

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 21st March, 2016**
Judgment pronounced on: 7th April, 2016

+ **O.M.P. (I) (COMM.) No.48/2016 & I.A. No.2301/2016**

SHIVANSH AUTO ZONE PVT LTD Petitioner
Through Mr.Amit Sibal, Sr. Adv. with
Mr.Rajat Aneja & Ms.Chandrika
Gupta, Adv.

versus

HONDA CARS INDIA LTD. Respondent
Through Mr.Jagdev Singh, Adv.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioner has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 *inter alia* seeking the following reliefs:-

“(i) Allow this petition and direct the Respondent to continue to treat the petitioner as it’s sole and exclusive Authorised Dealer for Mandi (Himachal Pradesh) area till the final decision of the Arbitral proceedings initiated by the Petitioner in terms of the Notice dated 21.01.2016 and 08.02.2016

(ii) stay the operation of letter dated 05.02.2016 issued by the respondent and direct the petitioner to resume supply of Cars and other related services to the petitioner in terms of the dealership agreement.

(iii) Restrain the Respondent from appointing any other party as it's dealer for Mandi area/zone till the final decision of the Arbitral proceedings initiated by the Petitioner.”

2. It is contended by the petitioner that the respondent has unilaterally stopped supply of cars to the petitioner w.e.f. 1st December, 2015, in breach of the terms of the Agreement and has terminated the agreement vide its letter dated 5th February, 2016 without any cause. The respondent has also taken the steps during the pendency of present petition to appoint a new dealer to issue the dealership in the area of Mandi (HP).

3. Brief facts of the case are that Honda Cars India Ltd (respondent) and M/s. Shivansh Autozone Private Ltd. (petitioner) entered into a Dealership Agreement initially in the year 2011 for a period of one year which was subsequently renewed. Lastly, the Dealership Agreement was executed on 1st April, 2015 which was valid till 31st March, 2016.

4. During the term of the Agreement, it came to the notice of the respondent that the petitioner committed breach of various terms and conditions of the Agreement which has adversely affected the respondent's reputation and lowered the brand image of the respondent. As per the respondent, the petitioner has repeatedly not complied with the specific terms of the Dealership Agreement which not only resulted in the loss of reputation but also caused irreparable loss to the respondent.

5. The notice issued by the respondent contains the details of breach of terms and conditions. It is stated that the respondent on numerous occasions pointed out the non-compliance of the terms of the Dealership Agreement and resultant deficiency in service by the petitioner, however,

despite repeated assurances the petitioner failed to take any action for the rectification of the same.

6. As per the respondent, the breaches which were committed by the respondent are as follows:-

- (i) Failure to provide funds resulting in cars not being purchased/lifted from respondent which are to be sold to the customers. As a result, respondent has received several complaints regarding non-delivery of Honda Cars, which has resulted in lowering the brand image of Honda.
- (ii) Failure to implement direction/suggestion of the management of the respondent despite repeated reminders and requests for improving the overall performance of the dealership. This has resulted in decrease of sales, drastic fall in overall performance of the dealership and loss of confidence among customers and management of the respondent.
- (iii) Failure to maintain minimum "Stock of products and personnel in various departments in such numbers and of such qualification as prescribed by respondent to handle the operation of dealership.
- (iv) Adopting wrong and fraudulent practices to manipulate the SSI score. Further, consumer complaints not being addressed and noted in time as a result of which the HSPIRIT score has dropped below satisfactory level.
- (v) Issuance of unauthorized advertisements in the newspaper regarding opening of New Dealership outlet in Kullu to mislead customers and general public.

- (vi) Failure to make payments to vendors within stipulated time for promotional activities done by these vendors resulting in lowering the reputation of Honda Brand.
- (vii) Dealership operations were conducted and unilateral decisions were implemented by the respondent which is in gross violation and in breach of the terms and conditions of the Agreement.

7. The abovementioned breaches were already pointed out by the respondent to the petitioner but, despite several reminders, the same were not rectified. Further, on 26th November 2015, Paras Gautam and Siddharth Gautam both sons of petitioner's Director physically assaulted respondent's Associate Mr. Ravi Lamba (Area Manager-North) and threatened to kill him when he was on official tour to Mandi to review the performance and progress of Honda Dealership. In order to protect and safeguard himself, Mr. Ravi Lamba immediately called the police and an FIR was registered in Sadar Mandi Police Station under Sections 341, 323, 506 and 34 of the Indian Penal Code against Paras Gautam and Siddharth Gautam.

It is submitted that in view of continuous non-performance in terms of sales and after sales service by the respondent resulted in losses to the Company, loss of reputation due to customer dissatisfaction and decline in brand equity, as a consequence of which the respondent took corrective measures to protect its interest.

8. It is submitted that due to the facts and circumstances explained, the respondent was constrained to take corrective measures as per the terms of the agreement to protect its interest. The correspondence between the

parties including the show-cause notice dated 11th December, 2015 would reveal the acts of omission and commission committed by the respondent resulting in the issuance of the above said show cause notice.

9. It was denied by the counsel for the respondent that the respondent has unilaterally stopped supply of cars to the petitioner w.e.f 1st December, 2015, in breach of the terms of the Agreement and has belatedly sought to illegally terminate the agreement vide its letter dated 5th February, 2016.

10. Mr.Amit Sibal, learned Senior counsel appearing on behalf of the petitioner submits that the agreement is terminated without any valid cause; the petitioner would suffer an irreparable loss and injury if the termination is not stayed. He says that the petitioner has spent more than Rs. 8 crores at site in order to run the dealership and it is also an issue of livelihood of many employees and their respective families.

11. It is also informed that many cars, which are unsold, are still lying with the petitioner. Further, the owner of the petitioner was never involved in the incident referred by the respondent. Rather, the petitioner has helped the respondent in this regard and despite of his sons may or may not be involved. He was always with the respondent before the police.

12. Learned counsel for the respondent has denied all the arguments of the petitioner and submits that though the petitioner is not entitled to any damage, on the contrary, the respondent is claiming damages from the petitioner for various breaches to the terms of the agreement and for the loss of goodwill and reputation. Moreover, it is well-settled that in case a person can be adequately compensated in terms of money, he is not entitled to injunction in view of the provisions of Section 14(l)(a) of the

Specific Relief Act, 1963. It is submitted that the petitioner was well aware as to what investments are required to be made in case he wishes to become a dealer of the respondent and he made an informed choice. The Dealership Agreement was for a fixed term of one year and its validity would have to be extended by further renewals every year. It is submitted that the petitioner made an informed choice with regard to the investment in the business.

13. It was also denied that the petitioner hired and employed about 60 personnel to run and manage the dealership business and the said personnel have been trained to specific business of Honda dealership, as required by the respondent. As regards chart showing refund of bookings due to non supply of vehicles by the respondent is concerned it is submitted that the non-supply of cars was solely due to the failure of the petitioner to provide funds to purchase the cars which are to be sold to the customers. It was denied that the petitioner was always forced to work under constraints and limitations, as the supply of cars from respondent was never as per the requirements of petitioner's business nor was it in tune with the local demand. It was further denied that the bookings of particular brands (Honda city, Honda Civic etc.) were never met by the respondent and on the contrary, petitioner was heaped with supply of brands that were not in demand.

It is denied by the respondent that the petitioner was trying its best to take the business to new heights and the untiring efforts started showing results in the financial year 2014-15 in which the company posted profits.

14. It is submitted that after the termination of the dealership by the respondent with immediate effect vide its letter dated 5th February, 2016

as per the terms of the agreement dated 1st April, 2015, the respondent issued a letter of intent dated 10th February, 2016 to M/s. Magma Autolinks Pvt. Ltd. for appointment of authorized dealer of respondent at Mandi, Himachal Pradesh. It is denied that some of the officials of the respondent have been suggesting to the petitioner to provide them illegal gratifications and also the fact that there are many others in the market who are ready and willing to do the same.

It is submitted that the petitioner was aware of the reasons as to why the cars were not supplied to the petitioner. It is denied that as there was no response from the respondent and supply of cars, other services were not resumed. The notice dated 21st January, 2016 to the respondent is a matter of record and the same was duly replied to by the respondent vide their reply dated 5th February, 2016. The respondent reserves its right to raise all the issues including the ones referred to by the petitioner in the arbitration proceedings before Arbitral Tribunal at appropriate stage hence, the respondent is reserving the right to raise those claims and issues at that stage.

15. It is denied that the respondent has violated any terms of the dealership agreement, rather the action taken by the respondent is fair, just and legal. It is submitted that the petitioner continued to carry out servicing of cars as a dealer of the respondent till he was terminated. Further, spare parts were also being supplied to him by Honda Motor India Private Limited. It is denied that the letters dated 11th December, 2015 and 5th February, 2016 are merely an eye wash and an empty formality. It is also denied that the actions of the respondent are arbitrary, unjustified and in violation of principles of natural justice. It is denied that the petitioner

suffered any loss on account of any illegal or unjustified action of the respondent, on the contrary, the respondent suffered loss of goodwill and reputation and is entitled to damages on account of various acts of commission and omission on the part of the petitioner.

16. The respondent has placed many documents in order to show its bonafide. As far as the allegation of the respondent about criminal matter is concerned, this Court does not wish to express any opinion as the said proceedings are pending.

17. The dealership of the petitioner was valid up to 31st March, 2016. It was non-exclusive.

18. It is admitted position that after the expiry of period of dealership agreement on 31st March, 2016, no formal agreement has been executed between the parties for renewal. It is not denied by the petitioner that before the expiry, in February, 2016 itself the dealership agreement was terminated, thus, in view of the circumstances available on record, the Court cannot compel the respondent that they must execute the dealership agreement which was non-exclusive and the circumstances of the same were known to the petitioner. The earlier agreement now is not enforceable in law under the scheme of Section 14(1)(a) of the Specific Relief Act, 1963. Besides the above, no injunction can be granted in view of Section 41(e) of the said Act which states that an injunction cannot be granted to prevent the breach of agreement, the performance of which cannot be enforced.

19. (i) In the case of *IOC v. Amritsar Gas Service*, (1991) 1 SCC 533, the Supreme Court has held that a dealership agreement containing a clause entitling either party to terminate the agreement with thirty (30)

days' notice was determinable in nature, and therefore, in terms of Section 14(1) of the Specific Relief Act, 1963 (hereinafter referred to as "Specific Relief Act") a relief of restoration of dealership cannot be sustained. Section 14(1) (c) of the Specific Relief Act states that a contract which is in its nature determinable cannot be specifically enforced. It was further held that even if the termination of the agreement was illegal, the only relief which could be granted was the award of compensation for the period of notice.

(ii) A similar view was espoused by the Supreme Court in *E. Venkatakrishna v. Indian Oil Corporation and Ors.*, (2000) 7 SCC 764 wherein it was held that all the arbitrator could do, if he found the termination of the distributorship to be unlawful was to award damages, as any civil Court would have done in a suit. The appellant therein was appointed as a dealer of the first respondent to distribute liquefied petroleum gas and the dealership agreement therein contained a termination clause that the distributorship could be terminated if the dealer did any act which was prejudicial to the interests of the respondent.

20. Therefore, the reliefs now sought after termination cannot be granted being contrary to the provisions of the Special Relief Act. Even if the termination of the agreement was found to be unlawful, the only relief which could have been available is damages/compensation which would have to be considered as per its merits if any steps are taken by the petitioner. In the present case, the situation is worse than other cases as the contract between the parties has already been lapsed as per efflux of time. It was the non-exclusive contract. The respondent in view of the reasons given in the reply is not ready to renew the same. The relief

sought in the present petition cannot be granted while dealing with the application under Section 9 of the Act.

21. There is no merit in the petition. The same is accordingly dismissed.

22. No costs.

(MANMOHAN SINGH)
JUDGE

APRIL 07, 2016