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Original Application Nos.698 and 699 of 2023 and Arb.Appln. No.426 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.08.2023

Pronounced on : 29.08.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

**Original Application Nos.698 and 699 of 2023
and Arb.Appln. No.426 of 2023**

Ford India Private Limited,
represented by Authorised Signatory .. Applicant in both Original
Application Nos.698 and 699
of 2023 and respondent in
Arb. Appln. No.426 of 2023

vs.

1.VSN Commercials Private Limited,
having its registered office at .. 1st respondent in Original
5-3-372, RP Road, Application Nos.698 and 699
Secundarbad-500 003, of 2023 and applicant in
Telengana. Arb.Appln. No.426 of 2023

2.Mody Autonaton Private Limited, .. second respondent in Original
rep. by its Authorised Signatory. Application Nos.698 and 699
of 2023

(second respondent impleaded as per order
dated 18.08.2023 in A. No.4306 of 2023)

Prayer in O.A. No.698 of 2023: Original Application filed under XIV
Rule 8 of Original Side Rules read with Section 9 (ii)(d) of the
Arbitration and Conciliation Act, 1996 to pass an order of injunction
restraining the first using the presmies at Survey No.33, Medchal



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Highway NH-44, near Bowenpally Checkpost, Secundarabad-500 011, for any purpose other than the service dealership of the applicant as per the Dealer Service Agreement dated 29.10.2021 pending resolution of the dispute between the parties by the arbitral tribunal.

Prayer in O.A. No.699 of 2023: Original Application filed under XIV Rule 8 of Original Side Rules read with Section 9 (ii)(d) of the Arbitration and Conciliation Act, 1996 to pass an order of injunction restraining the first respondent from in any manner discontinuing their service dealership located at Survey No.33, Medchal Highway NH-44, near Bowenpally Checkpost, Secundarabad-500 011 pursuant to the Dealer Service Agreement dated 29.10.2021 pending resolution of the dispute between the parties by the arbitral tribunal.

Prayer in Arb.Appln. No.426 of 2023: Application filed under XIV Rule 8 of Original Side Rules to vacate the order dated 09.08.2023 passed exparte in O.A. No.698 of 2023.

For applicant in both Original Application Nos.698 and 699 of 2023 and respondent in Arb. Appln. No.426 of 2023	: Mr.R.Yashod Vardhan, Senior Counsel for Mr.P.Vinod Kumar for M/s.J.Sagar Associates
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For 1st respondent in both Original Application Nos.698 and 699 of 2023 and applicant in Arb.Appln.No.426 of 2023	: Mr.Satish Parasan, Senior Counsel for Mr.T.Saikrishnan
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For 2nd respondent in both Original Application No.698 and 699	: Mr.P.S.Raman, Senior Counsel for Mr.Adarsh Ramanujam
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COMMON ORDER

Original Application No.698 of 2023 has been filed by the

applicant seeking for an order of injunction to restrain the first respondent from using the premises at Survey No.33, Medchal Highway NH-44, near Bowenpally check post, Secundarabad-500011, for any purpose other than the service dealership of the applicant as per the Dealer Service Agreement dated 29.10.2021, pending resolution of the dispute between the parties by the Arbitral Tribunal.

2. Original Application No.699 of 2023 has been filed by the applicant seeking for an order of injunction to restrain the first respondent from in any manner discontinuing their service dealership located at Survey No.33, Medchal Highway NH-44, near Bowenpally check post, Secundarabad-500011 pursuant to the Dealer Service Agreement dated 29.10.2021 pending resolution of the dispute between the parties by the Arbitral Tribunal.

3. Arbitration Application No.426 of 2023 has been filed to vacate the order dated 09.08.2023 passed exparte by this Court in O.A. No.698 of 2023.



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4.The applicant in Original Application Nos.698 and 699 of 2023

was a manufacturer of Ford brand of Cars in India. Due to operational losses, they had to stop manufacturing in India. Some of the Dealers of the applicant, who were earlier selling and servicing Ford Cars in India under a Dealership agreement, were later appointed as an authorised service centre of the applicant to service the Ford Cars in India instead of both selling and servicing the Ford Cars . One such entity is the first respondent in the Original Applications. A fresh Dealer Service Agreement dated 29.10.2021 was entered into between the applicant and the first respondent in substitution of the earlier Dealership Agreement, which had authorised the first respondent to both sell and service the Ford Cars manufactured by the applicant. Under the fresh Dealer Service Agreement dated 29.10.2021, the first respondent was authorised to service the cars manufactured by the applicant at Survey No.33, Medchal Highway NH-44, near Bowenpally check post, Secunderabad-500011. The Dealer Service Agreement dated 29.10.2021 is for a period of five years. Under the Dealer Service Agreement dated 29.10.2021, the first respondent undertook to operate three authorised service outlets for five years and one of them is at the place (Bowenpally) more fully described



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in the schedule to the judges summons.

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5.Under the Dealer Service Agreement dated 29.10.2021, the first respondent with the prior approval of the applicant is empowered to relocate the existing outlet to any other location. The first respondent through its communication dated 04.08.2022 to the applicant sought approval for relocating the existing outlet (Bowenpally) to another nearby location. The applicant by its reply dated 24.08.2022 to the first respondent has granted in principle approval to relocate the existing outlet (Bowenpally) on condition that the existing outlet should be closed after the outlet at the new location becomes operational. On 07.03.2023, the first respondent shared with the applicant the Lease Deed of the new location to which the outlet was to be shifted (proposed outlet). The applicant gave its formal approval on 10.03.2023 subject to the condition that the existing outlet (Bowenpally) should be closed within one month of operation of the proposed outlet. Thereafter, the applicant by its communication dated 09.04.2023 had shared the approved layout for the proposed outlet to be setup by the first respondent in terms of Clause 16 of the Dealer Service Agreement. The applicant by its



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Communication dated 22.06.2023 shared the approved branding for the proposed outlet in terms of clause 17 of the Dealer Service Agreement.

The first respondent by its Communication dated 26.06.2023 to the applicant has informed the applicant that the relocation proposal has hit a roadblock and that the first respondent is bound by timelines to start dealership of another automobile manufacturer at the premises which houses the existing outlet (Bowenpally). The applicant replied to the first respondent on 28.06.2023 and informed them that since the existing outlet is owned by the first respondent, there was no reason to relocate to another place.

6. It is stated in the affidavit filed in support of these applications that meetings between the representatives of the applicant and the first respondent took place in the month of June and July 2023 to resolve the differences. On 22.07.2023, the first respondent by its Communication informed the applicant that it would stop operations at the existing outlet (Bowenpally) by 10.08.2023. The applicant, on receipt of the said communication, requested the first respondent by its letter dated 31.07.2023 to continue operations at the existing outlet until the



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applicant approves the proposed outlet. According to the applicant, since no response was received from the first respondent, the applicant invoked the arbitration clause in the Dealer Service Agreement dated 29.10.2021 on 07.08.2023. After invoking the arbitration clause, the present applications have been filed.

7. According to the first respondent, having given in principle approval for relocating the Bowenpally outlet to a new location, the applicant cannot coerce the first respondent to continue operation for servicing Ford cars at the existing outlet. It is also their case that the property where the Bowenpally outlet is located has already been sold by them to M/s.Mody Autonation Private Limited/second respondent herein and already there is a delay on the part of the first respondent to deliver possession of the property to the purchaser/second respondent herein. It is also the case of the first respondent that there is no prohibition for the first respondent to sell the property where the Bowenpally outlet is located to a third party during the pendency of the dealership agreement. It is also their case that they have made all safeguards in the interest of the customers of Bowenpally outlet and the details of safeguards were



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also informed to the applicant by the first respondent. According to the first respondent, the existing customers of Bowenpally outlet will not be inconvenienced by the relocation of the outlet to a new place. It is also their case that the second respondent is a separate legal entity and sale of the property in favour of the second respondent is not with any ulterior motive or to defraud anyone. According to the first respondent, the sale of the property where Bowenpally outlet is located, was for a fair market price and the sale was effected in the beneficial interest of the first respondent and not to defraud anyone.

8. It is also the case of the first respondent that the orders passed by this Court on 09.08.2023 and 18.08.2023 will create severe reputational loss to them as they enjoy tremendous credibility in the market. It is also their case that balance of convenience is in their favour for vacating the orders passed by this Court on 09.08.2023 and 18.08.2023. According to them, irreparable loss will be caused to them since there is a possibility of facing a damage claim from the second respondent on account of not delivering the possession of the property to them on time subsequent to the sale.

9. According to the second respondent, the purchaser of the



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property where Bowenpally outlet is located, the property was purchased by them under a sale deed dated 18.01.2023. According to them, the first respondent has absolutely sold and transferred the premises in favour of the second respondent. According to them, the first respondent was permitted to use Bowenpally premises through a lease deed dated 18.01.2023 only upto 31.07.2023, which was further extended on a request made by the first respondent till 10.08.2023. According to them, the first respondent is bound to vacate the premises on or before 18.08.2023. It is also their case that the first respondent has no right to continue the operation beyond 18.08.2023. It is also their case that they have already contracted with another third party brand to operate a state of the art facility for such third party brand in Bowenpally premises. It is also their case that if the first respondent does not vacate the premises, they will be unable to meet the contractual deadlines with such third party brand, resulting in termination of the agreement and thereby causing severe financial hardships. According to the second respondent, third party brand has categorically informed them that if the said premises is not ready, they will terminate the agreement with the second respondent. The second respondent has also contended that they have



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already invested huge sums of money for setting up an outlet and in case there is any further delay in opening the outlet, they are likely to face huge damage claim from the third party. According to them, they will be suffering grave, irreparable loss and injury if the injunction granted by this Court is not vacated.

10. Mr.R.Yashod Vardhan, learned Senior Counsel appearing for the applicant, Mr.Satish Parasaran, learned Senior Counsel appearing for the first respondent and Mr.P.S.Raman, learned Senior Counsel appearing for the second respondent have reiterated the contents of the respective affidavits filed by the respective parties. They also drew the attention of the Court to the relevant documents filed in support of the contentions of the respective parties.

Discussion:

11. The issue that arises for consideration is whether the first respondent can be prevented from relocating Ford cars outlet from the existing outlet (Bowenpally) to another place. The injunction reliefs sought for by the applicant is a discretionary relief. The applicant will



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have to establish (a) prima-facie case; (b) balance of convenience; and (c) irreparable loss in order to obtain interim injunction from this Court.

The well settled principles laid down for grant of an order of injunction is also applicable to an application filed under Section 9 of the Arbitration and Conciliation Act, 1996 (in short "the Act") as seen from the decisions of the Hon'ble Supreme Court and High Courts.

12. The followings are the undisputed facts:

(a) The applicant had stopped manufacturing Ford brand of Cars in India on account of its operational loss.

(b) The first respondent was the dealer of the applicant to sell Ford brand of Cars even prior to the fresh dealer service agreement dated 29.10.2021, which is the subject matter of dispute in these applications.

(c) Under the fresh dealer service agreement dated 29.10.2021, the first respondent was appointed as an authorised service centre for Ford brand of Cars only for a period of 5 years.

(d) The applicant was informed about the relocation of the outlet from Bowenpally to a new place by the first respondent as early as on 04.08.2022 by a written communication and a copy of the lease deed



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entered into between the first respondent and the third party in respect of the new location was also furnished by the first respondent to the applicant.

(e) The applicant has given its in principle approval for the first respondent to relocate Bowenpally outlet to a new place by its communication dated 24.08.2022.

(f) In its in principle approval dated 24.08.2022, the applicant has requested the first respondent to close down the existing outlet (Bowenpally) once the new outlet becomes operational.

(g) Under the communication dated 10.03.2023 sent by the applicant to the first respondent, the applicant has imposed a condition that they should close down the existing outlet (Bowenpally) within one month of operation of the new outlet.

(h) The first respondent has sold the property where Bowenpally outlet is located, to the second respondent under a registered sale deed dated 18.01.2023. Subsequent to the sale, the second respondent, in order to accommodate the applicant and to safeguard its business of servicing Ford Cars at Bowenpally outlet, has entered into an agreement of lease with the first respondent for the period from the date of sale till



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the end of July, 2023. The lease period has also now got expired by the lapse of 6 months from the date of lease.

13. It is not in dispute that the first respondent can seek for relocation of Bowenpally outlet to another place subject to getting approval of the same from the applicant. The first respondent, in accordance with the dealer service agreement dated 29.10.2021, has admittedly sought for approval from the applicant to relocate Bowenpally outlet to a new place. The first respondent has also handed over the copy of the lease deed, in respect of the new location where the first respondent is desirous of relocating, to the applicant. The first respondent through its communication has informed that the relocation will not inconvenience any of its existing customers as sufficient safeguards have been taken by them to prevent the loss of customers. The applicant has granted in principle approval for the first respondent to relocate Bowenpally outlet by its email dated 24.08.2022 subject to the condition that the existing outlet should be closed down once the new approval becomes operational. In another communication dated 10.03.2023, the applicant has informed the first respondent that the



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existing outlet should be closed within one month from the date when the new outlet becomes fully operational.

14. The first respondent has sold the property where the existing outlet is located, to a third party, namely, the second respondent in these applications, under a registered sale deed dated 18.01.2023. The second respondent claims that they have entered into a contract with a third party for running a dealership business in respect of a different brand of automobiles. The sale deed dated 18.01.2023 by which the second respondent has purchased the property from the first respondent is also placed on record before this Court by the respondents 1 and 2. As seen from the terms and conditions of the dealer service agreement dated 29.10.2021, there is no prohibition imposed on the first respondent to sell the property where Bowenpally outlet is presently located to another third party. The first respondent is also not opting out of the dealership as per the dealer service agreement dated 29.10.2021, but, is desirous of only relocating the existing outlet to a new place.

15. Earlier, the first respondent was appointed as a dealer by the



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applicant for sales and service of Ford brand of cars, which was manufactured by them. But, due to operational loss, the applicant had stopped the manufacturing of Ford cars in India. However, in order to safeguard the interest of its customers, who had already purchased Ford cars, fresh dealer service agreements were entered into granting dealership for servicing Ford cars alone. Judicial notice can be taken by this Court that in view of stoppage of manufacturing of Ford cars in India, authorised service centres of the applicant will see a decline in the number of customers in the years to come. It is also not the intention of the first respondent to get away from the fulfilment of the terms and conditions of the dealer service agreement dated 29.10.2021. They have intimated the applicant the safeguards to be provided by them in order not to loose the existing customers from Bowenpally workshop. When in principle approval has been given by the applicant by its communication dated 24.08.2022 for relocating the Bowenpally outlet to a new place, the applicant cannot now object to the first respondent for the said relocation.

16. The first respondent would have certainly spent huge sums of



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money for establishing the new outlet. A copy of the lease deed dated 18.01.2023 entered into by the first respondent with the second respondent was also furnished to the applicant. The applicant is also aware that the first respondent would have spent substantial sums of money for relocating the existing outlet to a new place. Though the dealer service agreement dated 29.10.2021 stipulates that the conditions imposed by the applicant for relocation should be fulfilled by the first respondent, the applicant cannot impose draconian conditions, that too, when they have already granted approval for the first respondent to relocate Bowenpally outlet to a new place. In fact, as seen from the communication dated 24.08.2022 sent by the applicant to the first respondent, they have only stated that once the new outlet becomes operational, the existing outlet (Bowenpally) should be closed down by the first respondent. Even in the subsequent communication dated 10.03.2023, the applicant has only stated that the first respondent should close down the existing outlet (Bowenpally) within one month from the date when the new outlet becomes operational. When there is no prohibition stipulated on the first respondent under the dealer service agreement dated 29.10.2021 for sale of the property where Bowenpally



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outlet is now located to any other party, the applicant is now estopped from seeking the reliefs sought for in these applications.

17. On a prima-facie consideration, the first respondent has not committed any breach of contract, i.e. the breach of dealer service agreement dated 29.10.2021. They have also informed the applicant in unequivocal terms that the relocation of the outlet will not inconvenience any of its existing customers as adequate safeguards to protect their interest will be made by the first respondent at their cost. There was no deliberate delay on the part of the first respondent to relocate Bowenpally outlet to a new place. As seen from the documents filed by the first respondent, only due to the delay in getting the building ready at the new place, there has been a delay for making the new place fully operational. It is also not the case of the appellant that there is no progress in the construction work for making the new place fully operational. The work is still in progress and the first respondent has also assured that in a short time, the new location will be made fully operational.



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18. If injunction is granted as prayed for in these applications, third party rights will also be affected. The second respondent is the purchaser of the property where the existing outlet (Bowenpally) is now located. The second respondent has purchased the property from the first respondent as early as on 18.01.2023 through a registered sale deed. Subsequent to the sale deed, in order to protect the interest of the first respondent, to safeguard its customers, a lease deed also has been entered into between the first respondent and the second respondent, which expired on 18.08.2023. The second respondent has also stated that they have agreed to give the property for the purpose of dealership of another brand of automobile and repeated extensions have been sought by them for putting the place fully functional to deal with the new brand of automobile. They have also contended that if the possession of the property at Bowenpally , which was sold by the first respondent, is not delivered to them immediately, they will have to suffer a huge damage claim. Though the applicant may contend that the first respondent and the second respondent are group of companies, as some of the directors are in common, the said contention has to be rejected by this Court on a prima-facie consideration. The first respondent and the second



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respondent are two different entities. Just because some of the directors are common to both, the applicant does not have a right to pierce the corporate wheel, that too, in an application filed under Section 9 of the Act, even before initiating arbitration. The question of piercing the corporate wheel by this Court in an application filed under Section 9 of the Act will not arise as the relief granted in Section 9 of the Act is a discretionary relief. Only after the oral and documentary evidence are let in by all the parties to the dispute, it can be decided as to whether the respondents 1 and 2 are group of companies and corporate wheel can be lifted.

19. The registered sale deed dated 18.01.2023 placed on record by the second respondent discloses the payment of sale consideration and therefore, this Court at the stage of Section 9 application cannot come to the conclusion that only to defraud the applicant, such a sale deed was entered into between the first respondent and the second respondent.

20. When there is no prohibition for sale under the dealer service



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agreement dated 29.10.2021, injunction relief sought for in these applications by the applicant will amount to incorporating new terms under the dealer service agreement dated 29.10.2021 without the consent of the first respondent, which is not legally permissible under law. When the third party's rights will be affected, this Court will have to be cautious while granting injunction under Section 9 of the Act, that too, when the said application has been filed even before the commencement of the arbitration. The second respondent also claims that they have invested huge amounts of money on the property purchased by them from the first respondent for establishing their new dealership business.

21. Section 56 of the Indian Contract Act, 1872, deals with impossibility of performance and frustration of the contract, and is extracted hereunder:-

"56. Agreement to do impossible act.—An agreement to do an act impossible in itself is void.

Contract to do act afterwards becoming impossible or unlawful.—A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void



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when the act becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful.—Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise."

In the case on hand, at the time of entering into the dealer service agreement dated 29.10.2021, it was possible for the first respondent not to shift the Bowenpally outlet to any other place unless and until the new place becomes fully operational. However, in view of the sale of the premises, where the Bowenpally outlet is located, it has now become a necessity for the first respondent to shift the location to another new place. The dealer service agreement dated 29.10.2021 also does not prohibit the first respondent from selling the property where the Bowenpally outlet is presently located. In view of the subsequent developments, it may have now become impossible for the first respondent to retain the Bowenpally outlet at the existing place. On



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account of impossibility of performance, the contractual obligations, if any, for retaining the Bowenpally outlet at the same place may have become void as per the provisions of Section 56 of the Indian Contract Act, 1872, as the first respondent cannot be prevented from shifting the Bowenpally outlet to a different place.

22. All the above mentioned factors lead this Court to conclude that (a) prima-facie case (b) balance of convenience and (c) irreparable injury are in favour of the respondents for vacating the order of injunction granted by this Court on 09.08.2023 and 18.08.2023 in favour of the applicant. It is also to be noted that if at all there is a delay in making the relocated outlet fully operational, the applicant could have waited for some more time and if it is found that there is no progress shown for completion of the work in the new outlet in the new location, they could have filed these applications at a later point of time, after noticing the inconvenience caused to its customers of Bowenpally outlet. But, in a hurried and in a premature manner, they have filed these injunction applications.



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23. The judgment relied upon by the learned Senior counsel for the applicant in the case of *Gujarat Bottling Co. Ltd. and others Vs. Coca Cola Co. and others [(1995) 5 SCC 545]* has no applicability to the facts of the instant case. In the instant case, both the parties have not terminated the contract and both of them want to continue with the contract, but, only due to the new place being not ready, the outlet at the new place could not become fully operational. In all likelihood, it will become fully operational very soon. In *Gujarat Bottling case* (cited supra), it was a clear case of breach of contract, while the period of the contract was still in existence. Since, in the instant case, the facts are different, this Court is of the considered view that *Gujarat Bottling's case* (cited supra) has no applicability to the facts of the instant case.

24. Further, as observed earlier, no prima-facie case has been made out by the applicant for grant of the injunction reliefs sought for in these applications. The balance of convenience is also in favour of the respondents for vacating the order of injunction. Irreparable loss may be caused to the respondents if the injunction is granted by this Court at this stage without the final adjudication in the arbitral proceedings. In case



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this Court grants the injunction reliefs sought for by the applicant in

Original Application Nos.698 and 699 of 2023, the commercial hardship caused to the first respondent will be much more than the commercial hardship caused to the applicant.

25. For the foregoing reasons, there is no merit in the Original Application Nos.698 and 699 of 2023 and accordingly, they are dismissed. Consequently, Arbitration Application No.426 of 2023 is allowed by vacating the order dated 09.08.2023 passed exparte by this Court. No Costs.

29.08.2023

Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes / No



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ABDUL QUDDHOSE, J.

vga/rkm

pre-delivery in

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