

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CWP NO. 19354 of 2015(O&M)
DATE OF DECISION : 27.06.2019**

Shilpa Ajwani & Ors.

... Petitioners

versus

U.T. Chandigarh & Ors.

... Respondents

CWP NO. 19355 of 2015

M/s Tupperware India Private Limited

... Petitioner

versus

U.T. Chandigarh & Ors.

... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

**Argued by : Mr. Puneet Bali, Senior Advocate with
Mr. R.P. Sahni, Advocate and
Mr. Sachin Jain, Advocate for
petitioners in CWP No. 19354 of 2015.**

**Mr. Rohit Khanna, Advocate
for petitioner in CWP No. 19355 of 2015.**

**Mr. J.S. Toor, Standing counsel for
U.T. Chandigarh.**

**Mr. Amit Jhanji, Advocate
for the complainant.**

ARUN MONGA, J.

1. It would be trite to quote that a dynamic civil society having Rule of Law requires strong and efficient criminal justice system. Bounden duty of the State is that Rule of Law is guaranteed to every citizen of the country. However, criminal proceedings cannot be instituted/initiated invoking State machinery as a short cut to other civil remedies, which may otherwise be available in law, merely because the

same are not equally efficacious. Neither the criminal proceedings are to be resorted for settling personal civil disputes between the parties nor to get even with an opposite party or for criminal inculcation to satisfy personal grievance. The rampant tendency of invoking State criminal machinery in the disputes arising out of commercial contracts, which are essentially civil in nature, needs to be deprecated.

In this context, the Apex Court in case titled as “**Sheo Nandan Paswan v. State of Bihar and others**” 1987(1) SCC 288 observed thus:

“(...) a criminal proceeding is not a proceeding for vindication of a private grievance but it is a proceeding initiated for the purpose of punishment to the offender in the interest of the society. It is for maintaining stability and orderliness in the society that certain acts are constituted offences and the right is given to any citizen to set the machinery of the criminal law in motion for the purpose of bringing the offender to book.”

2. The petitioners herein seek quashing of FIR No. 245 dated 05.08.2015 registered under Sections 406 and 420 IPC read with Sections 3 and 4 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (for brevity, Act of 1978), at Police Station Sector 31, Chandigarh. As a sequel thereof, quashing of consequential proceedings of investigation by the Economic Offences Wing, Chandigarh has also been sought. I propose to dispose of both the above petitions by this common order.

3. Petitioner in CWP No. 19355 of 2015, namely, Tupperware India Private Limited' (for brevity, the Company) is registered under the Companies Act. It is engaged in the business of manufacturing and selling various products, including design centric preparations, storage and serving solutions for the kitchen and dining through its internationally and domestically known brand “Tupperware”.

4. Parent company of Tupperware India entity is incorporated in United States of America (USA). In 1942, Earl Tupper developed his first bell shaped container; the brand products were introduced to the public in 1948. The worldwide

sales of the products under the brand name 'Tupperware' from 2012 to 2014 were 2.6 billion USD, 2.7 billion USD and 2.6 billion USD, respectively. The Indian entity was set up some time in year 1996 after obtaining various statutory approvals from the Government of India as also from the Reserve Bank of India.

5. Petitioner company subsequently set up a manufacturing unit in State of Uttarakhand sometime in year 2009. For marketing of its products, the company uses a methodology what is called in common parlance “person to person” selling, as the uniqueness of its products and technology, claims the company, requires personal explanation. The company appoints distributors for sale of its products who are assigned their respective sale territories. These distributors in turn create a sales network consisting of Managers and Sale Consultants who are so designated as per the sales turnover undertaken by them. The relationship between the company and its distributors is stated to be on principle to principle basis. It is marketed by means of approximately 1.9 million direct sales people on contract.

6. In CWP No. 19354 of 2015, petitioner Ms. Shilpa Ajwani is the Managing Director, Ms. Vandita Batta is the Director of Finance, Mr. Chandan Deep Singh Dang is the Director of Marketing, Mr. Jaideep Abhichandani is the Regional Sales Head(North) of the Company whereas petitioner No.5 Mr. Michael Lazaro is the Head Emerging Markets.

7. Before proceeding further, it is appropriate to advert to the background of the case and the circumstances under which the dispute has arisen inter se the complainant and the petitioners, though they may be at variance on some of the factual aspect.

8. The impugned FIR dated 05.08.2015 was got registered by Ms. Seema Arya (hereinafter referred to as the complainant), who had earlier served the Company as its Sales Development Manager at Chandigarh from 10.10.2011 to 28.02.2013. The complainant was interested to avail the distribution rights of the

company products for the area of Chandigarh, Panchkula, Mohali, Kharar and Shimla. She entered into a distribution agreement with the Company on 05.03.2013, which was later renewed on 01.07.2013. Since a previous distributor of Company, namely Ms. Remy Kakkar, having distribution rights for the same area, wanted to quit the business, an assignment deed was entered between her and the complainant on 18.08.2013 under which the former transferred her business in favour of the complainant for a goodwill amount of Rs.22,28,409/-. It was followed by execution of a tripartite agreement dated 18.08.2013 *inter se* the complainant, the outgoing distributor and the Company. Certain dispute arose qua payment of money, *inter se* parties, leading to the issuance of legal notice dated 12.06.2015 by the Company seeking invocation of arbitration in terms of Clause 26 of the Renewal Distribution Agreement dated 01.07.2013 (Annexure P-4). Consequently, an Arbitrator has been appointed to adjudicate upon the disputes between the Company and the complainant.

9. The complainant submitted a complaint dated 12.02.2015 Annexure P/12 to the police. On its basis, impugned FIR (Annexure P-24) was registered by name against petitioners No. 1-5 in CWP 19354/2015 and also two non petitioners namely CEO Rickgoing and Ms. Asha Gupta. The investigating officer issued notice under Section 160 Cr.P.C. to CEO Rickgoing, Tupperware Brands Corporation, USA, Ms. Asha Gupta, Group President, Asia Pacific, Tupper Brands(Singapore), Mr. Michael Lazaro, MD, Tupperware Bangladesh Private Ltd., Ms. Shilpa Ajwani, Managing Director, Tupperware India Private Limited (w.e.f. 05.06.2015), Ms. Vandita Batta, CFO, Tupperware India Private Limited, Mr. Chandan Dang, Director Marketing, Tupperware India Private Ltd., Mr. Jaideep Abhichandani, Regional Sales Manager, North Region, Tupperware India Private Limited, Ms. Gagan Anand, Sales Development Manager, North Region, Tupperware India Private Ltd.

The relevant contents of the FIR are reproduced hereunder :

“To

*The Superintendent of Police,
Union Territory, Chandigarh.*

*Subject : Complaint against the Managing Director, Tupperware
India Pvt. Ltd. A 1, Udyog Vihar, Sector 18 Gurgaon, (Hr.).*

Respected Sir,

I was approached by the company representative with an idea to start the business of Tupperware product, which is direct selling from one person to one person and that through open market. This concept was unique and seems to be profitable. Since the product can be sold in the region through me and mine sales force only as the same cannot be sold in an open market as per the company policy.

2. That as per the statement and assurance given by the representative of the company, I was appointed as Distributor by the Tupperware company in view of agreement dated 05.03.2013 for Chandigarh region. In the said agreement it was stated therein that the sale of the Tupperware product will be through direct marketing system and will be operated through distributor appointed by the company and their sales force in accordance with policies. Accordingly I had been informed that I will be appointed for Chandigarh, Panchkula, Mohali, Kharar and Shimla. I had been shown that I will be the only eligible distributor of the area and sale with 45 managers will yield more than 2.5 lac per month. It has also been disclosed that the product can only be sold through direct marketing to a person and not through retail. As per the agreement Clause 7, it was stated that the company will assist the distributor in promoting and marketing of the product. It was also assured that no other person will be allowed to sale the product through retail or directly to the force team. My client on this allurement entered into the agreement.

3. That I took a shop on rent (bigger in size as per the direction of the official) and renovate the same (as per direction by the officials) by taking huge loan.

4. That I have also been directed to enter into a tripartite agreement between the company, outgoing distributor (Mrs. Remy

Kakkar proprietor of M/s Jhimli arty Sales) with regard to facilitate her. I objected to it but then was threatened that contract will be cancelled and no team force will be given. I had already spent a lot of money in the business. Thus under the compelling circumstances, as I have invest a lot of money and thus entered into a settlement. As per the said agreement it was decided that I will pay ₹22,28,409/- as goodwill amount to the outgoing distributor against the transfer of her sale force/distributorship to me. I have been shown that approximately 75 managers are there at the time of interview. But there after while calculating goodwill amount, it was reduced to 35 managers, who were transferred and according to that the said was calculated. It shows that approximately 40 managers were fake. It is relevant to mention herein that I have not even seen the faces of the so called managers, who vanished. It is submitted herein that the said managers were not be actual one rather it was shown to be excessive. The same is proved from the fact that the only first entry was ut by them/their sales force in the sale account and thereafter they vanished because they were the forged one. It is submitted that after two months, only 18 managers left. It clearly shows that I have been defrauded by the outgoing distributor by showing the excessive unit manager in collusion with the company.

5. *That not only this, the outgoing distributor is still doing the business of the present company and she is representing herself to be a distributor of your company. I along with company representative had gone to the office of outgoing distributor in Sector 34, Chandigarh and caught her red handed selling the products on the asking of company's representative. The display board of Tupperware was removed from her office. It clearly shows that she is still into the business and showing her to be a distributor of Tupperware. As per Clause 10 of the agreement, the outgoing distributor is not entitled for goodwill amount as she has violated the terms and conditions of the agreement. I made a complaint against her to the company and their goodwill amount. The company instead of helping me, started threatening me of dire consequences. It clearly shows that the company has played fraud with me by showing me only distributor in the region and the outgoing distributor has resigned and will not be working and for this I am*

paying the goodwill amount.

6. *That not only this the company has promised that the product will be sold through distributor only in the area. But beside sale through outgoing distributor, I came to know that the product is being sold through internet by various companies. It clearly shows that the company has played fraud with me. Not only this the sales force as well as the members made by me are complaining fraud against the company. A copy of the said complaint is attached for your kind consideration.*

7. *That now scenario is that the person including sales force of my client is getting the product of Tupperware at more than 40% discount from the other person to whom the company is supplying the product. The Tupperware product as stated to be not to sell through retail is in fact a misnomer. It is open and everybody can buy the product through internet or through outgoing distributor. This clearly shows that I have been defrauded by the Tupperware company, which has put me into a loss of more than 50 lacs.*

8. *That I called the company to settle the final amount with me on breach of the agreement by the company, but the company has refused and secondly admitting the fraud that the Tupperware item is being sold openly but has stated that nothing can be done against it is not only me rather all the other female members have been defrauded by the company by showing it to be sale through person to person and no retail.*

9. *That a bare perusal of these facts clearly shows that the company has played a fraud upon me by showing me a business of sale of Tupperware through direct to direct person only and not to open market. Whereas the product is being sold openly. Secondly, the company has played a fraud upon me by directing me to give approximately Rs.22 lacs to outgoing distribution for giving the sale force to me and for not selling the product. But the company in collusion with the outgoing distributor to sell the product openly and when I apprised the fact, the company threatened me instead of stopping the goodwill amount of outgoing distributor. Thus the company has played fraud on me by misrepresenting and even threatening me.*

10. *That I have also come to know that the business of company is against the Prize and Chits and Money Circulation Scheme Act, 1978. The same may be investigated. I therefore request you to take legal appropriate action against the company as they have played fraud on me.”*

Pursuant to the above FIR, the investigation was later transferred to Economic Offence Wing, Chandigarh.

10. The petitioners case is that by registering the FIR, their fundamental rights have been violated. The complaint does not disclose any offence and complainant has lodged the police report as an arm-twisting measure to settle a civil dispute by resorting to criminal proceedings, irrespective of the fact that there was arbitration clause in the distributorship agreement entered between the parties and the same was invoked by the Company.

11. In the reply filed by the investigating agency, it is averred that on receipt of the complaint, preliminary enquiries were conducted and after taking legal opinion in the matter, FIR was registered. During investigation it was found that not only the complainant but various other persons were cheated and defrauded by the Company and its Management by presenting illusionary facts and figures concerning sale and man-power. The complainant was misled by assuring her to be the sole distributor of the Chandigarh region and was forced to pay goodwill amount to the outgoing distributor, whereas the latter despite entering into the agreement to quit, continued doing business of the Company representing herself to be the distributor and all this was done by her in connivance with the Company. Not only this, the Company in connivance with different entities permitted the sale of its products online, which resulted in loss to the complainant and wrongful gain to the Company. It is also mentioned that the Company is doing the business by enrolling new members by charging ₹800/- as membership fee/ recruitment kit charges by alluring

that the sale of its products would be on principal to principal basis. Every member has to further make new members under him/ her. Members achieving higher position in pyramid by recruiting more members and higher sale of products are allured with easy and quick money in cash and kind in the form of prizes like televisions, air conditioners etc., whereas, the reality is otherwise. The gullible women fall prey to their evil design and are being cheated firstly, by purchasing the products of the Company at higher rates and then secondly, by being forced to sell the same at loss because the same products are available online at a heavy discount. The Company indulged in this pyramid scheme without taking approval from the competent authority viz., Reserve Bank of India.

It is averred that the Company not only cheated the innocent people but they also violated the instructions/guidelines issued by the Government from time to time concerning their business. According to the investigating agency, a prima facie case for commission of offences under Sections 406, 420 IPC read with Sections 3 and 4 of the Act of 1978 is made out against the petitioners. The matter requires in-depth investigation, which has been put at halt due to non-cooperation of the petitioners. Dismissal of the petitions has thus been sought.

12. In the return filed by the complainant/ respondent, it is admitted that she remained employed with M/s Tupperware as whole time Sales Development Officer at Chandigarh from 10.10.2011 to 28.02.2013; distribution agreement dated 05.03.2013 Annexure P/3 and Distribution Renewal Agreement dated 01.07.2013 Annexure P/4 were entered into between the complainant and the Company; deed of assignment dated 18.08.2013 Annexure P/5 was also executed between the outgoing distributor Ms. Remy Kakkar and the complainant and it was followed by execution of tripartite agreement dated 18.08.2013 Annexure P/6 inter se the complainant, the outgoing distributor Ms. Remy Kakkar and the company.

Per complainant, she was given false assurance of sole distributorship

of the Company, whereas the Company in connivance with other online companies sold its product in the open market at heavy discounts. The intention of the Company, right from the beginning, was to cheat and defraud her. Deliberately, wrong facts and figures were shown only to extract maximum possible good-will amount from the complainant. Even the outgoing distributor, despite having received the goodwill amount, continued running the business showing herself to be the distributor of the Company which disentitled her to claim good-will amount. Still, the Company forced the complainant to pay the goodwill amount.

The action of the Company in selling the products by recruiting members after charging ₹800/- as membership fee, without any approval and alluring them by providing incentive amounts/prizes, is in violation of the provision of Act of 1978. The members are being misled that the sale of the products would be on principal to principal basis, whereas online sale of products was done at heavy discount, which amounts to cheating and causing wrongful loss to the members.

Complainant has also averred that there was no condition of giving of distributorship on non-exclusive basis in the initial agreement dated 05.03.2013 and that the Company got the agreement renewed under coercion, which is evident from the fact that in the renewal agreement it was mentioned in Clause 9.25 that the Company would have full control over sale of the products via internet, whereas the Company forbid the distributors and sales teams from selling the products through internet, which is illegal.

Complainant has alleged that all the petitioners are responsible for day to day affairs of the Company and all of them are vicariously liable for the acts of omission and commission done on behalf of the Company. It is not denied that there was arbitration clause in the agreement between the parties, but it is averred that arbitration proceedings were opted by the petitioners to save themselves from the criminal proceedings. Even otherwise, both the proceedings viz. Criminal and

arbitration, can go on simultaneously and merely because an act has a civil profile is not sufficient to denude it of its criminal outfit. There are specific allegations against the petitioners, substantiated during the investigation, which is going on fairly and in a right direction.

According to the complainant, there is no violation of fundamental rights of the petitioners. The present writ petitions are not maintainable as only one forum i.e. either Article 226 of Constitution of India or Section 482 Cr.P.C. is available to them and not both.

13. I have heard learned Senior counsel for the petitioners as also learned Standing counsel for UT Chandigarh and learned counsel for the complainant and have carefully gone through the respective pleadings as also the documents appended therewith.

14. Opening his arguments, learned Senior counsel for the petitioners would contend that a perusal of the FIR reveals that no criminality is made out against the petitioners, who are even not named in the complaint and merely by mentioning that cheating has been done, does not suffice to attract the penal provisions. According to him, the complainant has failed to show commission of any offence, as the petitioners never cheated or committed any breach of trust. The allegations in the complaint, do not constitute any offence under Sections 406 and 420 IPC. He pointed out that despite no one being named by the complainant in the FIR, the police with *malafide* intention has arraigned the top office bearers of the Company even without knowing their roles and responsibilities.

Learned Senior counsel further contended that while lodging the FIR, the complainant concealed the material facts of her previous employment with the Company prior to taking distributorship. According to him, she was well versed with the business module and functioning of the Company and of her own volition she opted to become distributor of the Company and it was on 'non-exclusive basis'. It

does not now lie in her mouth to stage a volte face and say that she was kept in dark about the business pattern and was thus cheated.

Learned Senior counsel for the petitioners further submitted that the dispute is purely of civil nature, arising out of business transactions and the matter is subjudice before the Arbitrator as per the provisions in the agreement. According to him, shoe is in fact on the other foot and it is a classic case where process of criminal law has been abused by the complainant just to wriggle out of her contractual obligation to pay the goodwill amount and dues of the Company. To generate pressure on the petitioners, she lodged the complaint with the police on false and baseless allegations.

Learned Senior counsel for the petitioners also argued that the complainant has miserably failed to show that there was an entrustment of the property, and if at all such entrustment was there, then also she has to show that there was misappropriation or conversion or disposal of the same for the petitioners' use. Regarding Section 420 IPC, he argued that the essential elements of dishonest inducement to deliver the property, to alter, to destroy the valuable security and the mens rea are amiss in the present set of facts and circumstances. According to him, it is a fit case where this Court should exercise the inherent powers under Article 227 of the Constitution of India read with Section 482 Cr.P.C. to quash the FIR.

15. Per contra, learned Standing counsel for UT Chandigarh sought to justify the registration of FIR and submitted that during investigation cognizable offences are prima facie made out against the petitioners. According to him, the petitioners indulged in cheating and defrauding innocent people. Further investigations are required to be conducted and no case for interference by this Court at the threshold, is made out.

16. Learned counsel for the complainant has submitted that the complaint prima facie discloses the commission of offences under Sections 406, 420 IPC read

with Sections 3 and 4 of the Act of 1978. In support of his submissions, he threadbare traversed and invited my attention to the averments made in the FIR to contend that there are specific allegations against the petitioners, who induced the complainant to become distributor of the Company and caused financial loss to her running in lakhs of rupees and wrongful gain to them. He has further argued that the FIR is not an encyclopedia and the complainant is not required to detail each and every aspect and it is for the investigating agency to unearth the truth.

He has further asserted that this Court cannot assume the role of trial Court to embark upon an enquiry as to the reliability of the material on record. Whether the dispute is of civil nature or not, could be decided only after recording of evidence and the petitioners would have an opportunity to prove their case at the trial. According to learned counsel for the complainant, powers under Section 482 Cr.P.C or Article 227 of the Constitution cannot be exercised to stifle legitimate investigation, at this stage of inception of proceedings. He further propounded that exercise of inherent powers under the provisions *ibid*, is only an exception and not the rule and that the said power has to be used very sparingly, which is not warranted in this case.

17. The first question which arises for determination is whether this Court can exercise its inherent powers to quash the criminal proceedings.

18. Let us have a glance of the law enunciated from time to time, relating to the ambit for exercise of the inherent powers of the High Court under Section 482 of the code read with Articles 226/ 227 of the Constitution to quash the criminal proceedings.

19. Broad guidelines have been postulated by the Apex Court for exercise of the powers under Article 226 and 227 of the Constitution or under Section 482 of the Code in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, AIR 1992 SC 604, which read as under:-

“105. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. Do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so

absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

20. The Apex Court in *M/S. Pepsi Foods Ltd. & Anr v. Special Judicial Magistrate & Ors.*, 1998 AIR (SC) 128, has clearly held that though the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he has to undergo the agony of a criminal trial.

21. Similarly, in *Madhavrao Jiwaji Rao Scindia & Ors. v. Sambhajirao Chandrojirao Angre & Ors.*, 1988 AIR 709, the Apex Court has observed that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be

utilized for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction are bleak and, therefore, no useful purpose would be served by allowing a criminal prosecution to continue, the court may, while taking into consideration the special facts of a particular case also quash the proceedings, even though it may be at a preliminary stage.

22. It is thus clear that this Court has sufficient powers to quash the criminal prosecution if it finds that initiation or continuance of the criminal proceedings amounts to abuse of the process of Court or quashing of the proceedings would otherwise serve the ends of justice, when no offence is disclosed by the complaint. This Court, in a given case, can indubitably exercise its constitutional jurisdiction under Articles 226/ 227 read with the power vested under Section 482 of Code in a given case, as in the case in hand, where violation of fundamental rights as enshrined under Articles 14, 19(1)(g) and 21 of Constitution of India is involved. The very purpose for exercising such power is to avoid agony of undergoing a criminal trial to the concerned persons, especially when the complaint and/ or FIR makes out no case against them or a dispute is of a civil nature.

23. Adverting to the case in hand, it may be noted at the outset that as per the head note (subject) of the complaint Annexure P/12, the complaint was lodged only against the Managing Director, Tupperware India Limited, Gurgaon. However, while registering the FIR Annexure P/24, the concerned police official recorded the following note:

“ Today, a complaint No.20151533 dated 12.02.2015 by Seema Arya wife of Sunil Kumar R/o SCO 47, 1st Floor Sector 47D, Chandigarh against Director/ CEO-Rick Going, CEL Ms. Asha Gupta, Group President-Mr. Michael Lazaro, MD-Ms. Shila Ajwani, Deputy Manager-Ms. Vandita Batta, Director Finance, Mr. Chandan Dang, Director of Marketing, Ms. Jaideep, Senior Development Manager-Ms. Gagan Anand, Sale Development Manager, Tuperware, Udyog Vihar, Sector 18, Gurgaon (Haryana) under section 406,420 IPC and 3,4 and 5 of Chit Fund Money Circulation (Banning) Act has been received in which case No.245/15 under section 406,420 IPC and 3,4 and 5 of Chit Fund Money Circulation (Banning) Act has been

registered in Thana and the original copy and photo copy through police by constable Arinda Nizad i/c EOW Sector 17 is being sent.

13. Action taken: Since the above report reveals commission of offence(s) u/s as mentioned at item No. 2, registered the case and took up the investigation/directed" IC Rank (blank) to take up the investigation/Refused investigation/transferred to P.S.I/C EOW Sector 17 on point of jurisdiction.

FIR read over to the complainant/informant, admitted to be correctly recorded and a copy given to the complainant/informant free of cost.

14. Signature/thumb impression of the complainant/informant.

Date and time of dispatch to the Court.

Signature of officer incharge PS

Name: Mohan Singh

Rank: Sub Inspector

No. 866/CHG."

24. As already noted above, the complainant had lodged the complaint of her grievance only against the Managing Director of Tupperware, Gurgaon. In the complaint, it was nowhere indicated if petitioners No.2-5 in CWP 19354/2015 and the aforesaid two non petitioners namely CEO-Rickgoing and Ms. Asha Gupta had done or omitted to do anything in the developments, dealings and transactions with the complainant, which could give rise to her grievance against them. Police proceedings (reproduced above) recorded while registering the FIR also do not show if any of the petitioners No.2-5 in CWP 19354/2015 and the aforesaid two non petitioners namely CEO-Rickgoing and Ms. Asha Gupta had done or omitted to do anything to warrant registration of the FIR against them. There is thus nothing at all, either in the complaint or the aforesaid proceedings recorded by the police while registering the FIR, to show any role and criminality of the aforesaid other petitioners No.2-5 and the two non-petitioners namely CEO-Rickgoing CEL Ms. Asha Gupta, Group President. Neither is it recorded as to how they were identified and/ or found liable and thus named in the impugned FIR

Annexure P/24 as the accused persons.

25. FIR Annexure P/24 does not even show, if before its registration, the police had held any inquiry and, if yes, on that inquiry, the police found that they were also liable for the offences in question.

26. It is intriguing to note that while the complaint was only against the Managing Director of the Company, yet the police went out of the way and also roped in and registered the FIR by name against petitioners No. 2-5 and the two non-petitioners namely CEO-Rickgoing from USA and CEL from Singapore Ms. Asha Gupta, Group President. That too, without showing on record any material at all, let alone justifiable incriminating material for registering the FIR by name against them. The manner in which petitioners No. 2-5 and the said two non-petitioners namely CEO-Rickgoing, CEL Ms. Asha Gupta, Group President were roped in and named as accused in FIR registered by the police is far from the usual and leaves much to be desired.

27. Settled law seems that mere presence of formal words in the complaint alleging the ingredients of a particular offence, even when such allegations are ex facie unbelievable and unacceptable, would not justify the registration of the FIR on patently unbelievable and unacceptable allegations.

28. Let us now examine whether allegations in the complaint taken at their face value, are believable and acceptable to a reasonably prudent person. If yes, whether the same constitute the offences as defined under Sections 406, 420 IPC and/ or Sections 3 and 4 of the Act of 1978.

29. Admitted facts are that the complainant remained employed as whole time Sales Development Officer with M/s Tupperware at Chandigarh from 10.10.2011 to 28.02.2013; distribution agreement dated 05.03.2013 Annexure P/3 and Distribution Renewal Agreement dated 01.07.2013 Annexure P/4 were executed between the complainant and the Company; deed of assignment dated 18.08.2013

Annexure P/5 was executed between the outgoing distributor Ms. Remy Kakkar and the complainant and it was followed by a tripartite agreement dated 18.08.2013

Annexure P/6 inter se the complainant, the outgoing distributor Ms. Remy Kakkar and the company.

30. Succinctly, the relevant factual allegations in the complaint are that :

(a) It was represented to the complainant that the product could be sold in the region only through her and her sales force and could not be sold in open market as per the company policy.

(b) Complainant was informed that she will be the only eligible distributor of the area; the sale with 45 managers will yield more than 2.5 lacs per month.

(c) It was disclosed that the product can only be sold through direct marketing and not through retail.

(d) Complainant was compelled to enter into tripartite agreement with the outgoing distributor (Remy Kakkar) and the company on threat of cancellation of contract.

(e) Complainant was shown that there were approximately 75 managers at the time of interview but thereafter while calculating the goodwill amount, it was reduced to 35 managers and thus 40 managers were fake.

(f) Outgoing distributor was still representing herself to be a distributor and doing the business in the area in violation of clause 10 of the tripartite agreement.

(g) Complainant came to know that the product was being sold through internet by various companies.

(h) Persons including members of sales force of the complainant, are getting the product at more than 40% discount from other persons, to

whom the company is supplying the product. Any body can buy the product through internet or through outgoing distributor. It has put the complainant to loss of more than Rs. 50 lacs.

In the background of aforesaid allegations, the complainant accused the company of playing fraud on her by showing her a business of sale of Tupperware through direct to direct person only and not in open market. Whereas, the product was/ is being sold openly. Secondly, company has played a fraud on the complainant by directing her to give approximately Rs.22 lacs to outgoing distributor for giving her sales force to the complainant and for not herself selling the product. The company is in collusion with the outgoing distributor to sell the products openly. When apprised of this fact, instead of stopping payment of the goodwill amount to the outgoing distributor, the company threatened the complainant. Complainant also alleges that she came to know that that the business of the company is in violation of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978.

31. Question is whether or not the allegations at (a) to (h) or any of them, are believable and acceptable to a person of ordinary prudence. In my opinion, the answer to this question is in the negative for the following reasons:.

(a) Admittedly, the complainant remained employed with M/s Tupperware as whole time Sales Development Officer at Chandigarh from 10.10.2011 to 28.02.2013. Ms. Remy Kakkar was the distributor for the same area from 2004 till 18.08.2013, when she assigned her distributorship to the complainant vide assignment deed dated 18.08.2013. It is unbelievable that the complainant, having worked as a whole time Sale Development Officer at Chandigarh from 10.10.2011 to 28.02.2013 with M/s Tupperware, would not have known, when she took the distributor ship on 05.03.2013 from the company, that Ms. Remy Kakkar was already working as distributor for the same area. Furthermore, both of them were

simultaneously and independently holding the distributorship of the company for the same area from 05.03.2013 to 18.08.2013. There is not even a whisper in the complaint that the complainant was ignorant of this reality. In the circumstances, the Court is inclined to assume and proceed on the premise that when the complainant took the distributorship on 05.03.2013 from the company, she was well aware of the reality that Ms. Remy Kakkar was already working as distributor for the same area.

(b) Tripartite Agreement dated 18.08.2013 Annexure P/6 contains specific recital (A) that the company had appointed the outgoing distributor as a distributor for its products in terms of a distribution agreement dated 09.12.2004 on a non-exclusive basis. It was during the subsistence of the said distribution agreement dated 09.12.2004 on a non-exclusive basis between the company and Ms. Remy Kakkar that the complainant entered into the distribution agreement dated 05.03.2013 Annexure P/3 with the company for the same distribution area.

(c) While the distributorship of Ms. Remy Kakkar was still continuing, the complainant took the distributorship for the same distribution area from 05.03.2013 vide distribution agreement Annexure P/3. It is unbelievable that during the subsistence of distributorship of Ms. Remy Kakkar on non-exclusive basis till after 05.03.2013 and known to the complainant, the Company would have represented to the complainant that her distributorship would be on an exclusive basis for the same area and would/could have thereby induced the complainant to enter into the distribution agreement dated 05.03.2013.

(d) Distributor's agreement dated 05.03.2013 Annexure P/3 was admittedly executed between the complainant and the company. It is quite an elaborate and formal document running into 28 pages, specifying in detail the terms and conditions agreed upon between the parties. If, as alleged by the complainant, it had been represented to her that the product

could be sold in the region only through her and her sales force and not in open market as per the company policy, such a condition would have definitely been incorporated in the distribution agreement itself, which was/is quite formal in nature and contains elaborate and detailed terms and conditions agreed upon. In fact, to the contrary, as per clause 9.25 of this agreement, the complainant had acknowledged that the national and international nature of the internet requires the company or the related company to assume full control over the promotion and sale of the products via the internet. There is no recital and/or condition- express or implied- in the distribution agreement that it was represented to her that the product could be sold in the region only through her and her sales force and could not be sold in open market as per the company policy. Learned counsel for the respondents could not point out to anything in this document - express or implied- to show if thereby it had been represented to the complainant that the product could be sold in the region only through her and her sales force and by none else and could not be sold in open market as per the company policy.

(e) There is absolutely nothing –express or implied- in the distributor’s agreement Annexure P/3 to show that complainant was informed that she will be the only eligible distributor of the area; the sale with 45 managers will yield more than 2.5 lacs per month or that it was disclosed that the product can only be sold through direct marketing and not through retail.

Any policy of the company has not been produced, whereby the sale of the products in open market was prohibited. All this shows the patent falsehood of the complainant’s allegations in this behalf. Facts and circumstances show that the complainant very well knew, when she entered into the initial distribution agreement, that her distributor ship was on non-exclusive basis.

32. Same and/ or similar is the position qua the allegations that the complainant was informed that she will be the only eligible distributor of the area;

the sale with 45 managers will yield more than 2.5 lacs per month and that it was disclosed that the product can only be sold through direct marketing and not through retail.

33. It cannot, therefore, be said, on the basis of complaint allegations, that it was falsely represented to the complainant that the distributorship was on an exclusive basis, or that the sale with 45 managers will yield more than 2.5 lacs per month or that it was disclosed that the product can only be sold through direct marketing and not through retail. and/or on such representation, she was induced to execute the initial distribution agreement dated 05.03.2013.

34. Thus, in the execution of distribution agreement(Annexure P-3), no offence under section 405 or 420 IPC can be said to have been committed.

35. Coming to the Distribution Renewal Agreement dated 01.07.2013 (Annexure P-4) executed between the complainant and the Company. It recites that upon the expiry of the original distribution agreement, the parties were entering into this Distribution Renewal Agreement and same (shall) stand expired on 30.06.2016. Thus the initial Distribution Agreement dated 05.03.2013 Annexure P/3 remained in force only from 05.03.2013 to 30.06.2013.

36. It is not even alleged in the complaint and not even a single instance has been specified to show that during the period covered by the initial Distribution Agreement Annexure P/3 (from 05.03.2013 to 30.06.2013), the Company had sold the product in the complainant's distribution area in open market or that such sale was in violation of its contract with the complainant. Assuming for a moment, without holding, that there was some implied condition in the initial distribution agreement or there was any oral agreement or representation made to the complainant that the company would not sell the product in the complainant's distribution area in open market and that such sale was in violation of its contract with the complainant, the same being a breach of agreement, would at the

most give rise only to civil consequences and would not attract any criminal liability at all.

37. There is categorical recital in the Distribution Renewal Agreement dated 01.07.2013(Annexure P/4) that the Company had thereby renewed the appointment of the distributor (complainant) on non-exclusive basis and the Company shall have the right to appoint one or more additional distributors within the same distribution area. Further, it provides that the company may sell the products to large accounts for resale to consumers within the distribution area. Thus, it had been specifically agreed vide distribution renewal agreement dated 01.07.2013(Annexure P/4) between the parties thereto that for the period from 01.07.2013, the complainant's distributorship was on non-exclusive basis. In the execution of this distribution renewal agreement dated 01.07.2013 Annexure P/4 also, no offence under section 405 or 420 IPC can be said to have been committed.

38. Next comes the deed of assignment dated 18.08.2013 (Annexure P/5) executed by the outgoing distributor Ms. Remy Kakkar in favour of the complainant. It may be noted here that vide this assignment deed, the parties thereto (the complainant and the outgoing distributor Ms. Remy Kakkar) had fixed and settled the good will amount at Rs. 22,28,409/-. The complainant had obligated herself to pay the same to the assignor (outgoing distributor Ms. Remy Kakkar). There is no role , let alone any criminality, ascribed to the company or any of the petitioners, in its execution.

39. Coming now to the tripartite agreement dated 18.08.2013(Annexure P/6) inter se, the complainant, the outgoing distributor (Ms. Remy Kakkar) and the company entered into on 18.08.2013. Its perusal shows that the deed of assignment by the outgoing distributor Ms. Remy Kakkar in favour of the complainant had already been executed prior to the execution of this tripartite agreement.

40. Recitals A to F and the terms and conditions No. (1) and (10) of the

tripartite agreement dated 18.08.2013 Annexure P/6, which are relevant, are reproduced below:

A. *The company had appointed the Outgoing Distributor as a Distributor for its products in terms of a Distribution Agreement dated 9th December, 2004 (hereinafter referred to as the "Distribution Agreement") on a non-exclusive basis and on the terms and conditions contained therein.*

B. *The Outgoing Distributor has decided to exit from the distributorship of the Company and has after obtaining the consent of the Company, assigned her business/Sales Force to the Successor Distributor/Baby Distributor in terms of a Deed of Assignment dated 18th August, 2013 (hereinafter referred to as the "Deed of Assignment") in favour of the Successor Distributor in consideration of the Successor Distributor having agreed to pay the Goodwill Amount that the Outgoing Distributor would be entitled to receive against transfer of her Sales Force/distributorship to the Successor Distributor.*

C. *The Company has appointed the Successor Distributor as one of the non-executive Distributors of the Company in terms of a Distribution Agreement dated 4th March, 2013 (hereinafter referred to as "the New Distribution Agreement") entered into between the Company and the Successor Distributor on the terms and conditions contained therein.*

D. *The Outgoing Distributor has transferred 35 number of Active Units (Managers along with their respective consultants) of her Sales Force to the Successor Distributor in terms of the Deed of Assignment. As per the policy of the Company and the Distribution Agreement, the Outgoing Distributor is entitled to payment of the Goodwill Amount by the Successor Distributor against transfer of Sales Force/Distributorship by the Outgoing Distributor to the Successor Distributor, subject to and in accordance with the terms agreed between the parties.*

H. *At the request of the Outgoing Distributor and the Successor Distributor, the Company has agreed to act as the facilitator for the payment of the Goodwill Amount by the Successor Distributor to the Outgoing Distributor in the manner agreed between the parties as hereinafter mentioned :*

F. *The parties wish to record their understanding in the manner appearing hereinafter*

NOW THE AGREEMENT WITNESSETH and it is hereby agreed by and between the parties hereto as follows :

1. *The Successor Distributor hereby agrees that she is liable to*

pay an amount of Rs.22,28409/- (Rupees Twenty Two Lacs Twenty Eight Thousand Four Hundred and Nine Only) (hereinafter referred to as the "Goodwill Amount") to the Outgoing Distributor against transfer of her Sales Force/Distributorship to the Successor Distributor in terms of the Deed of Assignment, subject to the terms thereof.

2. Xxx...

10. The Outgoing Distributor agrees and accepts that her entitlement to claim Goodwill Amount is against a fair and effective transfer of her Sales force to the Successor Distributor, and therefore, after termination of and/or effective transfer of her distributorship, the Outgoing Distributor shall not represent herself as a Distributor of the Company, nor shall the Outgoing Distributor deal with products in any manner without prior written consent of the Company. The Outgoing Distributor acknowledges that her indulgence in any marketing of the products after termination of her distributorship, or in unethical activities like poaching members of the Sales Force of the Successor Distributor or of any other Distributor, shall disentitle her from claiming the Goodwill Amount from the Successor Distributor. As such, upon receipt of a communication from the Successor Distributor in writing informing any such unethical activity on part of the Outgoing Distributor, the Company shall discontinue payment of further Goodwill Amount to the Distributor without prejudice to its rights against the Outgoing Distributor otherwise. The Outgoing Distributor shall have no right to claim any outstanding Goodwill Amount or any such amount from the Company whatsoever."

41. As noted above, vide Assignment deed dated 18.08.2013 Annexure P/5, the parties thereto (the complainant and the outgoing distributor Ms. Remy Kakkar) had already agreed upon and determined a sum of Rs. 22,28,409/- as the good will amount, payable by the complainant to the assignor (Ms. Remy Kakkar). The tripartite agreement was executed subsequent to the assignment deed dated 18.08.2013.

The recitals/terms of the tripartite agreement, reproduced above, show

that it was at the request of the outgoing distributor and the complainant that the company had agreed only to act as the facilitator for the payment of goodwill amount already fixed/determined by and between the complainant to the outgoing distributor. Of course, this tripartite agreement provides that “ upon receipt of a communication from the successor distributor in writing informing any such unethical activity on the part of the outgoing distributor, the company shall discontinue payment of further goodwill amount to the distributor without prejudice to its (Company’s) rights against the outgoing distributor otherwise. The outgoing distributor shall have no right to claim any outstanding goodwill amount or any such amount from the company whatsoever.”

43. In relevant para 4 of the complaint (incorporated in FIR), the complainant has alleged as under:

“ I had been shown that approximately 75 managers are there at the time of interview. But thereafter, while calculating the goodwill amount, it was reduced to 35 managers, who were transferred and according to that the said (sic goodwill amount of Rs. 22,28,409/-) was calculated. It shows that 40 managers were fake. It is relevant to mention herein that I have not even seen the faces of the so called managers, who vanished. It is submitted herein the said managers were not actual one rather it was shown to be excessive. The same is proved from the fact that only first entry was put by them/their sale force in the sale account and thereafter they vanished because they were the forged one. It submitted that after two months only 18 managers left. It shows that I have been defrauded by the outgoing distributor by showing the excessive unit managers in collusion with the company. ”

Perusal of record as above shows that firstly, vide Assignment deed dated 18.08.2013 (Annexure P/5), the parties thereto (the complainant and the outgoing distributor Ms. Remy Kakkar) had already fixed the good will amount at ₹22,28,409/- payable by the complainant to the assignor (outgoing distributor Ms.

Remy Kakkar). This being the situation, the company and/or the petitioners had no role to play or occasion to project the wrong number of the managers/work force for fixation of the goodwill amount. It follows that the petitioners cannot be made liable for colluding with the assignor in defrauding the complainant of the goodwill amount. Secondly; the complaint itself shows that the first entry was put by the managers/their sale force in the sale account after the commencement of the complainant's distributorship. Obviously, the concerned managers and their sale force were actually in position at the commencement of the complainant's distributorship and even subsequently, when they put their the first entries in the sale account after the commencement of the complainant's distributorship. Merely because, later on some of them discontinued the work, it does not mean that they were not in position at the commencement of the complainant's distributorship. Thirdly; as per complainant's own allegations, qua the number of the managers/sales force, it was the outgoing distributor (Ms. Remy Kakkar) who had defrauded her. The complaint does not show what role, if any, was played by the petitioners in showing the allegedly wrong number of the managers/ work force. It also does not disclose any facts and circumstances to show how the company and/or the petitioners had colluded with the outgoing distributor to defraud her of the goodwill amount.

44. Even tripartite agreement dated 18.08.2013(Annexure P/6) clearly shows that it was executed only to facilitate the compliance of the assignment agreement, already executed between the complainant and the outgoing distributor Ms. Remy Kakkar. The role of the company was only to act as a facilitator. In this situation, the allegation that the complainant was compelled to enter into tripartite agreement with the outgoing distributor (Remy Kakkar) and the company on threat of cancellation of contract, is patently absurd and unacceptable, to say the least.

45. The goodwill amount, in terms of the assignment deed, was payable

by the complainant to the assignor, of course through the company. The relevant allegations in the complaint are that the company had defrauded the complainant in collusion with the assignor. Criminality cannot be attributed to the petitioners, merely because on the basis of tripartite agreement, the Company performed its obligation of receiving the good will amount from the complainant in trust and it discharged that trust by paying the same further to the assignor. Ex facie, there is absolutely no warrant for attributing criminality to the petitioners for the same.

It is not even the case of complainant that any contractual amount thus entrusted to the company and/or the petitioners was not actually passed on by them to the assignor. In the absence of an allegation to that effect, which is the essential element for offence under section 406 IPC, the registration of an FIR against the petitioners for the said offence was/is wholly unwarranted.

46. It is nowhere alleged in the complaint dated 12.02.2015 (Annexure P/12) that the complainant had ever sent a communication to the company in writing informing it of any unethical or prohibited activity on the part of the outgoing distributor. This being the situation, the complainant cannot invoke the clause of obligation of the company or of the petitioners herein, for discontinuing payment of further goodwill amount to the outgoing distributor or make any grievance against them on this score.

47. Even if assumed for sake of arguments, that the complainant had sent any written communication to the company and/or the petitioners complaining of any breach of the terms and conditions of the assignment deed on the part of the assignor sufficient to oblige the company/petitioners to discontinue /withhold any further payment of good will amount to the assignor and they (the company/petitioners) failed to perform that obligation, even then the same, at best, would give rise only to civil consequences and not attract any criminal liability.

48. Section 406 IPC deals with criminal breach of trust. A careful reading thereof shows that a criminal breach of trust involves the following ingredients:

- (a) a person should have been entrusted with property, or entrusted with dominion over property;*
- (b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so;*
- (c) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.*

49. For attracting Section 406 IPC, the sine qua non is the initial entrustment of the property with the free consent of the prosecutor. The essential ingredients to constitute a criminal breach of trust are:

- (i) entrusting a person with property or with any dominion over property,*
- (ii) that person entrusted*
 - (a) dishonestly misappropriating or converting that property to his own use; or*
 - (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.*

A trust implies confidence placed by one man in another. It implies necessarily that the confidence was freely given and there is a true consent. There is no true consent, if confidence is obtained as a result of a trick. Hence, a person cannot be said to be 'entrusted' with property when he obtains possession thereof by means of a trick or cheating. The word 'entrusted' when used with respect to money means that the money has been transferred to the accused in circumstances which show that notwithstanding the delivery to the accused, the property in it continues to vest in the prosecutor and the money remains in the possession or control of the accused as a

bailee, to be restored to the bailor or applied in accordance with his instructions.

50. Essential ingredients of the offence of cheating under Section 420 of IPC are:

(i) there should be fraudulent or dishonest inducement of a person by deceiving him,

(ii) (a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property;

or

(b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived;

and

(iii) in cases covered by, (ii)(b) the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

51. Thus, for applicability of the offence u/s 420 IPC, *ibid* the inception itself the possession of property is obtained by the accused by deception and trick on the complainant/ prosecutor. For this, to be noted, there can be and is no question of free consent from the prosecutor/ complainant/ aggrieved.

52. On the other hand, in criminal breach of trust, in the first instance, the property is lawfully acquired or acquired with the consent of the owner. But thereafter, it is dishonestly misappropriated by the person, to whom it is entrusted. In case of criminal breach of trust as contemplated/ punishable u/s 406 IPC, at the time of entrustment possession of the property, a free and informed consent flows from the aggrieved/ prosecutor. There is no element of dishonesty at the time of taking its possession. As against this, in case of the offence under section 420 IPC, the element of dishonesty at the inception itself is the *sine qua non* whereby, the aggrieved/ prosecutor is induced to deliver possession of the property. Cheating, therefore,

means that in the first instance itself, the accused by deceiving person fraudulently or dishonestly, induces the person deceived to deliver any property or make him do or make him omit anything/ something which he would not do or omit, if he were not so deceived.

53. Hence, there is a fundamental inconsistency between the offences under Sections 406 and 420 IPC . On the same set of facts, the offences under section 406 and 420 IPC cannot stand together, being the anti-thesis of each other.

54. As regards the offences under the Prize Chits and Money Circulation Scheme (Banning) Act, 1978, the only allegations in the complaint Annexure P/12 (as incorporated in the FIR Annexure P/24) are as under:

“ That I have also come to know that the business of the Company is against the the Prize Chits and Money Circulation Scheme (Banning) Act, 1978”.

55. The ‘money circulation scheme’ and ‘prize chit’ are defined in the 1978 Act as under:

“2. Definitions.

Xxx (c) “money circulation scheme” means any scheme, by whatever name called, for the making of quick or easy money, or for the receipt of any money or valuable thing as the consideration for a promise to pay money, on any event or contingency relative or applicable to the enrolment of members into the scheme, whether or not such money or thing is derived from the entrance money of the members of such scheme or periodical subscriptions;

(e) “prize chit” includes any transaction or arrangement by whatever name called under which a person collects whether as a promoter, foreman, agent or in any other capacity, monies in one lump sum or in installments by way of contributions or subscriptions or by sale of units, certificates or other instruments or in any other manner or as membership fees or admission fees or service charges to or in respect of any savings, mutual benefit, thrift or any other scheme or arrangement by whatever name called, and utilizes the monies so collected or any part thereof or the income accruing from investment or other use of such monies for all or any of the following purposes; namely:- Xxx”

56. Section 3 of the 1978 Act, *inter alia*, provides that that no person shall promote or conduct any prize chit or money circulation scheme and Section 4 is the

relevant penal provisions for violation of this prohibition.

57. The business module of the petitioners is well explained in the brochures placed on record by the parties. The case of the petitioners is that by enrolling members, which amount to fraction of its turnover(about 2%) and by indulging in a direct sale model, it has not offended any provision of the 1978 Act.

58. What is a direct sale model? Multi-level marketing, also known as Network marketing/ direct selling/ social selling/ referral marketing, is stated to be an alternate form of distributing products and services. Instead of using the traditional distribution channel, the Multi-level Marketing companies sell their products and services directly to consumers using word of mouth and/ or referrals from existing consumers. For this reason, it is called direct selling. In this form of marketing, customer/ consumer is given an opportunity to become a distributor and earn retail commission for the sales generated by the referrals. The customers might like the products/ services and decide to become distributors. When distributors referred by a consumer refer other customers, they earn retail commission/ team commission or group commission according to the total sales generated by the network of distributors.

Likewise, every multi-level marketing distributor can earn retail commission for the sales generated by personal referrals and team commission for the sales generated by multiple levels of distributors in their network. In the scenario, it cannot be held that a distributor is paid only to recruit people, whereas he is paid depending on the total sales volume generated by the entire team. It is a sort of sales promotion reward by the companies to their consumers turned distributors for their word of mouth advertisement effort, perhaps to save money on traditional advertisement.

59. There is an inherent distinction between multi-level marketing companies and pyramid schemes. If a business plan focuses on rewarding

participants for recruitment only, rather than for selling products/ services to the end customers, and makes money from things other than selling products, then it may be illegal. On the other hand, legitimate direct selling companies do not require large upfront investment or buying a large quantity of inventory and the services provided by them are legitimate one. Companies like Amazon, Flipkart and eBay etc. are the examples of direct selling modules. Since these were not traditional marketing modules world-wise, there is/ was certain confusion in relation to channelizing of multi level marketing/ network marketing etc. Multi level marketing being uncharted territory in India, an advisory was issued by the Government of India to the States and Union Territories by the Ministry of Consumer Affairs, Food and Public Distribution vide notification dated 26.10.2016, which envisages the principles to be considered for regulating the business of direct selling and multi-level marketing(MLM) and strengthening the existing regulatory mechanism on direct selling and multi-level marketing in order to prevent commission of any fraud and protect the legitimate right and interests of consumers. In the said advisory, network of direct selling and Pyramid schemes has been defined as below:-

“5. Network of Direct Selling-means a network of direct sellers at different levels of distribution, who may recruit or introduce or sponsor further levels of direct sellers, who they then support.

Explanation:- “network of direct selling” shall means any system of distribution or marketing adopted by a direct selling entity to undertake direct selling business and shall include the multi-level marketing method of distribution.”

6 to 10 XXXX

“11. “Pyramid Scheme” means: A multi layered network of subscribers to a scheme formed by subscribers enrolling one or more subscribers in order to receive any benefit, directly or indirectly, as a result of enrolment, action or performance of additional subscribers to the scheme. The subscribers enrolling further subscriber(s) occupy higher position and the enrolled subscriber(s) lower position, thus, with successive enrolments, they form multi-layered network of subscribers.

Provided that the above definition of a “Pyramid Scheme”

shall not apply to a multi layered network of subscribers to a scheme formed by a Direct Selling Entity, which consists of subscribers enrolling one or more subscribers in order to receive any benefit, directly or indirectly, where the benefit is as a result of sale of goods or services by subscribers and the scheme/financial arrangement complies with all of the following:

a) It has no provision that a Direct Seller will receive remuneration or incentives for the recruitment / enrolment of new participants.

b) It does not require a participant to purchase goods or services:

i. for an amount that exceeds an amount for which such goods or services can be expected to be sold or resold to consumers;

ii. for a quantity of goods or services that exceeds an amount that can be expected to be consumed by, or sold or resold to consumers;

c) It does not require a participant to pay any entry/registration fee, cost of sales demonstration equipment and materials or other fees relating to participation;

d) It provides a participant with a written contract describing the “material terms” of participation;

e) It allows or provides for a participant a reasonable cooling-off period to participate or cancel participation in the scheme and receive a refund of any consideration given to participate in the operations;

f) It allows or provides for a buy-back or repurchase policy for “currently marketable” goods or services sold to the participant at the request of the participant at reasonable terms;

g) It establishes a grievance redressal mechanism for consumers, more particularly described in Clause 7 herein.

Explanation 1 – For the purposes of this proviso the term “material terms” shall means buy-back or repurchase policy, cooling-off period, warranty and refund policy.”

A perusal of the above reflects that the network of direct selling and/ or multi-level marketing is not *per se* prohibited as long as the parameters/ safeguards notified by the Government of India have been adhered to.

What emerges out from the above discussion is that the basic principles of multi level marketing should be 'sale' amenable to various provisions of VAT(as it stood then) and GST(as it stands now), which, inter alia, implies that the heart and soul of a multi level marketing or direct selling should be sale of goods.

60. Adverting to the facts of case, it has come on record that the turnover of the Company from the selling of kits, for the last about ten years, is less than 2%of its total turnover. The Company has a manufacturing unit and it is amenable to GST(VAT earlier). It is neither a fly-by-night operator nor its whole sole agenda is to give loans or circulate money. Company which sells its products by multi level marketing or direct selling or even traditionally selling, always gives incentives to its customers, representatives as well as the staff, sales managers and higher officials. Promotion on the basis of sales made is a well known phenomenon in any industry. The Company herein would sell a start up kit for Rs.800/- containing various commodities and if otherwise purchased from the market, it would be at a much higher price. On purchase of a start up kit, a person would automatically be enrolled as a member. The sale of the start up kit is also against the deduction of VAT/GST, as applicable, meaning thereby that the same is also a sale.

61. In the light of above-mentioned facts, for understanding the true meaning and spirit of the 'money circulation scheme' and 'prize chit', as defined in the 1978 Act, it would be useful to notice the relevant part of the Statement of objects and reasons of the Act *ibid* . For ready reference, the same is reproduced hereunder :-

“The prize chit is really a form of lottery. Its basic feature is that the foreman or promoter who ostensibly charges no commission collects regular subscriptions from the members. Once the member gets the prize, he is very often not required to pay further installments and his name is dropped from further lots. The institutions conducting prize chits are private limited companies with a very low capital base contributed by the promoters, directors or their close relatives. Such schemes confer monetary benefit only on a few members and on the promoter companies. The Group had, therefore, recommended

that prize chits or money circulation schemes, by whatever name called, should be totally banned in the larger interests of the public and suitable legislative measures should be undertaken for the purpose.”

A perusal of the above shows that the basic object of the 1978 Act is/ was to cover prize chits, which would cover any kind of arrangement under which moneys are collected by way of subscriptions, contributions etc. and prizes, gifts etc. are awarded, which is really a form of lottery. By legislating the 1978 Act, the Government, therefore, wanted to ban prize chits and money circulation schemes.

62. Section 2(a) of the 1978 Act, which defines “Conventional Chit”, which means a transaction whether called chit, chit fund, kuri or by any other name by or under which a person responsible for the conduct of the chit enters into an agreement with a specified number of persons that every one of them shall subscribe a certain sum of money by way of periodical installments and how the subscriber then be entitled to a prize amount. Section 2(c) of the 1978 Act thus defines money circulation scheme for the purpose of making quick or easy money, or for the receipt of any money or valuable thing as the consideration for a promise to pay money etc.

63. Section 3 of the 1978 Act mandates that no person shall promote or conduct any prize chit or money circulation scheme or enroll as a member to any such chit or scheme, or participate in it otherwise, or receive or remit any money in pursuance of such chit or scheme.

Section 6 of the 1978 Act relates to offence under this Act and, inter alia, provides that if an act is committed by a Company, every person, who, at the time the offence was committed, was in charge of and was responsible for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

A bare reading of the aforesaid provisions of the 1978 Act would clearly indicate that once the entire turnover of the

company is dependent upon sales (out of which less than 2% is based upon sale of start up kits), by no stretch of imagination, could the company be held allegedly liable for violating the provisions of the 1978 Act. If sale incentives, selling of a start up kit, sales promotion, would become an offence under the 1978 Act, then any sale whether direct, indirect, by retail, discount scheme, enrolment for credit cards, travel holidays etc. would become an offence within the law of the land. The provisions of the 1978 Act were purely to curtail the illegal lotteries and investment of persons in a money circulation scheme for a promotion to be made in future without any product etc. actually being sold to them.

At this stage, it is relevant and pertinent to mention here that the same/ similar module of marketing/ sales is followed by the petitioner Company in the other countries globally viz. United States, Malaysia, Korea, Australia, New Zealand, Brazil, Mexico, Columbia, Poland, Morocco, France, Bulgaria, Iberia, Turkey, Germany, Austria, Slovakia, Czech Republic, Latvia, Netherlands, Belgium, Italy, Russia, Egypt, Lebanon and Tunisia.

64. Admittedly, the complainant remained employed whole time as the Sales Development Officer from 10.10.2011 to 28.02.2013 with M/s Tupperware. While lodging the FIR the complainant concealed the factum of her previous employment with the Company. By resigning from that post, she took and had been running the distributor ship of the company from 05.03.2013. Throughout this period from 10.10.2011, till the termination of her distributorship by the company vide one month's termination notice dated 24.08.2015 Annexure P/22, effective from 23.09.2015, she herself had also been promoting, participating in and running the same business on the same pattern. Upto the lodging of the complaint Annexure P/12 dated 12.02.2015 with the police, the complainant did not make any grievance to the effect that the company/petitioners had been/were doing their business in violation of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 or any other law. Obviously, she did not find any thing wrong or

unlawful in the business pattern of the company till 12.02.2015. It is surprising that she found nothing wrong or unlawful by herself promoting , carrying out and participating in the same business on the same pattern from 10.10.2011 to 23.09.2015, but while filing the complaint dated 12.02.2015, she suddenly found that business of the company was unlawful and prohibited by the Prize Chits and Money Circulation Scheme (Banning) Act, 1978. Own conduct of the complainant/ respondent No. 3 is incompatible and inconsistent with her allegations that the business of the petitioners was/is in violation of and constituted offences Sections 3/4 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978.

65. In my opinion, the allegations in the complaint and the FIR , as reproduced in preceding paras above, are too cryptic, vague, non-specific and without any particulars at all, to show even prima facie how the business of the Company is against the Prize Chits and Money Circulation Scheme (Banning) Act, 1978.

66. Apart of complaint/ FIR, the relevant part (preliminary objections para 2) of the reply respondent No. 3(complainant), in answer to the writ petition is as under:

“2. That it has been portrayed that Tupperware India Private Limited is a multinational company running a business of selling kitchen ware products on person to person basis by recruiting members. The working of the company can be explained by giving elaborate chart which is being annexed herewith as Annexure R-3/3. A bare perusal of the chart shows that a person desirous of selling the products of the petitioner company shall start by becoming a consultant by purchasing a joining kit amounting to Rs.800/-. A bare perusal of the mail dated 18.08.2014 is annexed herewith as Annexure R-3/4. If the person gets deactivated, then she has to again buy a membership by purchasing Reactivation Kit. A bare perusal of the mail dated 04.07.2013 is annexed herewith as Annexure R-3/5. Moreover, the company is also alluring the female

members to achieve white goods like LCD, AC, Fridge, Car etc as well as foreign trips on making the members and promotion to the next level is required. A bare perusal of the brochure is annexed herewith as Annexure R-3/6.”

67. There is thus, not even an allegation of any element of speculation or lottery. The reply of respondent No. 3, Annexure R-3/1 to Annexure R-3/4 read with the reply of respondents No. 1-2 show that the Company offers various incentives/gifts at different levels on achieving specified targets. No doubt, as per averments in the respondents' pleadings filed in this Court, a person desirous of selling the products of the company has to become a consultant on purchase of a joining kit for Rs. 800/- and in the event of its de-activation/termination, the person concerned has the option of its re-activation by purchase of a reactivation kit for Rs. 160/-.

68. It is obvious that this is being done by the company for promoting sale of its products and expansion of business and the Company offers various incentives/gifts at different levels on achieving specified targets. This pattern of business, in my opinion, is to encourage performance, promote efficiency and discourage complacency and expand the business, which is for the common benefit of all participants in the business. It has no element of speculation like lottery. This pattern of business, to my mind, does not come within the ambit of “money circulation scheme” or “prize chit” as defined in section 2 of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978.

69. That in similar circumstances, in CRM-M No. 32862 of 2016, titled as **Vasant Raj Pandit Vs. The State of UT Chandigarh**, this Court has been pleased to quash the FIR registered under 1978 Act read with Section 420 IPC. The allegation against the petitioner therein was that he was the Sole Proprietor of M/s Frontier Traders and Distributor of Japan Life and Marketing and a plan was

launched by prescribing enrollment of three members against commission of 10% of the sale value of the product directly sold by him, with the increase in the number of enrollment o members, the percentage of commission goes higher and higher attracting more customers and therefore, this is a scheme for making quick or easy money under the plan of the Company. The argument raised in the above-mentioned petition was for direct sale of goods and services rendered was by direct selling, the Company does not fall within the definition of 1978 Act. This Court while referring to the 1978 Act coupled with the letter dated 23.05.2002 issued by the Government of India, Ministry of Consumer Affairs, Food, Public Distribution, Consumer Affairs Department, concluded that the above-mentioned marketing module does not offend the 1978 Act. It was also held that once a Company is respectfully doing its business by paying Sales Tax, Income Tax, Invoice-cum-Delivery challan etc. and shows transparency of the business and legitimate conduct of the petitioner, even no offence can be attributed to it. The activities undertaken by the petitioner are business and commercial activities and do not fall within a money circulation scheme as defined in Section 2(c) of the Act. This Court further held that giving monetary benefits by joining new Distributors for selling qualitative products in the market and giving incentives on that basis, cannot be called a money circulation scheme. The case of the petitioners herein is para materia and identical to the case of Vasant Raj(supra).

70. In an identical case titled/ reported as **Naresh Balasubramaniam Vs. State of Karnataka & Anr. 2017 SCC Online Kar 843**, the FIR was quashed by Karnataka High Court. I am in respectful agreement with the reasoning given by learned Brother Anand Byrareddy, J. The case of the petitioner is squarely covered with the aforesaid decision. Relevant of the judgment is as below:-

“4. On a consideration of the material produced and the rival contentions, it is seen that it is neither the case of the de facto complainant nor the police

that the petitioner had committed any overt act in inducing the complainant from parting with any money or that he had influenced her in doing so, but the petitioner appears to be included in the Charge sheet only on account of the fact that he is said to be a Managing consultant of M/s Q-Net India. It is not indicated that M/s Q-Net has a presence in India other than through M/s Vihaan Direct Selling (India) Private Limited. It is not shown that the petitioner is associated with the latter. This circumstance alone would render the proceedings initiated against the petitioner bad in law. He is shown to be a resident of Malaysia in the Charge sheet, that is yet another factor that would dilute the case against the petitioner.

Secondly, the complaint is only as regards the complainant being disillusioned about the business and not having received any benefit for money she may have parted with. This could at best be a civil dispute or at the worst a cause of cheating by the person or persons who have received the same. It is nobody's case that the petitioner has received any money.

Thirdly, the petitioner is sought to be prosecuted as an officer of the main company M/s Q-Net, which is said to be engaged in multi-level marketing or direct marketing. The police appear to proceed on the basis that the activities of a multi-level marketing company is illegal and arbitrary. There is a suspicion created about the business in some circles while there are others who vouch for it as a sound business model. The doubts and strong words employed by the Bombay High court in denigrating the business itself, is a case in point.

As contended by the counsel for the petitioner and as seen from abundant material produced before this court it is evident that 'Direct Selling' has emerged as a global industry. A report prepared by the Federation of Indian Chambers of Commerce and Industry discloses that direct selling and multi-level marketing in India is estimated to be to the tune of several hundred crores of rupees. And that it has emerged as an independent industry. It is also expressed therein that direct selling and multi-level marketing are forms of economic activity that could play a very important role in a country like India, as it envisages low transactional cost mechanisms for sale of consumer products without the need for large marketing infrastructure.

In consideration of the fact that direct selling and multilevel marketing are important industry verticals, the Government of India has issued an

Advisory to the State Governments and Union Territories, which contain 'Model Framework for Guidelines on Direct Selling'. The model guidelines clearly indicate that multi-layered network of subscribers to a scheme formed by a direct selling company, which consists of subscribers enrolling one or more further subscribers in order to receive any benefit, directly or indirectly, where the benefit is, as a result of sale of goods or services for such subscribers, is not illegal.

Material of unimpeachable character pertaining to the activities of QNet have been produced before court. A perusal of the material and the charge sheet averments prima facie indicate that the activities of QNet and Vihan i.e., the multilevel marketing companies, do not constitute offences under the Prize Chits and Money Circulation Schemes (Banning) Act, 1978. the activities of the company do not fall within the definition of 'Money Circulation Scheme' under [Section 2\(c\)](#) of the Act, nor does it fall within the definition of 'Prize chit' under [Section 2\(e\)](#) of the Act. When the activities of these companies do not constitute either Money Circulation Scheme or Prize Chit, the offences under [Sections 4 and 5](#) of the Act, do not even remotely apply to such activities and consequently charging the accused for such offences is unsustainable.

The reports of FICCI also specify that the absence of a clear legislation and regulatory framework for multilevel marketing companies, have led to severe problems for such companies operating in the country. The present case clearly demonstrates that fact. Legislation such as the Prize Chits and Money Circulation Schemes (Banning) Act, 1978, which do not even remotely apply to the activities of multilevel marketing companies, are applied by the investigating authorities leading to disastrous results”

71. In the case of **State of West Bengal Vs. Swapan Kumar Guha**, reported as 1982(1) SCC 561, the Hon'ble Apex Court quashed the FIR, inter alia, on the ground that the FIR did not allege directly or indirectly that the firm was promoting or conducting a Scheme for making quick or easy money. It was further held that an FIR which does not allege or disclose that the essential requirement of penal provisions are prima facie satisfied cannot form the foundation or constitute the starting point of a lawful investigation.

In the case in hand, in the last paragraph of the complaint, the complainant has mentioned that the Company is violating the provisions of 1978 Act. Except for the above-mentioned isolated line/ assertion, no allegation is mentioned as to how there is violation of provisions of 1978 Act and in the considered opinion of the Court, the same cannot form the foundation or constitute the starting point of a lawful investigation.

The Apex Court while interpreting the provision of Section 2(c) of the 1978 Act has held that it is not a one ingredient in Section 2(c) of the Act, which makes an offence, but one has to look perforce to the adjectival clause which qualifies the word “for making of quick or easy money.” Therefore, two conditions must be satisfied before a person can be held guilty of an offence under Section 4 read with Section 3 & 2(c) of the Act. Firstly, it must be proved that he is promoting or conducting a scheme for making of quick or easy money and secondly, the charge of opportunity of making quick or easy money must be shown to depend upon an event or contingency relative or applicable to the enrollment of members into that scheme, which are totally lacking in the case in hand.

72. In **Lalita Kumari Vs. Government of Uttar Pradesh**, 2014(2) SCC 1 Hon'ble the Supreme Court has held that once a complaint is made to the concerned police officer and a preliminary enquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the general diary entry.

The entire purpose of laying down the law by the Apex Court is that if an Investigating Officer does not find any material to hold that a complaint discloses a cognizable offence, he would hold a preliminary enquiry in commercial matters. In the present case, it is apparent that the Investigating Officer did not find any credence in the complaint at the first blush and therefore, wanted to hold a preliminary enquiry. As noted above, there is variance in the complaint and the

registration of the FIR as well as the affidavit filed by respondent No.2. The Chairman and Chief Executive Officer of Tupperware Brands Corporation, USA never stepped his foot in India and surprisingly he has been arraigned as a accused despite the fact that Tupperware India Pvt. Ltd, a subsidiary company and Tupperware Brands Corporation, USA are different entities. How his name figured in the FIR is an unknown fact. Another accused named in the FIR, Ms. Asha Gupta was Managing Director of Tupperware India Private Limited and it is nobody's assertion that the complainant had any interaction with her in relation to her being appointed as a Director. Still she has been roped in the case. It has also been brought during the arguments that Mr. Chandan Dang, Ms. Vandita Bhatta, Mr. Jaideep, Mr. Abhichandani and Mr. Michael Lazaro are no longer working with the Company. They have had tough times in relation to explaining their position being arraigned as accused in the present case, in the society or for the purpose of their employment etc. The casual approach of the Investigating Officer in roping in the petitioners in the FIR without even there being any averment against them or having found anything in relation to their role, smacks of total illegality. The economic policy of India is to invite big foreign companies to come and invest in India and FIR like this becomes a great deterrent in the economic development of the country. It may be borne in mind that Government of India has set up a special autonomous organization "Invest India" to take initiatives of promoting foreign investment. Similarly, to promote manufacturing and indigenous products it has set up "Make in India" and likewise for entrepreneurs "Start up India. The State ought to use extra caution before initiating criminal proceedings against global conglomerates/ foreign investors in India to avoid a cascading and ripple effect on the general economy of country. For any such action, conveys wrong message in Business/Industry circles and is fraught with perils of jeopardizing government initiatives and dissuades foreign investors to set up Business/Industry/Investment in India for fear of frivolous civil and/ or

criminal litigation without accountability.

73. It is apt to mention here that after registration of the present FIR, the bank accounts of the company were also seized and are till date frozen despite the fact that the Company is not an accused in the present case.

74. Section 6 of the 1978 Act prescribes offences by the Companies and the same reads as under:-

“Offences by companies – (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officers of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation – For the purpose of this section – (a) “company” means any body corporate and includes a firm or other association of individuals; and (b) “director” in relation to a firm, means a partner in the firm.”

75. The provisions of Section 6 of the 1978 Act would have applied only in case the Company was an accused, which is not the position in the case in hand.

The complaint is only in the name of Company, whereas in the FIR the petitioners have been roped in. There is no applicability of Section 6 of 1978 Act and no vicarious liability can be fastened upon the petitioners unless and until the Company itself was an accused in the FIR.

76. There is another aspect of the matter. Clause 29.1 of the Distribution Renewal Agreement clearly provides reference of dispute to arbitrator and the same reads as under:-

“29.1 All disputes, differences and questions of any nature which at any time arise between the Parties to this Agreement or their respective representatives and assigns or any of them out of the construction of or concerning anything contained in or arising out of this Agreement or as to the rights, duties or liabilities under it of the Parties to it respectively or their respective representatives shall be referred to the Sole Arbitrator under the Arbitration and Conciliation Act, 1996. The Sole Arbitrator shall be appointed by the Managing Director of the Company. The Arbitration proceedings shall be held at New Delhi, India.”

77. It was a case where both the parties are alleging violation of terms and conditions of agreement entered between them and are claiming dues from each other, for which the arbitration clause has already been invoked by the petitioners and admittedly the arbitrator is seized of the matter. The Company has already terminated the distributorship of the complainant. The continuance of criminal proceedings against the petitioners is sheer abuse of process of law. I am satisfied that the dispute between the parties was/is of civil nature and it would be highly unjust if the criminal proceedings are allowed to continue and the petitioners are made to undergo the agony of trial which may take a number of years to end.

78. In the light of above discussion, I am of the opinion that the registration of impugned FIR against the petitioners is wholly unwarranted and an abuse of the process of law and that the continuance of its investigation would

mean undue further harassment to the petitioners. Accordingly, both these petitions are allowed and the FIR No. 245 dated 05.08.2015 registered under Sections 406 and 420 IPC read with Sections 3 and 4 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 at Police Station Sector 31, Chandigarh and the consequential proceedings of investigation are quashed,

(ARUN MONGA)
JUDGE

June 27, 2019

shalini/Jiten

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| 1. | Whether speaking/ reasoned: | Yes/ No |
| 2. | Whether reportable: | Yes/ No |