

5th NLIU-JURIS CORP NATIONAL CORPORATE LAW MOOT COURT
COMPETITION 2014

TEAM A1

BEFORE THE HON'BLE SUPREME COURT OF INDIA

LIFELINE LIMITED.....APPEALANT

VS

SWASTH LIFE LTD & OTHERS..... RESPONDENT

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

MEMORENDUM OF BEHALF OF RESPONDENT

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Mitsui & Company Ltd. vs Deputy Commissioner Of Income Tax on 27 May, 1999

Modi Industries Limited vs The Union Of India And Anr. on 2 April, 1970

V/O Tractor Export, Moscow vs M/S. Tarapore & Company & Anr on 28 October, 1969

Smita Conductors Ltd vs Euro Alloys Ltd on 31 August, 2001

F. Hoffmann-La Roche Ltd. & Anr. vs Cipla Ltd. on 24 April, 2009

Wockhardt Ltd. vs Hetero Drugs Ltd. And Ors. on 8 September, 2005

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Vedant Bio Sciences vs Chemists & Druggists Association ... on 5 September, 2012

Vicnivaas Agency vs Food Corporation Of India on 21 November, 2013

G.K. Granites vs Tata Hitachi Construction ... on 21 November, 2013

Rohit Medical Store Through Its ... vs M/S Aashish Enterprises, Ambala ... on 16 December, 2010

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Books:

- 1. Law Of Arbitration And Conciliation And ADR 10th edition Avtar Singh**
- 2. Contract and Specific Relief 11th edition Avtar Singh**
- 3. Intellectual Property Act**
- 4. Company Law Avtar Singh**
- 5. Company law Dr. S.R. Myneni**

LEGAL DATABASES

- 1. Manupatra**
- 2. SCC Online**
- 3. Indiankanoon**
- 4. Lawoctopus**

LEGISLATIONS

- 1. The Constitution of India, 1950**
- 2. The Indian company Act 2013**
- 3. The Patent Act 1970**
- 4. Indian contract act 1872**
- 5. Arbitration and cancellation Act, 1996**
- 6. Competition Act 2002**

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STATEMENT OF JURISDICTION

The Honorable 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.

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STATEMENT OF FACTS

Jeevani limited is a listed company in corporate in 1990 under companies 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 of company act 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 has 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

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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 defrauding and mispresatation to bonafide purchaser i.e. lifeline. Lifeline also alleged fact of pending investigation was concealed by promoters with malafide intention to ensure that they get inflated shares 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 final and binding and conclusive on parties to agreement upon all issue & question.

2.2 The parties shall endeavor to amicably

Jurisdiction

3.1 All dispute toching upon subject matter shall subject to jurisdiction of Delhi high court.

The Hon'ble single judge of Delhi court court have jurisdiction. This order has challenged in appeal by promoters to division bench high of Delhi court that single judge erred in its decision and that constitutes arbitration clause and accordingly referred the dispute to decide in term of agreement. Aggrieved by order of court, **lifeline approaches to the Supreme Court of India and matter in pending for argument.**

In Meanwhile after merger to increase profit lifeline decide to introduce a new life saving drug name “**novel**” into market. This drug was manufactured with active R&D which property of

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lifeline after merger. New drug awaited in market as its cheaper then other lifesaving drug including “**inventive**” which presently premier in market. This drug was sold by (“**swasth**”) a sister concern of promoter of erstwhile jeevani. Swasth in 2010 assigned absolute right to few of developed and completed R&D projects and IPRs of jeevani. Before lifeline launch drug **Novel** swasth filed suit for infringement of its IPRs in Delhi Court that new “novel” was substantially similar to its drug and swasth able to interim injunction.in meanwhile swasth launched a similar cost drug, large chunk in market after withdraw interim injunction.

Based on above lifeline filed application to before **Comptition commission of India (“the CCI”)** allenging that swasth was abusing its dominant position by indulging bad faith litigation. CCI made lifeline was prima facia passed order & direction DG CCI to investigate Report DG awaited.

Swasth being aggrieved by order of CCI filed a writ petition making party in Delhi high court. Upon hiring lifeline, CCI and swasth the court held CCI made prima facia finding and directed for investigation.as no adverse effected is caused to swasth and it found no reason for interfere and dismissed writ petttion.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 arise out of same transaction and also request of counsel’s appearing in matter,**the Supreme court exercising its power has tagged matter together.**

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STATEMENT OF ISSUES

1ST ISSUE:

Whether The foreign lender application is maintainable?

2ND ISSUE:

Whether Delhi court have jurisdiction to resolve dispute between lifeline & promoters of jeevani?

3RD ISSUE:

Whether IPRs right is violated?

4TH ISSUE:

Whether Investigation by Competition Commission of India is maintainable?

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SUMMARY OF ARGUMENTS

Whether the foreign lender application is maintainable.

It is humbly submitted that, foreign lenders application is maintainable because foreign lenders are creditors of jeevani.

Whether Delhi court have jurisdiction to resolve dispute between lifeline & promoters of jeevani .

It is humbly submitted that, Delhi high court has no jurisdiction as the agreement dated 23rd march 2013 between promoters & lifeline. Had an arbitration clause and any dispute arising between them should be referred to arbitration.

Whether IPRs right is violated.

It is humbly submitted that, IPR right is not violated. Because Swasth had absolute rights which sometime in the year 2010 got assigned a few of the developed and completed R & D projects and IPRs of Jeevani.

Weather Investigation by Competition Commission of India is maintainable.

It is humbly submitted that, Investigation by Competition Commission of India is not maintainable. Because Swasth Have certain IPR rights & base on that rights Swasth Was able to obtain an interim injunction against lifeline by Delhi high court.

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ADVANCED ARGUMENT

Whether the foreign lender application is maintainable.

As per the fact sheet paragraph no 7 The Company however contended that the foreign lenders are not creditors of the Company and no notice was required to be sent to them. After word said whether they even constitute a class of creditors is disputed.

As per above statement company deny they are not our foreign lenders after that they accepted they are the foreign lenders but class of creditors disputed. That means company agreed they are foreign creditors of company.

Dispute between company & foreign lenders are resolve by arbitration proceedings before a foreign arbitral tribunal constituted in Hong Kong, against Jeevani. The arbitration was initiated for payments to be made under a consortium agreement providing financial assistance to Jeevani, entered into between the foreign lenders and Jeevani. On 27th July 2010 a foreign arbitral award was passed in favor of the foreign lenders against Jeevani.

But still execution is not completed. Award is pending that men's relation of company and creditors still exist.

The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("Convention") has been ratified by India on 13.7.1960. Article VII of the New York Convention provides that the Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 ceases to have effect between the members of the New York Convention.

Prior to the enactment of the Arbitration and Conciliation Act, 1996

("Act") the law annulment of domestic and enforcement of foreign a wards were governed by the Indian Arbitration Act, 1940 ("1940 Act"), the Arbitration (Protocol and Convention) Act, 1937 and the Foreign Awards

(Recognition and Enforcement) Act, 1961 ("1961 Act").

The 1961 Act was enacted by the Indian Legislature to implement the New York Convention.

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The 1996 Act was enacted pursuant to the commitment of the Government of India to make an appropriate legislation amending and consolidating the law in terms of UNCITRAL Model Law and Rules1.

As per above convention company is liable for pay but company not paid to foreign lenders that's why foreign lenders have creditors right against company.

They are creditor of company they must serve the notice but company not provide proper notice to them which is mandatory on company.

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Whether Delhi court have jurisdiction to resolve dispute between lifeline & promoters of Jeevani ?

On 23rd March 2012 the sale Agreement was made between My cleint and Lifeline limited. This agreement, inter alia, 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.it was clearly mentioned in agreement clause that dispute has been resolve by committee of three personnel and binding on & final to all dispute party. So it's Arbitration clause.It also decided by divisional Bench of high court. So from my part it's sold by arbitral proceeding only. according to section 28 of indian contract act 1872.

28. Agreements in restrain of legal proceedings, void

Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to the extent.

Exception 1 : Saving of contract to refer to arbitration dispute that may arise. This section shall not render illegal contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subject shall be referred to arbitration, and that only and amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

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Whether IPRs right is violated ?

My client (Swasth life limited) have lifesaving drugs in the market, is name was “Inventive” . Which presently is the premier drug available in the market? The drug “Inventive” was being manufactured and sold by My client. My client company is sister concern of jeevani and had sometime in the year 2010 got assigned absolute rights to a few of the developed and completed R & D projects and IPRs of Jeevani.so for Inventive My client has full right to manufacturing and my opposition is infringing my right and interim injunction made by Hon’ble Delhi High Court is Valid and completely justify to my client. Lifeline has to charged.

According to CHAPTER XVIII (SUITS CONCERNING INFRINGEMENT OF PATENTS)Of Indian Patent Act

Section 108

Reliefs in suit for infringement

(1) The reliefs which a court may grant in any suit for infringement include an injunction (subject to such terms, if any, as the court thinks fit) and, at the option of the plaintiff, either damages or an account of profits.

(2) The court may also order that the goods which are found to be infringing and materials and implements, the predominant use of which is in the creation of infringing goods shall be seized, forfeited or destroyed, as the court deems fit under the circumstances of the case without payment of any compensation.

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Weather Investigation by Competition Commission of India is maintainable.

It is fundamental right article 25 that freedom of conscience and free profession and according to that my client (Swasth life limited) has right to launched a in drug in the market

My Client has right sale the drug in the market. Decision which was given by Delhi High Court is based on fact, it is injuncion granted in favors of my client and for that reason opposition filed an application to CCI. So Application to the Competition Commission of India by my opposite party is not valid and maintainable and this matter has not the prima facie view. Charges made on my client are unjust & CCI's Order for directing investigation was bad in law. So it's not maintainable.

According section 19 of completion act 2002 Inquiry into certain agreements and dominant position of enterprise. (1) The Commission may inquire into any alleged contravention of the provisions

Contained in subsection (1) of section 3 or sub-section (1) of section 4 either on

Its own motion or on—

(a) 29[receipt of any information, in such manner and] accompanied by such fee

As may be determined by regulations, from any person, consumer or their

Association or trade association; or

(b) A reference made to it by the Central Government or a State Government

Or a statutory authority.

And also object under section 26 sub clause (6)&(7) of this act

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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) Recall of order dated 5th July 2013 passed by the Hon'ble Company Judge of the Delhi High Court approving the Scheme.
- (2) Refer the matter to arbitrator.
- (3) To upheld the validity of the Intellectual Property Rights
- (4) Stop the order for directing investigation was bad in law as Swasth in its endeavor to protect its IPRs cannot be held.

**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 Respondent as in duty bound, shall humbly pray:

COUNSELS ON BEHALF OF RESPONDENT