IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 23RD DAY OF DECEMBER 2020

THE HON'BLE MS. JUSTICE P.T.ASHA

O.A. Nos.372 to 375, 377 and 378 of 2020
and
A.Nos.1867, 1868 and 1872 of 2020

O.A.Nos.372 and 373 of 2020:

In the matter of :
Section 9 of the Arbitration and Conciliation Act, 1996
&
Disputes arising under Agreement entered between Hyundai Motors India Limited and M/s.Talwar Mobiles Pvt.Ltd. dt 20.05.1999 & 10.4.2006 (Dealership Code S 5201)

M/s.Talwar Mobiles Private Limited
Patny Plaza, No.160, Sardar Patel Rd.,
Viman Nagar, Begumpet, Hyderabad,
Telangana - 500 003
Rep.by its Authorised Signatory ..Applicant
(in O.A.Nos.372 and 373 of 2020)

vs

M/s.Hyundai Motors India Limited,
Plot No.H-1, Sipcot Industrial Park,
Irungattukottai, Sriperumbudur Taluk,
Kancheepuram 602 117 ..Respondent
(in O.A.Nos.372 and 373 of 2020)

O.A.No.372 of 2020:

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the Respondent, or any of its officers, agents, servants and subordinates from in any manner or any person acting on behalf of or through the authority of the Respondent by appointing distributors in the areas of the Applicant with Codes S 5201, S5227, S 5234 pending disposal of adjudication of disputes in arbitration between the parties;

O.A.No.373 of 2020:

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the Respondent, or any of its officers, agents, servants and subordinates from in any manner acting and carrying on any actions in detrimental to the interest of the Applicant pursuant to the Termination Notice dated 13.08.2020 pending disposal of adjudication of disputes in arbitration between the parties;

O.A.Nos.374 and 375 of 2020:

In the matter of :
Section 9 of the Arbitration and Conciliation Act, 1996
&
Disputes arising under Agreement entered between Hyundai Motors India Limited and M/s.Talwar Mobiles Pvt. Ltd dt 13.01.2016.

M/s.Talwar Mobiles Private Limited
Patny Plaza, No.160, Sardar Patel Rd.,
Viman Nagar, Begumpet, Hyderabad,
Telangana - 500 003
Rep.by its Authorised Signatory ..Applicant
(in O.A.Nos.374 and 375 of 2020)

vs

M/s.Hyundai Motors India Limited,
Plot No.H-1, Sipcot Industrial Park,
Irungattukottai, Sriperumbudur Taluk,
Kancheepuram 602 117 ..Respondent
(in O.A.Nos.374 and 375 of 2020)

O.A.No.374 of 2020:

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the Respondent, or any of its officers, agents, servants and subordinates from in any manner acting and carrying on any actions in detrimental to the interest of the Applicant pursuant to the Termination Notice dated 13.08.2020 parties;

O.A.No.375 of 2020:

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the Respondent, or any of its officers, agents, servants and subordinates from in any manner or any person acting on behalf of or through the authority of the Respondent by appointing distributors in the areas of the Applicant with Codes S 5201, S5227, S 5234 pending disposal of adjudication of disputes in arbitration between the parties;

O.A.Nos.377 and 378 of 2020:

In the matter of :
Section 9 of the Arbitration and Conciliation Act, 1996
&
Disputes arising under Letters of Intent/Agreement entered between Hyundai Motors India Limited and M/s.Talwar Mobiles Pvt.Ltd. dt. 23.11.2016 (03.02.2017)

M/s.Talwar Mobiles Private Limited
Patny Plaza, No.160, Sardar Patel Rd.,
Viman Nagar, Begumpet, Hyderabad,
Telangana - 500 003
Rep.by its Authorised Signatory ..Applicant
(in O.A.Nos.377 and 378 of 2020)

vs

M/s.Hyundai Motors India Limited,
Plot No.H-1, Sipcot Industrial Park,
Irungattukottai, Sriperumbudur Taluk,
Kancheepuram 602 117 ..Respondent
(in O.A.Nos.377 and 378 of 2020)

O.A.No.377 of 2020:

Original Application praying that this Hon'ble Court be pleased to grant an order of INTERIM INJUNCTION restraining the Respondent, or any of its officers, agents, servants and subordinates from in any manner or any person acting on behalf of or through the authority of the Respondent by appointing distributors in the areas of the Applicant with Codes S5201, S5227, S5234 pending disposal of adjudication of disputes in arbitration between the parties;

O.A.No.378 of 2020:

Original Application praying that this Hon'ble Court be pleased to grant an order of INTERIM INJUNCTION restraining the Respondent, or any of its officers, agents, servants and subordinates from in any manner acting and carrying on any actions in detrimental to the interest of the Applicant pursuant to the Termination Notice dated 13.08.2020 pending disposal of adjudication of disputes in arbitration between the parties;

A.No.1867 of 2020:

In the matter of :
Section 9 of the Arbitration and Conciliation Act, 1996
&
Disputes arising under Agreement entered between Hyundai Motors India Limited and M/s.Talwar Mobiles Pvt. Ltd dt 13.01.2016.

M/s.Talwar Mobiles Private Limited
Patny Plaza, No.160, Sardar Patel Rd.,
Viman Nagar, Begumpet, Hyderabad,
Telangana - 500 003
Rep.by its Authorised Signatory ..Applicant

vs

M/s.Hyundai Motors India Limited,
Plot No.H-1, Sipcot Industrial Park,
Irungattukottai, Sriperumbudur Taluk,
Kancheepuram 602 117 ..Respondent

Application praying that this Hon'ble Court be pleased to grant an order of interim stay of the Termination Notice dated 13.08.2020 and consequently permit the Applicant to carry on the dealership of the vehicles of the Respondent with all consequential actions to be taken by the Respondent for sale of the vehicles to enable the Applicant to carry on the business and perform their obligations under the Dealership Agreement dated 13.01.2016 and extended vide its renewals, pending disposal of adjudication of disputes in arbitration between the parties; pending disposal of the Arbitration Proceedings;

A.No.1868 of 2020:

In the matter of :
Section 9 of the Arbitration and Conciliation Act, 1996
&
Disputes arising under Agreement entered between Hyundai Motors India Limited and M/s.Talwar Mobiles Pvt.ltd dt 20.05.1999 & 10.4.2006 (Dealership Code S 5201)

M/s.Talwar Mobiles Private Limited
Patny Plaza, No.160, Sardar Patel Rd.,
Viman Nagar, Begumpet, Hyderabad,

Telangana - 500 003
Rep.by its Authorised Signatory ..Applicant

vs

M/s.Hyundai Motors India Limited,
Plot No.H-1, Sipcot Industrial Park,
Irungattukottai, Sriperumbudur Taluk,
Kancheepuram 602 117
..Respondent

Application praying that this Hon'ble Court be pleased to grant an order of interim stay of the Termination Notice dated 13.08.2020 and consequentially permit the Applicant to carry on the dealership of the vehicles of the Respondent with all consequential actions to be taken by the Respondent for sale of the vehicles to enable the Applicant to carry on the business and perform their obligations under the Dealership Agreement dated 20.05.1999 & 10.04.2006 and extended vide its renewals, pending disposal of adjudication of disputes in arbitration between the parties; pending disposal of the arbitration proceedings.

A.No.1872 of 2020:

In the matter of :
Section 9 of the Arbitration and Conciliation Act, 1996
&
Disputes arising under Letters of Intent/Agreement entered between Hyundai Motors India Limited and M/s.Talwar Mobiles Pvt.Ltd. dt.23.11.2016 (03.02.2017)

M/s.Talwar Mobiles Private Limited
Patny Plaza, No.160, Sardar Patel Rd.,
Viman Nagar, Begumpet, Hyderabad,
Telangana - 500 003
Rep.by its Authorised Signatory ..Applicant

vs

M/s.Hyundai Motors India Limited,
Plot No.H-1, Sipcot Industrial POark,
Irungattukottai, Sriperumbudur Taluk,
Kancheepuram 602 117 ..Respondent

Application praying that this Hon'ble Court be pleased to grant an order of interim stay of the Termination Notice dated 13.08.2020 and consequentially permit the Applicant to carry on the dealership of the vehicles of the Respondent with all consequential actions to be taken by the Respondent for sale of the vehicles to enable the Applicant to carry on the business and perform their obligations under the Letters of Intent (Dealership Agreement) dated 23.11.2016 (03.02.2017), pending disposal of adjudication of disputes in arbitration between the parties; pending disposal of the Arbitration proceedings.

These Original Applications and Applications are coming on this day before this court for hearing the court made the following order:

Reserved on : 03.12.2020

Delivered on : 23.12.2020

The dealer has moved this Court under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act')

2. Applications are filed for the following reliefs:

OA.Nos. 372 &373 of 2020 and A.No.1868 of 2020:

a. Grant an order of INTERIM STAY of the Termination Notice dated 13.08.2020 and consequentially permit the Applicant to carry on the dealership of the vehicles of the Respondent with all consequential actions to be taken by the Respondent for sale of the vehicles to enable the Applicant to carry on the business and perform their obligations under the Dealership Agreement dated 20.05.1999 & 10.04.2006 and extended vide its renewals, pending disposal of adjudication of disputes in arbitration between the parties;

b. Granting an order of INTERIM INJUNCTION restraining the Respondent, or any of its officers, agents, servants and subordinates from in any manner acting and carrying on any actions in detrimental to the interest of the Applicant *pursuant to the Termination Notice dated 13.08.2020 pending disposal of adjudication of disputes in arbitration between the parties;*

c. Granting an order of INTERIM INJUNCTION restraining the Respondent, or any of its officers, agents, servants and subordinates from in any manner or any person acting on behalf of or through the authority of the Respondent by appointing distributors in the areas of the Applicant with Codes S 5201, S5227, S5234 pending disposal of adjudication of disputes in arbitration between the parties.

OA.No.374 & 375 of 2020 and A.No.1867 of 2020:

a. Grant an order of INTERIM STAY of the Termination Notice dated 13.08.2020 and consequentially permit the Applicant to carry on the dealership of the vehicles of the Respondent with all consequential actions to be taken by the Respondent for sale of the vehicles to enable the Applicant to carry on the business and perform their obligations under the Dealership Agreement *dated 13.01.2016 and extended vide its renewals, pending disposal of adjudication of disputes in arbitration between the parties;*

b. Granting an order of INTERIM INJUNCTION restraining the Respondent, or any of its officers, agents, servants and subordinates from in any manner acting and carrying on any actions in detrimental to the interest of the Applicant pursuant to the Termination Notice dated 13.08.2020 pending disposal of adjudication of disputes in arbitration between the parties;

c. Granting an order of INTERIM INJUNCTION restraining the Respondent, or any of its officers, agents, servants and subordinates from in any manner or any person acting on behalf of or through the authority of the Respondent by appointing distributors in the areas of the Applicant with Codes S5201, S5227, S5234 pending disposal of adjudication of disputes in arbitration between the parties.

OA.Nos.377 and 378 of 2020 and A.No.1872 of 2020:

a. Grant an order of INTERIM STAY of the Termination Notice dated 13.08.2020 and consequentially permit the Applicant to carry on the dealership of the vehicles of the Respondent with all consequential actions to be taken by the Respondent for sale of the vehicles to enable the Applicant to carry on the business and perform their obligations under the Letters of Intent (Dealership Agreement) dated 23.11.2016 (03.02.2017) and extended vide its renewals, pending disposal of adjudication of disputes in arbitration between the parties;

b. Granting an order of INTERIM INJUNCTION restraining the Respondent, or any of its officers, agents, servants and subordinates from in any manner acting and carrying on any actions in detrimental to the interest of the Applicant pursuant to the Termination Notice dated 13.08.2020 pending disposal of adjudication of *disputes in arbitration between the parties;*

c. Granting an order of INTERIM INJUNCTION restraining the Respondent, or any of its officers, agents, servants and subordinates from in any manner or any person acting on behalf of or through the authority of the Respondent by appointing distributors in the areas of the Applicant with Codes S 5201, S5227, S5234 pending disposal of adjudication of disputes in arbitration between the parties.

3. The dispute arises from out of the three Dealership Agreements which are detailed hereinbelow:

1.Agreement dated 20.05.1999 Dealership Code No.S5201 -1 Show Room and three Service Centres

2. Agreement dated 13.01.2016 Dealership Code No.S5227 -2Show Room and two Service Centres

3. Letter of Intend dated 23.11.2016 Dealership Code No.S5234 -1 Show Room and 1 Service Centre.

4. Applicant's Case

a) The applicant would submit that they were founded in the year 1986 with the launch of its flagship dealership (Talwar Auto Garages). It is in the year 1998 that they first ventured into the Passenger Car Segment with the dealership of the respondents' cars. They were dealers for other vehicles and there were several dealerships in the brand name, Talwar. It is taking into account the applicant's ability to invest capital and infrastructure that the respondent had selected the applicant. The dealership was started in the name of 'Talwar Hyundai'. The business relationship had commenced in the year 1998 and a Dealership Agreement was entered into on 20.05.1999. This was extended in the year 2006 by way of an Agreement dated 10.04.2006. The territorial area of operation was Secunderabad and Hyderabad. Hyderabad was added as an Addendum to the said Agreement. Thereafter, two Dealership Agreements dated 13.01.2016 were entered into by way of Letter of Intent dated 23.11.2016. This Letter of Intent was formalized by way of Agreement dated 03.02.2017. The applicant would submit that they had invested huge sums of money and established four showrooms and six service stations. A Sincerity Deposit of Rs.60 lakhs each was made towards the contracts. The applicant would submit that nearly 700 employees were engaged exclusively for the respondent's dealership.

b) The applicant would submit that they had performed well both in the sales as well as service of the vehicles and had been appreciated by none less than the respondent and the respondent had also acknowledged the service by way of conferring Awards and Shields on the applicant. In fact, the achievements of the applicant found mention in the website of the respondent themselves. Between the years 1999 and 2019, a total investment of Rs.50 Crores on infrastructure and maintenance of showrooms was made by the applicant. The applicant had also raised various loans facilities by way of over draft facilities with the banks and other financial institutions, all of which were for fulfilling the obligations under the Agreement with the respondent. The applicant would further submit that the showrooms were also established only with the consent of the respondent. The applicant would submit that, as already stated, the applicant was dealing with other vehicles as well, in one such dealership, the applicant had suffered severe financial loss, as a result of which, the cash flow during the period 2018-2019 had been reduced. However, the applicant would submit that the sale performance of the respondent's vehicles was more than 85 per cent even during the lockdown.

c) Meanwhile, from the year 2019, the respondent was pressurizing the applicant to infuse more funds into the business, as admittedly the investment had been diverted to the closure of the dealership of Volvo, due to loss. The applicant was in fact, contemplating sale of their properties. However, due to the general slump in the economy, the applicant's properties were not fetching adequate market value. Added to this, the automobile industry throughout the world was on a downward trend and along with it, the world was hit by the covid-pandemic. Consequently, the business of the applicant had been seriously affected. The applicant would submit that they had been assuring the respondent that they were taking steps to infuse funds through the sale of their properties. But the situation was not conducive for that and they requested for some more time from the respondent. However, to their surprise, the respondent had shocked them with three show cause notices, on 24.06.2020, giving the applicant seven days time to send a reply regarding the action plan that they propose to undertake for infusing funds with reference to the Agreement dated 20.05.1999 and 10.04.2006, which has been extended from time to time and the Agreements dated 13.01.2016 and 23.11.2016 and 03.02.2017. The notices would indicate that the reasons for termination was the poor performance in sales, inventory fund, man power, test drive cars, etc. The

applicant would submit that except for the inventory fund, all other reasons stated in the show cause notice were vexatious, particularly, when the respondent was aware of the reasons for the same. The applicant would submit that these reasons are only an afterthought and had been given, since the respondent had already decided to terminate the services of the applicant. The applicant would submit that such an action was being taken by the respondent, despite their knowing that the applicant had assets over a sum of Rs.44 crores and they were capable of infusing a sum of Rs.15 crores at one stretch and it was only the lockdown which was acting as a stumbling block.

d) On receipt of these notices, the applicant had sought for a personal hearing, for which the respondent, however did not accede to and the applicant had sent a detailed reply for all these show cause notices on 01.07.2020, requesting for time till 31.08.2020, indicating their willingness to infuse funds. However, despite such a detailed response, the respondent had proceeded to terminate the Agreement without giving any chance for the applicant herein to put their plan in action.

e) The applicant would submit that the termination was highly arbitrary, since the respondent had not taken note of the sale effected by the

applicant till the year 2019 and they had also not paid heeds to the fact that the applicant was ready to infuse a sum of Rs.10 to 15 crores into the business. In fact, the termination had come at a time when the applicant had expressed their willingness to infuse further funds. The applicant would therefore submit that since the Agreement between the parties contemplated resolution of their disputes through arbitration, the applicant had come forward with the instant applications under Section 9 of the Arbitration and Conciliation Act.

5. Counter of the respondent:

a) The respondent had taken out a preliminary objection that the application filed is not maintainable in view of Section 14(1)(d) of the Specific Relief Act. They would further contend that the Dealership was not an exclusive dealership and was purely a commercial contract. On the merits of the case, the respondent would submit that the over ambitious attitude of the applicant had resulted in this current situation. They would contend that the applicant had diverted huge sums of money for the promotion of the other dealerships and had not paid attention to the respondent's dealership. Even in the year 2018, the applicant had failed to meet the agreed requirements for running the showroom and dealership, as per the agreed standard business norms. In March 2018, the respondents

had requested the applicant to make good the deficiency by infusing funds, so as to increase the sales. However, the applicant did not pay heed to the above.

b) The respondent would emphasise that they have not rushed into issuing the termination notice but had done so only after giving several opportunities to the applicant to improve their service.

c) The respondent would submit that poor performance by the applicant would be a direct reflection on the respondent and it would definitely result in the brand image of the respondent being affected. The respondent had issued the termination notice on 13.08.2020 which was to take effect from 12.09.2020. The dealership at Hyderabad was operated only on the basis of the Letter of Intent dated 23.11.2016 and there was no Agreement, like in the other contracts. The respondent would further deny the statement of the applicant that a sum of Rs.60 lakhs had been paid towards Sincerity Deposit. The sale performance had deteriorated much before the Pandemic. However, the applicant was fairing very poorly. The respondent also had a grievance that the entire amount borrowed by the applicant was not being infused into the business of dealership of the respondent's car. The respondent further submitted that they are already in the process of initiating Arbitration proceedings and would seek to have the Petition dismissed.

6. Submissions:

a) Mr. Om Prakash, learned Senior Counsel, appearing on behalf of the petitioner would present his arguments on the ground that after the Dealership had been entered into between the applicant and the respondent, the same had grown rapidly and it was only in the year 2019 that there has been slump in the sales. The learned Senior counsel would further contend that the grievance of the respondent was not that payments were outstanding from the respondent, but, on the contrary, the dispute envisaged by the respondent was the fact that the applicant had taken up another dealership and the funds were diverted into that dealership. In the show cause notice issued by the respondent, they had stated that termination was contemplated since the car sales and test drive vehicles had decreased and the man power was inadequate. The applicant had responded to the said show cause notice vide their reply dated 01.07.2020 setting out in detail their answers to the allegations made in the show cause notice. However, not considering the same a termination letter dated 13.08.2020 was issued to the applicant. In the said letter they had also suggested the name of an Arbitrator. A reply was sent on 15.10.2020 and the applicant had also simultaneously moved the Court. As per the termination letter, notice period for the termination

was to end within 30 days of the date of the letter. Since the 30 days period had not come to an end, the applicant was granted status-quo order, which has been extended to date. The respondent had also stopped the sales of cars immediately but had however continued to supply spares and the applicant was also permitted to carry out service which also stopped shortly thereafter.

b) The learned Senior counsel would submit that as regards the last contract, an Agreement was not entered into and the parties were only working on the Letter of Intent. According to him, the Letter of Intent did not contemplate termination by either party. He would submit that under the first Agreement dated 20.05.2019, which was being extended from time to time, the termination of the dealership was contemplated as per Clause 13 therein. As per the terms of this Clause, either party was entitled to terminate the Agreement by giving 30 days notice. No reason whatsoever was required to be given for such termination and it was sufficient if the notice conveys the intent to terminate the contract. The second contract dated 10.04.2006 contemplated a termination simplicitor giving seven (7) days notice in writing to the dealer, in the event of the dealer's failure to duly comply with any of the obligations under Sub Clauses 4.3 to 4.9 therein. The learned Senior Counsel contended that reasons given in the

termination letter for terminating the applicant did not come within any of the obligations contemplated under Sub Clauses 4.3 to 4.9. He would submit that having issued a notice of termination as contemplated under Clause 13.2, the termination should be in line with the conditions contained therein. He would further argue that Section 14 of the Specific Relief Act has been amended on 01.10.2018. He would also argue that even after this Court had directed the respondents to continue to make the supplies, they had failed to do so and were guilty of committing contempt of orders of this Court. He would therefore conclude that the termination order should be stayed and the respondent directed to continue with the sales.

c) Per Contra, Mr. T.R.Rajagopalan, learned counsel appearing on behalf of the respondent would reiterate that the contract being a determinable one, the applicant cannot seek to specifically enforce the same, particularly, in the light of Section 14 of the Specific Relief Act. He would also argue that by reason of Section 41 (e) of the Specific Relief Act, this Court cannot grant an injunction restraining the termination. He would submit that the substantive relief which is sought for in the application is to stay the termination of the contract. As regards the merits of the case, the learned Senior Counsel would submit that although the applicant had been performing very well till the year 2018, thereafter, there has been dip in their performance. The applicant was running several dealerships and in fact, when one such dealership was fairing badly, the applicant had diverted the funds required for the respondent's dealership to the other dealership, as a result of which, the funding had been reduced drastically for the respondent's dealership and consequently the sale had also come down. That apart, the maintenance and up keep of the showrooms was also affected on account of this funds crunch.

d) The learned counsel would submit that the termination did not happen overnight and it was only after giving several opportunities to the applicant to set right the business that the respondent had taken the ultimate decision of terminating the contract. According to the learned counsel, the respondent cannot allow its brand image to be affected trying to help the applicant. He would therefore seek to have the application dismissed.

7. Discussion:

a) The issue involved in all the above applications is whether the applicant was entitled to an injunction against the termination in a proceedings under Section 9 of the Arbitration and Conciliation Act, particularly, in the light of under Section 14 (1) (d) and 41 (e) of the

Specific Relief Act as amended. In order to appreciate the above arguments, it is necessary to extract the termination clause in each of these Agreements.

Agreement dated 20.05.2020

"Clause 13: Termination of Agreement: Both HMI and DEALER are entitled to terminate this agreement by giving 30 days notice. No reasons whatsoever need to be stated by the party giving notice of termination and it is sufficient if the notice conveys the intention of the party to terminate this agreement."

Agreement dated 10.04.2006

13. Termination of Agreement:

13.1. Both HMI and DEALER are entitled to terminate this agreement by giving 30 days notice. No reasons whatsoever need be stated by the party giving notice of termination and it is sufficient if the notice conveys the intention of the party to terminate this agreement.

13.2. Without prejudice to HMI's rights under Clause 13.1 above, HMI is entitled to terminate this Agreement after serving seven (7)

> *days' notice in writing to the DEALER in the event of the DEALER's failure to duly comply with sub-clauses 4.3 to 4.9 hereinabove. "*

Dealership Agreement dated 13.01.2016 was effective for a period of 3 years.

The termination clause and the standard provisions enclosed with the Agreement are to be treated as part of the Agreement. The Termination Clause was similar to the one which is in the Agreement dated 10.04.2006. The Letter of Intent dated 23.11.2016 provided for termination in Clause No.27 which reads as follows:

> *" HMI is entitled to terminate this LOI forthwith and the Sincerity Deposit paid by you will be forfeited in the event if you:*
>
> *a) fail to buy/take on lease the property, obtain approvals, licenses, etc, for the Dealership operations within 60 days from the date of acceptance of this LOI or fail to complete the construction of the building in all respects at the site for Dealership operations as committed in the*

Activity Schedule submitted by you.

b) fail to make the Dealership operational within the period specified in Clause 1 above.

c) deal in any other business other than HMI's Dealership Operations at the Location specified under the heading "SPACE GUIDELINES" in Clause -4 above.

d) Breach any of the terms of this LOI and such breach is not rectified to the satisfaction of HMI within 30 days of receipt of notice from HMI to that effect.

e) Fail to return the signed copy of this LOI along with the Demand Draft and other documents mentioned supra."

Therefore, on a reading of the above Clause in the respective contracts, it is clearly evident that the contract between the parties was determinable. Once the contract is a determinable one, then as per the provisions of Section 14(1)(d) of the Specific Relief Act, the applicant cannot specifically enforce the said contract. That apart, Section 41(e) of the Specific Relief Act would also state that no injunction can be granted.

Therefore, in the light of the above legal provisions, the instant applications wherein the substantive relief sough for is against the termination is prima facie without any basis. Such a relief cannot be granted under Section 9 of the Arbitration and Conciliation Act.

b) There has been a plethora of judicial pronouncements holding that where a contract was a determinable one the same cannot be specifically enforced. The first in the above line is the judgment in "***Indian Oil Corporation Ltd vs. Amritsar Gas Service and others- reported in [1991 (1) SCC 533]"***, where the Hon'ble Supreme Court has held that *Sub-section (1) of Section 14 of the Specific Relief Act specifies the contracts which cannot be specifically enforced, one of which is 'a contract which is in its nature determinable'.* Thereafter in the Judgment reported in "[***(2000) 7 SCC 764] – E.Venkatakrishna Vs. Indian Oil Corporation and others"***, the Hon'ble Supreme Court had held that the restoration of a dealership by the Arbitrator was per se erroneous, since the remedy available to the dealer was to seek damages. The judgment of the Supreme Court was thereafter followed by a Division Bench of this Court in the Judgment reported in "[***(2007) 6 MLJ 525] – Bharat Petroleum Corporation Limited Vs. Rajarajeswari Agency and others"***, wherein the Division Bench has held that the restoration of the distributorship was wrong and the termination of the distributorship was well within the rights of the Company BPCC since the distributorship agreement was determinable.

c) In a recent Judgment of the Delhi High Court reported in "***2018 (168) DRJ 650 – Parsoli Motors Works Private Limited Vs. BMW India Private Limited***", the Delhi High Court after discussing the various judgments on the point had held that the issue involved in the proceedings was covered by the provisions of Section 14 of the Specific Relief Act. The learned Judge had gone on to hold that when the decision of the respondent not to renew the contract with the petitioner suffers from an illegality, even in such a case the petitioner is only entitled to be compensated and cannot seek to have the contract specifically enforced. The learned Judge had relied upon the provisions of Section 14 (1) (a) and (c) of the Specific Relief Act. The learned Judge held that once the Agreement between the parties was determinable in nature then the decision of one not to renew the contract cannot be called in question. In the judgment reported in "[***AIR 2000 Delhi 450] – Rajasthan Breweries Ltd. Vs. The Stroh Brewery Company",*** the learned Judge went one step further by stating that even in the absence of a Clause for termination in the agreement giving a few days notice it was well within the right of the respondent to terminate the contract and the remedy available to the applicant was only to seek for compensation. The learned Judge had refused to grant an injunction stating that since the application in question was one filed under Section 9(ii)(e) of the Arbitration and Conciliation Act, the relief sought for could not be granted in the light of the provisions of Sections 14(1)(c) read with Section 41 (e) of the Specific Relief Act.

d) Therefore, in view of the discussions herein above, the applicant has not made any case for grant of the order of injunction and prima facie case is also not in their favour. Consequently the applications are dismissed.

e) It is needless to state that, if the applicant is able to substantiate breach on the part of the respondent, they are entitled to compensation in the form of damages.

Sd/.P.T.A.J.
23.12.2020

//Certified to be a true copy//

Dated this the day of 2020

SU/28.12.2020 COURT OFFICER(O.S.)

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.