

\$~9

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

CS(COMM) 408/2017

PASPA DISTRIBUTORS PRIVATE LIMITED Plaintiff

Through: Mr A. Das and Ms Rashi Bansal,
Advs.

versus

PERFETTI VAN MELLE INDIA PVT. LTD Defendant

Through: Nemo

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

%

30.05.2017

**CS(COMM) 408/2017 & I.A.No.6871/2017 (under Order XXXIX
Rules 1 & 2 of the Code), I.A.No.6872/2017 (under Order XXVI
Rule 9 of the Code) & I.A.No.6873/2017 (Exemption)**

Present suit is based on a distribution agreement dated 22.05.2014 which had been entered between the plaintiff and the defendant. The contention of the plaintiff is that this distribution agreement had been terminated by the defendant unilaterally without giving any reason; the following prayers have been made:-

“A. A decree for declaration declaring that the plaintiff is the Defendant's 'agent' in Law, having an interest in the goods of the Defendant, which is the subject matter of the agency under the Distributorship Agreement dated 22.5.2014 [executed between the Plaintiff and the Defendant], which could not be terminated prejudicially to the Plaintiff's interest. And/or

B. A decree for declaration/cancellation holding that the termination letter dated 9th February, 2017, sent by the Defendant to the Plaintiff whereby and where under the Defendant terminated the Distributorship Agreement dated 22.05.2014 executed between the Plaintiff and the Defendant is an act of

breach & is in contravention to Section 202 of the Indian Contract Act, 1972, and hence the termination letter dated 9th February, 2017 be delivered up and cancelled. And/or

C. A decree of permanent injunction restraining the Defendant by itself or by its members, servants, agents or nominees from appointing any distributor or dealer in lieu of the Plaintiff in the areas of Jadavpur/Ranikuthi, Behala & Topsia/Tangra (Kolkata, West Bengal) for the purposes of selling/distributing/marketing/dealing with the Plaintiff's products till the interest of the Plaintiff is not extinguished in respect of the Plaintiff's products. And/or

D. A decree of permanent injunction restraining the Defendant by itself or by its members, employees, staff, servants, agents or nominees from supplying any product or goods similar to the products supplied by it to the Plaintiff to any distributor or dealer or person in the areas of Jadavpur/Ranikuthi, Behala & Topsia/Tangra (Kolkata, West Bengal) till the interest of the Plaintiff in the subject matter of the Distributorship Agreement dated 22.05.2014 is not extinguished. And/or

E. A decree of permanent injunction restraining the Defendant by itself or by its members, employees, staff, servants, agents or nominees from supplying any product or goods similar to the products supplied by it to the Plaintiff to any distributor or dealer or person in the areas of Jadavpur/Ranikuthi, Behala & Topsia/Tangra (Kolkata, West Bengal) till all the products or goods purchased by the Plaintiff from the Defendant has been sold to third party consumers.

F. Pass a decree of declaration/cancellation holding that Article 3.1 of the Distributorship Agreement dated 22.05.2014 is contrary to Section 202 r/w Section 184 of the Indian Contract Act, 1872 and the same be delivered up and cancelled. And/or

G. Pass a decree of recovery/damages in terms para 38 of the suit.

H. Pass any other relief as this Hon'ble Court may so deem fit and proper in

the facts and circumstances of the present case.”

The distribution agreement dated 22.05.2014 has been perused. This is a document executed between the plaintiff and the defendant. Termination clause is contained in clause 19. Clause 19.2 reads as under:-

““Without prejudice to the right of the Company to terminate the Agreement provided in Clause 18 above, either party may terminate the Agreement without assigning any reason by giving to the other 30 clear days’ notice in writing which notice may be sent by registered post, telegram or fax addressed to the usual place of business of the addressee and shall be deemed to have been received by the addressee at the expiry of seven days from the date of dispatch if by registered post or at the expiry of 48 hours after dispatch if by telegram or same day if sent by fax.””

The defendant had in fact premised the cancellation of this agreement in terms of clause 19.2 which is clear from the notice given by the defendant to the plaintiff dated 09.02.2017. Relevant extract reads herein as under:-

*“Dear Mr.Agarwal,
This is in reference to Distribution Agreement dated 22nd May, 2014 entered into with you and your appointment as our distributor pursuant thereto.*

We are constrained to invoke clause 19.2 of Distribution Agreement which is reproduced hereunder for your ready reference:

“19.2 Without prejudice to the right of the Company to terminate the Agreement provided in Clause 18 above, either party may terminate the Agreement without assigning any reason by giving to other 30 clear days’ notice in writing which notice may be sent by registered post, telegram or fax addressed to the usual place of business of the addressee and shall be deemed to have been received by the addressee at the expiry of seven days from the date of dispatch if by registered post or at the expiry of 48 hours after

dispatch if by telegram or same day if sent by fax.

In accordance with the termination clause mentioned above, we hereby give your clear thirty days' notice. The said Distribution Agreement would hence stand terminated on 10th March, 2017 at the close of business hours.

We request your cooperation in assigning a time and place when our Distribution Sales Officer can inspect your books of accounts, in accordance with Clause 18 of the Distribution Agreement. All admissible claims, if any, would be settled on submission of claims with relevant supporting and duly signed by our distribution Sales Officer and we will be happy to settle all final dues, if any, as admissible.

We also request you to return forthwith all books, documents, papers, and other property Perfetti Van Melle India Private Limited that is presently in your possession or cancel."

A reply to this letter had been sent by the counsel for the plaintiff which is dated 27.03.2017. His submission is that the distribution agreement has been going on smoothly; in fact there are certain outstandings which the plaintiff has to claim from the defendant.

This Court is of the view that the act of the defendant in terminating the distribution of the plaintiff was clearly in terms of clause 19.2 of the distribution agreement which is an admitted document duly signed by both the parties. Notice of termination dated 09.02.2017 (as extracted supra) gave right to the plaintiff to get the books of account (in terms of clause 18) inspected and all claims to be settled on the submission of claims to be made by the plaintiff along with the supporting relevant documents. This letter is happily worded and in fact gave a cordial opportunity to the plaintiff to settle all disputes with the defendant. The plaintiff did not accede to this

request of the defendant. He neither filed claim and nor relevant documents before the defendant. No cause of action has been made out by the plaintiff.

However, the aforementioned finding may not be relevant at this stage in view of the finding now to be returned by this Court which is to the effect that this Court has no territorial jurisdiction to try this suit. The plaintiff is admittedly a company having its registered office at Kolkata. The defendant has its registered office at Kolkata. The distribution agreement which is the subject matter of dispute was also executed inter-se the parties on 22.05.2014 at Kolkata. All these facts are admitted. No cause of action has arisen in Delhi in terms of Section 20 (c) of the Code of Civil Procedure, 1908. This has been candidly admitted by the plaintiff. His only submission on this count is that clause 21 of the Distribution Agreement which reads as under:-

“21. JURISDICTION

The parties expressly agree that the place of receipt of payment by the Company and the place of payment by the Distributor shall be Delhi. It is also agreed that any suit to enforce the right of either party under or in respect of this Agreement shall be instituted in and tried by a competent court only in the city of Delhi and in no other court and the Distributor further expressly agrees to submit to the jurisdiction of such court.””

clothes the plaintiff to approach Delhi Courts, is in the view of this Court not the correct legal position.

Where the averments in the plaint and the documents annexed thereto shows that the Delhi Courts do not have the territorial jurisdiction to entertain the suit; parties by consent cannot agree to chose their territorial jurisdiction. In a judgment reported as (1971) 1

SCC 286 Hakam Singh Vs. M/s Gammon India Ltd.) the Apex Court had held as follows:

“....it is not open to the parties by agreement to confer by their agreement jurisdiction on a Court which it does not possess under the Code. But where two courts or more have under the CPC jurisdiction to try a suit or proceeding an agreement between the parties that the dispute between them shall be tried in one of such Courts is not contrary to public policy.”

The plaint has to be returned (under Order VII Rule 10 of the Code) to be filed in the competent court. Plaintiff is directed to appear before the Joint Registrar on 24.7.2017 for the return of the plaint which may thereafter be filed in the appropriate court.

Suit disposed of.

INDERMEET KAUR, J

MAY 30, 2017/A