no proceedings for enforcement of this foreign award has been filed by the 1st Appellant.

7.In early August 2013 the 1st Appellant, of the 1st Respondent made an application before the Hon'ble Company Judge for recall of order dated 5th July 2013, passed by the Hon'ble Company Judge of the Delhi H.C approving the Scheme. The 1st Appellant contended that they had not

received notice of the Scheme and were not able to attend the meeting of creditors. The 1st Appellant, further contended that they constituted a separate class of creditors and since there was no separate meeting held for them the Scheme must be set aside. The Company however contended that the 1st Appellant, are not creditors of the company and no notice was required to be sent to them and the fact they are even separate class of creditors is disputed. The Hon'ble Company Judge dismissed the application and refused to set aside the Scheme. Against this order the 1st Appellant went in appeal to the Division Bench of the Delhi H.C, which also dismissed the appeal after due consideration of facts. Now this order is under challenge before the S.C of India and is pending arguments.

8.After the merger, the newly merged 2nd Appellant, continued with the operation of the erstwhile 1st Respondent, which included its operations of supplying generic drugs to the U.S.A. However soon after, the 2nd Appellant, received notices from the U.S F.D.A for providing drugs of below par quality and in violation of the requisite production parameters set out by the F.D.A. On further scrutiny by the 2nd Appellant, it was found out that the investigations by F.D.A on drugs produced by the 1st Respondent, at its plants in India was commenced much before the merger of the 1st Respondent and the 2nd Appellant. The 2nd Appellant filed a suit against the 2nd Respondents before the Delhi H.C for damages arising out of breach of contract dated 23rd March 2013, for compensation for wrongful gain and unjust enrichment of the 2nd Respondent by way of defrauding and misrepresenting to the 2nd Appellant further the 2nd Appellant also alleged that the fact of the pending investigations was concealed by the 2nd Respondents with malafide intention to ensure that they get an inflated price for their shares. The 2nd Respondents contended that the Delhi H.C has no jurisdiction as the agreement dated, 23rd March 2013, between the parties had an arbitration clause and any dispute arising between them

should be referred to arbitration. However, the 2nd Appellant contended that there is no arbitration clause in the agreement.

9.

The extract of relevant clause from the Share Sale Agreement that was relied upon by the 2nd Respondents are stated below:-

1. **Governing Law**

1.1. This Agreement shall be interpreted and construed in accordance with the laws of India.

2. **Dispute Resolution**

2.1. Decision of an empowered committee comprising of (three) executive level personnel of the Company shall be final, binding and conclusive on parties to this Agreement upon all questions and issues relating to the meaning, scope, instructions, claims, right or matters of interpretation of and under this Agreement.

2.2. The parties shall endeavor to amicably resolve the above mentioned issues.

3. **Jurisdiction**

3.1. All disputes touching upon the subject matter of the agreement shall be subject to the jurisdiction of Delhi courts."

10.The Hon'ble Single Judge of the Delhi H.C held that the above clause could not be regarded as an arbitration clause and therefore held that the Court had jurisdiction to look into the issues involved and kept the matter for completion of pleadings and arguments on a later date. This Order of the Single Judge was challenged in appeal by the 2nd Respondents to the Division Bench of the Delhi H.C. The Division Bench held that the Single Judge had erred in its decision and that the clause constitutes an arbitration clause and accordingly referred the disputes to be decided by the Empowered Group in terms of the agreement. Aggrieved by this Order of the Division Bench of the Delhi H.C, the 2nd Appellant has approached the Supreme Court of India and the matter is pending for arguments.

11. In the meanwhile, and soon after the merger, the 2nd Appellant to increase its profitability, decided to introduce a new life saving drug by the name of "Novel" into the market. This new drug was manufactured after further developing the active R & D which became the property the 2nd Appellant after its merger with 1st Respondent . The new drug Novel was eagerly awaited in the market as it was published to be considerably cheaper then other life saving drugs in the market, including the drug "Inventive" presently being the premier drug available in the market. The drug "Inventive" was being manufactured and sold by Swasth Life Limited ("**Swasth**"),herein after referred to as the 3rd Respondent, a sister concern of the 2nd Respondent, of the erstwhile 1st Respondent . The 3rd Respondent had sometime in the year 2010 got assigned absolute rights to a few of the developed and completed R & D projects and IPRs of the 1st Respondent . Before the 2nd Appellant could launch drug 'Novel', The 3rd Respondent filed a suit for infringement of its IPRs in the Delhi H.C alleging that the new drug 'Novel' was substantially similar to its drug "Inventive" and was based on certain IPRs which

have been assigned to the 3rd Respondent. Based on its arguments, the 3rd Respondent was able to obtain an interim injunction against 2nd Appellant who was restrained from launching the new drug 'Novel' until further orders of the Court. In the meanwhile, the 3rd Respondent launched a similar cost effective drug in the market, cornering a large chunk of the market, after which it withdrew the case against 2nd Appellant and the interim injunction was vacated.

12.

Based on the above the 2nd Appellant filed an application before the CCI alleging that the 3rd Respondent was abusing its dominant position by indulging in bad faith litigation. The CCI based on the allegations made by the 2nd Appellant was of the *prima facie* view that the 3rd Respondent may have abused its dominance and passed an Order directing the DG, CCI to investigate on the information provided by the 2nd Appellant,and submit its report within 45 days. The report of the DG is still awaited.

13. The 3rd Respondent being aggrieved by the Order of the CCI filed a writ petition making the 2nd Appellant and the CCI a party in the Delhi High Court. The 3rd Respondent submitted that CCI's Order for directing investigation was bad in law as the 3rd Respondent in its endeavor to protect its IPRs cannot be held, even prima facie, to be abusing its dominance. Upon hearing the arguments of the 3rd Respondent , the 2nd Appellant and the CCI, the Delhi High Court held that CCI has made *prima facie* finding, and has only directed for an investigation on the allegations made against the 3rd Respondent. As such no adverse effect is caused to the 3rd Respondent and therefore it found no reason to interfere with the investigation of the DG CCI and dismissed the writ petition filed by the 3rd Respondent. On appeal, the Division Bench also did not find any

reason to interfere with the order of Hon'ble Single Judge and accordingly the 2nd Appellant has come before the Supreme Court against the order of the Division Bench.

14 Given the fact that these litigations involve the same parties and disputes arise out of the same transactions and also on the request of the Counsel's appearing in the matter, the Supreme Court exercising its inherent powers has tagged the matters together for hearing.

ISSUES RAISED

1. **Whether the Foreign lenders constitute a separate class of creditors and Whether the Scheme should be set aside.**

2. Whether there exists a valid arbitration clause in the share sale agreement.

3. Whethere there was any breach of contract.

4. Whether the CCI's probe into Swasth is justifiable.

Summary of Pleadings

1.**Whether the foreign lenders constitute a separate class of creditors**.

It is the humble submission of the 1st Appellant that the 1st Respondent do indeed constitute a separate class of creditors.It was also further outrageously contended by the 1st Respondent that the 1st Appellant do not even form a part of the 1st Respondents creditors.

This submission is two fold:

1.Firstly,it is factually proven that there was a consortium agreement signed between the foreign lenders and other creditors of the company which not only sets them apart from other creditors but it also proves the fact that the 1st Appellant are creditors of the 1st Respondents company.

2.Secondly,a foreign arbitral award is pending favouring the 1st Appellant which again sets them apart from any of the other creditors.It was also acknowledged by the foreign arbitral tribunal that the 1st Appellant are creditors of the company.

2.**Whether there exists a valid arbitration clause in the share sale agreement.**

The Appellants humbly submit before this honourable Supreme Court that there definitely does not exists a valid arbitration clause in the share sale agreement.

It has been stated in the clause that 3 executive level heads of the 1st Respondents company are to be appointed and empowered for resolving all disputes arising between them.It is also to be noted that as per Section 12 of the Arbitration and Conciliation Act,1996 In an arbitration,the two parties appoint their own arbitrators and these two arbitrators appoint a third and a common arbitrator.

This criteria has not been met and conveniently ignored by the Respondents,so this dispute resolution clause can in no way be construed as a separate and valid arbitration clause.

3.**Whether there was any breach of contract**.

It is the humble submission of the Appellants that there was breach of contract committed by the Respondents. Active Concealments of facts does constitute "fraud" under S.17 of the Indian Contract Act,1872.The Respondents ought to have disclosed any pending investigations against them. They have been Unjustly Enriched in this particular case because of the fact that this concealment by the Respondents led to them getting an inflated price for their Shares from Lifeline. Therefore it is clear that the Appellants are entitled for restitution for the excess price that they have paid due to the Respondents concealment of a very important fact.

4.**Whether the CCI's probe into Swasth is justifiable**.

It is humbly submitted by the Appellants that the probe into Swasth is not justifiable. The primary question which arises in this case is that "Whether Swasth holds a dominant position in this sector.".It is further contended by the Appellants that Swasth does not fulfill the criteria of

S.4 of the Competition Act,2002 and hence it is clear that they do not hold a dominant position. Swasth, exercising its legal rights doesn not amount to abuse of dominant position and hence there was no Prima Facie case here and so it is clear that CCI's probe into Swasth is by no means justifiable.

PLEADINGS

1. Whether the foreign lenders constitute a separate class of creditors.

Firstly it would be pointed out that the Respondents have not considered us as creditors of the company. In *paragraph 7* of the facts sheet it is clearly given that "the company (Respondents) contended that the foreign lenders are not creditors of the company and no notice was required to be sent to them and the fact that whether they even constitute a class of creditors is disputed". A consortium agreement was signed between the appellants and a few other creditors of the company. Therefore we should be construed as creditors of the company. The Respondents have misrepresented to the court itself saying that we are not creditors of the company therefore this hon'ble court should turn a serious eye towards this issue. In ***Amar Singh vs. Union of India***[1] the learned single judge of the hon'ble Supreme Court of India held *that "courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts. Courts held that such litigants have come with unclean hands and are not entitled to be heard on the merits of the case*". It can further be noted in the case of ***Paramount Publicity ltd vs. M.C.D***[2]**,** the learned single judge of the Delhi High Court held that *"relief shall not be granted by any courts or judicial authority when there is misrepresentation or suppression of facts by either of the parties".*

Secondly, we humbly submit that we should be construed as a separate class of creditors because we have a foreign arbitral award in our favor. The Respondent is liable to pay the consortium the

[1] Amar Singh vs. Union of India (2011)7 SCC 69
[2] Paramount Publicity ltd vs. M.C.D (195)32 DRJ 185

said amount in the arbitral award. A notice should have been sent to us regarding the meeting for negotiations of the scheme but the respondents have failed in their part to send us the notice for negotiations for the scheme.

2. **Whether there exists a valid arbitration clause in the share sale agreement.**

It is our humble submission that the arbitration clause in the share sale agreement is unjust, biased and in favor of the respondents. The share sale agreement dispute resolution clause reads as follows : "*decision of an empowered committee comprising of (three) executive level personnel of the company shall be final, binding and conclusive on parties to this agreement upon all questions and issues relating to the meaning, scope, instructions, claims, right or matters of interpretation of and under this agreement"*. This clause does not entertain arbitration but it is merely conciliation. The jurisdiction clause, which follows, clearly mentions*, " All disputes touching upon the subject matter of the agreement shall be subject to the jurisdiction of Delhi courts*". This has to be interpreted in a way that all problems or disputes, which arise regarding the share sale agreement, will be subject to the courts at Delhi.

It is given in the dispute resolution clause that 3 executive level personnel will be appointed and empowered for resolving disputes but their qualification and other relevant materials are not given. In arbitration, the two parties appoint their own arbitrators and those two arbitrators appoint a third and common arbitrator. This is clearly explained in **Sec.11 (3) of the Arbitration and Conciliation Act, 1996** that states, *"in an arbitration with three arbitrators, each party shall appoint one arbitrator and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator"*. These criteria have not been met in the dispute

resolution clause therefore it cannot be construed as a dispute resolution clause.In ***Raja Bahadur Motilal Poona Mills ltd vs. State of Maharashtra***[3] the Hon'ble division bench of the Bombay High Court held that *" even though there may exist an arbitration clause in an agreement between the parties, it does not bar them from invoking a civil suit to resolve any disputes"*.

3.**Whether there was any breach of contract.**

It is the humble submission of the Appellants that the Respondents have breached the contact.

I would like to place before this Hon'ble S.C that the defendants have failed to fulfill their duty to disclose their pending investigation which shows clearly that there was unjust enrichment in the part of the promoters.

To quote ***Lord Wright*** in **Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbour Ltd**[4].

> " *any civilised system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of or some benefit derived from another which it is against conscience that he should keep. Such remedies in English law are generically different from remedies in contract or in tort, and are now recognised to fall within a third category of the common law which has been called quasi-contract or restitution."*

[3]Raja Bahadur Motilal Poona Mills ltd vs. State of Maharashtra (2003)1Bom CR 251
[4]Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbour Ltd[4]. [1943 AC 32 : (1942) 2 All ER 122 (HL)] : (AC p. 61)

the Hon'bleS.C Judges *P.Sathasivam* and *A.K. Patnaik* have stated this as a reason for the judgment while delivering the judgment in case of **Nagpur Golden Transport Co. (Regd.) v. Nath Traders[5],** similarly in this case the promoters have abstracted a higher price from Lifeline by not telling them about the pending investigation by the F.DA. into their company.

And in the interest ofthe matter in hand it is also pertinent to look into the case of **Mafatlal Industries Ltd. v. Union of India[6]**

Dawson.J, also took the same view. The following observations of the learned Judge, however, indicate the nature of the violation in this case, which is of quite some significance:

> *"No question such as that which arose in* ***Air Canada v. British Columbia****[7] would arise in the present case. In the Canadian case, a majority of the S.C held that, whilst moneys paid under a mistake of law might be recovered upon the basis of unjust enrichment, that doctrine did not extend to moneys paid under unconstitutional legislation. No question of unconstitutionality arises in this case. The application of the common law would also raise the question whether the principle of unjust enrichment can be invoked when moneys paid under a mistake of fact or law constitute an expense which has been passed on to someone else, as the respondent insurer is said to have passed on the overpayments of stamp duty to its insured in this case. The better view would seem to be that it is the unjust enrichment of the payee rather than loss suffered by the payer which should govern entitlement to*

[5]Nagpur Golden Transport Co. (Regd.) v. Nath Traders[5], (2012) 1 SCC 555
[6]Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536
[7]Air Canada v. British Columbia[(1989) 59 DLR (4th) 161, Can SC]

restitution but, having regard to the view which I take, it is unnecessary to determine that question in these proceedings."

In the matter at hand, clearly promoters have been unjustly benefited due to this deal, if they had duly revealed about the investigation then definitely the market price of their shares would have come down which they inflated the price by concealing the fact.

Section 17 of Indian Contracts Act defines fraud in which sub clause 2 says any active concealment amounts to fraud so they have the knowledge and they believe in it as well hence it is clear they have committed fraud.

Section 17. "fraud defined "

"*Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agents,*[1] *with intent to deceive another party thereto his agent, or to induce him to enter into the contract;*

(1) the suggestion as a fact, of that which is not true, by one who does not believe it to be true;

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made without any intention of performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent.

It is also pertinent to note that in the case of ***A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam***[8]

43.4. *Once the court discovers falsehood, concealment, distortion, obstruction or confusion in pleadings and documents, the court should in addition to full restitution impose appropriate costs. The court must ensure that there is no incentive for wrongdoer in the temple of justice. Truth is the foundation of justice and it has to be the common endeavour of all to uphold the truth and no one should be permitted to pollute the stream of justice.*

43.5. *It is the bounden obligation of the court to neutralise any unjust and/or undeserved benefit or advantage obtained by abusing the judicial process.*

4. ***WHETHER CCI'S PROBE INTO SWASTH IS JUSTIFIABLE.***

It is humbly submitted before this Honourable Court that the CCI's probe into Swasth is not at all Justifiable.

The biggest question which would arise out of this issue is whether Swasth ever held a dominant position. the facts are totally silent on the market share of the Swasth, moreover the main requirements of the company to hold a dominant position is not fulfilled by Swasth, Lifeline i.e erst while Jeevani is in a great position and is one of the leading pharmaceutical company which attracted a company like Lifeline to come forward to merge with them then it is clear that it is not holding a dominant position as it is not operating independent of the market competition hence there is no question of Swasth holding a dominant position.

[8] *A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam*, (2012) 6 SCC 430 at page 459

under section 4 of the Competition Act they have defined "dominant position" as :-

(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; or

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

since they were affected by the competition in that relevant market they cannot be said to be holding dominant position.

The next question arising is whether a company exercising its fundamental legal rights can be held as abusing its dominant position. Swasth has in good faith filed a petition for infringement of their IPR, there is no malifide intention proved if a person withdraws a case. if that's the case then any person who withdraws a case should be charged for malifide intention and there should be no provisions in law given for withdrawal of a petition once filed.

As Lifeline claims if there should be an abuse of dominant position then there should be fulfillment of atleast one of the provisions under section 4 of the competition act 2002

Section 4. [(1)No enterprise or group] shall abuse its dominant position.]

(2) There shall be an abuse of dominant position 4 [under sub-section (1), if an enterprise or a group].—-

(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.

(b) limits or restricts—

(i) production of goods or provision of services or market therefor; or

(ii) technical or scientific development relating to goods or services to the prejudice of consumers; or if an enterprise"

(c) indulges in practice or practices resulting in denial of market access [in any manner]; 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.

None of the above provision is fulfilled by this act of Swasth so it is clear that there is a grave error committed by the Competition Commission of India while deciding a prima facie case in

this matter. There has been an error on part of CCI ordering an investigation into our company since there exists no prima facie case while

And they have not followed the rules laid down by the commission i.e CCI regulation 2009 rule 15, 16,17, says there needs to be a scrutiny done by the secretary and then time be given to the claimants for the correction of any faults and then later hold a meeting with the concerned parties then decide about the prima facie case in this case to avoid such blunders being made.

They should stop the investigation as we said above if there are pending investigations on a company will affect its reputation and will result in downfall of its market price which is a very bad sign in case of a company.

PRAYER

In the light of the issues raised, arguments advanced and authorities cited, the Petitioner humbly submits that this Hon'ble Supreme Court may be pleased to adjudge and declare to:

1. *To convene a new meeting for all the Creditors.*
2. *To award damages for the breach of contract by the Respondents.*
3. *To not hold out on the investigations carried out by the DG.*

AND

Any other order as it deems fit in the interest of equity, justice and good conscience.

For This Act of Kindness, the Appellants Shall Duty Bound Forever Pray.