IN THE HON'BLE SUPREME COURT OF INDIA

AT NEW DELHI

Appeals Filed Under *Article 136* of the Constitution of India

Appeal No. 1/2014

Foreign Lenders _ _ _ _ _ _ _ _ _ _ Appellants

v.

Lifeline Ltd. _ _ _ _ _ _ _ _ _ _ _ _ _ _ Respondents

CLUBBED WITH:

Appeal No. 2/2014

Lifeline Ltd._ _ _ _ _ _ _ _ _ _ _ _Appellants

v.

Promoters of Jeevani Ltd. _ _ _ _ _Respondents

CLUBBED WITH:

Appeal No. 3/2014

Swasth Ltd._ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ Appellants

v.

Competition Commission of India _ _ _ _ _ _Respondent No. 1

Lifeline Ltd._ Respondent No. 2

Memorial Submitted to the Hon'ble Chief Justice

and His Companion Judges

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Indian Case Laws

Statutes

1. The Companies Act, 1956
2. Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
3. The Arbitration and Conciliation Act, 1996
4. The Competition Act , 2002
5. The Constitution Of India

Books

1. Drm J. C Verma, Corporate Mergers Amalgamation & takeovers (5th edn, Bharat Law House, 2008)
2. A Ramaiya, Guide to Companies Act (16th edn, Lexis Nexis Butterworths Wadhwa, 2008)
3. Seth Dua & Associates, Joint Venture and Mergers and Acquisitions in India (Lexis Nexis Butterworths Wadhwa,2011)
4. K. M Ghosh & Dr. K.R Chandratre, Company Law with Secretarial Practices (vol. 3,13th edn, Bharat Law House, 2007)
5. P C Markanda, Law Relating To Arbitration & Conciliation, commentary on the Arbitration and Conciliation Act (6th edn reprint, Wadhwa Nagpur, 2007)
6. M P Jain, Indian Constitutional Law (6th edn reprint, Lexis Nexis Butterworths, 2012)
7. M P Jain, Indian Constitutional Law with Constitutional Documents(vol. 1,6th edn, Butterworths wadhwa Nagpur, 2010)
8. V N Shukla, Constitution of India (11th edn, Eastern Book Company, 2008)
9. Dr. Vikas Vashishtha, Law &Practice of Intellectual Property in India (3rd edn, Bharat Law House 1999)

Statement of Jurisdiction

The respondents humbly submit that this memorandum is in response to three appeals filed before this Honourable Court and, clubbed by this Honourable Court. All the three appeals are filed under Article 136 of the Constitution of India. It sets forth the facts and the laws on which the claims are based.

Article 136 of the Constitution of India States that:-

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 judgment, decree, determination, sentence or order in 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 judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

Statement of Facts

- Jeevani Limited ("**Jeevani**") is a listed public company with its registered office in New Delhi. It is one of the leading market players in pharmaceutical manufacturing industry, with a global market share also.
- Lifeline Limited ("**Lifeline**") is a listed public company with its registered office in Mumbai. Lifeline is a major producer of food products in India. Lifeline decided to foray in the pharmaceutical sector.
- **"Scheme" –** Lifeline approached Jeevani for a possible partnership to venture into this sector and on 27th January 2012, both companies decided to merge. And it was decided that Jeevani would completely merge into Lifeline and all the assets and liabilities of Jeevani would be transferred to Lifeline, including the active R&D and IPRs of Jeevani.
- Scheme finalized on 5th March 2012. Bombay Stock Exchange did not provide its approval. On 30th March 2012, the companies approached the Hon'ble Delhi High Court, under section 391 of the Companies Act, 1956. Order passed for convening creditor's meeting.
- Advertisement for notice of meeting given in an English newspaper and a local language newspaper. Meeting held, and scheme was approved by 3/4th majority. So Delhi High Court approved the scheme on 5th July 2013 and meanwhile Bombay High Court also approved the scheme as Lifeline approached the Hon'ble court.
- Certain creditors of Jeevani, mainly foreign banks (**Foreign Lenders**) invoked arbitration proceedings against Jeevani, in Hong Kong. On 27th July 2010, foreign arbitral award passed in favour of foreign lenders and directed Jeevani to pay the foreign lenders the

amount stated in arbitral award. Till date no proceedings for enforcement of this foreign award is filed by foreign lenders.

Case No. 1

Foreign Lenders v. Lifeline Ltd.

Foreign Lenders contended that,

- They did not receive the notice of meeting of creditors; therefore they were not able to attend the meeting.
- They constitute to a separate class of creditors. And therefore, the Scheme should be set aside.

Lifeline contended that,

- Foreign lenders are not creditors of the company and no notice required to be sent.
- Foreign lenders do not belong to a separate class of creditors.

The Hon'ble Company Judge, dismissed the application filed by the foreign lenders and refused to set aside the scheme. The appeal to the division bench of Hon'ble Delhi High Court was also dismissed. Therefore appeal made to the Hon'ble Supreme Court.

Case No. 2

Lifeline Limited v. Promoters of Jeevani Ltd

On receiving notices from the US Food and Drug Administration (**"FDA"**), Lifeline discovered the breach of contract of 23rd March 2013, by the Promoters of Jeevani and filed a suit in Delhi High Court for the claim of damages. Issue arose on the jurisdiction of the court. Lifeline contended that the agreement clause is not an arbitration clause and the Hon'ble Delhi High Court has the jurisdiction to accept the petition. Promoters who were contending that the clause

in the agreement is an arbitration clause and therefore the hon'ble court does not hold any jurisdiction, aggrieved by the order of the learned single judge made an appeal. The hon'ble Division Bench, held the clause to be an arbitration clause. Now, Lifeline has made an appeal to the Hon'ble Supreme Court.

Case No. 3

Swasth v. CCI & ors.

Lifeline decided to launch a new life saving drug, "Novel". This drug was manufactured after further developing the active R&D which now is the property of Lifeline, according to the scheme. **Swasth,** sister concern of Jeevani, claimed absolute rights over certain IPRs of Jeevani and got an interim injunction over Lifeline, claiming infringement of IPRs. And further launched a similar drug, captured the market and withdrew the injunction. Lifeline filed case with CCI for abuse of dominant position and ordered DG to investigate. Aggrieved by this decision Swasth filed writ to Delhi High Court which was rejected and an appeal to the Division Bench of Delhi High Court which was also rejected. Hence appeal to Supreme Court.

The Hon'ble Supreme Court exercising its inherent powers has now tagged the matters together for hearing.

Hence in the Present Appeal.

Statement Of Issue

1. Whether the foreign lenders have the locus standi?
2. Whether the notice should have been sent?
3. Whether the clause between Promoters and Lifeline is an Arbitration Clause?
4. Whether the appeal under article 136 is maintainable?

Summary of arguments.

1. **The appellants did not have the locus standi.**

   The respondents humbly submit that the appellants did not have the locus standi. **Firstly**, the appellants are not the creditors as there is no proof of being them as the creditors. **Secondly**, appellants are not the separate class of creditors as it is for the company to decide who the creditors are and the courts sanction it.

2. **The Notice should not have been sent.**

   The respondents respectfully submit that the notice should not have been sent. **Firstly**, as the appellants are not the creditors so no notice should have been sent. **Secondly**, the notice was published in the local as well as the English newspaper.

3. **The clause 2.1 of the agreement is an arbitration clause**.

   The respondents humbly submit that the clause 2.1 of the agreement is an arbitration clause. **Firstly**, all the essentials of the arbitration agreement are fulfilled. **Secondly**, the word arbitration, arbitrator is not necessary to make a clause an arbitration clause. **Thirdly**, the clause does not provide any absolute restriction.

4. **The appeal under Article 136 is not maintainable.**

   The respondents respectfully, submit that the appeal under Article 136 of the Constitution is not maintainable. **Firstly**, the essentials of the article are not fulfilled there has been no grave injustice and there is no special circumstance to file this appeal as the inquiry by the DG is still going on. **Secondly**, the order by the CCI is

correct. There is a Prima Facie view that there was an abuse of dominant position. So, the CCI ordered for inquiry by the DG that was harmless and could not cause any damage to the appellant. **Thirdly**, the appellants filed a frivolous injunction to restrain the respondents from entering into the market. The appellants had a mala fide injunction.

Pleadings and Authorities

1. Whether the foreign lenders have the locus standi?

1.1 That the Petitioners are not the creditors.

The Respondents humbly submit that the Petitioners are not the creditors of the Lifeline (herein referred as the *Company*) as there is no proof of being them as creditors to the company.

Since the foreign arbitral award of 27th July 2010 is not yet enforced in India.[1] Foreign Lenders would not be covered the ambit of "*Creditors*" as the foreign arbitral award becomes a decree of court only after the court is satisfied to enforce it.[2]

1.2 That the Petitioners are not even a separate or a special class of creditors:

The respondents humbly submit that the court does not itself consider at the point what class of creditors or members should be made parties to the scheme. This is for the company to decide in accordance with what the scheme purports to achieve.[3]Hence it's for the company to decide whether to treat them as a special class or not. Further it's the duty of the court to satisfy itself before granting permission for amalgamation under section 391 of the Companies Act 1956.[4] In the current case the Delhi High Court and Bombay High Court are satisfied[5] and when the Petitioners approached the Delhi High Court and Division Bench of Delhi High Court against the

---

[1] Factsheet at ¶ 6

[2] Section 58 of The Arbitration and Conciliation Act, 1996

[3] PALMER'S COMPANY LAW 24th EDN. :WHAT CONSTITIUES A CLASS

[4] Hindustan Lever & Anr vs. State of Maharashtra AIR 1961 689

[5] Factsheet at ¶ 5

Amalgamation (herein referred as *Scheme*) the appeal was dismissed.[6] Even if the auditor appointed by the court makes a mistake while looking the accounts of the company by ignoring the fact that the company didn't put the foreign lenders as a separate class, the honorable S.C. said that the foreign lenders cannot be treated as a separate class.[7] In Anglo American Insurance Ltd[8].,the court held that the "*American creditors were not a separate class although they might well have had the right to make a claim against the fund in the United States, the terms of the scheme did not deprive them of that right*." In fact the Petitioners are a *sub class of a class of creditors*.[9]

The honorable S.C. concluded in *Miheer H. Mafatlal vs. Mafatlal Industries Ltd.*[10] *"On the express language of section 391(1) it became clear that where the compromise and arrangement is proposed between a company and its members or any class of them a meeting of such members or class of them has to be convened. This clearly presupposes that if the scheme is offered to any sub-class of member which has a separate interest and a separate scheme to consider, no question of holding a separate meeting of such a sub-class would at all survive." "Consequently when one and the same scheme is offered to entire class of equity shareholders for their consideration and when commercial interest of the applicant so far as the scheme is concerned is in common with other equity shareholders, he would have a common cause with them either to accept or to reject the scheme from commercial point of view. There was no occasion for*

---

[6] Factsheet at ¶ 7

[7] In Re Arvind Mills Ltd. (2002) 37 SCL 660

[8] (2001) 1 BCLC 755. Dictum of Bowen LJ in Sovereign Life Assurance Co. v. Dodd (1892) 2 QB 573

[9] In Re Arvind Mills Ltd. (2002) 37 SCL 660

[10] (1996) 87 Com Cases 792

convening a separate class meeting of the minority equity shareholders represented by the appellant and his group as tried to be suggested.

Without regard of the wishes of the shareholders or a class of creditors who had no real interest in the assets of the company, the scheme could proceed without their consent.[11] The petitioners have no real interest in the assets of the company.

2. Whether the notice should have been sent?

The petitioners contented that they are the creditors and notice of scheme of merger should have been sent. The petitioners are not the creditors so no notice was required.

Nevertheless,

In so far as the allegation that no notice was served on the petitioners, of the meetings is concerned, admittedly they have been served with the notice of the meeting as the respondents 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[12], but they did not choose to attend the said meeting.

The notice of the meeting should be given to all the members of the company or all the creditors, though in the case of creditors it has been held that a meeting could not be invalidated merely because notice was not served on an individual creditor.[13]

---

[11] Oceanic Steam Navigation Co Ltd. (1939) 9 Com Cases 229 (Ch D)

[12] Factsheet at ¶ 2

[13] Indian Crescent Bank Ltd., Re, (1949) 53 CWN 183; Bhagat Ram Kohli v. Angel's Insurance Co. Ltd., (1937) 7 Com Cases 161

In the case of *Vikrant Tyres Ltd., Re, it was held that, a meeting conducted in accordance with the provisions of s. 391(2) and also under the permission of the court was not to be invalidated only on the ground that a creditor was not served with notice. The court should see that the interest of such a creditor is also protected and the transferee company* (herein, Lifeline) *acknowledged liability to him.*[14]

Where all the assets and liabilities of one company are transferred to the other and the creditors of one company are given the same rights against the transferee company which the creditors would have had against the transferor company, then their objection to the scheme of merger has very little substance.[15]

It would not be a matter of much importance if the scheme of amalgamation would protect the interest of the creditors and furthermore, as noted in the case of *Nav Chrome Ltd., Re*[16], the creditors of the transferor company are in a happier position because they are getting a financially stronger company as their debtor.

Therefore it is submitted that the foreign lenders are not the creditors, further, not a separate class of the creditors and the interest of foreign creditors is being transferred to a much financially sound company as after amalgamation, all the debts, liabilities of Jeevani goes to Lifeline.[17]

---

[14] (2003) 47 SCL 613

[15] Bengal Tea Industries v. Union of India, (1988-89) 93 CWN 542

[16] (1997) 79 Com Cases 285 AP

[17] Factsheet at ¶ 1

3. Whether Clause 2.1 of the agreement is an arbitration clause?

3.1 That the respondents fulfil all the essentials of the arbitration agreement.

"An arbitration agreement is an agreement to submit present or future disputes (whether they are contractual or not). An arbitration agreement is therefore a contractual undertaking by two or more parties to resolve disputes by the process of arbitration, even if the disputes themselves are not based on contractual obligations" [18] The term 'Arbitration Agreement' is sometimes used interchangeably with arbitration clause.

Essentials of Arbitration

1. There must be a present or future difference in connection with some contemplated affairs.[19]
2. There must be the intention to settle such differences by a private tribunal.[20]
3. The parties must agree in writing to be bound by the decision of such tribunal.[21]
4. The parties must be ad idem.[22]

According to Clause 2.1 of the ***agreement*** between the Petitioners and the Respondents clearly states that *"Decision of an empowered committee comprising of (three) executive level personnel of the company shall be final, binding and conclusive parties to this agreement upon all questions and issues relating to the meaning, scope, instructions, claims,*

[18] RUSSELL ON ARBITRATION, 21ST Edn., page 40

[19] Section 7 of Arbitration and Conciliation Act, 1996

[20] Jagdish Chander v. Ramesh Chander (2007) SCC 719

[21] KK Modi v. KN Modi, AIR 1998 SC 1297

[22] Law of Arbitration and Conciliation P.C. Markanda 6th Edn., page 135

rights or matters of interpretation of and under this agreement."[23] In this clause of the agreement it is clearly stated that there should a committee whose decision must be final and binding. Regarding the intention of the parties, the Supreme Court in another case held that the intention of the parties to refer a matter to arbitration is to be gathered from the expression used in correspondence and the meaning it conveys. In case it shows that there had been a meeting of minds between the parties and they had actually reached an agreement upon all material terms, then and then alone can it be said that a binding contract was capable of being spelt out from the contract or the correspondence.[24] The parties had an intention to arbitrate by putting clause 2.1 in the *agreement.* Hence it fulfils the main essentials of the arbitration clause.

The Supreme Court in Powertech World Wide Ltd. v. Delvin International General Trading LLC[25] has examined the definition of an 'arbitration agreement', the hon'ble S.C. held that "the language of the arbitration clause itself, it is unambiguously clear that there is a binding arbitration agreement between the parties the words `shall' appearing in the arbitration clause have to be given their true meaning. The expression `shall' has to be construed mandatorily Upon taking this as the correct approach, the arbitration agreement would be binding upon the parties as the expression `settled amicably between both the parties' cannot be construed as a condition precedent to the invocation of the arbitration agreement and the reference to arbitration being an alternative and agreed remedy, the petitioner may unequivocally be allowed to invoke the arbitration agreement." In the current case the language is clear that

[23] Factsheet at ¶ 9

[24] Rickmers Verwaltung Gmbh v. Indian Oil corporation, (1999) 1 SCC 1

[25] (2012) 1 SCC 361

there should be arbitration. Clause 2.2 of the agreement states that "*The parties shall endeavour to amicably resolve the above mentioned issues."* According to the Supreme Court (supra) this clause won't mean that there is an alternative and agreed remedy.

When it is provided in the matter of dispute the case shall be referred to certain authority whose order shall be final, it amounts to valid arbitration agreement. The existence of dispute, the reference of the case to the authority and express unequivocal intention to attach finality to the order of the authority are extremely significant factors which seem to clothe the authority with a quasi-judicial character.[26]

3.2 That the word' Arbitration 'is not necessary for an arbitration agreement.

The word *Arbitration* is not necessary to be mentioned in the arbitration agreement to prove that it arbitration.[27] No particular form was needed to bring into existence an arbitration agreement, nor it was words like "arbitrator" or "arbitration" need to mention in an arrangement where parties had really intended to submit their differences or disputes to arbitration.[28] Even if the words 'arbitration' and 'arbitral tribunal (or arbitrator)' are not used with reference to the process of settlement or with reference to the private tribunal which has to adjudicate upon the disputes, in a clause relating to settlement of disputes, it does not detract from the clause being an arbitration agreement if it has the attributes or elements of an arbitration agreement.[29]No particular form can be laid as universal for framing an arbitration agreement, but this much is certain that the words used for the purpose must be words of choice and determination to go to

[26] Ram Lal Jagan Nath v. State of Punjab AIR1966 PH 436

[27] Bihar State Mineral Developement Corp v. Encom Builders AIR 2003 SC 3688

[28] Jagdish Chander vs Ram Chander (2007) 5 SCC 719

[29] Ibid

arbitration and not problematic words of mere possibility.[30] In agreement it is clearly mentioned when there is a dispute a committee will be formed and decision would be binding.[31]

Now it can be clearly stated that Clause 2.1 cannot be rejected as an arbitration clause on the mere ground the word *arbitration* is not mentioned in the agreement.

3.3 That the Clause 2.1 in the agreement does not provide absolute restriction.

The Supreme Court in the case Visa International Ltd. v. Continental Resources (USA) Ltd.[32] it held that, "No party can be allowed to take advantage of inartistic drafting of arbitration clause in any agreement as long as clear intention of parties to go for arbitration in case of any future disputes is evident from the agreement and the material on record, including surrounding circumstances.". When there are contradictory constructions are possible construction that gives effect to the arbitration agreement should be preferred.[33]Contract, being a commercial document must be interpreted in a manner which gives efficacy to the contract rather than invalidate it.[34] The narrow technical approach is improper.[35]

Arbitration cannot be held vague only because the mode and manner of the arbitration is stated to be set out subsequently as per the agreement.[36] Clause 2.1 in the agreement is an arbitration clause in the ***agreement.***

---

[30] Veer Construction v. Saraswati Conclave AIR 1996 Del 12

[31] Factsheet at ¶ 9

[32] (2009) 2 SCC 55

[33] Oil and Natural Gas Commission v. Sohanlal Sharma ILR 1969 (2) Cal 392

[34] Arbitration, Conciliation and Mediation Manupatra V.A. Mohta, second edn, p. 128

[35] Union of India v. M/s. D. N. Revri & Co. AIR 1976 SC 2257

[36] Mukund Limited v. Hindustan Petroleum Corporation Limited 2005 (2) Bom CR 21

4. WHETHER THE APPEAL UNDER ARTICLE 136 MAINTAINABLE?

4.1 That the essentials of Special Leave Petition under Article 136 are not fulfilled.

The main essentials of Article 136 of the Indian Constitution are:-

1. There should be special and exceptional circumstances.[37]
2. There has substantial and grave injustice has been done.[38]

In the current case, there is no special and exceptional circumstances exist in the case. CCI apprehended that there might be an abuse of dominant position.[39] Hence an inquiry for the abuse of dominant position by the DG is ordered by the CCI[40] which was challenged by the appellant in hon'ble Delhi High Court[41] and Divison Bench of Delhi High Court[42], they rejected the writ and appeal respectively by giving the reason that they did not want to interfere with the DG's investigation. Even the High Court and Division did not want to interfere in such early stages as there has been no inquiry report nor the final judgment by the CCI.

[37] Pritam Singh v. State AIR 1950 SC 1619

[38] Nawab Singh v. State of U.P. AIR 1954 SC 278

[39] Factsheet at ¶ 11

[40] Factsheet at ¶ 12

[41] Factsheet at ¶ 13

[42] Factsheet at ¶ 13

4.2 That the order passed by the CCI is correct.

CCI passed an order for inquiry by the DG for abuse of dominant position and he has to submit a report within 45 days.[43] This is done with the consonance with the competition act.[44] Before passing an order for inquiry, the CCI must form a prima facie view.[45] In the current case there is a prima facie view. The CCI before passing an order looked into the facts of the case. The Appellant put a frivolous injunction and restrained the defendant from the entering the market.[46] This act of denying access to market[47]is an act of abuse of dominant position. Hence there was a prima facie view for the inquiry. This order is not against any principles of natural justice.[48] The inquiry won't harm the appellants[49] as there has been no restraining order to work as given in section 33 of the Competition Act 2002. Even the Delhi High Court and Division Bench of Delhi High Court refused to interfere on the ground that the inquiry has not been completed yet.[50] This act of passing an order for inquiry is an administrative process not an adjuratory process.[51] Hence there was a prima facie in passing the order and no adverse effect on the appellants

[43] Factsheet at ¶ 13

[44] Section 19 of Competition Act 2002

[45] Competition Commission of India v. Steel Authority of India

[46] Factsheet at ¶ 11

[47] Section 4(2) (c)

[48] Competition Commission of India v. Steel Authority of India

[49] Factsheet at ¶ 13

[50] Factsheet at ¶ 13

[51] Ibid

4.3 That the injunction filed by the appellants was frivolous.

In the current case the appellants filed an injunction to stop the defendants from producing the drug 'Novel'.[52] The appellants had malafide intentions. The appellants brought a frivolous case to the Delhi High court on the ground that there IPRs have been infringed.[53] But the case wasn't so. The drug 'NOVEL' was developed by active R&D of the defendant.[54] Hence they had the absolute rights on it. The 'NOVEL' was eagerly awaited in the market.[55] Before its launch, the appellants filed an injunction and restricted the defendants. Then on similar grounds launched a new product and captured the market. After capturing the market, the appellants withdrew the case against the defendants.[56] This shows that the interim injunction filed was malafide in nature. And the appellants just wanted the defendants to not launch their product and gain market share. This is an act of denying market access is a part of Abuse of Dominant Position.[57]

For granting of interim injunction a prima facie case has to be proved.[58] The prima facie case presented by the appellants was on false ground that the IPRs of the drug NOVEL were owned by them, but the drug was manufactured was active R&D.[59] The case of interim injunction should be a filed having a bonafide intention.[60] In the current case the only intention of the

---

[52] Factsheet at ¶ 11

[53] Factsheet at ¶ 11

[54] Factsheet at ¶ 11

[55] Factsheet at ¶ 11

[56] Factsheet at ¶ 11

[57] Section 4(2) (c)

[58] Power Control Appliances v. Sumeet Machines Pvt. Ltd. (1994) 2 SCC 448

[59] Factsheet at ¶ 11

[60] S.M. Dyechem Ltd. V. Cadbury (India) Ltd. (2000) 5 SCC 573

appellants was to capture the market by denying the access to market to the respondents. The interim injunction could be granted only if the two essentials i.e. . Prima facie case and bonafide intention.[61] The hon'ble Delhi High Court failed to look into account that the intention of the appellant was malafide. Hence the appellants filed a frivolous injunction and hon'ble Delhi High Court failed to take into the account the intention was malafide. Hence the injunction filed was to capture market and stop the defendant to enter the market and have the whole access.

[61] M. Gurudas v. Rasarajan (2006) 8 SCC 367

Prayer

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

1. *The Appellants are not the creditors and scheme is valid.*
2. *The Clause 2.1 of the agreement is an arbitration clause.*
3. *The appeal under article 136 is not maintainable.*

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

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

Sd/-

(Counsel *for* the Respondent)