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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 09th February, 2018

Pronounced on: 09th March, 2018

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O.M.P. 842/2011

TUPPERWARE INDIA PRIVATE LTD

..... Petitioner

Through : Mr.Vikas Goel, Mr.Abhishek
Kumar & Ms.Arushi Gupta,
Advocates.

versus

VEENA WALIA

..... Respondent

Through : Mr.K.R.Chawla and Mr.Sunil
Verma, Advocates.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. The petitioner is engaged in the business of manufacture of tupperware products and the respondent is the distributor thereof. The Distributor Agreement was entered into between the parties on 11th June, 1999 and the relevant clauses are clause 4 and clause 20 reproduced herein :

“Clause 4

DURATION

Notwithstanding the date of signature of this Agreement, the Agreement shall be deemed to

have commenced on the commencement date. The Agreement shall remain in force for a period of twelve months thereafter. On the expiry of the aforementioned period it shall be automatically renewable by further periods of twelve months at a time. However, it is the understanding of the Parties that the total duration of this Agreement shall not exceed thirty six months after which the Parties, if they so desire may enter into a fresh Distributorships Agreements in writing at the terms and conditions contained therein. Notwithstanding anything contained hereinabove, during the terms of the Agreement either party is not desirous of automatically renewing the Agreement for a further period of twelve months it may give a written notice of its intention at least one month prior to the date on which such renewal comes into force, and on the expiry of the said period of this Agreement would terminate.

20. TERMINATION

20.1 *Notwithstanding anything to the contrary elsewhere contained herein, this agreement shall be terminable summarily: at the election of the Company, acting in its sole discretion, in any of the following events:*

xxx

20.2 *the above shall be without prejudice to the company's other rights in law including its rights to claim damages.*

20.3 *in the event the Company is desirous of terminating the agreement without cause it may do so after giving the Distributor one*

month's notice in writing of its intention to do so".

2. The aforesaid clause provides two mode of termination. The first is given in clause 20.1 which cites 11 events of the termination of contract but whereas the termination in clause 20.2 is without any cause. It is submitted the contract was initially for 12 months, renewable for further 12 months but after 36 months a fresh agreement was to be entered into between the parties. Admittedly the distribution agreement was renewed twice till 11-06-2001. However, on 6th July, 2001, the petitioner issued a notice of termination which runs as under :-

"xxx

The Company has decided to terminate the agreement and in accordance with clause 20.3 of the Agreement is serving you with a one month notice which shall commence from the date hereof and the Agreement and the Expenses Agreement shall stand automatically terminated at the expiry of the said notice period .

You are hereby requested to pay to the Company within the said notice period all outstanding dues amounting to a sum of Rs. 4,35,852.00 owed by you to the Company in terms of the Agreement and Expenses Agreement (Annexure I). Further, you shall continue to perform all your obligations as a distributor in terms of the Agreement during the said notice period. However, please note that in view of the impending termination of the Agreement, you shall be required to pay in cash/post dated cheques for any stocks that

may be supplied to you by the Company during this notice period .

In the event you fail to fulfil your obligations as distributor aforesaid during the said notice period the Company may be constrained to adopt other measures as may be required to ensure that the dealers and the Company's customers are not put to any inconvenience in this regard .

You are hereby put to notice that in the event you fail to pay the outstanding owed by you to the Company in terms of the Agreement and the Expenses Agreement within the aforementioned notice period, the Company shall, in addition to the termination of the Agreement, be' constrained to initiate such other appropriate legal proceedings against you as it would deem fit and necessary to recover its dues including charging penal interest thereon at the rate of 11 % per annum in terms of the Agreement. The above shall be without prejudice to the Company's other rights/remedies in law including its rights to claim damages."

3. The respondent in reply wrote a letter dated 06.08.2001 as under :

"xxx

In your letter dated July 6, 2001 terminating the agreement, you have served me with one month's notice which expires today. I am not interested in availing one month's extension as that would not serve my any purpose. I have completed my Vanguard month of July on 6th August, 2001. I undertake to execute

orders obtained upto this date (i.e. week 31) so that my sales force does not suffer any inconvenience or financial loss. I would feel obliged if my accounts are settled and Goodwill paid at the earliest so that may look around some other ways and means to earn my livelihood.”

4. Hence, it is argued that the respondent in its reply simply asked for accounts to be settled and even did not avail of one month's notice period, however, later the respondent arose a dispute and an arbitration notice was issued on 10-10-2001. The statement of claim was filed by the respondent herein before the learned Arbitrator noted inter alia :-

15. That immediately thereafter, upon termination of the Agreement, the complainant approached the Respondent herein and informed that the said termination is absolutely illegal and contrary to the Agreement. However, the Respondent failed to adhere to the request of the complainant to continue the said Agreement for another period of 12 months and was willing to extend the said Agreement for one month only. The same however was not acceptable to the claimant. Thereafter, a meeting took place between the Respondent and the claimant on 8-8-2001 wherein the respondent offered and agreed to issue a cheque of Rs. 14,00,000/- (Rupees fourteen Lacs only), within a period of 3 days, to the claimant. However, the Respondent failed to issue the said cheque. On enquiry by the Claimant the officials of the Respondent namely Mr. Kanwar Bhutllli, Managing Director and Mrs. Gaganpreet, Directory Finance, blatantly refused to issue

the aforesaid cheque as promised. Immediately thereafter the. Claimant herein issued a notice dated 14.8.2001 and demanded from the Respondent a sum of Rs.14 lacs, as agreed to between the parties. Despite the receipt of the notice, the Respondent neglected and failed to pay the aforesaid sum of Rs.14 lacs and any other amount as due by it to the Claimant and as such resiled from the verbal understanding entered into between the Claimant and the Respondent on 8.8.2001.”

5. The statement of defence was filed by the petitioner herein and para 15 of the same notes:

“15. The contents of paragraph 15 in so far as they deal with the termination of the Distribution Agreement, the extension of the distributorship by a period of one month and the receipt only of the Claimant's notice dated 14th August 2001 are correct. The rest of the contents of the paragraph under reply are wrong and denied. It is denied that the termination of the Distribution Agreement is illegal or contrary thereto for the reasons alleged or at all. In terms of clause 20 of the Distribution Agreement, the Respondent is entitled to terminate the Distribution Agreement at any time notwithstanding its duration where there is a failure on the part of the claimant to make timely payments to the Respondent for the Tupperware Products and Demonstration Kits supplied by the Respondent to the Claimant thereunder. In view of the claimant having persistently defaulted in making over these payments to the Respondent, the Respondent had no other

option but to terminate the distributorship with effect from 6th August 2001 as and by way of its letter dated 6th July 2001. The termination of the Distribution Agreement is therefore in accordance with law and the Claimant cannot be heard to complain of the same for the reasons alleged or at all. The Respondent thereafter extended the date of termination by one month as a special case by virtue of which the termination came to be effective from 6th September 2001. Upon termination, the claimant was called upon to make over to the Respondent all the sums of money due and payable by her to the Respondent under the Distribution Agreement, the details of which are more fully set out in the counterclaim of the Respondent. The Claimant has however failed and neglected to do so and has instead made certain claims upon the Respondent which are wholly baseless, whimsical, illegal, and untenable and with a view to evading the amounts due and owing by her to the Respondent. The Claimant in partial discharge of the amounts due and owing by her to the Respondent issued cheques which were however returned unpaid.

It is denied that any meeting took place between the Claimant and the Respondent on 8th August 2001 or that the Respondent agreed at this meeting to issue a cheque for Rs. 14,00,000/- in favour of the claimant within the period stated for the reasons alleged or at all. The Respondent did not at any point of time agree to pay any amounts to the claimant. On the other hand it is the Claimant who owes money to the Respondent, the details of which are more fully set out in

the Respondent's counterclaim. In the circumstances, the question of there being any failure or refusal on the part of the Respondent or of any of its representatives to have issued or to issue a cheque for the said amount does not arise at all. It is denied that the Respondent is bound to comply with the demand of tile Claimant's notice dated 14th August, 2001 for the reasons alleged or at all. It is denied that there was any verbal understanding reached between the panics at the meeting of 8th August 200 1 on the aforesaid alleged amount of Rs. 14 ,00,000/- fur the reasons alleged or at all. In the circumstances, the question of there being any neglect or failure on the part of the Respondent to pay this alleged amount to the claimant docs not arise at all. All allegations in this regard are wrong and denied.”

6. Para 15 of the rejoinder to the statement of defence is as follows :

“15. Contents of para 15 of the reply are wrong and denied and those of the corresponding paras of the claim are reaffirmed and reiterated as correct. It is denied that the agreement between the claimant and respondent was terminated on the ground of alleged failure on part of the claimant to make timely payments to the respondents for the Tupperware Products and demonstration kits supplied by respondent or as alleged in para under reply. The allegations contained in para under reply are merely an afterthought and not sustainable and absolutely false. The respondent be put to strict proof of the same. It is denied that in

view of the alleged default ill, making over the payments the respondent, was left with no other option but to terminate the distribution agreement as alleged in para under reply. It is once again denied even at the sake of repetition that the agreement was terminated on account of the alleged nonpayment of the dues or the alleged breach of the distributor agreement. It is once again denied that termination of Distribution Agreement is in accordance with law or that the claimant cannot complain of the same as alleged. It is admitted that letter for extension of the termination period was given to the claimant, however, the claimant refused to accept the said extension. The contents of the aforesaid letter are matter of record. It is denied that the claim of the claimant were wholly baseless, whimsical, illegal, and untenable and with a view to evade the alleged amounts due and alleged owed by her to the respondent. The issuance of cheque are matter of record, however, as the respondent owed huge money to the claimant, which the respondent refused to pay, so the claimant was left with no other option but to stop the payment of the said post-dated cheques issued in favour of respondent under intimation to the respondent. It is reiterated that respondent during the discussions admitted to make part payment of sum of Rs.14,00,000/-. However, for the first time for the reasons best known to respondent, the respondent has denied having discussions on this issue with the claimant. Letter dated 02.08.2002 falsifies the stand taken by the respondent.”

7. The petitioner argued it had never admitted of any meeting dated 08.08.2001 and there being no documentary evidence for the same, the learned arbitrator erred in awarding Rs.14 lakhs to respondent.

8. Only two pertinent issues have been raised before me:-

“ISSUES

a) Whether the Respondent's letter dated 6th July 2001 wrongly illegally terminated Distribution Agreement dated 11th June 1999 as renewed from time to time. If so, its effect?

b) Whether the Respondents agreed to pay Rs. 14 Lakhs as alleged, in para 15 of the Statement of Claims: if so, its effect?

9. Qua issue no. *a)* – the learned arbitrator gave its finding as follows:-

“Notice of termination does not give any reason as to why the Distribution Agreement had been terminated. Although the Respondents had a right to terminate the Agreement without any cause, once it has recently renewed, they could not have terminated it without assigning any reason. As such we are of the opinion that the Distribution Agreement has been illegally terminated despite the fact that the same had been renewed, as the renewal was automatic every year.

We may observe that Clause 20.1 of the Distribution Agreement starts with non-obstante Clause stating that notwithstanding anything to the contrary and elsewhere contained herein the Distribution Agreement

shall be terminable summarily on the election of the Company acting in its sole discretion in any of the following events. This Clause does employ that although the Company has reserved its right to terminate the Agreement, it is clearly mentioned in Clause 20.1 that the 'non-obstante Clause shall override all other Clauses regarding termination mentioned in the Agreement and the Agreement could be terminated only on certain events which are mentioned in Clause 20.1. The provision of Clause 20.3 are contrary to the provision of Clause 20.1 of the Distribution Agreement. In the presence of Clause 20.1 of the Distribution Agreement. Clause 20.3 is ineffective and not enforceable. It is mentioned in the Notice dated 6th July 2001 that, "Company had decided to terminate the Agreement and in accordance with Clause 20.3 of the Agreement is serving her with one month notice which shall commence from the date hereof and the Agreement and the Expenses Agreement shall stand automatically terminated on the expiry of the said notice period".

So in order to terminate the Agreement, the Respondent had to comply with Clause 20.1. Since we have already held that "the Agreement provides that it is automatically renewable up to the period of 3 years, year after year then the Agreement stands renewed and notice does not mention as to which terms and conditions have been breached by the Claimant/Distributor".

The Respondent in their written arguments have referred to the judgment of Hon'ble Delhi High Court in the case of Classic

Motors Ltd. Vs. Maruti Udyog Limited wherein it has been observed that after availing the benefit a person cannot challenge the (termination clause) of the agreement after taking full advantage under the agreement and reaping" the benefit from it. The Respondent had also submitted that since the agreement was entered with a free consent, the plea of economic duress's is also not maintainable but we find that these arguments have no force and the judgment cited by the Ld. Counsel for the Respondent i.e. Classic Motors Ltd., Supra is clearly distinguishable. The Respondents have terminated the agreement which is contrary to the terms and conditions stated in para 20.1 to 20.1.11. Although, the Respondent has pressed that the agreement was terminated" under clause 20.3 but once it has been extended by implication for another year, the Respondent could not have invoked clause 20.3 without any valid reason. So, the Respondents could not have invoked clause 20.3 to terminate the agreement.

(i) The invoking of the clause 20.3 is thus contrary to the mutual extension of the agreement period for another year after the expiry of two years. Since the agreement" itself had provided that the same could be extended to a period of three years.

(ii) Even otherwise, the provisions of clause 20.3 are ex-facie and are one sided and lack mutuality and thus are invalid and ineffective as such the notice of termination of agreement based on clause 20,3 is also bad and totally ineffective."

10. I disagree with this finding of the learned arbitrator. In fact the correct meaning of the word '*elsewhere*' given in *non obstante* clause refers to clauses *other than* clause 20. If this interpretation is not given it would render clause 20.3 redundant which could never be the spirit of the agreement or intention between the parties.

11. The petitioner has thus rightly terminated the agreement per clause 20.3. It was never the term of the agreement viz; if it was extended for one year, the petitioner was to give reasons for its termination. The learned arbitrator ignored the renewal as *per* clause 4 was an automatic renewal and clause 20.3 did not bar termination of the contract under clause 20.3 if the agreement was renewed for a further period. I would rather go with the minority opinion on this issue more specifically noted in its paras No.27 and 28, as below:

27. While referring to the clause 20 of the Agreement relating to provisions for termination of the contract the Ld. Counsel for the claimant has contended that the use of the words 'Notwithstanding anything to the contrary elsewhere contained herein, ', in this particular clause would apply to the clause 20.3, which is contrary to other provisions of clause 20 thus it should be considered as redundant. The contention is without any substance. The words 'notwithstanding anything to the contrary elsewhere contained herein, n in the agreement mean anything contrary considered in any other clauses of the contract and not in the clause 20 itself. Thus, clause 20.3 cannot be struck down.

28. The Ld. Counsel for the claimant has argued that the Distribution Agreement containing the said clause has been entered into two unequal parties, inasmuch as, the respondent is a giant corporation and whereas, the claimant has been a weak housewife and thus, this clause, which is oppressive in nature should be struck down. This argument is of no merit in view of the fact that this claimant had joined the respondent at first as Dealer, then as Manager and must have been aware of the functioning of the respondent and thus was not innocently led into signing a Distributors Agreement. The claimant has enjoyed the benefits of this Agreement for a sufficient long period and preferred to continue with the said agreement containing the said clause without demur. In view of the above discussions, I hold that the termination of the agreement is valid. This issue is decided in favour of the respondent.

12. Qua issue **b)** the learned arbitrator has held the petitioner to be liable to pay Rs.14 lakhs to the respondent in view of a meeting dated 08.08.2001. The tribunal gave the following reasons for such award :

“The Claimant has alleged in her claim 'petition that Respondents had agreed to pay a sum of Rs. 14,00,000/- (Rupees Fourteen Lakhs only), The Claimant immediately after the termination of the Distribution Agreement had approached' the Respondents and told them that termination of Distribution Agreement was absolutely illegal and contrary to the terms and conditions of the Distribution Agreement. Thereafter a meeting had taken place on 08.08.2001 between the Respondents and Claimant wherein the Respondents were alleged

to have offered and agreed to issue a cheque of a sum of Rs. 14,00,000/- (Rupees Fourteen Lakhs only) as damages but the Claimant says that Respondents did not issue any cheque.

The Respondents in their written statement have denied to have agreed to issue a cheque of a sum of Rs. 14,00,000/- (Rupees Fourteen Lakhs only) and on the contrary, the Respondents have pleaded that no such talk had ever taken place. However, the Claimant in her affidavit had categorically stated that on 08.08.2001 in the presence of Shri T.R. Anand, representative of the Claimant, and Director (Finance) Ms. Gagan Preet and Mr. Kanwar Bhutani, Managing Director of the Respondents, the Respondents had offered to issue a cheque of a sum of Rs.14,00,000/- (Rupees Fourteen Lakhs only) but later on they refused to issue a cheque. Thereafter Claimant issued a notice dated 14.08.2001 and demanded from the Respondents a sum of Rs. 14,00,000/- (Rupees Fourteen Lakhs only) but despite the receipt of the notice, the Respondents have neglected and failed to pay aforesaid sum.

When cross-examined the Claimant stated that there was no document so reduced into writing about the promise of making the payment of Rs. 14,00,000/- (Rupees Fourteen Lakhs only). However, it was oral decision taken in the meeting when Claimant met the Respondents on 08.08.2001. The Respondents have even denied that any such meeting had taken place on 08.08.2001. However, the Respondents in their affidavit did not speak about the meeting having taken place. On the other hand, Claimant is quite assertive that on 08.08.2001 meeting did take place in the presence of Shri T.R. Anand, representative of the Claimant, and Director (Finance) Ms. Gagan Preet and Mr. Kanwar Bhutani, Managing Director on behalf of the Respondents wherein they had agreed to pay Rs. 14,00,000/- (Rupees Fourteen Lakhs only) to the Claimant. The statement given by the Claimant has not been effectively cross-examined by the Respondents and her testimony has not been shattered at all. The Respondents have not bothered to produce Ms. Gagan Preet and Mr. Kanwar Bhutani which was essential for the Respondents since the

Claimant has particularly named those two officers who had agreed to pay Rs. 14,00,000/- (Rupees Fourteen Lakhs only). Not producing these two witnesses adverse inference can be drawn against the Respondents regarding the holding of meeting on 08.08.2001, however, it is the case of the Claimant itself that only a meeting had taken place, no written agreement was made regarding payment nor any minutes of the meeting were recorded but we are inclined to hold that the meeting had taken place. Consequently, thereafter the Claimant had issued a notice of demand of Rs. 14,00,000/- (Rupees Fourteen Lakhs only) to the Respondents. But no reply to the notice was given by the Respondent.”

13. The argument of petitioner is the award given by the learned arbitrator is void since is based purely on the fact *the petitioner did not produce its own employees in its evidence to rebut the factum of meeting of 08.08.2001; hence an adverse inference need to be taken against the petitioner* and therefore the award of a sum of Rs.14 lakhs *per se* is based on wrong principles of law. It is argued there is no documentary proof of any expenditure incurred and admittedly no document were ever signed between the parties which could prove meeting between them wherein a sum of Rs.14 lakhs was allegedly settled, hence, the arbitrator could not have awarded the sum. It is alleged the learned arbitrator without looking into evidence and simply on the basis of an adverse inference had awarded a sum of Rs.14 lakhs to the petitioner which *per se* is wrong.

14. The petitioner referred to *Delhi Jal Board v. Dev Raj Kataria & Ors.* 2016 (1) ARBLR 196 (Delhi) wherein it was held:

10. It is however noted that though the claim is based on the expenditure incurred, no documentary proof of expenditure incurred was filed by the respondent No. 1 in the arbitration proceedings. In the opinion of this court, on a mere self serving statement of the contractor's witness, the arbitrator could not have awarded the monetary amount of Rs. 40,000. Howsoever valid the merits of a claim, the same in law cannot be allowed unless the same is substantiated, especially a claim on the basis of expenditure said to have been incurred. The money expended has to be proved by documentary evidence. Therefore, so far as the objection to Claim No. 4 is concerned, the same is allowed by setting aside this Claim No. 4 for a sum of 40,000.

15. And in *Oil and Natural Gas Corporation Ltd. V. Schlumberger Asia Services Ltd.* 2006 (91) DRJ 370 :

70. The minority award has applied correct principles of interpretation of contracts and has Therefore reached the correct conclusions. I may note that the minority award has noted a fact ignored by the majority award, being that the equipment was brought to India with custom declarations that it would be used for execution of certain works and thereafter re-exported. The minority award has correctly noted that the contract in question was in consonance with the obligation of the contractor to take back the equipment to point of origin or if contractor used the equipment elsewhere in India for another contract, he would not be re-exporting the equipment from the shores of this country, meaning thereby the act of demobilization will not be completed.

71. I need not deal with the issue of interest inasmuch as I am holding against the contractor to the very entitlement under the contract.”

16. Further in *Oil and Natural Gas Corporation Ltd. V. Western Geco International Ltd.* (2014) 9 SCC 263 it was held:

“39. No less important is the principle now recognised as a salutary juristic fundamental in administrative law that a decision which is perverse or so irrational that no reasonable person would have arrived at the same will not be sustained in a Court of law. Perversity or irrationality of decisions is tested on the touchstone of Wednesbury’s principle of reasonableness. Decisions that fall short of the standards of reasonableness are open to challenge in a Court of law often in writ jurisdiction of the Superior courts but no less in statutory processes where ever the same are available.”

17. Hence it is argued by the learned counsel for the petitioner the award be set aside.

18. I have heard the arguments. The petitioner qua issue No.2 has challenged the finding of facts. I may here refer to an affidavit filed by the claimant Smt.Veena Walia (page No.134 of documents) wherein at para No.13 (page No.141) she affirms:-

“13.That during the first 6 months period of the aforesaid Agreement commencing from 25th week to 52 week i.e. from 11.06.1999 to 31.12.99, the deponent herein appointed as many as 216 members of Dealers and 18

Managers who worked as a single unit and generated total sales worth Rs.52,23,405/- for the Respondent which is reflected in the statement of account. The Statement of Account is Exhibit C-11.”

19. Further various letters (at page No.181) reveal even after the termination of the contract, the petitioner appreciated the efforts of the respondent in popularizing the product of the petitioner in Northern India. I would here refer to various paras of the affidavit in evidence filed by the respondent viz.:-

“16. That the deponent states that the Distribution Agreement that was initially for a period of 12 months i.e. w.e.f 11.06.99 to 10.06 .2000 was automatically renewed for a further period of 12 months i.e. 11.06.2000 to 10.06.2001 and finally from 11.06.2001 to 10.06.2002. However, in complete violation of the terms, spirit and in breach of the agreement the Respondent, arbitrarily terminated the Distribution Agreement vide its letter dated 06.07.2001. Copy of the said letter is annexed herewith the marked Exhibit C-19.”

20. Paras No.20 and 21 of said affidavit the respondent speaks about the account as under:-

“20. That the deponent states that during the course of its distributorship with the Respondent, the Claimant had appointed 1867 dealers/managers who are now being used at Respondent's instance by other distributors appointed by Respondent. As per the policy in this regard, as set by the

Respondent, the Respondent engaging the services of these dealers and managers, as registered with the other distributor, are liable to pay @ Rs.13,000/- per Dealer/ Manager for the one time Goodwill as attached to/of each of such dealer or the manager. In the present case the Respondent is liable to pay a sum of Rs.2,42,71,000/- for 52 such managers and 1867 dealers as registered with the Claimant and now being engaged by the Respondent and/or other distributors through the Respondent. The list of Manager and dealers is Exhibit C22.

21. That the deponent states that due to the illegal termination of the Agreement, the Respondent is liable to pay damages on account of loss suffered by the Claimant herein. The deponent further states that as per the terms and conditions as contained in clause 4 of the said Agreement, the Respondent should have given the notice of one month in advance from the date of renewal of the said Agreement after the expiry of the said 12 months. However, by omitting to do so, the Respondent herein, in view of clause 4 of the distribution agreement, has made its intention clear to automatically renew and extend this Agreement of Distribution for another period of one year i.e. until 10.06.2002. The deponent states that the Respondent herein vide alleged notice dated July 6, 2001 terminated the Agreement without assigning any reason therein. The deponent states that in view of Clause 4, the Claimant herein was entitled to the notice in the month of May, 2001 of the intention of the Respondent to terminate the Agreement. By not doing so,

the Respondent gave a clear indication that it wanted to extend Agreement for another period of one year. Needless to state the stipulated in the Distribution Agreement automatically extended the Agreement for another period or one year as stipulated in the Distribution Agreement and hereinabove. It is rather stated that before the expiry of the Agreement on 11th June 2000, the Claimant was also asked to accept the Distributorship for Panipat area, which she accepted and also demanded from the Respondent forms and contract numbers. The said letter is Exhibit C 21.

21. The aforesaid paras refer to the termination of the contract; the statement of account Ex.C 11 of the respondent; the number of managers and dealers the respondent had appointed for popularising the product of the petitioner and also she was being appointed as a distributor for Panipat area vide letter Ex. C 21, which is a *dealer application form* issued by the petitioner in favour of the respondent for Panipat. Admittedly prior to 14.07.2001 the petitioner was writing letters of appreciation and suddenly to the shock of the respondent, the petitioner had terminated the contract, thus, could have caused loss of profit to the respondent for which she made various claims. No doubt the petitioner had a right per clause 20.3 above to terminate the agreement without any reason but by extending it for a year and then abruptly cancelling it would certainly have put the respondent to losses in view of her further commitments with her managers

and dealers and hence in such a scenario her settling of accounts with the petitioner company is quite plausible.

22. Now admittedly, the respondent in her affidavit had talked about settlement between the parties in a meeting dated 08.08.2001. There is no cross-examination to this assertion of the respondent in her affidavit viz., qua the meeting dated 08.08.2001 or the person who participated in such meeting. The only question asked by the petitioner in its cross examination qua meeting dated 08.08.2001, as recorded on 14.04.2003 is to the effect “*I have no documents to show that respondent promised to pay Rs.14.00 Lac*”. The meeting for settlement of accounts; as also the oral settlement agreement to an extent of Rs.14.00 Lac was never challenged by the petitioner herein in its cross examination, though admittedly, the respondent also did not allege any written document was ever executed between the parties in the meeting. It appears from the facts, since the respondent had to pay to her various sub-dealers so to end the controversy the respondent agreed to accept to pay a sum of Rs.14.00 Lac in full and final settlement of all her accounts in a meeting with the petitioner, held on 08.08.2001. The evidence of respondent on record with no cross examination by the petitioner on this aspect, led the arbitral tribunal to award an amount of Rs.14.00 lac and this view taken by the learned arbitral tribunal is certainly a plausible view. It is settled law that while considering objections under Section 34 of the Act the Court does not sit in appeal against the award and is not expected to re-appreciate the entire evidence or to re-assess the

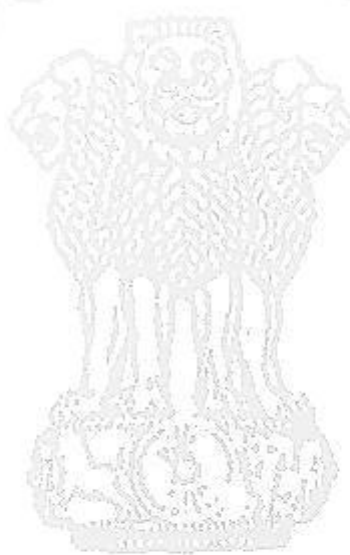
case of the parties. Thus where the learned arbitrator has taken a view on factual finding which appears to be plausible on peculiar facts of the case, this Court would not come in the way to impose its own view. As the view of the learned arbitrator is justified on facts, the award needs no interference. The objections are therefore dismissed.

23. No order as to costs.

YOGESH KHANNA, J

MARCH 09, 2018

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