

BEFORE THE HON'BLE SUPREME COURT OF INDIA

SPECIAL LEAVE PETITION

UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA

FOREIGN LENDERS.....**APPELLANT**

V.

JEEVANI LIMITED.....**RESPONDENT**

LIFELINE LIMITED.....**APPELLANT**

V.

PROMOTERS OF JEEVANI LIMITED.....**RESPONDENT**

SWASTH LIFE LIMITED..... **APPELLANT**

V.

COMPETITION COMMISSION OF INDIA..... **RESPONDENT NO.1**

LIFELINE LIMITED..... **... RESPONDENT NO.2**

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

MEMORANDUM ON BEHALF OF THE RESPONDENTS

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8. The Patents and Designs Act, 1970

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4. Ratanlal and Dhirajlal, The Indian Penal Code, 33rd Edition,
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5. Siddharth Bawa, Law of Intellectual Property, Allahabad Law Agency
6. Dr. N.V. Paranjape, Law Relating To Arbitration And Conciliation In India,
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LEGAL DATABASES:

1. Manupatra
2. SCC online

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1. Black's law Dictionary, 2nd edition, 1910

STATEMENT OF JURISDICTION

The Hon'ble Supreme Court has the jurisdiction in this matter under

Article 136 of the Constitution of India reads as follows:

“136. Special leave to appeal by the Supreme Court

- (1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgement, decree, determination, sentence or order in any cause or any cause or matter passed or made by any court or tribunal in the territory of India.
- (2) Nothing in clause (1) shall apply to any judgement, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to armed forces.

STATEMENT OF FACTS

1. Jeevani Limited (Jeevani) is a listed public company incorporated in the year 1990 under the Companies Act, 2013 with its registered office in New Delhi. It is one of the leading market players in the pharmaceutical manufacturing industry.
2. Lifeline Limited (Lifeline) is another listed public company registered and incorporated under the Companies Act, 2013 having its registered office in Mumbai. It is a popular company in the Indian market as a major producer of food products.
3. Lifeline decided to foray into the pharmaceutical sector. Lifeline approached Jeevani for a possible partnership to venture into this sector. In and around November, 2011, both companies had initiated negotiations for a possible merger.
4. The companies decided to merge on 27th January, 2012. The three promoters of Jeevani who were also the majority shareholders in the company sold their entire shareholding (which is 18% in Jeevani) to Lifeline.
5. It was also specifically provided in the agreement that all intangible properties including the active R & D and IPRs of Jeevani would become the property of Lifeline and all rights accruing from it would vest with Lifeline.
6. The scheme was finalized on 5th March 2012 and filed before the Bombay Stock Exchange for its approval. But the Bombay Stock Exchange did not approve the scheme.
7. On 30th March 2012, Jeevani and Lifeline filed an application under section 391 of the Companies Act 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 chapter V of the Companies Act ordered for a meeting of the creditors to be convened.
8. Jeevani issued a notice for meeting of its creditors by publishing an advertisement in a local English newspaper and local language newspaper and accordingly a meeting of the creditors was held and the scheme was passed by them. It was also approved by the Hon'ble Delhi High Court on 5th July 2013. Around the same time Lifeline, under the relevant provisions of the Companies Act, got the scheme approved by the Bombay High Court.

9. Foreign lenders had jointly, invoked 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. On 27th July 2010 a foreign arbitral award was passed in favor of the foreign lenders.
10. In early August 2013 the foreign lenders of Jeevani had made an application before the Hon'ble company judge for recall of order dated 5th July 2013 . The foreign lenders contended that they had not received notice of the scheme and were not able to attend the meeting.
11. The company however contended that the foreign lenders were not the creditors of the company and no notice was required to be sent and the fact that whether they even constitute a class of creditors was disputed.
12. The Hon'ble Company Judge dismissed the application filed by the foreign lenders, against which foreign lenders went in appeal to the Division Bench of the Delhi High Court. This order is now under challenge in the Hon'ble Supreme Court.
13. After the merger, the newly merged Lifeline had continued with the operations of the erstwhile Jeevani, which included its operations of supplying generic drugs to the United States of America. Soon after, Lifeline received notices from the US Food and Drug Administration (FDA) for providing drugs of below par quality.
14. Lifeline on further scrutiny, found out that the investigation had commenced much before the merger took place. On this basis Lifeline filed a suit against the promoters before the Delhi High Court for damages arising out of breach of the contract dated 23rd March, 2012.
15. The Promoters contended that the Delhi High Court had no jurisdiction in the matter as the agreement between the parties included an arbitration clause for settlement of disputes. However, Lifeline contended that there was no arbitration clause.
16. Sale agreement between the parties stated that dispute resolution proceedings were to be carried out by an Empowered Committee comprising of three executive level personnel of the company.
17. The Hon'ble Single Judge of Delhi High Court held that the stated clause in the agreement could not be held as an arbitration clause and that the jurisdiction to settle disputes lies with the Court.

18. The promoters of Jeevani challenged the order of Single Judge by an appeal to the Division Bench of Delhi High Court and the Division Bench held that the clause constituted an arbitration clause and referred the dispute to be decided by the Empowered Committee. Aggrieved by this Order of the Division Bench of Delhi High Court, Lifeline has come before the Hon'ble Supreme Court in appeal.
19. After its merger Lifeline decided to introduce a new life saving drug by the name of 'Novel' which was published to be considerably cheaper than other life saving drugs including 'Inventive' which was being manufactured by Swasth Life Limited (Swasth).
20. This drug was manufactured after further developing the active Research & Development (R&D) projects which had become the property of Lifeline after its merger with Jeevani. .
21. Swasth was a sister concern of the promoters of erstwhile Jeevani. Sometime, in the year 2010 they were assigned absolute rights to a few of the developed and completed R&D projects and intellectual property rights of Jeevani.
22. Before the new drug was launched, Swasth filed a suit for infringement of intellectual property rights alleging that the drug Novel was substantially similar to their patented drug Inventive and was granted an interim injunction for the same by the Delhi High Court restraining Lifeline from launching Novel.
23. A similar cost effective drug was launched by Swasth after which it withdrew its case against Lifeline and the interim injunction was vacated.
24. An application was filed by Lifeline before the Competition Commission of India (CCI) alleging that Swasth had abused its dominant position. The CCI had made an order to the Director General to investigate into the matter and provide its report regarding the same within a period of 45 days. The report is still awaited.
25. Swasth being aggrieved by the Order of CCI filed a writ petition at the Delhi High Court making Lifeline Limited and CCI a party to it. The Delhi High Court held that the CCI had made a prima facie finding and had only directed for investigation. The writ petition filed by Swasth Life Limited was dismissed by the Delhi High Court.
26. On appeal, the Division Bench also did not find any reason to interfere with the order of the Hon'ble Single Judge and accordingly Swasth has come before the Supreme Court against the order of the Division Bench.

STATEMENT OF ISSUES

ISSUE I:

Whether the Scheme of Arrangement should be set aside

ISSUE II:

Whether an Arbitration clause exists in the Sale Agreement.

ISSUE III:

Whether there has been an Abuse of Dominant Position.

SUMMARY OF ARGUMENTS

Issue I

Whether the scheme of arrangement should be set aside.

It is humbly submitted before the Hon'ble Supreme Court of India, that the appellants are wrong to ask for recall of the order for the approval of the scheme of arrangement, as they had not been convened for the meeting of the creditors. Foreign Lenders had a consortium agreement with Jeevani and every entity that is under the consortium remains independent in his business operations and has no say in other member's operations which are not related to the consortium. Foreign lenders do not constitute any class of creditors and they have no locus standi in asking for recall of the order of the Hon'ble High Court.

Issue II

Whether an Arbitration clause exists in the Agreement

It is humbly submitted before the Hon'ble Supreme Court of India, that the appellants have made a faulty claim of breach of contract against the Promoters of Jeevani Limited. The appellants had all the means of discovering the truth with due diligence. And, the dispute resolution clause in the agreement constitutes an arbitration clause as dispute resolution by an empowered committee is a form of Arbitration.

Issue III

Whether there has been an Abuse of Dominant Position

It is humbly submitted before the Hon'ble Supreme Court of India, that the special leave petition be dismissed as there has been an abuse of dominant position by Swasth Life Limited. Lifeline Limited has developed a generic drug based on its own IPR and R&D Projects, which became its property after its merger with Jeevani Limited. There has been no infringement of IPR of Swasth. Invocation and then vacation of an interim injunction in order to maintain monopoly in the market and restrain Lifeline from accessing the market has led to an abuse of dominant position by Swasth Life Limited.

ARGUMENTS ADVANCED

I. WHETHER THE SCHEME OF ARRANGEMENT SHOULD BE SET ASIDE

It is humbly submitted that the appeal is maintainable under article 136 of the Constitution of India. Article 136 is the residuary power of SC to do justice where the court is satisfied that there is injustice.

I.1 Approval of scheme of arrangement.

Jeevani limited entered into a scheme of arrangement with Lifeline limited in order to meet the growing global demands.

Under section 291 of The Companies Act, 1956, the scheme was initiated by the Hon'ble Delhi High Court and the Hon'ble Company Judge, in accordance with the mandate of Chapter V of The Companies Act, 1956 ordered for a meeting of the creditors. Accordingly notice was issued to call a meeting of the creditors which was published in a local English newspaper and local language newspaper which contained the terms of the proposal and its effect. Thus a meeting of the creditors was held and resolutions were passed by a vote of majority.

Thereafter the scheme was also approved by the Delhi High Court, as well as the Bombay High Court.

The court shall sanction a scheme that excludes certain creditors if it can be shown that there were good commercial reasons for doing so. It may for example not be desirable to include trade creditors in a scheme so as to ensure continuity of supply, even though other unsecured claims are excluded.¹ The court shall not consider what class of creditors or members should be made parties to the scheme of compromise and arrangements. This is for the company to decide in accordance with what the scheme purports to achieve. So long the procedure followed and the

¹ Re PT Garuda Indonesia [2001] All ER (D) 53

scheme approved by the majority is bona fide, just and fair and is not violative of any provision of law and is not unconscionable, nor contrary to public policy, the court shall not pierce the veil of apparent corporate purpose underlying the scheme.²

The Hon'ble High court of Delhi and the Hon'ble High Court of Bombay sanctioned the scheme with due diligence as they were satisfied with the provisions of the scheme of arrangement.

I.2 Jeevani Limited had a consortium agreement with the foreign lenders.

The arbitration proceedings were initiated for payments to be made under a consortium agreement providing financial assistance to Jeevani Limited, entered into by the Foreign Lenders and Jeevani Limited. Under the consortium agreement, the interest of the foreign lenders was limited to the terms of the agreement according to which the arbitral award was made in their favor. This award has not been enforced by them.

Consortium agreements are those which constitute two or more individuals, companies or government that work together towards achieving a chosen objective. An agreement of a group to help each other if an emergency should occur. It can be sharing a space or helping a member if a disaster occurs³. Each entity within the consortium is only responsible to the group in respect to the obligations set out in consortium contract. Therefore every entity that is under the consortium remains independent in his business operations and has no say in other member's operations which are not related to the consortium.

The consortium agreement clearly states that it does not make a person a creditor or a debtor in any way.

The proposed scheme had no infirmity or objectionable feature of any kind or illegality or lack of bona fide in the scheme so proposed. It was not framed to defeat the rights of creditors or any group of shareholders and was unanimously approved by all creditors and shareholders in the meeting by the chairman. Infact, the scheme appeared to be proposed to be for the sake of

² Re Mihir H. Mafatlal v Mafatlal Industries Ltd. 1996 (4) Comp LJ 24 SC

³ Black's Law Dictionary, 2nd edition 1910.

administrative convenience and the liabilities of the company was not going to adversely affect the creditors in any way.⁴

Where the scheme of compromise or arrangement has been duly approved by majority representing 3/4th in value of the creditors or members as the case maybe, the Tribunal shall give sanction to the scheme.⁵

Reliance can be made on these Judgments, based on the fact that the court had granted approval to the scheme of arrangement, transparency lies in the fact that the foreign lenders are not actual creditors of the company and their interest is not being affected by the scheme of arrangement.

Foreign lenders have recalled the order dated 5th July, 2012, where the Delhi High Court had approved the scheme of arrangement. It is not a matter of course and court should have due regard to conduct of applicants averments in support of his application and bona fide attempt to pay outstanding dues. As there was a complete want of bona fides on the part of the company, a stay could not be granted.⁶

Therefore, foreign lenders have no locus standi in asking for a recall of the order for approval of the scheme of arrangement.

⁴ Eicher Ltd. and Eicher Motors Ltd. v Malbros Investments Ltd. and their shareholders (2005) BC 564 (MP)

⁵ Section 230, Companies Act, 2013 and Re Mehta Investments Pvt. Ltd (1990) 1 Comp LJ 285 (Del.)

⁶Central bank of India v. Roofit Industries Ltd. IV (2004) BC 363 Bom

II. WHETHER AN ARBITRATION CLAUSE EXISTS IN THE SALE AGREEMENT.

When Jeevani Limited decided to merge with Lifeline Limited, the promoters of Jeevani Limited sold their stake to Lifeline Limited vide a separate sale agreement dated 23rd March 2012.

II.1 Promoters of Jeevani have not breached the sale contract.

Lifeline Limited is wrong on their part to contend that there has been a breach of contract through misrepresentation of facts. They cannot claim of misrepresentation as they had the means of discovering the truth with ordinary diligence.⁷

Also before the sale of shares the Promoters disclosed all the facts which were vital according to them, and the prospectus was also easily available for access to the petitioners which contained all the vital information about Jeevani Limited.

Lifeline Limited also contended that details of the investigations being carried out by the US FDA were not disclosed to them, constituting a breach of contract. The investigations by the US FDA were inconclusive at the time the agreement was made, thus making their claim of a breach completely false. Such investigations are a routine practice by the US FDA to ensure that the quality of drugs being supplied to the US is at par with their set standards.

The promoters contended that Delhi High Court has no jurisdiction unless the matter is referred to arbitration. Also, the Hon'ble Judge of Delhi High Court held that the clause could not be regarded as an arbitration clause and therefore held that the court had the jurisdiction to look into the matter.

This order of the single Judge was challenged in appeal by the Promoters to the Division Bench of the Delhi High Court. The Division Bench held that the clause constitutes an arbitration clause and accordingly referred the disputes to be decided by the Empowered Group in terms of the agreement. The decision of the Division Bench implies that the Dispute

⁷ Balraj Chibber v. N.O.I.D.A. (1995) All LJ 1513; (1996) 27 All LR 10 and Nasiran Bibi v Mohd. Hussain (1996) All LJ 1648

resolution clause in the agreement constitutes arbitration and any disputes arising out of the subject matter of the agreement shall be referred to the empowered committee.

II.2 Dispute resolution by the empowered committee is a form of arbitration.

Arbitration agreement means an agreement by the parties to submit to the arbitrator all or certain disputes which have arisen or which may arise between them in respect of defined legal relationships whether contractual or not.⁸

The arbitration agreement constitutes one of the important segments of the law of arbitration. An arbitration agreement means a written agreement between the parties to submit any present or future differences or disputes to arbitration, whether an arbitrator is named therein or not.⁹ Thus it would be seen that an agreement providing for arbitration must have definite parties, such an agreement should be in writing and there should be an intention of the parties to have their differences or disputes referred and decided through arbitration¹⁰. Parties, Dispute and finality of the decision are the three essential attributes of an arbitration agreement. What is necessary is the existence of an arbitration clause in the agreement stipulating that in case of any dispute or difference arising out of contract the matter shall be referred to the arbitrator whose decision shall be final and binding on the parties. The arbitration clause is not required to be in any specific form.¹¹ The arbitration agreement maybe a self-contained document or it may be in the form of a clause in the contract. But it must be necessarily in writing. The essence of arbitration agreement lies in the fact that the parties should intend to take a reference to arbitration and should be ad idem in this regard.

While there is no specific form of an arbitration agreement the words used must disclose a determination and obligation to go to arbitration and not merely contemplate the possibility thereof.

⁸ Section 2(1)(b) of the Arbitration and Conciliation Act, 1996

⁹ Section 7 of the Arbitration and Conciliation Act, 1996

¹⁰ Union of India v. Janki Prasad Agrawal, AIR 1986 All 15

¹¹ Smt. Rukmani Gupta v. The Collector, Jabalpur AIR 1981 SC 479

Even if words arbitration and arbitral tribunal or arbitrator are not used in the clause it does not detract it from being an arbitration clause, if it is in writing and intention of parties clears that they mutually agree to get their disputes resolved by arbitration.¹²

It must be stated that arbitration agreements vary widely in their phraseology for reason that they are not required to be in any particular form. If from the language used in the clause it can be inferred that the parties have agreed to refer their disputes arising in relation to the subject matter of the contract arbitration, such a clause would amount to be an arbitration clause¹³. Clause 2 of the sale agreement clearly states that it is an arbitration clause,

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, instruction, claims, rights or matters of interpretation of and under this Agreement.

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

Amicable resolution of a dispute and a binding and conclusive decision by a neutral party clearly indicates that Dispute Resolution clause is a form of Arbitration.

A Judgment delivered by the Bombay High Court constituted that the recommendation of the organization was to the effect that the workers aggrieved by termination of the employment, should be entitled to appeal against the termination to neutral bodies such as an arbitrator, court, or arbitration committee or a similar body and that the neutral body concerned should be empowered, to examine the reasons.¹⁴ Interpreting this judgment, it can be understood that the dispute resolution by an empowered committee referred to in the sale agreement, is a form of arbitration.

¹² Jagdish Chander vs Ramesh Chander, (2007) 5 SCC 719 and Punjab State v. Dinanath AIR 2007 SC 2157

¹³ Managing Director Orissa State Cashewnut Development Corporation Limited v Ramesh Chandra Swain AIR 1992 Ori. 35

¹⁴ Jitendra Savla v. Life Insurance corporation of India & others 2003 SCC Online Bom 1049

Therefore, Lifeline Limited is wrong to approach the Delhi High Court as it had not exhausted all the remedies available under the agreement for Dispute Resolution. Lifeline Limited on its own instance entered into the sale agreement and despite having all the means to discover information did not do so and later claimed that the Promoters had defrauded them. Also, that the empowered committee is a form of arbitration.

II. WHETHER THERE HAS BEEN AN ABUSE OF DOMINANT POSITION

Lifeline Limited forayed into the pharmaceutical industry by merging with Jeevani Limited. In order to increase its profitability, Lifeline introduced a new life saving drug ‘Novel’ in the market which was manufactured after further developing its active Research & Development (R&D) projects. Novel, was considerably a more cost effective drug compared to ‘inventive’ which was the premier lifesaving drug in the market and as being manufactured by Swasth Life Limited (Swasth).

III.1 Lifeline Limited has not infringed the Intellectual Property Rights of Swasth.

Swasth had a dominant position in the market as it had been supplying a life- saving drug under the protection of its intellectual property rights, which also helped Swasth establish a monopoly in the market. When lifeline limited forayed into the pharmaceutical industry, it further developed the R&D projects, which became its property after the merger with Jeevani Limited.

Swasth obtained an interim injunction against Lifeline Limited restraining Lifeline Limited from launching its new life saving drug, Novel. This injunction was obtained by Swasth to reduce competition in the market and to maintain its dominant position. Later, Swasth launched a more cost effective drug, and vacated the interim injunction. Swasth Life Limited indulged in a harmful conduct by restricting Lifeline Limited from producing its goods and by indulging in bad faith litigation. In view of the allegations projected in the information and as detailed herein above, the commission is of the prima facie opinion that Swasth by abusing its dominant position in the relevant market sought to stifle competition in the relevant market by denying market access and foreclosing entry of Lifeline Limited.¹⁵

Swasth contended that Lifeline Limited had infringed its Intellectual Property Rights. However, there has been no infringement of intellectual property rights as Lifeline Limited had manufactured its drug ‘novel’ based on further development of R&D projects and intellectual property rights which became the property of Lifeline Limited during the merger with Jeevani Limited. Swasth Life limited had been assigned some intellectual property rights and R&D projects of Jeevani, as Swasth is a sister concern of the Promoters of Jeevani Limited. The fact that Lifeline Limited was originally a company manufacturing food products and after the merger the intellectual property rights and research and development of Jeevani Limited were further developed to manufacture a life-saving drug., Swasth cannot claim infringement of intellectual property rights as the intellectual property rights of Swasth and Lifeline Limited

¹⁵ M/S Bull Machines Pvt. Ltd. v. JCB India Limited, Case no. 105 of 2013 CCI

come from the same body i.e. Jeevani Limited which draws only one conclusion that the intellectual property rights of Swasth and Lifeline Limited are of the same nature.

III.2 There has been an abuse of dominant position by Swasth.

Competition Commission of India (hereinafter referred to as CCI) has been empowered by the Competition Act to investigate in any matter which is anti-competitive in nature.

Since this matter had been referred to CCI by Lifeline Limited, it was its duty to investigate.¹⁶ Prima facie, CCI observed that Swasth had abused its dominant position in the market as they had a monopoly in producing the drug.

Also, Swasth's conduct of invoking and then revoking an interim injunction constituted a harmful conduct. Since, Swasth and Lifeline Limited operated in the same Indian market, Swasth restricted Lifeline's access to the relevant market. These are the factors through which an abuse of dominant position is assessed.¹⁷ Thus, prima facie, concluding the fact that there had been an abuse of dominant position. Swasth also indulged in another anti-competitive practice of predatory pricing¹⁸ by selling low cost drugs.¹⁹ Predatory pricing is analysed under competition laws as illegal monopolization or attempt to monopolize, and is considered to be a form of abuse of dominance.²⁰

The CCI gave a prima facie view which was inconclusive in nature because investigation has not been done. An order was given to the Director General to investigate in this matter and the report is still awaited. Swasth has no Locus Standi in instituting a suit against Lifeline Limited and dragging them to the court. Secondly, the Hon'ble Judge and Division Bench found no reason to interfere with the order of the CCI to investigate in the matter.

It was noted that the competition act certainly does not prohibit companies from maintaining a dominant position but what is prohibited is the abuse of such dominant position.²¹ Patents act provides statutory protection for commercial exploitation of patents to its holder. It also provides an exception of anti-competitive agreements²² and clearly mentions that nothing contained in

¹⁶ Section 19(1), Competition Act, 2000

¹⁷ Section 4, Competition Act, 2000

¹⁸ Napp Pharmaceutical Holdings Limited v. Director General of Fair Trading [2002] CAT 1

¹⁹ Section 4(2)(a)(iii), Competition Act, 2000

²⁰ Matsushita Elect. Industrail Co. v. Zenith Radio 475 Us 574 (1986)

²¹ Intex Technologies (India) v. Telefonaktiebolaget LM Ericsson , Case No. 76/2013 CCI

²² Section 3(5), Competition Act, 2000

section 3 of the act shall restrict, “*the right of any person to restrain any infringement or to impose reasonable condition as maybe necessary for protecting any of his rights.*” But this imposes a question, that can holders of protected intellectual property rights impose any condition?

The answer here is in the negative, because if they do so CCI can certainly investigate the reasonableness of the conditions imposed in their agreements. If the investigations lead to the finding that global patent licensing agreements with discriminatory non-disclosure conditions and different royalty terms with each party could have an appreciable adverse effect on competition and in actually an abuse of dominant position in the relevant market in India, the Delhi High Court will certainly allow CCI to adjudicate in the matter.

It is however, made clear that nothing stated herein shall tantamount to an expression of final opinion on the merits of the case and the Director General shall conduct the investigation without being influenced by any observations being made herein.²³

Therefore, considering the fact that there has been no infringement of intellectual property rights and the report of the Director General is still awaited, Swasth should not come to any conclusions and should await the report.

²³M/S Bull Machines Pvt. Ltd. v. JCB India Limited, Case no. 105 of 2013 CCI

PRAYER

In the light of the issues raised, arguments advanced and authorities cited, may this Hon'ble Court be pleased to:

1. Dismiss the special leave petition.
2. In the alternative declare and adjudge:
 - a. That the scheme of arrangement should not be set aside.
 - b. That there is an arbitration clause in the agreement.
 - c. That there has been the abuse of dominant position.

AND/OR

Pass any other order that it deems fit in the interest of justice, equity and good conscience. And for this, respondents as in duty bound, shall humbly pray.