



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on : 19th July, 2022
Judgment Delivered on : 4th August, 2022

+ CS(COMM) 857/2017

VATECH GLOBAL CO LTD Plaintiff
Through: Mr. Neeraj Grover with Ms.
Meenakshi and Mr. Vikramaditya
Singh, Advocates.
versus

UNICORN DENMART LTD & ORS Defendants
Through: Mr. Gunjan Kumar with Mr. Navjeet
Kumar Giri, Advocates.

+ CS(COMM) 1/2016

UNICORN DENMART LTD Plaintiff
Through: Mr. Gunjan Kumar with Mr. Navjeet
Kumar Giri, Advocates.
Versus

VATECH GLOBAL CO LTD Defendant
Through: Mr. Neeraj Grover with Ms.
Meenakshi and Mr. Vikramaditya
Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

1. By this common judgment I shall decide both the captioned cross suits. CS(COMM) 857/2017 was filed on behalf of Vatech Co. Ltd.



(hereinafter referred to as 'Vatech') as a summary suit under Order XXXVII of the Code of Civil Procedure, 1908 (CPC) seeking recovery of Rs.2,77,26,742/- along with interest of Rs.14,68,444/- computed from the due date till the date of filing of the suit along with *pendente lite* and future interest @ 14% per annum. CS(COMM) 1/2016 was filed on behalf of Unicorn Denmart Ltd. (hereinafter referred to as 'Unicorn') for recovery of Rs.4,01,00,000/- towards damages for breach of agreed terms by Vatech along with future interest @12% per annum.

2. It has been pleaded on behalf of Vatech in CS (COMM) 857/2017 that:

- (i) Vatech is an international company incorporated under the laws of Republic of Korea and is one of the world's leading manufacturers of high-tech dental 2D and 3D digital imaging equipment and software.
- (ii) Vatech exports its product to more than twenty countries across the world.
- (iii) Mr. Shammi Gumbhir, defendant no. 2, is the Managing Director of Unicorn and the defendants no.3 and 4 are the directors of Unicorn. Unicorn is in the business of providing goods and services in India in respect of dental equipment.
- (iv) Vatech and Unicorn were doing business with each other since 2009, in terms of which Vatech was supplying dental devices to Unicorn to market and sell them in India.
- (v) As per the agreed payment terms, 50% of the amount was required to be paid in advance by Unicorn and the balance 50% within two months from the date of Bill of Lading.



- (vi) Between September and December, 2014, Unicorn placed purchase orders on Vatech for supply of the following goods:
- (a) 132 sensors via e-mail on 14th October, 2014.
 - (b) 28 OPG(PaX-i) and 28 Sensors via e-mail on 11th November, 2014.
 - (c) 10 PaX-i and 4 PaX-i SC via e-mail on 1st December, 2014.
 - (d) 250 sensors via e-mail on 19th December, 2014.
- (vii) Based on the aforesaid purchase orders Vatech raised the following proforma invoices on Unicorn:

S.No.	Date of Invoice	Commercial Value
1.	15 th October, 2014	USD 176,250.00
2	31 st October, 2014	JPY 28,320,600.00
3.	25 th November, 2014	USD 317,300.00
4.	26 th November, 2014	JYP 18,525,234.00

- (viii) Unicorn released 50% of the amounts based on the aforesaid proforma invoices.
- (ix) Accordingly, Vatech executed the orders and raised the following commercial invoices:

S.No.	Date of Invoice	Total Commercial Value	INR
1.	29 th October, 2014	USD 176,250.10	1,11,03,756.30 (@ 63.00)
2.	19 th November, 2014	JPY 28,320,600.00	1,47,26,712.00 (@ 0.52)



3.	26 th December, 2014	USD 317,300	1,99,89,900.00 (@ 63.00)
4.	11 st December, 2014	JPY 18,525,234.00	96,33,121.68 (@ 0.52)

The terms of the payment were duly mentioned in the aforesaid proforma invoices as well as the aforesaid commercial invoices.

- (x) The goods in respect of the aforesaid invoices for which 50% payments were received, were duly dispatched by Vatech to the defendants and were delivered to the defendants as per schedule.
- (xi) As per the agreed payment terms, the balance payment of 50% in respect of the aforesaid invoices was to be paid within 60 days of the Bill of Lading, however, Unicorn failed to make the said payment.
- (xii) Various reminders were sent by Vatech to Unicorn. However, Unicorn failed to pay the amount.
- (xiii) Vatech sent a legal notice dated 6th May, 2015 to Unicorn calling upon them to clear the unpaid invoices. However, Unicorn failed to clear the same.

3. Summons in the suit were issued on 2nd July, 2015. Leave to defend was filed on behalf of the defendants and vide judgment dated 30th May, 2017, conditional leave was granted to Unicorn, upon Unicorn depositing the amount claimed in the suit i.e. Rs.2,77,26,742/- before the Registrar General of this Court within six weeks. The aforesaid judgment was challenged by Unicorn before a Division Bench of this Court and vide judgment dated 14th March, 2018 the order of the learned Single Judge was modified and Unicorn was directed to furnish security to the extent of



Rs.2,77,26,742/-, to the satisfaction of the Registrar of this Court. Hence, CS (OS) 1849/2015 was filed on behalf of Vatech as a summary suit under Order XXXVII of CPC seeking recovery of the amounts under the aforesaid four invoices. Subsequently, CS (OS) 1849/2015 was converted to a commercial suit and was re-numbered as CS(COMM) 857/2017.

4. Unicorn contested CS(COMM) 857/2017 by filing a written statement in which it has been pleaded that:

- (i) Defendants no.2 to 4 have wrongly been impleaded in the suit as they are merely directors of Unicorn and have not dealt with Vatech in their individual capacity.
- (ii) A Distributor Agreement dated 4th September, 2009 (Ex. DW-1/3 in CS(COMM) 857/2017) was entered into between one of the subsidiaries/sister company of Vatech registered in Singapore i.e. Vatech Asia HQ Pte. Ltd. (hereinafter referred to as 'Vatech Asia'), with Unicorn and the terms of the said Agreement were extended to the distribution of the products exported by Vatech to Unicorn.
- (iii) Vatech breached the agreed terms of understanding between the parties, thereby causing losses to Unicorn.
- (iv) In breach of the agreed terms, Vatech appointed other distributors/dealers for sale of its products in India despite the fact that there was a clear understanding between the parties that Unicorn shall be the sole and exclusive distributor for a period of 15 years from the date of the Distributor Agreement.
- (v) Vatech breached agreed terms of understanding by causing delay in supply of spare parts causing discomfort to the customers of Unicorn.



- (vi) Vatech failed to sign Service Agreement proposed by Unicorn in order to protect the interests of its customers.
 - (vii) On the understanding that Unicorn will be the exclusive and sole distributor of Vatech in India for 15 years, Unicorn made huge investment for marketing the products of Vatech.
5. In its replication, Vatech has re-affirmed its assertions made in the plaint.
6. Unicorn, on 26th November, 2015, filed CS(COMM) 1/2016 for recovery of Rs.4.01 crores wherein, it was pleaded that:
- (i) Unicorn is one of the largest companies in India engaged in the business of importing, marketing, distribution and sale of dental equipment.
 - (ii) Unicorn was importing, marketing and selling the products of Vatech in India since 2009 and there was never any dispute.
 - (iii) A Distributor Agreement dated 4th September, 2009 was signed between the Unicorn and Vatech Asia, a subsidiary of Vatech based in Singapore.
 - (iv) Vatech offered exclusive marketing, distribution and selling rights of its products in India to Unicorn for a period of 15 years.
 - (v) Unicorn put in a lot of effort and investment to create a market for Vatech's products in India.
 - (vi) From 2009 to 2014, Unicorn imported Rs.35.80 crores worth of products from Vatech.
 - (vii) In the latter part of 2014, Vatech started delaying supply of spare parts and also appointed new dealers for the Indian market in violation of



the understanding between the parties, whereby Unicorn was to be the sole and exclusive distributor.

- (viii) On account of the delay caused by Vatech in supplying spare parts to Unicorn, Unicorn could not provide after sale services to its customers in India.
- (ix) After the arrangement with Vatech was terminated, Unicorn entered into understanding with other internationally reputed companies for importing, marketing and distributing dental equipment.

7. Based on the above, CS(COMM) 1/2016 was filed by Unicorn claiming Rs.4.01 crores on account of damages under the following heads:

- (a) Loss of expected profits – Rs.2 crores.
- (b) Loss on account of non-supply of spare parts on time– Rs. 1 lakh.
- (c) Loss of reputation – Rs.50 lakhs
- (d) Salary expenses – Rs.1 crore
- (e) Advertisement expenses – Rs.50 lakhs

8. In the written statement filed in CS(COMM) 1/2016 on behalf of Vatech, besides what has already been stated in the plaint filed in CS(COMM) 857/2017, it has been pleaded that:

- (i) The Distributor Agreement was entered into between Vatech Asia, a sister company of Vatech and Unicorn for a period of two years in the year 2009 and thereafter, the said Agreement was not extended. Therefore, when the disputes arose, the said agreement was not operative.
- (ii) Relationship between Vatech and Unicorn continued smoothly till October, 2014. However, when Vatech appointed another distributor



to cover southern parts of India, Unicorn felt insecure and started delaying the payments of Vatech.

- (iii) Vatech had given a written assurance to Unicorn that spare parts will be provided to the customers of Unicorn.
- (iv) The relationship between Vatech and Unicorn was ended by Unicorn and not Vatech, and therefore, there cannot be any claim for loss of profits.
- (v) The Distributor Agreement of 2009 contained an arbitration clause and if the said Agreement is held to be valid and operational this Court would not have the jurisdiction to entertain the present suit.

9. In its replication, Unicorn has re-affirmed its assertions made in the plaint.

10. The following issues were framed in the suit on 18th July, 2016 in CS(COMM) 1/2016:

- “1. Whether the suit is barred by limitation? OPD*
- 2. Whether there is a valid contract between the petitioner and the respondent as alleged in the suit? OPP*
- 3. Whether there is any breach of contract on the part of the respondents? OPD*
- 4. If so, whether the petitioner is entitled to damages/the amount? OPP*
- 5. Whether the petitioner is entitled to the decree as prayed? OPP”*

11. The following issues were framed in the suit on 13th December, 2017 in CS(COMM) 857/2017:

- “1. Whether or not the invoices raised by the plaintiff are valid? OPP*
- 2. Whether or not the terms of invoice constitute a binding agreement? OPP*
- 3. Whether there exists any valid distributor agreement dated 4th*



September, 2009 between the two parties as claimed by the defendants? OPD

4. *Whether or not plaintiff has breached the distributor agreement as claimed by the defendants? OPD*
5. *Whether or not the plaintiff is entitled to the amount outstanding as per invoices and relief as prayed? OPP*
6. *Relief''*

12. In CS(COMM) 1/2016, I.A. No.1540/2018 was filed on behalf of Vatech for appointment of a Local Commissioner for recording of evidence. Accordingly, vide order dated 2nd February, 2018, Mr. V.K. Maheshwari, Additional District Judge (Retd.) was appointed as a Local Commissioner to record the evidence. Evidence was recorded by the Local Commissioner in CS(COMM) 1/2016 between 13th March, 2018 and 2nd May, 2018. Mr. Song Gi Shin appeared as a witness on behalf of Vatech and Mr. Mukesh Aneja and Mr. Shammi Gumbhir as witnesses on behalf of Unicorn.

13. In CS(COMM) 857/2017, I.A. No.6032/2018 was jointly filed on behalf of the parties for appointment of a Local Commissioner for recording of evidence. Accordingly, vide order dated 3rd May, 2018, Mr. V.K. Maheshwari, Additional District Judge (Retd.) was appointed as a Local Commissioner to record the evidence. Evidence was recorded by the Local Commissioner in CS(COMM) 857/2017 between 2nd July, 2018 and 4th August, 2018. Mr. Song Gi Shin appeared as a witness on behalf of Vatech and Mr. Mukesh Aneja as a witness on behalf of Unicorn.

14. Witnesses of both the sides have supported their respective versions which shall be discussed in detail while dealing with the issues.

15. Final arguments in both the suits were heard on 12th July, 2022, 15th July, 2022 and 19th July, 2022.



16. I have heard submissions on behalf of the parties and also gone through the record of the suits.

17. My issue wise findings are as under:

Issue 1 in CS(COMM) 1/2016

“1. Whether the suit is barred by limitation? OPP”

18. It is the case of Vatech that the suit filed by Unicorn is barred by limitation as it seeks to enforce an Agreement that was executed in the year 2009. On the other hand, it has been submitted on behalf of Unicorn that the breach occurred only in 2014 and therefore, the suit is not barred by limitation. In view of the fact that the alleged breach of the Agreement, which is the subject matter of the suit, occurred only in October, 2014, the present suit is not barred by limitation.

19. Therefore, issue no.1 in CS(COMM) 1/2016 is decided in favour of Unicorn and against Vatech.

Issue 1, 2 and 5 in CS(COMM) 857/2017

- “1. Whether or not the invoices raised by the plaintiff are valid? OPP*
2. Whether or not the terms of invoice constitute a binding agreement? OPP
5. Whether or not the plaintiff is entitled to the amount outstanding as per invoices and relief as prayed? OPP”

20. In his affidavit of evidence, Mr. Song Gi Shin has exhibited the four proforma invoices: (i) USD 176,250.00 dated 15th October, 2014 (ii) JPY 28,320,600.00 dated 31st October, 2014 (iii) USD 317,300.00 dated 25th November, 2014 (iv) JYP 18,525,234.00 dated 26th November, 2014 (Ex. PW-1/6 COLLY). He has further exhibited the four commercial invoices: (i) USD 176,250.10 dated 29th October, 2014 (ii) JPY 28,320,600.00 dated 19th



November, 2014 (iii) JPY 18,525,234.00 dated 11th December, 2014 (iv) USD 317,300 dated 26th December, 2014 (Ex. PW-1/7 COLLY). Unicorn has not disputed the receipt of the said invoices or the amount claimed therein, nor has Unicorn raised any dispute with regard to the quality of goods supplied.

21. Counsel for the plaintiff has submitted that the proforma invoices (Ex. PW-1/6 COLLY) and the commercial invoices (Ex. PW-1/7 COLLY) duly contained payment terms agreed between the parties, in terms of which 50% of the amount was payable in advance and 50% was payable within 60 days from the date of Bill of Lading.

22. Counsel for Vatech has correctly relied upon the judgment of this Court in ***Punjab Pen House v. Samrat Bicycle Ltd.***, 1990 SCC OnLine Del 238, where it was held that when goods are supplied through a bill on certain terms and conditions, the said terms and conditions amounts to a written contract between the parties. The judgement in ***Punjab Pen House*** (supra) was followed in ***KLG Systel Ltd. v. Fujitsu ICIM Ltd.***, 2001 SCC OnLine Del 440, and it was held that invoices/bills are written contracts and the terms contained therein are binding upon the parties. In this regard, reference may be made to the cross examination of Unicorn's witness on 4th August, 2018, questions no.32 and 33 of which are reproduced below:

“Q.32 As mentioned by you, in answer to Q 31, that all purchases by Unicorn have been done from Vatech on same terms, I draw your attention to the commercial invoice no. VG141029, dated 29th Oct-2014, Exhibit 85, VC 141226 dated 26-Dec-2014, Exhibit 86, VVG141119 Dated 19.11.2014 Exhibit 87, and VVG 141209 dated 11.12.2015 Exhibit - 88-(all the exhibits are in part III-A of Court file), placed by the



Plaintiff, 50% of the mentioned amount has been paid as advance by Unicorn, therefore are they valid invoices?

A Yes, these are valid invoices.

Q33. The Payment terms on these invoices is indicated that 50% payment is released in advance and the balance 50% on receipt of the goods?

A Yes, it is correct.”

23. Unicorn’s witness has clearly admitted the validity of the invoices and the payment terms. In view thereof, there cannot be any dispute that the terms of the invoices (Ex. PW-1/6 COLLY and Ex. PW-1/7 COLLY) constituted a valid and binding contract between the parties.

24. Between November 2014 and March 2015, various reminders were sent by Vatech to Unicorn via e-mails for clearing the outstanding amount due to Vatech (Ex. PW-1/9 COLLY).

25. In the beginning, Unicorn clearly admitted its liability to pay the amounts due under the invoices. Reference may be made to various e-mails exchanged between the parties (Ex. PW-1/9 COLLY), relevant portions of which are reproduced below:

- (i) E-mail dated 4th November, 2014 written by Unicorn to Vatech (part of Ex. PW-1/9 COLLY at page 97 of Vatech’s documents), which is set out below:

“WE WILL ARRANGE YOUR PAYMENTS WITH IN 2-3 DAYS FOR OPG, KINDLY CONTACT TO OUR AGENT FOR IX40 .”

- (ii) E-mail dated 13th December, 2014 written by Unicorn to Vatech (Ex. PW-1/10), which is set out below:



“We are running short of cash flow because of year end billings. So, we are transferring your old payment shortly but as far as 50% of new order is concerned, it will be towards the end of the year only and you may dispatch before 31st December after getting the payment. You may keep the order ready.”

(iii)(E-mail dated 16th December, 2014, written by Unicorn to Vatech (part of Ex. PW-1/9 COLLY at page 104 of Vatech’s documents), which is set out below:

“In this case, I have a request because of the cash flow issues. Can you allow balance 50% payment of old lot of RVGs already received by 31st December? This is the only other way right now. Then in that case, we can transfer payment even during this week also. But second payment can be only till end of this month.”

26. A perusal of the aforesaid e-mails clearly show that Unicorn had admitted its liability to make the payments due as per the invoices and agreed to pay the same. It was only later that Unicorn changed its stand and started linking the clearing of the invoices with other issues such as delay of spares by Vatech and signing of a Service Agreement. In this regard, reference may be made to the e-mails dated 29th January, 2015 (part of Ex. PW-1/9 COLLY at page 109 of Vatech’s documents) and 26th February, 2015 (Ex. PW-1/13) from the Managing Director of Unicorn to Vatech, wherein it is stated that payments will be released only after signing of the Service Agreement between Vatech and Unicorn.

27. The validity of the invoices as well as the payment terms and the amount due have been duly admitted by the witness of Unicorn in the cross-examination conducted on 4th August, 2018. Reference may be made to



response of Unicorn's witness to questions no.48 and 49 in the cross examination conducted on 4th August, 2018, which is set out below:

“Q48. Can you inquire from your office right now and tell this Hon'ble Court on the outstanding amount as shown?”

A.Rs. 2.83 Crores.

Q49. Can you tell this Hon'ble Court, why the payments- as due of Rs.2.83 Crores as due to the plaintiff and being shown outstanding in your books of account since the financial year 2014-15-are not being paid and have been stopped?

A. Because due to breach of contract, amount more than the stated amount became due from the Vatech and then it became the part of litigation.”

28. There is a clear admission by Unicorn that a sum of Rs.2.83 crores was payable by Unicorn to Vatech under the invoices and the only reason for non-payment of the same was on account of the alleged breach of Agreement by Vatech. However, this cannot be a valid ground for withholding payment under the invoices for goods that have already been supplied. Even if the submission of Unicorn that Vatech had breached the terms of the Agreement is believed to be correct, the remedy of Unicorn would be to claim damages, which it has done by filing CS(COMM) 1/2016. But, the payment under the invoices in respect of goods supplied, had to be made.

29. Therefore, it is held that the terms of invoices raised by Vatech on unicorn constituted a binding agreement. Unicorn has admitted the receipt of the said invoices and the amounts due under the said invoices. Therefore, Vatech is entitled to the amounts due under the said invoices.



30. Accordingly, Issues no. 1, 2 and 5 are decided in favour of Vatech.

Issue no. 3 in CS(COMM) 857/2017

“3. Whether there exists any valid distributor agreement dated 4th September, 2009 between the two parties as claimed by the defendants? OPD”

AND

Issue no. 2 in CS(COMM) 1/2016

“2. Whether there is a valid contract between the petitioner and the respondent as alleged in the suit? OPP”

31. It has been vehemently contended on behalf of Unicorn that the Distributor Agreement dated 4th September, 2009 (Ex. DW-1/3 in CS(COMM) 857/2017) between Vatech Asia and Unicorn constituted an Agreement between Vatech and Unicorn. It is further contended that the aforesaid Agreement continued to operate between the parties as it was for a duration of 15 years. He submits that the parties worked on the basis of this Agreement till 2014. He places reliance on e-mail dated 19th January, 2015 from Vatech to Unicorn (part of Ex. PW-1/6 COLLY in CS(COMM) 1/2016 at page 19 of Unicorn's documents), where reference has been made to 'past agreement', which refers to the aforesaid Distributor Agreement of 2009.

32. Reference is also made to the e-mail dated 20th January, 2015 from Vatech to Unicorn (part of Ex. PW-1/6 COLLY at page 18 of Unicorn's documents in CS(COMM) 1/2016) and e-mail dated 29th March, 2015 from Vatech to Unicorn (part of Ex. PW-1/6 COLLY at page 33 of Unicorn's documents in CS(COMM) 1/2016), wherein a reference has been made to



‘prior mutual agreement signed by both parties’. It is further submitted that Vatech had no market in India and it was only on account of the efforts put in by Unicorn and the investments made by Unicorn over a period of 6 years that Vatech had achieved a market presence in India. It was a clear understanding of the parties that in order to recover the investments made by Unicorn, the agreement would be for a period of 15 years. In this regard, reference is made to e-mail dated 27th February, 2015 from Unicorn to Vatech. (part of Ex. PW-1/6 COLLY at page 41 of Unicorn’s documents in CS(COMM) 1/2016)

33. On the other hand, it has been contended on behalf of counsel for Vatech that the aforesaid Distributor Agreement was not between Unicorn and Vatech but between Unicorn and Vatech Asia, a sister company of Vatech. He further submits that even if it is assumed that the aforesaid Agreement operated between Vatech and Unicorn, the said agreement was valid only for a duration of two years and there is no basis to say that the said Agreement was extended beyond two years.

34. At the outset, before proceeding further, it is deemed apposite to set out the relevant parts of the Distributor Agreement dated 4th September, 2009 (Ex. PW-1/3 in CS(COMM) 1/2016), relied by both the sides.

“Section 1.04 - Facilities, Ability and Desire to Be a Distributor

The Distributor represents that it possesses the technical facilities and the ability and requisite experience to promote the sale and use of the products manufactured or supplied by the Company and that it is desirous of developing demand for and sale of such products in the territory on an exclusive in dental field basis as stated upon the terms and conditions set forth herein.



The Company is desirous of having the Distributor develop a demand for and sale of the products, in such territory on an exclusive in dental field basis upon the terms and conditions set forth herein.

xxx

xxx

xxx

Section 2.01 – Appointment

The Company appoints the Distributor as the distributor for the retail sale of the Products within the territory and the duration period as described in Appendix attached hereto. The territory so described; which may be subsequently enlarged, reduced, or otherwise changed in area with the mutual consent of the parties hereto is hereinafter referred-to as the "Territory".

xxx

xxx

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Section 2.03 - Selling Rights Reserved

Notwithstanding anything to the contrary stated herein in this Agreement, the Company reserves the right to sell; either directly or through any of its branch, agent or distributors; any of its products, within any territory, throughout the world.

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Section 3.02 -Payment & Delivery

The Distributor shall pay the Company for the Products ordered, as set forth by the effective price schedule agreed upon from time to time. The-current effective price schedule is set forth in Appendix C- 'Price Schedule', attached hereto. Full payment for the Products ordered by the Distributor shall be due and must be settled 30 days from the date of the Company's issued invoice through Telegraphic Transfer to the following bank and account:

Bank:

DBS BANK



NEUTRAL CITATION NO: 2022/DHC/002930

Account: 0006-000388-01-9 (US\$ Acc)
Beneficiary: VATECH ASIA HQ PTE LTD
Swift Address: DBSSSGSG

ii. *The Distributor shall pay all freight and insurance charges for delivery of the Products ordered to the Distributor's nominated warehouse address.*

iii. *The normal delivery time following receipt of order shall be 4 weeks depending on the quantities of the order and the availability of stocks in the inventory.*

iv. *The Company may change the schedule of prices as detailed in Appendix B from time with 30 days' written notice to the Distributor.*

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ARTICLE 7 – ARBITRATION

Section.7.01-Arbitration

All disputes, controversies or differences which may arise between the parties, out of or in relation or in connection with this agreement, or for the breach thereof shall be finally settled by arbitration in the Republic of Singapore in accordance with the Commercial Arbitration Rules of the Singapore Arbitration Board under the laws of the Republic of Singapore. The award rendered by the arbitrator(s) shall be final and binding upon both parties concerned.

xxx

xxx

xxx

Section 8.03 - Completeness of Instrument

This instrument contains all of the agreements, understandings, representations, conditions, warranties, and covenants made between the parties hereto. Unless set forth herein, neither party shall be liable for any representations made and all modifications and amendments hereto shall be made in writing.



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ARTICLE 9-ENTIRE AGREEMENT

Section 9.01 – Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof. It contains all of the covenants and agreements between the parties with respect to the said matter. Each party to this

Agreement acknowledges that no representations, inducements, promises, or agreements oral or otherwise have been said by any party or anyone acting on behalf of any party, which are not embodied herein and that no other agreement, statement, or writings not contained in this Agreement shall be valid or binding.

This Agreement may not be altered, amended, or modified except by a written instrument signed by both parties hereto.

35. It is undisputed that the aforesaid Agreement was between Vatech Asia, a sister company of Vatech, and Unicorn. It is also an admitted position that the payment terms as provided in the said Agreement were not followed by the parties. The Agreement provided full payment to be made within 30 days from the date of invoice, however, admittedly the parties followed the terms of payments provided in the proforma invoices and the commercial invoices. Appendix A of the Agreement provided that the agreement was for a period of 24 calendar months from the date of endorsement. Article 9 of the agreement provided that any modification of the agreement would have to be in writing. Admittedly, the duration of validity of the Agreement was never extended in writing by either of the parties. In a commercial arrangement between two commercial entities, it would be reasonable to expect that if the terms of a written Agreement were to be extended, the same would be in writing and cannot be on the basis of



an oral understanding between the parties. Unicorn has not placed on record any written document to show that the period of the said Agreement was extended beyond two years.

36. In this regard, reference may be made to the cross examination of Vatech's witness on 2nd May, 2018 in CS(COMM) 1/2016, which is set out below:

"Q.42 Please see your email dated 19.01.2015 (page 19 of the document filed by plaintiff). In the second para of the mail you have referred to one Article 5 of the past agreement; I put to you that this past agreement referred by you in your mail dated 19.01.2015 is the agreement dated 04.09.2009 Exhibit PW I/3?"

A Yes, it is."

37. A reference may also be made to cross examination of Unicorn's witness on 23rd March, 2018 in CS (COMM) 1/2016, which is set out below:

"Q15 I put it to you that the agreement you have referred was valid for 2 years, was this agreement extended in writing?"

A there is no such writing with regard to extension/ amendment of the mentioned agreement. But, there are email communications by Mr. George Shin and Mr. Edward accepting the validity of the agreement even during 2014 also.

Q16 Can you show any such email that you have referred?

A Message by Mr. George Shin dated 20.01.2015, message by- Mr. Edward dated 29.03.2015, message by Mr. George Shin dated 13.10.2014."

38. I have examined the abovesaid emails referred to by Unicorn's witness. The relevant extracts from the said emails are set out below:



- a. E-mail dated 19th January, 2015 written by Vatech to Unicorn (part of Ex. PW-1/6 COLLY at page 19 of Unicorn's documents in CS(COMM) 1/2016), which is set out below

*"For the alternative, we can also discuss based on the **past agreement** which worked perfectly fine so far.*

As it was OK for both in the service part (Article 5), we don't need to fix it."

- b. E-mail dated 20th January, 2015 written by Vatech to Unicorn (part of Ex. PW-1/6 COLLY at page 18 of Unicorn's documents in CS(COMM) 1/2016), which is set out below:

*"According to the **past agreement**, even our new draft, supplier has to supply the parts regardless the contracts termination. There is no one side risk to you on the service. And the exclusivity of India except south can be given to you, only when you promising the proper business commitment with a certain period."*

- c. E-mail dated 29th March, 2015 written by Vatech to Unicorn (part of Ex. PW-1/6 COLLY at page 33 of Unicorn's documents in CS(COMM) 1/2016), which is set out below:

*"- Vatech will keep providing the technical supports based on the **prior mutual agreement signed by both parties**."*

39. There is nothing in the aforesaid e-mails to suggest that the 2009 Agreement was extended by the parties beyond two years. In the e-mail dated 19th January, 2015, there was only a reference to Article 5 of the 2009 Agreement dealing with the service part. In the e-mail dated 20th January, 2015, reference was to supply spare parts even after termination.



In the e-mail dated 29th March, 2015, Vatech had committed to provide technical support based on the ‘prior mutual agreement’ signed between the parties. A reference has been made to specific terms of the 2009 Agreement for specific purposes. However, this cannot be read to mean that the parties had agreed to extend the term of the said Agreement beyond two years. Merely because Unicorn had an expectation that the Agreement would extend to a period of 15 years, would not mean that the parties had agreed to extend the same for a period of 15 years.

40. It has rightly been submitted on behalf of Vatech that if the Distributor Agreement dated 4th September, 2009 was extended by the parties, then the parties would have had to take resort to the Arbitration clause provided in the said Agreement for the disputes that are subject matter of the present suits. As per its own understanding, Unicorn has filed the present suit to claim damages for breach of the Agreement. If the said Agreement was stated to have been existing, Unicorn’s remedy would have been to initiate arbitration proceedings and not file CS(COMM) 1/2016. In fact, the present suit would not be maintainable at all. Therefore, as per Unicorn’s own understanding, the aforesaid Agreement was not operative in the year 2015/2016. In this regard, reference may be made to the response of Unicorn’s witness in the cross examination conducted on 13th March, 2018 in CS(COMM) 1/2016, which is set out below:

“Q21. As per the agreement if there is any dispute how that is to be resolved?”

By way of Arbitration as per Section 7.01.”



41. Therefore, it is held that the Distributor Agreement (Ex. PW-1/3 in CS(COMM) 1/2016) was operative only for two years from 4th September, 2009, as provided in the Agreement. The same was never extended by the parties. Therefore, At the time of the dispute between the parties, the agreement was not operative.

42. Both the issues stand answered accordingly.

Issue 4. in CS(COMM) 857/2017

“4. Whether or not plaintiff has breached the distributor agreement as claimed by the defendants? OPD”

AND

Issue 3. In CS(COMM) 1/2016

“3. Whether there is any breach of contract on the part of the respondents? OPD”

43. Counsel for Unicorn has submitted that Vatech committed a breach of the Distributor Agreement (Ex. PW-1/3 in CS(COMM) 1/2016) in October, 2014, when it appointed another distributor in India. As per Unicorn, the Distributor Agreement (Ex. PW-1/3 in CS(COMM) 1/2016) as well as the appointment letter dated 4th September, 2009 (Ex. PW-1/2 in CS(COMM) 1/2016), clearly provided that Unicorn will be the exclusive distributor for the retail sale of Vatech’s products within the territory of India.

44. On the other hand, on behalf of Vatech it has been contended that there was nothing in the Distributor Agreement (Ex. PW-1/3 in CS(COMM) 1/2016) to suggest that Unicorn was appointed as an exclusive distributor. Reference made to Section 1.04 of Article 1 of the Distributor Agreement (Ex. PW-1/3 in CS(COMM) 1/2016) is not apposite as it was in the nature



of a recital to the Agreement and not the substantive provision of the Agreement.

45. Undoubtedly, it is noted in Section 1.04 that the understanding of the parties was to appoint Unicorn as the distributor for Vatech's products in India on an exclusive basis. This view is fortified also by the appointment letter dated 4th September, 2009 (Ex. PW-1/2 in CS(COMM) 1/2016), wherein it has clearly been stated that Unicorn has been appointed as '*exclusive distributor for the territory of India*'. The said appointment letter also notes that this is in accordance with the Distributor Agreement dated 4th September, 2009 (Ex. PW-1/3 in CS(COMM) 1/2016). Therefore, I am of the view that Unicorn was appointed as an exclusive distributor by Vatech in India in terms of the Distributor Agreement and appointment letter. However, as I have held above that the aforesaid Agreement was only in place for a period of two years and was never extended by the parties. Though the parties may have followed some provisions of this Agreement at a later point of time, there is nothing to suggest that the exclusivity clause in the said Agreement was extended by the parties. Therefore, when another distributor was appointed by Vatech in October, 2014 in India, it cannot be said that it amounted to a breach of Agreement between the parties.

46. In this regard, reference may be made to the response of Unicorn's witness in the cross examination conducted on 23rd March, 2018 in CS(COMM) 1/2016, which is set out below:

"Q4 In other words, the only breach on part of the defendant that you referring is the distributor agreement dated 04.09.2009.

A There was subsequent discussion between us that this agreement is a part of their standard agreement but we have been appointed



as strategic partner and will continue to be the exclusive for 15 years to recover our investments which we will do on their behalf. Their business in India was nil till that time and due to the nature of the products they wanted a company with the high technical background to sell the products. However, the written agreement was dated 04.09.2009 only.

Q5 Do you mean to say that what you have stated above was only oral understanding?"

A Yes but it was continuing till 2014 without any breach."

47. On behalf of Unicorn, reliance has been placed on the cross examination of Vatech's witness in CS (COMM) 1/2016 conducted on 24th April, 2018.

"Q34 Is it correct that during the period 2009 to 2014 plaintiff was the sole distributor of defendant?"

A Yes. Volunteered: It is a matter of record."

48. Just because Vatech did not appoint another distributor in India till 2014, did not mean that there was any contractual bar on Vatech appointing another distributor. Reference may be made to e-mails dated 13th October, 2014 (part of Ex. PW-1/6 COLLY at page 61 of Unicorn's documents in CS(COMM) 1/2016) and 15th October, 2014 (part of Ex. PW-1/6 COLLY at page 58 of Unicorn's documents in CS(COMM) 1/2016) written by Unicorn to Vatech. Though Unicorn has expressed its displeasure at Vatech appointing another distributor in India, nowhere in the said e-mails has Unicorn alleged that appointment of another distributor in India amounted to a breach of contract.

49. In fact, the e-mail dated 19th January, 2015 (Ex. PW-1/6 at page 18 of Unicorn's documents in CS(COMM) 1/2016) written by Unicorn to Vatech



suggests that Unicorn had accepted the fact that it was no longer the exclusive distributor of Vatech's products in India. In the said e-mail, Unicorn is asking Vatech to consider appointing Unicorn as its exclusive distributor for areas other than where it had already appointed Chessa as its distributor. In this regard reference may be made to the response of Unicorn's witness in the cross examination conducted on 4th August, 2018 in CS(COMM) 857/2017, which is set out below:

"Q41 You have stated in para 20 that the plaintiff malaises, and in complete disregard in spite of exclusive right to defendants, the plaintiff appointed another dealer. However, the mail sent by the defendant Managing Director Mr. Gumbhir dated Jan 19, 2015. placed by you at exhibit (page 76) states "You have clarified that Chessa is your distributor for sensor for 4 states in south India. But will you consider us Exclusive for rest of area or you want multiple dealers even in this territory also. Business plan cannot be finalized without this clarification", therefore, how do you state that you were appointed as Exclusive dealer?"

A it is a matter of record."

50. Accordingly, it is held that there was no breach of Distributor Agreement (Ex. PW-1/3 in CS(COMM) 1/2016) by Vatech. Therefore, both the aforesaid issues are decided in favour of Vatech.

Issue 4 in CS(COMM) 1/2016

"If so, whether the petitioner is entitled to damages/the amount? OPP"

51. Unicorn has claimed damages totaling Rs.4.01 crores as detailed in paragraph 38 of the plaint, on the basis that Vatech has breached the contract between the parties by appointing another distributor. I have already held



above that there was no breach of contract on the part of Vatech. Therefore, there cannot be any claim for damages for breach of contract. Even otherwise, Unicorn has failed to lead any evidence in support of its claim for damages.

52. A sum of Rs. 2 crores have been claimed on account of loss of expected profits on account of breach of contract by Vatech. While answering issue no.3, I have already held that the contract between the parties was, at best, for a period of two years and there is no basis to say that the contract was for a period of 15 years. In any case, it was Unicorn that decided not to work with Vatech after Vatech appointed another distributor in India.

53. In view thereof, no amount can be awarded to Unicorn for loss of expected profits. Further, no evidence has been placed on record by Unicorn to prove the loss of profits suffered by it.

54. A sum of Rs.1 lakh is claimed on account of delay in supply of spare parts by Vatech to Unicorn. As per Unicorn, there was a delay of 3 to 4 months in supply of spare parts worth about Rs.35 lakhs and therefore, Vatech is liable to pay a sum of Rs.1 lakh towards interest on the aforesaid amount. In this regard, reference may be made to the cross-examination of Unicorn's witness conducted on 13th March, 2018 in CS(COMM) 1/2016, which is set out below:

“Q31.The losses have been worked out by you are not based on any documentary evidence, what you have to say?”

A The calculation as objected can be given.

Q32 you have mentioned in your evidence that later part of the year 2013 that the defendant started delaying in supply of spares,



whereas no evidence to this effect in enclosed, what you have to say?

A In Email dated 24.03.2015 (Page 34, part 3 file) sent by Mr. Shammi Gambhir, Managing Director of plaintiff Company, he has given details of the incident and it has never been denied.”

55. Once again, Unicorn has failed to lead any evidence to establish delay in supply of spare parts so as to justify award of the aforesaid amount.

56. A sum of Rs.50 lakhs has been claimed by Unicorn on account of loss of reputation. It is the case of Unicorn that it was a reputed company in the Indian Dental Industry and acts of Vatech resulted in loss of reputation. Once again, no evidence has been led on behalf of Unicorn with regard to the reputation it enjoyed prior to the breakdown of relationship with Vatech and the loss in reputation it suffered on account of breakdown of such relationship. As observed above, it was the decision of Unicorn to end the relationship.

57. A sum of Rs. 1 crore has been claimed by Unicorn on account of salary expenses towards the additional staff employed by Unicorn for the business on the understanding that the Agreement with Vatech was for a period of 15 years. No evidence has been led in respect of additional staff hired by Unicorn for the orders of Vatech. I have already held above that there was nothing to show that the agreement was for a period of 15 years. In any case, it has come out in the evidence that after the termination of the relationship between Vatech and Unicorn, Unicorn was appointed as a distributor by four other companies as admitted by Unicorn's witness, Mukesh Aneja in his cross-examination on 13th March, 2018. Accordingly, there is no merit in this claim.



58. A sum of Rs.50 lakhs has been claimed towards advertisement expenses carried out on behalf of Unicorn in respect of products of Vatech. It is the case of Unicorn that Unicorn used to get printed brochures and pamphlets and products of Vatech and also displayed these products at various Dental Expos in India for which it incurred expenses. Once again, no evidence has been led in this behalf by Unicorn. On the other hand, the witness of Vatech has affirmed that they used to print out brochures and pamphlets of their products and not Unicorn. Reference may be made to the cross examination of Vatech's witness in CS(COMM) 857/2017 conducted on 16th July, 2018, which is set out below:

“Q37 Is it correct that the plaintiff generally used to take money from defendant for the brochures and other marketing material that were used by defendant at the stalls set up by it at various dental shows in India?”

A It is not correct. There was some discussion that some of the brochures and advertising material were provided by plaintiff free of cost. The shipping was paid by the defendant to the plaintiff That is why I used to hand carry from Korea whenever I visit India.

Q39 It is put to you that Vatech use to charge for all marketing and sales material provided by it to the defendant and the defendant had to make requests at every level and time to be able to get even a portion of marketing and sales material free of cost and it was not an automatic process of plaintiff to provide free materials for marketing to defendant.

A It is not correct. We never charge any money from the defendant. On the contrary we spent money for providing sales material and promotion and exhibition also to the defendant. Only



the shipping charge were borne by the defendant, when the material was sent to them by courier.”

59. In view thereof, Unicorn is not entitled to damages as claimed. Therefore, the said issue is decided in favour of Vatech and against Unicorn.

Unicorn’s objections to the maintainability of Vatech’s suit

60. Though no issue(s) have been framed, following objections have been taken on behalf of Unicorn with regard to defects in the plaint:

- (i) The plaint has not been signed on behalf of Vatech, as required under Order VI Rule 14 of CPC.
- (ii) No date or place has been mentioned in the verification to the plaint, as mandated under Order VI Rule 15 of CPC.
- (iii) Though the plaint was stated to have been notarised on 29th June, 2015 at Gautam Buddh Nagar, Greater Noida, the signatory to the plaint was not present in Greater Noida on the said date. In this regard, reliance has been placed on the cross-examination of Mr. Song Gi Shin by Unicorn’s advocate on 16th July, 2018 in CS(COMM) 857/2017. Mr. Song Gi Shin, in his cross-examination has admitted that Mr. Sookeun Park, the signatory on the plaint did not visit India in May, 2015.
- (iv) No Board Resolution has been placed on record in favour of Mr. Sookeun Park, authorizing him to sign, verify and file the plaint. In this regard, reliance has been placed on the judgment of the Supreme Court in State Bank of Travancore Vs. Kingston Computers (I) P. Ltd., MANU/SC/0280/2011.



(v) Vatech had not filed a Power of Attorney in favour of its witness, Mr. Song Gi Shin to lead evidence on behalf of Vatech in CS(COMM) 857/2017.

61. It may be noted that none of the aforesaid objections were taken in the written statement filed on behalf of Unicorn, nor was any issue framed with regard to the same.

62. In response, it has been contended on behalf of Vatech that the issues pointed out by Unicorn are, at best, procedural lapses only. He places reliance on the judgment of the Supreme Court in ***United Bank of India Vs. Naresh Kumar and Ors.***, (1996) 6 SCC 660, to contend that even where pleadings have been signed by an Officer of the company without a Power of Attorney or Board Resolution in his favour, the company can subsequently ratify the same. Reliance is also placed on the judgment of the Supreme Court in ***Uday Shankar Triyar Vs. Ram Prasad Kalevar***, (2006) 1 SCC 75, to contend that even if the plaint is not signed on behalf of the plaintiff due to a *bona fide* error, the defect can be permitted to be rectified before the judgment.

63. On merits, counsel for Vatech has drawn attention of the Court to the Board Resolution dated 24th April, 2015 (Ex. PW-1/1 at page 12 of Vatech's documents in CS(COMM) 857/2017) passed in the meeting of Board of Directors of Vatech authorizing Mr. SooKeun Park to file all law suits on behalf of Vatech. On the basis of the aforesaid Board Resolution, Mr. Park signed on the plaint.

64. Attention is drawn to the Power of Attorney dated 22nd February, 2016 (Ex. DW-1/1 in CS(COMM) 1/2016) issued by Vatech in favour of Mr. Song Gi Shin which authorises Mr. Song to sign and verify all



pleadings, including complaints/written statement as well as depose as a witness. The aforesaid Power of Attorney has been signed on behalf of Vatech by Mr. SooKeun Park who was authorised by Board Resolution dated 24th April, 2015. Even though the said Power of Attorney has been filed in CS(COMM) 1/2016, since the two suits are between the same parties and being decided together by a common judgement, judicial notice can be taken of the same so as to authorise Mr. Song Gi Shin to depose as a witness in CS(COMM) 857/2017. Further, a Power of Attorney dated 3rd May, 2018 was filed in favour of Mr. Song Gi Shin to depose as a witness in CS(COMM) 857/2017 on 5th July, 2018, while the evidence was being recorded in the said suit. In any case, Mr. Song Gi Shin has deposed as a witness on the basis of his personal knowledge, therefore, no Power of Attorney was required in his favour.

65. The relevant observations of the Supreme Court in ***United Bank of India v. Naresh Kumar*** (supra) are set out below:

"10. It cannot be disputed that a company like the appellant can sue and be sued in its own name. Under Order 6 Rule 14 of the Code of Civil Procedure a pleading is required to be signed by the party and its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the company. Order 29 Rule 1 of the Code of Civil Procedure, therefore, provides that in a suit by or against a corporation the Secretary or any Director or other Principal Officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. Reading Order 6 Rule 14 together with Order 29 Rule 1 of the Code of Civil Procedure it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and de hors Order 29 Rule 1 of the



Code of Civil Procedure, as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6 Rule 14 of the Code of Civil Procedure. A person may be expressly authorised to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of its officers a corporation can ratify the said action of its officer in signing the pleadings. Such ratification can be express or implied. The court can, on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing of the pleading by its officer.

11. The courts below could have held that Shri L.K. Rohatgi must have been empowered to sign the plaint on behalf of the appellant. In the alternative it would have been legitimate to hold that the manner in which the suit was conducted showed that the appellant-Bank must have ratified the action of Shri L.K. Rohatgi in signing the plaint. If, for any reason whatsoever, the courts below were still unable to come to this conclusion, then either of the appellate courts ought to have exercised their jurisdiction under Order 41 Rule 27(1)(b) of the Code of Civil Procedure and should have directed a proper power of attorney to be produced or they could have ordered Shri L.K. Rohatgi or any other competent person to be examined as a witness in order to prove ratification or the authority of Shri L.K. Rohatgi to sign the plaint. Such a power should be exercised by a court in order to ensure that injustice is not done by rejection of a genuine claim."

66. The relevant observations of the Supreme Court in ***Uday Shankar Triyar v. Ram Prasad Kalevar*** (supra) are set out below:

"16. An analogous provision is to be found in Order 6 Rule 14 CPC which requires that every pleading shall be signed by the



party and his pleader, if any. Here again, it has always been recognised that if a plaint is not signed by the plaintiff or his duly authorised agent due to any bona fide error, the defect can be permitted to be rectified either by the trial court at any time before judgment, or even by the appellate court by permitting appropriate amendment, when such defect comes to its notice during hearing.

17. Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. The well-recognised exceptions to this principle are:

- (i) where the statute prescribing the procedure, also prescribes specifically the consequence of non-compliance;
- (ii) where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;
- (iii) where the non-compliance or violation is proved to be deliberate or mischievous;
- (iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court;
- (v) in case of memorandum of appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant."

67. I am in agreement with the submissions made on behalf of Vatech that all the aforesaid objections taken on behalf of Unicorn are procedural ones and would not invalidate the present proceedings. As noted above, CS(COMM) 857/2017 was validly instituted on behalf of Vatech by Mr. Park, who was validly authorised through Board Resolution dated 24th April, 2015. In any case, it cannot be denied that Mr. SooKeun Park was the



former President/Representative Director of Vatech and hence, in terms of Order XXIX Rule 1 of CPC, was authorized to sign on behalf of Vatech. Even though, it appears that the notarization of the verification in the said suit was carried out by a notary in Gautam Buddh Nagar, Greater Noida, when Mr. SooKeun Park was in Korea, the same could be rectified/ratified at a later stage before the judgment is delivered, in view of the dicta of the aforesaid judgment of the Supreme Court.

68. At the hearing of the suit on 19th July, 2022, counsel for Vatech has placed on record verification of the plaint and the affidavit in support of the plaint duly notarized/apostilled in Korea on 1st August, 2018. Further, on the same date counsel for Vatech has also placed on record a supporting affidavit dated 19th July, 2022 of the current President of Vatech, Mr. Sunbeom Kim, notarized and apostilled in Korea, ratifying the original plaint that has been filed in CS(COMM) 857/2017 and affirming that the said plaint was signed by Mr. SooKeun Park, former President of Vatech. In view of the dicta of the judgments above, these documents are a complete answer to all the procedural irregularities pointed out on behalf of Unicorn in the filing of the suit.

69. The judgment in *State Bank of Travancore* (supra) is not applicable in the facts of the present case as in the said case, a specific issue was framed with regard to the signing of the plaint. Further, in the said case, it was an admitted position that no resolution was passed by the Board of Directors authorising the signatory to sign and verify the plaint. In the present case, the aforesaid objections were never taken in the written statement filed by Unicorn in CS(COMM) 857/2017 and therefore, no issue was framed with regard to the same.

**Relief**

70. In view of the discussion above, Vatech is entitled to recovery of the principal amount of Rs.2,77,26,742/- from Unicorn. Though Vatech has claimed interest @14% per annum for the pre-suit period, it is deemed appropriate to award pre-suit interest @9% per annum from the due date, in respect of each of the unpaid invoices, till filing of the present suit. Vatech is also entitled to *pendente lite* and future interest @7% per annum from the date of filing of the suit till its payment.

71. A decree is accordingly passed in favour of Vatech and against Unicorn, in the following terms:

- (i) In CS(COMM) 857/2017, recovery of principal amount of Rs.2,77,26,742/- along with pre-suit interest @ 9% per annum, and *pendente lite* and future interest @ 7% per annum.
- (ii) Dismissal of CS(COMM) 1/2016.
- (iii) Vatech shall also be entitled to costs in respect of both the suits.

72. Decree sheets be drawn up.

73. All pending applications, if any, stand disposed of.

AMIT BANSAL, J.

AUGUST 04, 2022

dk/at