

## Case Study for the M. C. Chagla Memorial Government Law College State Moot Court Competition, 2009

A share purchase agreement (“SPA”) was signed on October 1, 2008, between: (1) TrumpCo Limited (“**TrumpCo**”), a public limited company, who was the purchaser of shares under the SPA; (2) members of Patel family who were the shareholders and promoters of a public limited company called Best Corp Limited (collectively referred to as the “**Patels**”); and (3) Best Corp Limited (“**Best Corp**”). Both TrumpCo and Best Corp were companies registered in Mumbai and their operations were managed out of Mumbai.

Best Corp was one of the prominent companies in India and was involved in building windmills, which were used for production of electricity, and had recently negotiated agreements with certain customers. According to Best Corp, these agreements would ensure that over a period of the next 5 years, Best Corp would become the largest player in the windmill sector. TrumpCo had a turnover of approximately Rs. 1380 Crores and Best Corp had a turnover of approximately Rs. 1620 Crores. Best Corp had significant goodwill in the market and also had assets worth about Rs. 750 crores.

Prior to entering into the SPA, TrumpCo was also negotiating with Power Ventures Limited (“**Power Ventures**”), another company in this sector, which had turnover and profits similar to those of Best Corp, in order to purchase the shares of Power Ventures. Whilst the purchase price which the parties had considered for this transaction was lesser than the price that TrumpCo had agreed with the Patels, these talks did not materialize into a binding agreement because TrumpCo found that Best Corp had better prospects in view of its future business.

All the members of the Patel family who were shareholders of Best Corp had authorized Mr. Paritosh Patel, the largest shareholder of the Company, to *inter alia* sign the SPA, sell their shares in Best Corp and to take all necessary actions for this purpose.

Under the SPA, the parties had *inter alia* decided as follows:

1. The Patels, who owned 100% of the equity shares of Best Corp, would sell all of the equity shares held by them to TrumpCo and its nominees.
2. Mr. Paritosh Patel had undertaken take all steps to cause the Patels to complete the transaction.
3. Clause 5 of the SPA contained certain ‘conditions precedent’ to the ‘completion’ of the transaction (i.e. the completion of the actual sale and purchase of the equity shares), which were required to be completed before the actual sale and purchase of the shares occurred. Some of the conditions were required to be fulfilled by the Patels before TrumpCo would be required to purchase the shares, and there were some other conditions which were to be fulfilled by TrumpCo before the Patels would be required to sell the shares. The parties had agreed that the receipt of governmental and regulatory approvals for the completion of this transaction, if any, would also be a condition precedent, which both the parties would be required to jointly fulfill.
4. Under Clause 6 (i) of the SPA, the parties had agreed that in the event that any of the conditions precedent were not fulfilled by January 15, 2009 for any reason whatsoever, the agreement would automatically terminate without any further act of the parties. Under Clause 6 (ii), the parties had further agreed that they would ‘complete the transaction within a period of seven days from the fulfillment of all the conditions precedent’.

5. Both TrumpCo, and Mr. Paritosh Patel (on behalf of the Patels), had undertaken to make 'all reasonable commercial efforts' to (a) fulfill their respective obligations under the conditions precedent clause; and (b) thereafter complete the transaction as contemplated under Clause 6 (ii).

Much prior to the SPA, on or about September 30, 2007, Mr. Deepak Patel, the younger brother of Mr. Paritosh Patel, had agreed to transfer half the shares held by him (which portion constituted about 2% of the equity shares of Best Corp) to a distant relative Mr. Rajneesh Patel, who was not a shareholder of Best Corp. Some part of the consideration had been then paid by Mr. Rajneesh Patel to Mr. Deepak Patel. However, both of them did not complete any further formalities relating to this transfer owing to their busy schedules. Mr. Deepak Patel inadvertently did not inform the other Patels about this matter and TrumpCo was also not aware of this matter.

By November 2008, reports of the SPA appeared in various newspapers, since Best Corp had already been in the news for its recent agreements with its new customers.

On November 30, 2007, Mr. Rajneesh Patel addressed a letter to TrumpCo stating that he was not made a party to the SPA and that he objected to the transfer of the shares of the Company to TrumpCo and that in any event TrumpCo could not purchase the shares without his consent. He also stated that the SPA was therefore invalid. TrumpCo however did not respond to the letter of Mr. Rajneesh Patel.

Around the first week of December, there were newspaper reports suggesting that a business tycoon Mr. V. K. Kapoor had expressed his interest in Best Corp. These articles reported that whilst Mr. Kapoor did not have any interests in the windmills sector, he saw significant potential in the sector and therefore intended to incorporate a new company to purchase the shares of the Patels in Best Corp for a very high consideration. The CEO of TrumpCo was worried about this development, but Mr. Paritosh Patel assured him that the newspapers articles were only rumours.

Thereafter, the various conditions precedent to the transaction were complete by December 27, 2008. On January 2, 2008, TrumpCo wrote a letter to the Patels and to Best Corp stating that the transaction should be completed in accordance with the terms of the SPA.

On January 4, 2009, the Central Government brought into effect the substantive provisions of the Competition Act, 2002, with effect from the same date.

On January 5, 2009, Mr. Paritosh Patel wrote a letter to TrumpCo stating that the approval of the Competition Commission of India would now be required for the transaction, and that this would delay the transaction by several months, since preparation of the necessary details and forms to be filed with the Competition Commission of India would itself take a period of not less than two to three weeks, and the parties would thereafter have to wait for the approval of the Competition Commission of India, which could possibly take another few months. He stated that he regretted this fact, but had no choice except for not going forward with the transaction with TrumpCo, since the Patels urgently required funds for their other businesses. He also stated that owing to these reasons, the Patels would have to proceed with the transaction with another party which was not a big player the windmills business, and that the Patels were now free to do so.

TrumpCo responded to the aforesaid letter on January 7, 2009 stating that they were certain that the transaction would not require the approval of the Competition Commission of India, that they had necessary evidence to demonstrate this fact, and that the Patels were not meeting their contractual obligations. They also stated that the parties should immediately go ahead with the

transaction and in any event TrumpCo was ready to bear all consequences if the Competition Commission later conducted an enquiry and found that the transaction in fact required pre-approval.

The newspaper editions of January 8, 2009 reported that Mr. Kapoor had apparently inked a deal with the Patels, and had taken steps to incorporate a company to purchase all the shares of Best Corp from the Patels. As a related news item, there was also a statement made by the CEO of Power Ventures, which was reported in the newspapers, that the promoter family of Power Ventures was still extremely keen to sell their shareholding in Power Ventures to TrumpCo for a consideration similar to that intended to be paid to the Patels. The statement also contained details of how Power Ventures had entered into contracts which would provide Power Ventures with business similar to that of Best Corp.

In these circumstances, TrumpCo moved the Bombay High Court for reliefs on January 9, 2009, and upon the request of the parties, and in view of the urgency of the matter, the Bombay High Court decided to hear the matter in its entirety on January 12, 2009. Rajneesh Patel also filed an intervention application in the matter.

The following issues were *inter alia* raised before the Bombay High Court by the parties:

1. Whilst the parties agreed that the Bombay High Court could not determine whether or not the combination resulting from the transaction would have an appreciable adverse effect on competition, they raised the following question, viz. Whether the Bombay High Court could, in order to determine whether or not an injunction (restraining the Patels from selling their shares to any other person) should be granted, examine evidence to determine whether or not the transaction met the thresholds specified in the Competition Act, which would require it to be notified to the CCI.

In this regard, TrumpCo contended that the Bombay High Court could review such evidence, and if it found that the relevant thresholds were not met, it could injunct the Patels from selling their shares to others until the Patels completed the transaction specified contemplated under the SPA. The Patels firstly contended that only the Competition Commission could examine this issue, and any reference or notification to the Commission would result in the application of Clause 6 (i) of the SPA, and secondly, that in any event, the claim of TrumpCo relating to such evidence was invalid and the relevant thresholds were met.

2. Whether TrumpCo was entitled to an injunction and to specific performance of the SPA in the given circumstances.

3. Alternatively, if the Court ruled that the provisions of Clause 6 (i) were applicable in the present circumstances, whether the Patels had breached any of their contractual obligations under the SPA, and whether TrumpCo was entitled to damages for such breaches.

In this regard, TrumpCo argued that it was making such alternative prayer only because of the provisions of Clause 6 (i) agreed to between the parties, and that such prayer did not amount to an admission that damages were an adequate remedy for TrumpCo.

4. Whether Rajneesh Patel could intervene in the matter and whether his claims were justified.

Note: Counsel for the Patels shall also place their arguments on behalf of Rajneesh Patel.