



TAMIL NADU NATIONAL LAW UNIVERSITY

3RD NATIONAL MED-ARB COMPETITION

4TH TO 6TH JUNE 2021

PROPOSITION

1. Thomas Alva Medicine (hereinafter ‘TAM’) is an Indian Pharmaceutical Formulation Company involved in the formulation and manufacturing of over-the-counter (OTC) drugs, headquartered in the city of Chennai, India. TAM was founded by Ms. Samantha Rao in 1960 and is currently under the control of her grandson, Mr. Krishnan Rao, the CEO of the Company.
2. OldMacDonald Pharm (hereinafter ‘OMDP’) is an Indian Pharmaceutical Distribution Company, involved in acquiring and distributing all kinds of medicinal drugs including but not limited to Orthopaedics, Neurology, and OTC. OMDP is also the parent of two subsidiary companies involved in the sale and distribution of specialized pharmaceutical products notably Putinsulin, involved in selling medication for the prevention and control of diabetes, and Cardiac B, a cardiac specialty involved in selling medication for heart diseases and other cardiac ailments.
3. In 2015, TAM entered into a Share Purchase Agreement with OMDP acquiring a 49% equity stake in the company (Annexure-I). The two businesses continued their relationship without any conflict for many years, growing to become one of the largest pharmaceutical manufacturing-distribution collaborations in India, collectively responsible for over 50% of the drugs manufactured and sold in the country.
4. In January 2019, at the Indian Expo for Pharmaceuticals, Mr. Krishnan met with Ms. Malini Menon, CEO of OMDP. At the after-party of the event, the two shared an informal dinner, sharing details of their business and personal life alike. At the time, Mr. Krishnan expressed to Ms. Malini that he greatly values their business relationship and wishes to see it grow. During the course of that dinner, Mr. Krishnan also mentioned that he has big plans for TAM in the future, and hopes to expand from OTC drug manufacturing and venture into oncology. The two then continued to enjoy the night, returning to their respective lives after the Expo ended.

5. A few months passed and in a press conference dated 05.06.2019, Ms. Malini announced the establishment of another subsidiary company, “Alizeh Cancer Treatment” (hereinafter ‘ACT’), founded for the purposes of selling oncology drugs and providing subsidized psychotherapy services for patients of cancer and their caregivers. During the launch, Ms. Malini gave a speech on the importance of therapy and awareness of mental health, encouraging people to break the stigma around the topic and be present for their loved ones who may be battling with mental health issues. The establishment of this company and the speech made by Ms. Malini generated a huge public response with top members from not just the Government and the medical field but various other fields as well, applauding OMDP for addressing such an important issue and working towards a healthier society. ACT continued to grow in the subsequent months and gained popularity both nationally and globally.
6. Snark Industries is a giant Indian conglomerate with ventures in the fields of Pharmaceuticals, Retail, Automobiles, and Telecommunications. In April 2020, reports began circulating in the media that the assets of ACT were to be sold soon. By February 2021, official communication confirmed the speculations regarding the sale of ACT’s assets to Snark Industries (Annexure-II).
7. Upon confirmation of the news, Mr. Krishnan was upset that despite being aware of TAM’s intention to venture into oncology, the assets of ACT were not offered to him. In furtherance of this, he was also made aware of the existence of the Right of First Refusal clause in their agreement by his legal team.
8. Since Snark Industries has always been one of the top competitors of TAM, Mr. Krishnan felt that this move by OMDP will cause speculation in the public domain regarding TAM (Annexure-III). Enraged by this betrayal, Mr. Krishnan sent a strongly worded email (Annexure-IV) to Ms. Malini, claiming his rights over the assets of ACT.
9. Tension arose between the two regarding the sale of ACT, and the Board of Directors from neither company shied away from expressing their discontentment with the other party. Mr. Surya, the CFO of TAM released a public statement (Annexure-V) regarding recent events that have generated a huge response in the country, accusing OMDP of breaching market ethics and resorting to unethical means to acquire sensitive information. Mr. Surya further accused that Mr. Snitchell Starc, an ex-employee of TAM, had stolen confidential information from their company and provided it to OMDP and that strict action will be sought after both Mr. Snitchell Starc and OMDP (Annexure-VI).

10. This statement by Mr. Surya was not received well by Ms. Malini and her employees, who retaliated claiming that the allegations were baseless and false and were made with malicious intent to defame OMDP. Having understood that they had reached a deadlock in their dispute, and unable to risk the loss of their reputation if the matter proceeds to litigation, Ms. Malini, invoked the Dispute Resolution Clause of their Agreement and invited Mr. Krishnan to a Med-Arb session to take place on 4th June 2021.
11. In view of the Dispute Resolution Clause of the Agreement, the parties have decided to address their issues and concerns through mediation and then proceed to arbitration. OMDP appointed Mr. Karan Kamra as the sole arbitrator for the proceedings after correspondence with TAM (Annexure-VII). Mr. Karan Kamra is a leading Arbitrator and practicing advocate in the Supreme Court of India. He has an immense social media presence with around 4 lakh followers on Twitter and has been involved in encouraging conversation on controversial and contemporary issues, specifically working towards breaking the stigma surrounding mental health. He is also known as someone who stands up against any kind of wrong or injustice and has always been vocal about his opinions through various social media platforms. In 2017, Mr. Karan Kamra sponsored and ran a campaign called 'You Are Not Alone' alongside Ms. Malini, to increase sensitivity towards mental health issues. The campaign focussed on spreading the message that it is always better to try to open up and get professional help rather than to suffer silently. Moreover, in 2019, during the launch of ACT, Mr. Karan Kamra resorted to publicly appreciating the move of Ms. Malini and OMDP for taking action towards breaking the taboo around mental health and encouraging citizens to speak about these topics more (Annexure-VIII). The appointment of Mr. Karan Kamra is challenged by TAM since they did not agree to Mr. Karan Kamra's appointment and additionally, due to the possibility of bias. It is further urged by TAM that ACT be made a party to the arbitration proceedings since they were bound by the agreement entered into by OMDP. However, this is denied by OMDP. Mr. Krishnan and Ms. Malini will be present at the proceedings to represent the interests of their companies.
12. The issues to be raised in the Arbitral Proceedings are, but not limited to, the following:
 - A. Whether the Dispute Resolution Clause of the Agreement and the subsequent appointment of Mr. Karan Kamra as the arbitrator is valid;
 - B. Whether ACT must be added to the Arbitration Proceedings as a Third Party;
 - C. Whether OMDP has violated the terms of the Share Purchase Agreement entered into by the parties on 04.04.2015.

Annexure-I: Relevant Clauses of the Share Purchase Agreement

This Share Purchase Agreement (hereinafter 'Agreement') is entered into on 04.04.2015 by and between the drug formulation company Thomas Alva Medicine (TAM), hereinafter referred to as 'Purchaser', and the drug distribution company OldMacDonald Pharm (OMDP), hereinafter referred to as 'Seller', collectively referred to as 'Parties' in the Agreement.

WHEREAS the Seller's subsidiary companies involved in the sale and distribution of pharmaceutical products are -

- (i) Putinsulin, involved in selling medication for the prevention and control of diabetes.
- (ii) Cardiac B, a cardiac specialty involved in selling medication for heart diseases and other cardiac ailments.

1. Purchase and Sale: The Seller is desirous of raising further capital through a fresh issue, thereby resulting in 49% of equity shares (the 'Shares') of OMDP being held by the Purchaser post such fresh issue. A price of INR 555.0/- per Share has been agreed between the Parties for the purposes of such fresh issue

2. Right of First Refusal: In the event the Seller proposes to sell any of its assets including those of its subsidiaries, the Purchaser shall reserve the right of first refusal for the said transaction.

- (i) Any violation of the same by one party shall entitle the other to claim relief, and may result in termination of the agreement.
- (ii) For the purposes of this Agreement, the said right is confined to OMDP's subsidiaries.

3. Dispute Resolution: (1) In the event of any dispute arising out of or in connection with this agreement, including any question regarding its existence, operation, validity, breach, or termination, the Parties agree to

- (i) Refer the dispute to mediation at Tamil Nadu National Law University.
 - (ii) Refer the dispute to arbitration
 - a. After mediation, if the Parties choose to mediate on some of their issues and arbitrate on the rest, and/or
 - b. If mediation fails, and/or
 - c. If the mediation is abandoned by the mediator(s) or is otherwise concluded without the dispute being resolved.
- (2) The arbitration shall be in accordance with the Arbitration and Conciliation Act, 1996.

The Seller will appoint the sole arbitrator in consultation with the Purchaser. The venue of arbitration will be Tamil Nadu National Law University. The proceedings shall be undertaken in English. The arbitration award shall be final and binding on the Parties.

4. Modifications and Amendments: This Agreement may be modified or amended, but only in writing and must be signed by both the Parties to become valid.

5. Binding Effect: The covenants and conditions of this Agreement shall bind the Parties, their legal representatives, agents, and permitted assigns of the Parties.

6. Non-Compete: The Parties agree that during the period that this Agreement is in force, neither party shall directly or indirectly engage, in any business or activity, whether as a principal, agent, representative, stockholder, or in any other corporate or representative capacity, or render any services or provide any advice to any business, activity, person or entity, if the party reasonably knows that such business, activity, service, person or entity competes in any material manner with the other.

7. Non-Disclosure: The Parties agree not to reveal to any person, firm, or corporation any confidential information of any nature concerning each other or their businesses, or anything connected therewith.

8. Governing Law: The terms and conditions of this Agreement and any transactions contemplated upon, and any relief sought hereby shall be governed by, and construed, and interpreted in accordance with the laws of India.

IN WITNESS WHEREOF, the Parties upon a complete understanding of the Agreement and giving their consent to the same, have caused this Agreement to be executed on and come into force from 04.04.2015.

Annexure-II: Confirmation of Sale to Snark Industries

OLDMACDONALD PHARM
15.02.2021

#12, Barnes Street, III Lake Avenue,
Chennai – 600054, Ph: +91 9178275635

OMDP would like to announce the confirmation of the sale of ‘Alizeh Cancer Treatment’ (ACT) launched on 5th June 2019 to Snark Industries.

Snark Industries has officially acquired a 100% stake in ACT for INR 141.63 crore on 14th February 2021. ACT is now officially ‘Snark Cancer Treatment’ (SCT).

Snark Industries is a reputed conglomerate giant in the fields of Pharmaceutical, Retail, Automobile, Telecommunication, etc. This acquisition is beneficial to OMDP and its shareholders. While selling 100% of the stake of OMDP's ACT to Snark Industries, for the company and their stakeholders' benefit, OMDP would like to inform everyone that we continue to be in a stronger position in our core business and will continue to support our customers as usual in their business needs.

Sincerely,
Malini Menon,
CEO, OMDP

Annexure-III: News Headlines

1. Economic View: 23rd June 2016

BIG COMPANIES ARE STARTING TO SWALLOW THE WORLD

Rising competition between Thomas Alva Medicine and Snark Industries in recent times.

2. Indian Times: 1st April 2015

THOMAS ALVA MEDICINE HITS SNARK INDUSTRIES WITH PATENT SUIT

The battle of dominance over the country's pharmaceutical industry has escalated dramatically with TAM slamming a legal challenge on Snark Industries.

3. News Now: 2nd March 2015

DEFENSIVE DRUG INDUSTRY: FUELING CLASH OVER PATENTS

TAM and Snark Industries clash over Patent laws.

Annexure-IV: E-mail from Mr. Krishnan Rao to Ms. Malini Menon

From: krishrao@tam.com

Date: 18.02.2021

To: malmenon@omdp.com

Subject: Breach of Agreement by OMDP

Ms. Malini Menon,

I am writing to you to bring to your notice the blatant violation, on your part, of the share purchase agreement dated 04.04.2015 between your company OMDP and my company TAM.

It has come to my notice, through official communication, that the assets of your subsidiary company ACT were sold to Snark Industries Limited. In this context, my concerns are that first and foremost, my right of first refusal with respect to your subsidiaries has been violated. Secondly, of all the people, you have gone ahead and entered into a deal with my competitor. This is not appreciated at all! Moreover, you knew of my intention to expand into specialized drug formulation for cancer, and yet, you ignored it and plan on selling ACT to Snark Industries.

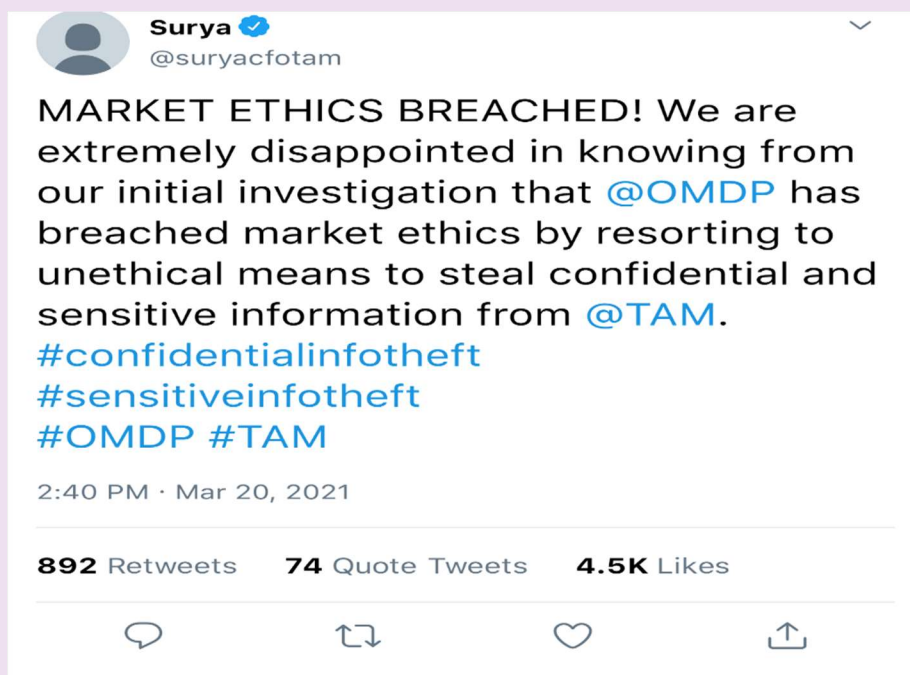
Considering our cordial business relationship for many years now, it is not just unethical but also extremely illegal for you to breach our agreement. I require that your deal with Snark Industries be taken back, the sale be revoked, and that the first right of refusal w.r.t ACT be given to my company TAM. I hope my request is strong and clear, failing which, I will have absolutely no qualms in taking the necessary legal recourse.

Sincerely,

Krishnan Rao,

CEO, Thomas Alva Medicine

Annexures-V: Tweet by Mr. Surya on Breach of Market Ethics by OMDP



Annexure-VI: Tweet by Mr. Surya on Ex-Employee



Annexure-VII: E-mail Correspondences between OMDP and TAM Regarding Appointment of Arbitrator

From: omdpmain@omdp.com

Date: 25th April 2021

To: tammmain@tam.com

Time: 1:30 p.m. IST

CC: krishrao@tam.com

Subject: Appointment of Arbitrator

We thank you for agreeing to resolve this dispute amicably. In view of the Dispute Resolution Clause of our Agreement, our legal team is strongly considering the appointment of Mr. Karan Kamra as the Sole Arbitrator for the proceedings. We would love to hear your opinion on this and urge you to respond to us with your thoughts before 27th April 2021.

Regards,

OldMacDonald Pharm

From: krishrao@tam.com

Date: 25th April 2021

To: omdpmain@omdp.com

Time: 1:35 p.m. IST

Reply: Appointment of Arbitrator

Sounds good to me.

From: krishrao@tam.com
To: omdpmain@omdp.com

Date: 26th April 2021
Time: 6:00 p.m. IST

Dear OMDP,

I do not think Mr. Karan Kamra is the right fit for the arbitration since he has publicly made statements appreciating OMDP's moves on social media and has also collaborated with you in the past. Request you to nominate someone else.

Regards,

Krishnan Rao,
CEO, Thomas Alva Medicine

From: omdpmain@omdp.com
To: krishrao@tam.com

Date: 27th April 2021
Time: 11:30 a.m. IST

Dear Mr. Krishnan,

We have already appointed Mr. Karan Kamra as the arbitrator after consulting you. As of now, no changes can be made in this regard.

Regards,
OMDP

Annexure-VIII: Tweet by Mr. Karan Kamra Appreciating the Launch of ACT



Annexure-IX: Relevant Clause from the Employer-Employee Agreement of TAM

4. Confidentiality:

4.1. During the term of this Agreement and in the course of Employee's performance hereunder, Employee may receive and otherwise be exposed directly or indirectly, to technical and non-technical confidential information of the Company, including without limitation, information related to formulations, processes, financial data, sales and marketing data, database, documentation, and correspondences which is proprietary and confidential to Company and their suppliers, customers or business partners (collectively 'Confidential Information').

4.2. The Employee acknowledges the highly sensitive character of the Confidential Information and agrees that the Confidential Information is the sole, exclusive, and extremely valuable property of the Company. Accordingly, the employee agrees not to use or reproduce the Confidential Information except as reasonably necessary in the performance of this Agreement, and not to disclose, lecture upon, or publish all or any part of the Confidential Information in any form to any third party, either during or after the term of this Agreement, without the prior written consent of the Company.

4.3. The Employee further acknowledges that a breach of any of the terms of this Agreement will result in irreparable and continuing damage to Company for which there will be no adequate remedy at law, and Company shall be entitled to injunctive relief and/or a decree for specific performance, and such other relief as may be proper (including monetary damages if appropriate).

DRAFTING COMMITTEE

This proposition was drafted by **Ms. Tamasaa T T**, IV-year student, TNNLU; **Ms. C V Shreya**, IV-year student, TNNLU; **Mr. Sekhar Sahu**, IV-year student, TNNLU; and **Ms. Anushree Rajendran**, IV-year student, TNNLU; under the guidance of **Ms. Mrinmoyee Mukherjee**, Assistant Professor of Law, TNNLU; **Mr. Nideesh Kumar T V**, Assistant Professor of Law, TNNLU; **Ms. Malini E**, Assistant Professor of Law, TNNLU; **Mr. M L Shankar Kaarmukilan**, Assistant Professor of Law, TNNLU; **Ms. A R Poorvaja**, TNNLU alumna, Practicing Advocate, Founder and Mentor at ‘The Settlement Table’; **Mr. Ramanujam T S T**, Chartered Accountant; and **Mr. Sashank T T**, Chartered Accountant.

Note: Teams are prohibited from contacting the aforementioned persons for help with the problem and/or any kind of preparation for this Competition directly or indirectly. The ADRC, TNNLU reserves the right to take any action it deems appropriate including disqualifying and/or blacklisting the participating institution and/or the participants found engaging in such conduct.

Disclaimer: This proposition, including the names and annexures used, is hypothetical. Any resemblance to any person or association is purely unintentional and only for academic/educational purposes.