

## SYMBIOSIS LEGAL TOURNAMENT 2018

### JUDGMENT WRITING COMPETITION

#### Intellectual Property Attorneys Association of Nebula & Air & Charm Co. v. Union of Nebula & NCLAT

Nebula is a peninsula with picturesque peaks and awe-striking valleys attracting millions of tourists every year. Furthermore, Nebula is considered to be one of the fastest growing economies of the world having a huge market potential. A Democracy with Parliamentary form of government and the President as the Head of the State is present. Nebula is well-acclaimed for its impartial and powerful judicial systems which always attempts to protect democratic integrity and always upheld people's rights enshrined under its constitution. The Constitution and laws of Nebula are *pari materia* to that of India.

In 2012, a patent was granted and published to a Cryogenic Refrigeration System by one Air & Charm company, a foreign company, for a validity period of twenty years as per the Patent laws of Nebula. This system claims to relate to cryogenic refrigeration systems, commonly referred to as cryostats, for extreme low-temperature cooling, and has particular application to those cryogenic refrigeration systems utilizing the well known Joule-Thomson effect or cooling cycle. Such apparatus is especially useful in cryo-electronics systems for both fixed ground-station and airborne operations. The company Air & Charm filed Form-27 disclosing the working of patents in Nebula for the years 2013 until 2015. The cryogenic refrigeration system developed by Air & Charm had brought novelty and complete difference from industry in the fact that the apparatus developed by them is useful both in ground-station and airborne operations. King & Co a company incorporated under Nebula Companies Act has attempted several times to procure a license to manufacture and sell the said apparatus. However, for the years 2013 until 2015 the invention was not worked on ground of 'invention under testing and further development'. In 2015, the license was granted to one Charm Co., a subsidiary of Air & Charm company for distribution in Nebula.

The pricing of the apparatus was extremely heavy and remained unaffordable to many laboratories which wanted to test and use them in such projects. Due to this, King & Co saw a lucrative opportunity to procure a license for the same. In pursuance of the same, despite several communications, the same was not possible. King & Co sought to apply for a Compulsory License under Section 84 and applied to the Controller in regard to the same on the grounds that the reasonable requirements of the public are not satisfied on account of non-

affordability of the price of the apparatus and the fact that it should be deemed to have not worked in Nebula as the working disclosure has not been submitted for the years 2016 and 2017. The Controller of Patents rejected the said argument and held that since there was a license granted and attempt to work the same, such argument would not be accepted and further directed Air & Charm to file disclosures for 2016 and 2017.

In the meantime, Air & Charm had expanded their areas of operations in Nebula. King & Co, a company dealing with commercial and retail refrigerators wanted to know and reverse-engineer the technology that enabled the apparatus developed by Air & Charm to run both on ground and air. Air & Charm entered into licensing agreements with competitors of King & Co to supply refrigerating units of the same and has done so for around three months. King & Co attempted again to enter into a voluntary license agreement with Air & Charm, however, Air & Charm imposed exorbitant royalty rates and excessively high charges. They alleged that terms of agreement were discriminatory, highly unfair and refusal to deal in the same terms as were used in case of its competitors. King & Co filed information under Section 14(1) with the Competition Commission of Nebula (CCN) alleging violation of Section 4. CCN ruled that it had no power to issue a compulsory license and such power was reserved with the authorities under Patents Act. King & Co filed an appeal before the NCLAT which issued a compulsory license in favour of King & Co. Air & Charm Co filed a statutory appeal to Supreme Court.

The Intellectual Property Attorneys Association of Nebula (IPAAN) filed a petition before the Hon'ble Supreme Court of Nebula contending that CCN or NCLAT had no power to issue a compulsory license and the order was *ultra vires*. The Supreme Court clubbed both and posted them for common hearing before a Division Bench. The Division Bench identified certain questions of law and referred the matter for disposal before a Five-Judge Bench.

- I. Whether CCN has power to issue Compulsory License?
- II. Whether a Compulsory License may be issued on grounds other than those specified under Patents Act, 1970?
- III. Whether a *person interested* may pursue both remedies in Patents Act & Competition Act for obtaining compulsory license concurrently?

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