

Reserved on : 03.11.2020

Delivered on : 23.12.2020

A.Nos.1901 & 1902 of 2020

P.T.ASHA, J.,

Challenging the termination of the dealership by the respondent the applicant herein, their dealer has moved these two applications under Section 9 of the Arbitration and Conciliation Act, 1996, seeking the following reliefs:

(a) a stay of the operation of Termination Letter dated 11.08.2020; and

(b) for a direction to the respondent to resume supply of all cars as well as all related services and facilities to the applicant as per bookings made by them treating the applicant as their authorized dealer till the disposal of the arbitral proceedings.

The facts in brief which are essential for considering the issue on hand are as follows.

Applicant's Case:

2. The applicant has been a dealer of automobiles since the year 1938. Considering their experience and expertise, the respondent had approached them with a request to take up their dealership at Kolkata. The respondent wanted to gain a foothold at Kolkata. During the negotiations there was a tacit understanding that considering the huge investment that the applicant was making into the dealership, the dealership would be for a long period of 30 years and that the termination would not be at will but on the breach of any of the obligation under the contract.

3. Pursuant to this negotiation, the Letter of Intent dated 12.11.2010 was issued by the respondent for a non-exclusive dealership of the Hyundai passenger cars and also for the after sales services. According to the applicant, the tenure under the LOI was

indefinite and this fact is confirmed by the LOI not containing any clause for termination at will nor for the execution of an agreement as a pre-condition to commence business.

4. Based on the above assurance, the applicant had invested huge sums of money and the entire building was modified to suit the needs of the respondent. The necessary man power was also engaged as per the dicta of the respondent.

5. It is the case of the applicant that after the sales had started, an agreement dated 30.04.2011 was got executed by the respondent from the applicant. However, a perusal of the agreement would clearly demonstrate that the same was not on the lines of the assurance given by the respondent at the time of negotiation. The agreement restricted the dealership to a tenure of three years and the said agreement also contained a clause for "*Termination at Will*". Despite the applicant's

request to re-work the terms as the same was totally one sided, the respondent refused. The applicant would further submit that the agreement was mechanically renewed on 29.04.2014 and 27.04.2017 for a further period of three years.

6. The applicant would further submit that the respondent was in the habit of supplying large numbers of cars much above its demand to the applicant and thereafter would insist upon the applicant selling the same. In fact, the applicant was required, at a time, to maintain 200 to 250 cars in stock and on one occasion they were asked to maintain 400 cars per month.

7. In addition to the above, the respondent had also ensured financial funding to the applicant from its financial companies including banks and this fund was called the Inventory Fund. As and when there was a booking the respondent would automatically get paid

from out of this fund. In fact, the respondent would be paid whether the car was sold or not. The applicant would then have to bear the strain of repaying the amount. It is also the case of the applicant that they had a blemishless track record for the sale of automobiles and they had also won several awards. In fact, the respondent have themselves issued several letters of appreciation and awards for the sale of cars undertaken by the applicant.

8. The applicant would submit that on and from the year 2018, there was a slow down in the automobile industry and therefore the applicant was unable to achieve targets and not only that they were finding it difficult to sell the cars. That apart, they were having some funding problems all of which was within the knowledge of the respondent. Meanwhile, the pandemic had also set and this compounded the applicant's problems.

9. It is in these circumstances that the applicant had received the first caution letter dated 22.11.2019 from the respondent in which the respondent had set out the shortcomings in the business of the applicant.

10. This was followed by a second caution letter dated 18.12.2019 to which a reply dated 19.12.2019 was issued by the applicant. Once again on 17.01.2020, the applicant received the third caution letter from the respondent. The applicant vide their reply dated 18.01.2020 informed the respondent that they were negotiating for the sale of their properties. They requested time till March 2020 to regularise the business. Despite this assurance, the applicant received yet another letter, the fourth in the line, dated 14.02.2020. Once again the applicant had sent a response on 19.02.2020. The respondent had not taken further action.

11. Thereafter, the applicant had sought for a credit facility for 100 vehicles on rotational basis, however, the respondent apart from turning down the request vide their e-mail dated 13.05.2020 had also followed it up with a show cause notice dated 12.06.2020. The applicant sent a detailed reply dated 22.06.2020 detailing the road map as to how they planned to bring the business back on track. However, on 25.06.2020 the respondent instructed the applicant to stop further bookings and on 07.07.2020 the applicant's operation was temporarily suspended.

12. Meanwhile, since the applicant was able to mobilise the fund they had informed the respondent about the same. However, by letter dated 11.08.2020, the respondent had terminated the dealership and the termination was to take effect from the 30th day of the issue of the letter. It is in these circumstances and taking into account the

arbitration clause contained in the agreement that the applicant is before this Court seeking interim measures of protection pending arbitral proceedings.

Counter of the Respondent:

13. The main ground of defense of the respondent is that the contract in question is a determinable one and therefore the action taken by the respondent cannot be called into question and further considering the provisions of Section 14 of the Specific Relief Act the applicant cannot specifically seek a direction to the respondent to continue the dealership of the applicant. The respondent would come forward with a specific case that it has a brand image world wide and where any dealer is unable to fulfil its promise to the customers regarding the supply of vehicles, it would reflect badly on the respondent, since, ultimately it is the respondent's brand image that takes the hit.

14. The respondent would deny absolutely the contentions of the applicant that the dealership was negotiated for an indefinite period taking into account the investment made. The respondent would also submit that even as per the LOI, the signing of a contract was envisaged and such an agreement has also been executed by the applicant. Therefore, it would not lie in the mouth of the applicant to now contend that they had not agreed to the terms of the dealership agreement. That apart the dealership was a non-exclusive one.

15. The respondent would acknowledge and admit that the performance of the applicant was very good till the year 2017. However, post the year 2017 and from the year 2018, there was a steep fall in the performance of the applicant. The respondent would deny the quantity of cars sold as put forward by the applicant and the respondent would go on to state that the caution letters had been issued

to the applicant only for the purpose of allowing the applicant to put its house in order. However, despite receiving the caution letters the applicant had not come forward with a concrete plan. The show cause notice was issued on account of the Inventory Fund, the fund diversion and non performance in sales etc.

16. The contention of the applicant that they were shocked to receive the show cause notice and later the Termination Letter, is to say the least absurd. After having received four caution letters and knowing fully well that none of the defects pointed had been cleared, it was well known to the applicant that steps would be taken to terminate the dealership as per the clause of the agreement if the defects are not rectified as requested / directed in the caution letters.

17. The respondent would submit the all of the applicant's assurances has been observed in the breach. Despite assuring a deposit

of Rs.5 Crores by 29.07.2020, the applicant barely mustered a sum of Rs.2 Crores that too on 30.07.2020. The situation has also not improved to date. The respondent would submit that it was only after giving sufficient opportunity to the applicant, that they had taken the ultimate step of termination. Therefore, the termination cannot be called in question as being arbitrary.

Rejoinder of the applicant:

18. In response to the counter, the applicant has filed a rejoinder, in which he has contended that it is only the Letter of Intent dated 12.11.2010 which forms the legal relationship between the parties and not the dealership agreement dated 30.04.2011. In fact, it is the case of the applicant, that the dealership agreement was never acted upon and is totally unenforceable in law. They would further contend that the agreement is void on account of the lack of mutuality and on account of it being so one sided. It is also their contention that the legal issue as to

whether the dealership is terminable is an issue which has to be decided by arbitration and therefore till such time the contract cannot be terminated.

19. The applicant would further submit that the respondent has not taken into account the lock down of the country and setting up high targets so as to cover the short falls of the other dealers, transition from BS-IV to BS-VI, etc, have contributed to the slow down of the applicant's business and being fully aware about this the respondent has hastily and over looking the principles of natural justice terminated the contract. Therefore, the applicant would submit that they are entitled to the interim orders as prayed for.

Submissions:

20. Mr.P.S.Raman, learned senior counsel appearing on behalf the learned counsel for the applicant would submit that the termination

of the dealership could only be on the grounds given in the Letter of Intent. However, a reading of the show cause notice dated 12.06.2020 would indicate that the respondent intended to terminate the dealership for the following reasons:

a) Failure to improve performance in terms of sales and market share.

b) Failure to infuse adequate Inventory Funds, which has resulted in business loss to the respondent through a decline in their market share as a result of which the brand image of the respondent had been badly affected.

He would contend that these grounds are not in keeping with the grounds for termination mentioned in the Letter of Intent.

21. The learned senior counsel would draw the attention of the Court to clause 24 of the Letter of Intent which gives the circumstances / reasons for terminating the LOI. He would therefore contend that the grounds of termination given in clause 24 of the LOI is not the reason

for which the show notice dated 12.06.2020 had been issued. He would further submit that the respondent had not taken into consideration the response of the applicant by e-mail dated 13.06.2020, in which the applicant had informed the respondent that they would be submitting the detailed plan and road map for introducing fresh working capital and repayment to their bankers. The applicant had undertaken to submit a detailed schedule by 19.06.2020.

22. The learned senior counsel would further submit that on the very same day yet another e-mail was sent, wherein, the applicant had informed the respondent that a sum of Rs.50,00,000/- would be deposited within 7 to 10 days and they had requested the approval of the respondent for allowing its rotation by 100% of their deposit. Thereafter, a detailed reply to the show cause notice was issued by the applicant which was forwarded under cover of their e-mail dated 22.06.2020 to the respondent. In the said reply, the applicant had

submitted a structured repayment and business plan. They had also highlighted the history and achievements of the applicant vis-à-vis the respondent's vehicles. They had informed the respondent the stages in which money flow would come into the business and also the expenses already incurred by them for setting up the business.

23. The learned senior counsel would submit that without giving time to the applicant to regularize the business, the respondent had suspended the supply of vehicles to the applicant. Thereafter, by letter dated 11.08.2020, the respondent had terminated the contract with effect from 30th day of the notice i.e., 11.09.2020. The main ground of attack is that the reasons for termination was not in tune with the termination clause contained in the LOI. The learned senior counsel would submit that although funds have been infused, now the respondent is refusing to consider withdrawing the termination letter.

24. The learned senior counsel would submit that the respondent has not taken into consideration the long standing relationship and the assurance of the applicant that they would infuse additional funds from the banks in and by which the business could be brought on line.

25. The learned senior counsel would further submit that the year 2019 was one of the worst years for the automobile industry in general and the respondent company was also a victim of this crisis. The respondent could therefore not contend that the applicant was incapable of fulfilling the terms of the contract between the two. It is only on account of these circumstances that the applicant could not come forward to regularise the business.

26. The learned senior counsel would rely upon the Judgement reported in *AIR 2008 Pat 5 - Niloufer Siddiqui and others Vs. Indian Oil Corporation Limited and others*, in which the termination of the

dealership by IOCL was set aside by the learned single Judge of the Patna High Court, which was confirmed in appeal by the Honourable Supreme Court. The contract was sought to be terminated on the basis of the standard agreement despite the fact that no formal agreement has been executed between the appellant therein and the respondent. The Honourable Supreme Court while confirming the order of the High Court held that since the parties had not signed the terms of the agreement there was no arbitration clause therein. The Bench therein had observed that the letter of allotment and the conduct of the parties clearly sets out that the contract was not revocable nor had it become void. He would also rely on the Judgements reported in **(2011) 161 PLR 410 – Punjab State Electricity Board Vs. Sutlej Construct Limited.**

27. The learned senior counsel would rely on the Judgement reported in **AIR 2012 SC 709 – Allied Motors Ltd. Vs. Bharat**

Petroleum Corporation Ltd. This was the case, where the 30 years old dealership was terminated without even issuing a show cause notice. The termination was set aside taking into account the haste with which the orders had been passed on grounds of malafides.

28. The learned senior counsel would also rely on the Judgement reported in ***2013 (4) CTC 154 – Embassy Property Developments Limited and others Vs. Jumbo World Holdings Limited and others***, to show that where in an agreement which is determinable by nature the issue involved was whether one party is entitled to specific performance of the share purchase agreement dated 21.12.2005, the bench observed that these are the core issues which had to be decided by the arbitral tribunal in the arbitration proceedings and therefore the interim orders which was originally rejected was granted in the appeal proceedings. Apart from the above, he had also placed reliance on the Judgements reported in ***(2014) 14 SCC 411 – Sushila Kumar Vs.***

Indian Oil Corporation Ltd. and others, **2016 (11) ADJ 565** – Sainik Krishak Sewa Kendra Vs. Indian Oil Corporation Ltd. and others and **AIR 2012 SC 739** – Reva Electric Car Company P. Ltd Vs. Green Mobil.

29. Per contra, Mr.T.R.Rajagopalan, learned senior counsel appearing on behalf of the learned counsel for the respondent would contend that once the contract is determinable then under Section 14 (1) (c) of the old act which is now the amended Section 14 (1) (d) of the Specific Relief Act, there cannot be a direction to the respondent to continue to supply the vehicles. He would rely upon Section 41 (e) of the Specific Relief Act to state that even under the provisions of this section, an injunction cannot be granted to the applicant.

30. He would submit that the applicant herein had entered into the contract with open eyes. He would submit that it was well known to

the applicant that he had to enter into dealership agreement and it is pursuant to such an agreement that the supplies have continued from the year 2010 onwards. The learned senior counsel would submit that there has been two extensions of the dealership agreement and despite signing on the dotted lines, the applicant has come forward with a very novel argument that he has not entered into in an agreement with the respondent.

31. The learned senior would further submit that even under the agreement no reason was required to be given for terminating the contract. The learned senior counsel would submit that despite giving several assurances right up to the time of filing the present applications the applicant had not been in a position to regularize the business. In response to the 4th caution letter, the applicant had undertaken to infuse a sum of Rs.5 Crores which is also not fulfilled. He would further submit that due to paucity of funds, the respondent is unable to carry

out the supplies and that apart, right from 07.07.2020, the supply of vehicles to the applicant had been stopped.

32. The learned senior counsel would submit that detailed reasons have been given as to why the respondent was proceeding to terminate the dealership. He would submit that it is well open to the applicant to prove the breach on the part of the respondent and claim damages there on. The learned senior counsel would rely upon the following Judgements:

(i) **1991 (1) ARBLR 97 (SC)** – Indian Oil Corporation Ltd. Vs. Amritsar Gas Service and others.

(ii) **2008 (1) ARBLR 113 (Madras)** – Bharat Petroleum Corporation Limited Vs. Rajarajeswari Agency and others.

(iii) **2009 (4) ARBLR 39 (Delhi)** – R.P.S.Educational Society Vs. Delhi Development Authority.

(iv) **2012 (94) ALR 16** – Samay Singh Vs. Hindustan Petroleum

Corporation Ltd. and others.

(v) **AIR 2014 Raj 1** – Raj. Rajya Vidyut Utpadan Nigam Ltd. Vs. Manglam Cement Ltd.

(vi) **2014 (4) ARBLR 348 (Delhi)** – Planet M. Retail Ltd. Vs. Select Infrastructure Pvt. Ltd.

(vii) **2015 (6) ARBLR 340 (Madras)** – Gammon – OJSC Mosmetrostroy JV and others Vs. Chennai Metro Rail Limited and others.

(viii) **2018 (2) ARBLR 50 (Delhi)** – Parsoli Motors Works Private Limited Vs. BMW India Private Limited.

(ix) **2020 (1) ARBLR 250 (Delhi)** – Inter Ads Exhibition Pvt. Ltd. Vs. Busworld International Cooperative.

(x) **2020 (2) ARBLR 497 (Delhi)** – Inter Ads Exhibition Pvt. Ltd. Vs. Busworld International Cooperative Vennootschap Met Beperkte Anasprakelijkheid.

(xi) **AIR 2007 SC 2144** – Arvind Constructions Co. Pvt. Ltd. Vs. Kalinga Mining Corporation and others.

(xii) **AIR 2007 SC 2563** – Adhunik Steels Ltd. Vs. Orissa Manganese and Minerals Pvt. Ltd.

(xiii) **2012 (6) ALLMR 357** – Nimbus Communications Limited Vs. Board of Control for Cricket in India and others.

(xiv) **2018 (2) ARBLR 433 (Madras)** – Indian Oil Corporation Ltd. and others Vs. Bhagawan Balasai Enterprises and others.

(xv) **2000 (3) ARBLR 316 (SC)** – E.Venkatakrishna Vs. Indian Oil Corporation and others.

(xvi) **AIR 2000 Delhi 450** – Rajasthan Breweries Ltd. Vs. The Stroh Brewery Company.

Discussion:

33. The applicant has come forward with a primary argument that the termination of the dealership on the grounds as mentioned in the

termination letter does not confirm to the grounds of termination as provided under the Letter of Intent and therefore the termination was bad. They have also taken out the contention that there is no dealership agreement and the agreement which was executed was not acted upon. This is a rather strange argument that has been put forward particularly when even as per terms of the Letter of Intent dated 12.11.2010 at the very outset it has been stated as follows:

“On this 12th November 2010 HMI formally issues to you this Letter of Intent (LOI). Subject to the satisfactory completion of facilities, recruitment & training of personnel and compliance of all the terms and conditions as indicated in this LOI. HMI shall sign dealership agreement with you or an entity owned by you, provided that you comply with all the terms and conditions set forth herein.”

34. This is once again reiterated in clause 20 which reads as follows:

“HMI shall review any documents and agreements made by your company with other parties relating to our intended dealership Agreement with HMI before such documents and agreements are executed and become effective, and they will be subject to HMI's approval.”

35. Thereafter, on 30.04.2011, the applicant has signed the dealership agreement together with its annexures. The duration of the dealership was for a period of three years and the contingencies for termination is also provided in clause 13. This dealership agreement has been renewed on 29.04.2014 and once again on 29.04.2017. The fact that the agreement of dealership has been acted upon is clearly evident from the letter dated 29.04.2014, which is a letter of renewal of the earlier dealership agreement dated 30.04.2011. This letter has been counter signed by the applicant in and by which they had conveyed their acceptances for renewal of the original agreement dated

30.04.2011 till 28.04.2017 on the same terms and conditions as the original agreement. Once again this statement is reiterated on 29.04.2017 when the applicant countersigns the renewal of the dealership agreement sent by the respondent for the period 2017 to 2020. Therefore the LOI stood novated by the dealership agreement.

36. In the caution letters, particularly the 4th caution letter and the temporary suspension of dealership operation letter dated 07.07.2020, reference has been made only to the 1st dealership agreement dated 30.04.2011. To none of the caution letters nor to the temporary suspension of the dealership letter has the applicant taken a plea that they had not entered into a dealership agreement or that the same was not acted upon. Such an argument appears to be taken up for the first time in the instant proceedings.

37. Be that as it may, having signed on the dotted lines and having renewed the said agreement twice, the applicant cannot now be permitted to state that the agreement was not acted upon and therefore the termination clause found thereon is not applicable to the agreement between the applicant and the respondent.

38. Admittedly, from a reading of the agreement it is clear that the contract is a determinable one. The termination clause of the dealership agreement would read as follows:

“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 4.10 herein above.”

39.The main and substantiative relief in the present petition is for setting aside the termination notice. Such a relief cannot be granted under Section 9 of the Act. The termination clause extracted above would clearly demonstrate that the contract is a determinable one. In these circumstances, considering the provisions of Section 14 (1) (c) *(prior to the amendment of the Specific Relief Act)* now Section 14 (1) (d) *(after the amendment)* of the Specific Relief Act, the contention of the applicant that the contract cannot be terminated is baseless. Further, a perusal of the documents would clearly indicate that the termination had not taken place over night. The respondent has given sufficient opportunity to the applicant to improve their business. The applicant who had given an assurance that they would infuse funds by March 2020 had failed to comply with this promise right up to the filing of these applications. The various replies to the caution notices would clearly indicate that the applicant was going through severe financial crunch much prior to the present pandemic.

40. Admittedly, from the year 2018 onwards the applicant has not been in a position to achieve the same success rate as they had till the year 2017. The parties are bound by the terms of the agreement. Further the records would indicate that the applicant has not been able to fulfill their obligations despite sufficient time being granted to them as is evident from their response.

41. In the Judgement reported in **1991 (1) SCC 533 – Indian Oil Corporation Ltd. Vs. Amristar Gas Service and others**, the Honourable Supreme Court was considering the correctness of termination of distributorship of the respondent by the applicant corporation. The applicant corporation had terminated the contract in view of a breach of the contract of distributorship by the respondent by invoking clause 27 of the agreement. The respondent had challenged the termination on the ground that the same was without notice or

opportunity to show cause. The Honourable Supreme Court while considering the same had observed as follows with reference to the right of termination:

“This finding read along with the reasons given in the award clearly accepts that the distributorship could be terminated in accordance with the terms of the Agreement dated 1.4.1976, which contains the aforesaid clauses 27 and 28. Having said so in the award itself, it is obvious that the arbitrator held the distributorship to be revokable in accordance with clauses 27 and 28 of the Agreement. It is in this sense that the award describes the Distributorship Agreement as one for an indefinite period, that is, till terminated in accordance with clauses 27 and 28. The finding in the award being that the Distributorship Agreement was revokable and the same being admittedly for rendering personal service, the relevant provisions of the Specific Relief Act were automatically attracted. 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'. In the present case, it is not necessary to refer to the other clauses of Sub-section (1) of Section 14, which also may be attracted in the present case since clause (c) clearly applies on the finding read with the reasons given in the award itself that the contract by its nature is determinable. This being so granting the relief of restoration of the distributorship even on the finding that the breach was committed by the appellant-Corporation is contrary to the mandate in Section 14(1) of the Specific Relief Act and there is an error of law apparent on the face of the award which is stated to be made according to 'the law governing such cases'. The grant of this relief in the award cannot, therefore, be sustained."

42. In yet another Judgement of the Honourable Supreme Court reported in (2000) 7 SCC 764 – ***E.Venkatakrishna Vs. Indian Oil Corporation and others***, the issue for consideration once again was

whether the termination of the distributorship was valid. The dealer had questioned the clause by reason of which the distributorship could be terminated if the dealer did anything which was prejudicial to the interest of the good name of Indian Oil Corporation, the respondent of its products. The challenge was by way of the Writ Petition which was dismissed by the High Court of Karnataka stating that the contract between the parties contained an arbitration clause. This order was not challenged by either party and thereafter the appellant had requested the respondent to appoint a sole arbitrator. The arbitrator ultimately directed the restoration of the distributorship to the appellant. The corporation had challenged the said award before the single Judge of this Court who rejected the challenge but in appeal the said award was set aside. The Division Bench had observed that if the arbitrator had found the termination to be unlawful then the appellant was only entitled to damages and the arbitrator was in error in directing the restoration of the distributorship. The Honourable Supreme Court up

held this view of the Division Bench and held as follows:

“We find it difficult to accept the contention on behalf of the appellant that what was referred to the Arbitrator was the issue of restoration of distributorship in the sense that the Arbitrator could direct, upon holding that the termination was unlawful, that the distributorship should be restored. We think that the reference itself contemplated consequential damages for wrongful termination. In any event and assuming that there is any error in so reading the reference, it is difficult to hold that the Arbitrator was thereby vested with jurisdiction to award restoration”

43. The Judgement of Indian Oil Corporation Limited Vs. Amritsar Gas Service and others was followed by the Division Bench of this Court in the Judgement reported in **(2007) 6 MLJ 525 – Bharat Petroleum Corporation Limited Vs. Rajarajeswari Agency and others**. The Bench had upheld the termination of the distributorship on

the ground that the distributorship agreement was determinable in nature and further held that restoration of the distributorship was not possible.

44. The High Court of Delhi in the Judgement reported in **2009 (4) ARBLR 39 (Delhi) – R.P.S Educational Society Vs. Delhi Development Authority** observed as follows:

“Termination of the contract is one of the facets of the commercial law and if a party is aggrieved that the contract was wrongly terminated, the remedy lies in claiming damages. The party cannot insist that the contract should be specifically performed and it should be restored to the position prior to the breach of the contract. Even otherwise it is settled law that show-cause notice cannot be stayed by a Court. Giving show-cause notice amounts to giving an opportunity to the party to explain the breaches. Serving show-cause notice is a right of the party and the Court cannot interfere in serving

show-cause notice and cannot say that the department should not ask the contracting party to explain its action. It is also settled law that the Court cannot write a new contract or revalidate a contract for the parties, if the contract is already terminated. The Court cannot thrust a contract upon the party under Section 9 of the Arbitration and Conciliation Act and ask that the contract should be restored. I find no force in the petition. The petition is hereby dismissed.”

45. In yet another of its Judgement reported in **2018 (168) DRJ 650 – Parsoli Motors Works Private Limited Vs. BMW India Private Limited**, the Delhi High Court was considering the non-renewal of the dealership agreement. After discussing the various Judgement on the point, the learned Judge held that the issue involved in the said proceedings is covered by the provisions of Section 14 of the Specific Relief Act. The learned Judge has observed as follows:

“Yet another reason, why, in my opinion, no case for

entertaining the present petition exists, is that, even assuming the decision of the respondent, not to renew the contract with the petitioner, suffers from any illegality, the petitioner could be adequately compensated by damages, should it choose to initiate any action in this regard. Applying clauses (a) and (c) of [Section 14](#) of the Specific Relief Act, therefore, no case for injuncting the respondent, from acting on its decision not to renew the contract with the petitioner, is made out, as grant of any such relief would amount to specific enforcement, at the interim stage, of the agreement between the petitioner and respondent, which is determinable in nature; further, inasmuch as the case of the petitioner is that it had mobilised considerable resources, and incurred considerable expenditure, in setting up and operating its distributorship, the grievance of the petitioner could adequately be redressed by compensation, should the contentions of the petitioner be finally found to be acceptable. The principle that a contract, which is determinable in nature, should not

be directed to be specifically enforced as, even if the contract is enforced, it could be terminated immediately, would apply, on all fours, to the present case as well. On this ground, too, no justification, for grant of any interim injunction, as prayed for by the petitioner, can be said to exist in the present case.”

46. Therefore, from a consideration of the above Judgements, it is clear that in so far as a contract which is determinable a party cannot seek to have the contract enforced in the light of Section 14 of the Specific Relief Act. The Judgements referred supra clearly holds that where the contract is determinable, the remedy of the affected party is only to seek compensation in the form of damages and on proving the same they would become entitled to be so compensated. Further Section 41 (e) of the Specific Relief Act prevents this Court from granting injunction.

47. In the Judgement of the Delhi High Court reported in ***AIR 2000 Delhi 450 – Rajasthan Breweries Ltd. Vs. The Stroh Brewery Company***, the issue that was placed for the consideration of the Court was whether the contract was determinable when the contract between the parties did not contain a clause for terminating the agreement by giving just a few days notice. The Division Bench has held as follows:

“Even in the absence of specific clause authorising and enabling either party to terminate the agreement in the event of happening of the events specified therein, from the very nature of the agreement, which is private commercial transaction, the same could be terminated even without assigning any reason by serving a reasonable notice. At the most, in case ultimately it is found that termination was bad in law or contrary to the terms of the agreement or of any understanding between the parties or for any other reason, the remedy of the appellants would be to seek compensation for wrongful termination but not a claim for specific performance of the agreements and for that

view of the matter learned Single Judge was justified in coming to the conclusion that the appellant had sought for an injunction seeking to specifically enforce the agreement. Such an injunction is statuorily prohibited with respect of a contract, which is determinable in nature. The application being under the provisions of [Section 9\(ii\)\(e\)](#) of the Arbitration and [Conciliation Act](#), relief was not granted in view of [Section 14\(i\)\(c\)](#) read with [Section 41](#) of the Specific Relief Act. It was rightly held that other clauses of [Section 9](#) of the Act shall not apply to the contract, which is otherwise determinable in respect of which the prayer is made specifically to enforce the same.”

48. On a conspectus of the factual position in the instant case as well the legal precedents narrated supra, it is seen that the applicant has not made out a prima facie case for grant of order of an injunction and further balance of convenience is on the side of the respondent, accordingly the applications are dismissed. However, there shall be no

order as to costs.

49. 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.

23.12.2020

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Pre-delivery Order in
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