



### Moot Proposition (2019-2020)

1. The Nectar (P) Ltd., is a multi-marketing company registered under the Companies Act. It markets various products through “network marketing”. This method of marketing differs from the conventional sale through a distributor and the retail network; any person could take up the marketing and sale, and make an earning. The marketing process is carried out directly by recruiting the customers themselves as distributors of the products and services. The Principal distributor approach the customers with the products of the company not just for consumption but also to encourage the customers to sell the products and earn profit.
2. The commissions are given only as per the volume of sales made by the individual distributor and his team. There is no service fee for registration as distributor. On joining as a distributor to the company, the principal distributor receives a starter kit for an amount of INR 650/-.
3. The company had released a new product known as “Nebalif” in the year 2018. The Company claims that this product has components which are natural extracts. The supplements provided under the name “Nebalif” claims to reverse dementia and Alzheimer’s disease. The company had announced in its website and through newspapers about the health benefits and also promised “*a capsule a day, keeps memory loss away*”. There are also statements in the company’s website that it is safe for children above five years. The price of one capsule is Rs. 25 and when brought through their distributor it is charged at a price of Rs. 21.
4. The capsule is not readily available in any pharmacies or supermarkets. The consumer has to approach the company directly or through their multi marketing agents. The consumer base of the company has increased day by day and there are thousands of people consuming the tablet.
5. “Nebalif” is one such product of the Nectar (P) Ltd. There are various other products which assist to increase bone strength. The company also sells multi vitamin capsules, protein powders etc., The product “Nebalif” was released targeting older consumers. The Company had released an advertisement in the newspaper on April 01, 2019. The advertisement specifically mentions that the supplement contains omega-3 fatty acid called DHA which

improves the memory of the consumer. The makers of the capsule also claimed that it was proven to restore upto 20 years of lost memory in as little as 30 days. At the end of the advertisement it was mentioned that the capsules have not been evaluated by the Food and Drug Administration or the FSSAI( i.e., Food, safety and Standard Authority of India). The advertisement also carried the following confirmation.

**“No side effects. Medically proven”**

6. Mr. Vijayan, 58 years old was losing short term memory. He was approached by the agents of Nectar (P) Ltd., who claimed that the supplement would enhance his memory and it has been clinically tested. He started consuming the capsules, one a day. He continued consuming the capsules for a period of three months. However, he started getting stomach cramps and body pain. He checked with the agents if it is safe to continue with the capsules. The Agent confirmed that it is absolutely safe and the side effects might be due to some other reason. But the health issue persisted and he slowly started to lose his vision.
7. Mr. Vijayan immediately stopped using the product and visited a physician. He was shocked to find that he had high blood sugar which led to diabetic retinopathy. This has further caused distorting vision. As he was very particular about his food habits and followed the diet chart provided by his physician to keep his diabetes under control. He reluctantly informed the Physician about the “Nebalif” capsules that he is consuming. He was shocked to know that DHA in the capsule increases the blood sugar which in-turn has caused vision loss.
8. He confronted the agents of Nectar (P) Ltd., who sold the product to him. They refused to accept his version and were ready to face the legal consequences. Therefore, Mr. Vijayan sent a legal notice to the company claiming compensation for the loss of vision and action against the company for false claims. He stated that their tagline “No side effects. Medically proven” is false and bogus. He challenged the product on the pretext that it does not hold FSSAI registration and has not obtained the licence under the Drugs and Cosmetics Act,1940. The legal notice claimed an amount of Rs. One crore as compensation. The company responded denying all the allegations of Mr. Vijayan. He approached the National Consumer Commission. However, his case was dismissed for want of clear evidence to prove that the product caused the loss of his vision. Therefore, Mr. Vijayan has approached the Hon’ble High Court by way of appeal.

9. Mr. Vasudevan who was once a distributor for this company has also filed a petition before the Hon'ble High Court that the system of network marketing practiced by the company falls within the definition of "money circulation scheme" under the provision of Prize chit and money circulation scheme (Banning) 1978 Act. Hence it is prohibited by the Act. He further states that the company collects service charge from the Principal distributor and claims otherwise. The starter kit costs Rs.650/-. However, the MRP rate on the kit is Rs.597 only so the remaining amount is collected as service charge. The collection of service charges is therefore illegal. Further, the progress of the chain of customers would get saturated at one point of time and the principal distributor will not find any purchaser/sub-distributor to sell or enroll afresh. Therefore, lakhs or even millions of people are bound to lose their entire money of Rs.650/- (value of one starter kit). At the same time, major portion of the amount would be a gain to the petitioners-company. Hence the Petitioner states that this also amounts to cheating under Section 420 of IPC. Mr. Vasudevan claims that he is one such victim and has filed a petition to direct the law enforcing authorities to take appropriate action against the Company.

The Hon'ble High Court has clubbed the matter together and issues framed are as follows:

- 1) Whether the scheme of the company Nectar (P) Ltd falls within the ambit of "money circulation scheme" under Sec 2(c) of Prize chit and money circulation scheme (Banning) 1978 Act.
- 2) Whether the Company is authorised to collect service charges.
- 3) Whether the business of the said company amounts to cheating of the distributors and falls under the Indian Penal Code.
- 4) Can the company sell its product even before obtaining licence under FSS Act and Drugs and Cosmetics Act?
- 5) Whether DHA in the capsules could be the only reason for the Petitioner to lose his vision?
- 6) Any other issues the parties deem fit

Last date for registration: **23 August 2019**

Last date for submission of memorials: **30 August 2019**

Kindly forward your memorials to the official email ID: [cdraglcmoot@gmail.com](mailto:cdraglcmoot@gmail.com)

1. Do not mention your names in the memorials. This will lead to disqualification. The participant is allowed to mention only the register number provided by the Moot Court Committee.
2. The college selection rank list will have only the registration number mentioned.