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LEGAL ANALYSIS: HARMONIOUS CONSTRUCTION VS. LEX SPECIALIS IN SWAPAN DEY V. CCI

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Introduction

Intellectual property rights vis-a-vis competition laws have always posed questions of jurisdictional nature before the courts in India. In the case of Competition Commission of India v. Swapan Dey & Anr. (Civil Appeal No. 519 of 2026), the question of jurisdiction has been brought up once again to the fore. On 2 February 2026, the Supreme Court stayed the operation of paras 8 to 10 of the NCLAT judgment dated 30 October 2025, in Swapan Dey v. Competition Commission of India. According to the stay order, the NCLAT was under the misconception while considering that by virtue of the Patents Act, 1970 being a special legislation, it ousted the jurisdiction of the CCI to deal with complaints of abuse of dominance under section 4(2)(e) of the Competition Act, 2002.

Thus, the matter of reconciling the two statutes arises here, which involves the question of interpretation of statutes and can be resolved either through harmonious interpretation or application of the principle of *lex specialis derogat legi generali*. In this case, the Supreme Court has heard the matter only on the ground of jurisdiction.

Factual Background of the Swapan Dey Matter

The facts surrounding the Swapan Dey case arose from a complaint filed with the Competition Commission of India (CCI) under Section 19(1)(a) of the Indian Competition Act of 2002 by Mr. Swapan Dey, who is associated with a hospital that provides dialysis services. The complaint alleged that Vifor International AG (Vifor) from Switzerland was engaging in anti-competitive behavior with regards to the patented drug Ferric Carboxymaltose (FCM). FCM is used to treat iron deficiency Anemia. The specific allegations included that Vifor was engaging in unfair vertical restraints in violation of Section 3(4) of the Act and abusing its dominant position under Section 4 of the Act, specifically via restrictive licensing

arrangements that allegedly limited supply, and thereby affected the affordability and access to FCM in India.

After an investigation of the case, the CCI closed its investigation on October 2022, determining that there was no *prima facie* violation of either section. However, the National Company Law Appellate Tribunal (NCLAT) upheld the CCI's closure on the merits when it issued its decision on October 30, 2025 – but the NCLAT did far more than that. Based on the order from the Delhi High Court dated 2023 concerning the Ericsson-Monsanto matters and the Supreme Court's order dated September 2025 dismissing a related special leave petition (but leaving questions of law open), the NCLAT determined that since the Patents Act is an area of special law, it is given precedence over the Competition Act, thereby the CCI has no jurisdiction to investigate any conduct arising from the exercise of the rights granted by the Patents Act.

The Doctrine of Lex Specialis: Arguments Supporting the Supremacy of Patents Act

According to the proponents of the lex specialis doctrine, the Patents Act constitutes a complete statutory code for the purposes of granting patents and licenses and preventing any infringement and abuse regarding the same. These are the sections within the Act specifically addressing cases of unreasonable licensing conditions, excessive prices or refusing to license in case public interest is adversely affected; Sections 84 and 85 (compulsory licensing), Section 140 (prevention of anti-competitive behavior), and procedures before the Controller of Patents.

According to the NCLAT, buttressed by the 2023 Division Bench judgment of the Delhi High Court, application of the Competition Act in dealing with matters relating to patents would be against the very legislative purpose for making statutory provisions for granting exclusivity to the patentees as an incentive to innovate. This follows from the doctrine *generalia specialibus non derogant*; a general law cannot apply where there exists a special law in that area of law. Clause 3(5) of the Competition Act constitutes a narrow exception in case reasonable restrictions exist to safeguard the IP rights of the owner.

Principle of Harmonious Construction: Arguments Supporting Concurrent or Complementary Jurisdiction

This school of thought is based on the theory of harmonious construction. Under harmonious construction, both pieces of legislation get their due importance without making either of them unnecessary. The Competition Act is a general legislation with the aim of prohibiting practices having AAEC. It doesn't have any intention of declaring patents invalid; its purpose lies in assessing the impact of certain conducts upon competition and not the issue of infringement and validity of the patent.

According to Section 60, the Competition Act is of paramount importance and will override

anything contained in any other Act. Section 62 states that the Competition Act will be supplemental to other laws.

The duty of CCI under Section 3 & 4 is to examine whether the manner of exercising patent rights (through restrictive licensing or excessive royalties) distorts the market and creates an adverse effect on competition without raising questions regarding the patent grant.

The principle of harmonious construction finds consistency with long-standing Supreme Court decisions wherein the reading of statutes together towards advancing their shared objectives, innovation via intellectual property rights versus consumer benefit and market competition, respectively, was stressed. International precedents such as those set forth by the European Union and the United States provide an indication that competition regulatory bodies consider IP-related matters (like standard-essential patents licensing, or pay-for-delay schemes) according to antitrust laws without ignoring the essence of patents. In India, prior single-judge decisions from the Delhi High Court supported CCI investigations without identifying any inherent conflict between the two enactments.

Supporters of an alternative construction argue that the patent enforcement methods, either through judicial proceedings or applications made before the Controller, may not have the same advantages in terms of comprehensive analysis of the market, economics experts advice, and investigatory power enjoyed by the CCI. Whereas the issuance of compulsory licenses under the Patents Act may require stringent conditions,

Supreme Court Comparative Evaluation and Alternative Pathways

The Supreme Court is faced with a decision among these interpretive extremes. A stringent interpretation of lex specialis through the lens of NCLAT and Division Bench of Delhi High Court would leave patent enforcement activities

almost entirely outside the ambit of CCI oversight, with limited recourse in important industries such as pharmaceuticals. On the other hand, harmonious interpretation could establish concurrent jurisdiction, with clear demarcation: patent bodies decide questions of validity, infringement, and fundamental licensing disputes, whereas CCI adjudicates competitive abuse in the pertinent market.

Some possible compromise solutions might involve:

- CCI deferring to patent tribunals regarding purely patent law matters but maintaining jurisdiction over economic consequences;
- Inter-regulatory cooperation or consultation protocols;
- Establishing a threshold for determining appropriate intellectual property enforcement and harmful extensions of the patent right.

The Supreme Court's February 2026 stay order, which only suspends the exclusionary provisions but sends out a notice, suggests a willingness to consider a more refined approach. The ancillary issue of whether private resolutions can oust CCI jurisdiction in matters of public interest further emerges.

Conclusion

In the case of *Swapan Dey v. CCI*, the dichotomy of harmonious interpretation and *lex specialis* raises larger questions about balancing the reward for innovations through exclusive rights with the need to protect competitive markets for consumer welfare. By applying the doctrine of *lex specialis* in *Swapan Dey*, NCLAT attempted to favour the special statutory scheme of the Patents Act. However, the stay issued by the Supreme Court on that judgement has stopped this process of evolution, and thus, a fresh perspective could now be adopted.

Harmonious interpretation seems to be a more appropriate approach not only because it is supported by the statute, the Constitution, and best international practices but also because it would allow both laws to coexist and support

each other. While the Patents Act would ensure the protection of exclusive intellectual property rights, the Competition Act would deal with the issues arising from those rights. The upcoming judgement by the Supreme Court would offer an ideal chance for the formulation of the necessary principles.

In any case, all interested parties – in business, academia, and regulation – are waiting for the judgement with bated breath.

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