IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	21.12.2024
Pronounced On	03.01.2025

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.S.No.280 of 2013
and
A.No.1953 of 2013

View Sonic International Corporation,
9F, No.192, Line Chen Road,
Zhonghe District,
New Taipei City 235,
Taiwan (R.O.C),
Represented by its
General Manager ...Plaintiff

Vs.

Inspan Infotech Pvt. Ltd.,
1st Floor, Door No.6,
Bishop Wallers Avenue South,
Mylapore,
Chennai -600 004
Represented by its
Managing Director ...Defendant

PRAYER:

Plaint filed under Order IV Rule 1 of High Court Original Side Rules read with Order VII Rule 6 of C.P.C., praying for judgment and decree against the defendant, as follows:

Directing the defendant to pay a sum of Rs.19099099/- together with interest at 10% per annum on the principal amount of Rs.19099099/- from the date of plaint till the date of realisation and directing the defendant to pay the costs of the suit

For Plaintiff : Mr.K.Sakthivel

For Defendant : Mr.A.G.Sathya Narayana

* * * * *

JUDGMENT

C.S.No.280 of 2013 has been filed by the plaintiff seeking to direct the defendant to pay a sum of Rs.1,90,99,099/- together with interest at 10% per annum on the principal amount of Rs.1,90,99,099/- from the date of plaint till the date of realisation.

2. The averments made in the plaint are as follows :

(i) The plaintiff is the manufacturer of computer monitors, LCD Televisions, Projectors, Video Processors, Mobile and wireless product related peripherals and the defendant was appointed as a non exclusive distributor for the promotion and sale of specified products of the plaintiff along with related peripherals and ancillary products within the territory of India and same was accepted by the defendant. A distribution agreement was entered into between the plaintiff and the defendant on 11.12.2009.

(ii) Both the plaintiff and the defendant had a normal business relationships in accordance with the abovesaid agreement till its expiry and thereafter, agreement was not renewed but the defendant continued to act as a dealer of the plaintiff on the understanding to apply the essence of the expired agreement and also the usual business practices. During the course of transactions, Pro forma Invoice No.3092391 for an amount of USD 70,200 on payment term of Net 45 days and Invoice No. 3092392 for an amount of USD 1,47,420 on payment term of Net 45 days were issued by the plaintiff to the defendant on 9-12-2011 and apart from the above said proforma invoices for which liability commences from the date of shipment. Thus, there was an outstanding due of sum of USD454,648 as on 16.12.2011 from the defendant to the plaintiff and this was confirmed by way of email dated 16.12.2011 from the plaintiff to the defendant's Senior Accounts Executive Mr.A.S.Senthilkumar with a copy to another official of the defendant Mr.Raghavan.

(iii) The defendant's Senior Accounts Executive A.S.Senthil Kumar sent an email dated 19.12.2011 to the plaintiff stating that Invoice No.3090978 for USD 75,600 would be settled on 21.12.2011 and the defendant requested to increase the credit period for few more days and on such request, the plaintiff increased the credit period for 10 more days. Again the defendant requested for further increase of the credit period, but the plaintiff rejected the said request by email dated 21.12.2011. Subsequently the defendant paid an amount of USD 69,088 on 23.12.2011 towards settlement of Invoice No.3090978 for amount of USD 75,600 on 29.12.2011. The subsequent two order Nos.3092391 and 3092392 of the defendant were honored. Thereafter there has been exchange of mails between the plaintiff and the defendant on 02.01.2012. The defendant remitted the amount of USD 75,600 on 05.01.2012 towards settlement of Invoice No.3090897. The unpaid amount in respect of the outstanding dues arose as on 05.01.2012 for Invoice Nos.3090980 and 3091312 amounting to USD 234,360. In spite of reminders through emails dated 10.01.2012, 17.01.2012, 19.01.2012 and 30.01.2012 from the plaintiff, the defendant has not come forward to pay in respect of dues arose as on the date of USD 234,360 ie., on 05.01.2012. Hence the plaintiff invoked the contractual term to charge interest at the rate of 10% for late payments and the same was informed to the defendant by way of email dated 03.02.2012. The defendant did not respond to the same. The plaintiff has also allowed credit memos for transactions in transaction Nos.2004453, 26630 and 26687.

(iv) The plaintiff demanding the defendant for immediate settlement of the over dues vide email dated 10.02.2012 of an amount of USD 399,241.06 which is inclusive of interest and deductions of allowed credit memos as stated above. The defendant having failed to honour their promises and in compliance of the terms of the agreement, sent email dated 13.02.2012 seeking clarifications. The plaintiff had also sent email dated 14.02.2012 providing clarifications. The plaintiff rejected the request of the defendant and requested to make payments immediately. Thereafter, the defendant remitted a sum of USD 19,108.36 towards part settlement of Invoice No.400 74257. Meanwhile, the plaintiff honoured the earlier placed order vide Invoice Nos.3093358 and 3093359. The plaintiff sent an email to the defendant on 29.02.2012 demanding payment of USD 376,380 which does not include USD 140400 for two transactions for which, due date had arisen only on 13.04.2012. The defendant remitted sum of USD 20,000 on 06.03.2012 and USD 20,000 on 19.03.2012 towards settlement of Invoice No.3091312. The total due as on 13.04.2012 was USD 476780. Thereafter the defendant has remitted amounts towards settlement of Invoice No.3091312 and Invoice No.3092391. The plaintiff allowed credit of sum of USD 104 on 29.03.2012. The defendant attempted to avoid the charges for the late payments. The defendant is very much reluctant to pay the outstanding admitted dues and interest accumulated on account of late payment. The defendant is liable to pay sum of USD 347915.84 which is equivalent to Indian Rupees Rs.1,90,99,099. Hence the plaintiff filed the present suit for recovery of money for a sum of Rs.19099099 with interest.

3. The defendant filed a written statement wherein it has been stated as follows :

(i) The above suit is neither maintainable in law nor on facts. The suit is barred by limitation. The defendant engaged in the business of distribution. The distribution agreement was entered into between the plaintiff and the defendant on 11.12. 2009. The defendant was appointed by the plaintiff as a non exclusive distributor of the plaintiff 's products namely computer monitors and projectors within the territory of India. The said agreement was in force for a period of one year from 11.12.2009. The above said distribution agreement was neither renewed nor a fresh agreement was entered into between the parties. The plaintiff's suit claim is based only on the said expired distribution agreement. The plaintiff cannot rely on the terms mentioned in the said expired distribution agreement for the present claim. The defendant never agreed to act as a dealer under the terms of the expired agreement.

(ii) Though the distribution agreement was not renewed, the defendant continued to act as the plaintiff's distributor in India. During December, 2011, the then Country Manager of the plaintiff had assured that the Defendant shall be appointed as its exclusive distributor in Tamil

Nadu, Kerala, Karnataka & Andhra Pradesh. The Defendant believing the same had placed purchase orders on large scale basis.

(iii) Mr.Ajay Sharma, the then Country Manager, vide e-mail dated 05.01.2012 had mentioned that the Defendant was assigned distributorship for the States of Karnataka, Kerala, Andhra Pradesh and Tamil Nadu (South India) and also mentioned that all States will have two distributors and M/s. Rashi Peripherals will be the other distributor in respect of the said territory and it was contrary to the assurance given by the plaintiff. However, the plaintiff reassured that the regionalization was in process and that the defendant would be given distributorship exclusively and that M/s. Rashi Peripherals Pvt Ltd would be assigned another territory.

(iv) The plaintiff forced the Defendant to place purchase orders under the impression that they would be awarded exclusive distributorship. It is evident from the said email dated 09/01/2012. The Country manager of the plaintiff had also promised that the defendant would be made as the sole distributor. On the basis of the plaintiff's abovesaid e-mail , the defendant placed orders on the same date for large volume of products. However, the plaintiff had once again sent an e-mail dated 10.01.2012, whereby reiterated that there will be two distributors in all States.

(v) The Defendants were under the impression that there were only two distributors in the above mentioned states i.e. the defendant and M/s. Rashi Peripherals Pvt., Ltd. However, subsequently it was found that there were two other distributors namely (1) M/s. Priya Computers (2) M/s. Roop Technologies, who were also operating in the market and selling the plaintiff's products at the rates, lower than the "Market Operative Price (MOP) provided to the Defendant, after the Defendant had placed their orders. The plaintiff has breached the understanding and had allowed other distributors to function within the territory assigned to the defendant. As the plaintiff had deliberately and fraudulently breached the promise, had allowed other distributors to deal with the same products at lower price, the defendant was also forced to sell the products at lesser price, which caused huge financial losses to the Defendant.

(vi) The Defendant had raised their obligation with respect to the MOP with the plaintiff vide e-mail dated 27.01.2012, wherein it had specifically mentioned that the MOP rates were much lower than the buying cost and had requested the plaintiff to intervene and increase the MOP of the other distributors.

(vii) Though the defendant placed another purchase order on 2nd February, 2012 on the assurance given by the plaintiff, however, the plaintiff once again reneged on its commitment. The defendant vide e-mail dated 13.02.2012 had stated that the plaintiff had committed exclusive distribution in south India and on the basis of which a huge stock was placed from August 2011, to match the demand and supply. The plaintiff had also promised about exclusive distributorship w.e.f January, 2012 and had also confirmed to cover up the losses occurred by the defendant due to MOP issue. Since the MOP issue was solely due to the mismanagement of the plaintiff's company, the defendant is not liable to pay any interest as claimed by the plaintiff towards delay in payment.

(viii) The plaintiff made derogatory remark about the defendant in an Internet Article. Due to the Plaintiff's derogatory comment, the Defendant suffered grievous and irreparable damage to its reputation and further caused damage to its goodwill. Hence the defendant had issued a legal notice dated 31/10/2013 to refrain the plaintiff from making defamatory statement as against the defendant. The plaintiff only has to pay a sum of Rs. 2,00,00,000/- towards damages caused to the defendant on account of the plaintiff's defamatory statement. The defendant had incurred loss on account of the plaintiff's actions and had sought for sanction of credit note.

(ix) The outstanding dues were not paid within the due dates, as the defendant was not in a position to sell the products, as the plaintiff had misled the defendant to believe that the defendant was the exclusive distributors and had engaged other distributors to market the same product and causing loss to the defendant. Further the defendant had made payment to a tune of USD 69,088 towards settlement of invoice No.309078 and USD 75,600/- towards invoice No. 3090897.

(x) The plaintiff is not entitled to charge interest on the basis of an expired agreement. The defendant has no contractual obligation with regard to late payments and any charge made thereof. The letter dated 09.02.2012 is an attachment to an e-mail dated 10.02.2012 and the same was never admitted by the defendant. The defendant had replied to the above said mail vide its mail dated 13.02.2012 and sought for clarifications. Since the other distributors who were operating in South India, the defendant was forced to sell the products below the purchase rate. Hence the defendant sustained heavy loss and had lost their customers also. However, due to longstanding relationship with the plaintiff, the defendant had made further payment of 19.108.36 USD with respect to purchase invoice Nos. 309335 and 3093359. The Plaintiff is not entitled to charge interest at the rate of 10%, by invoking the contractual term on the basis of an expired agreement. The defendant always responded to the email sent by the plaintiff. The letter dated 09.02.2012 which is an attachment to an e-mail dated 10.2.2012 was not admitted by the defendant. The defendant sought for clarification vide mail dated 13.02.2012 in reply to the above said mail. The Plaintiff promised to pay compensation for the losses occurred due to fixing MOP on the Defendant and fixing low MOP on other distributors, by clarifying MOP among the distributors.

(xi) The cause of action arose at Chennai within the jurisdiction of this Court, as purchase orders were placed by the Defendant at Chennai and the goods were supplied by the Plaintiff at Chennai.

4. The plaintiff filed a reply statement wherein it has been stated as follows :

(i) Both the plaintiff and the defendant had normal business relationship with the agreement. Though the agreement was not renewed, the defendant continued to act as a dealer of the plaintiff on the understanding to apply the essence of the expired agreement and the usual business practices. Hence the suit is maintainable and the suit is not barred by limitation.

(ii) As far as the MOP is concerned, the plaintiff does not state anything about the rate at which the products are to be sold in the market and it has nothing do with the MOP and same is controlled by the dealers only. The plaintiff and its Country Manager had never stated that the defendant would be appointed as an exclusive distributor. The plaintiff had never attempted to induce the defendant to place more orders in the pretext of appointing as an exclusive dealer. The defendant is the only non-exclusive dealer to the plaintiff and hence there is no breach of understanding. The defendant's attempt to sell the products at a lower price is their own decision at their own risk. Any loss on account of the same shall not be bore on the plaintiff. There was no agreement or undertaking between the parties as regards the MOP. Hence the question of waiving off interest charge does not arise and the plaintiff is not liable to pay a sum of USD 1,61,282.80 as claimed by the defendant.

(iii) The report published in the DQ Week with regard to initiation of the suit against the defendant is only at the instance of the said newspaper. If the defendant is aggrieved by the same, it can proceed against the publisher, editor or reporter of DQ Week. The plaintiff has not made any report in the newspaper as alleged by the defendant. The plaintiff never made any derogatory statement against the defendant. Hence, the plaintiff is not liable to pay damages to the extent of

Rs.2,00,00,000/-.

5. In the rejoinder to the reply statement filed by the defendant it is stated as follows:

The defendant denied the allegation that the cause of action for the counter claim is not related to the cause of action in the suit. The counter claim arises out of the transaction ie., the defendant's claim for recovery of USD 1,61,284.80 towards the loss caused on the account of the action of the plaintiff in appointing other distributors within the defendant's territory at lower MOP, contrary to the assurance given to the defendant. The defamatory statement made by the plaintiff's representative only with a view to apply pressure on the defendant to extract monies from the defendant. The price at which the products were to be sold in the market ie., MoP were periodically provided by the plaintiff only. The stand taken by the plaintiff that they had not given any assurance that they would appoint the defendant as their exclusive distributor is afterthought. The plaintiff forced the defendant to place huge orders under the belief that the plaintiff would make the defendant as the exclusive distributor of the plaintiff's product in India. The plaintiff had breached the understanding and had allowed the other distributors to function within the territory assured to the defendant and fixed the MoP for other distributors at the rate which was lower than the cost incurred by the defendant in purchasing the plaintiff's products. Hence the plaintiff caused loss to the defendant on account of appointment of other distributors within the defendant's territory and fixing a lower MoPs with respect to other distributors, which is contrary to the assurance given. The defendant denied the allegation that it is the only non-exclusive dealer and MoP was controlled by the dealers, whereas, the MoP was controlled by the plaintiff only. The plaintiff is liable to compensate the loss caused to the defendant. The plaintiff's country manager, Kuldeep Ramaiya had given the statement in the newspaper report, which has caused irreparable loss to the defendant. C.P.No.151 of 2011 filed against the defendant is a company petition which was dismissed by this Court vide order dated 15.02.2012.

6. On 26.11.2014, the following issues were framed :

i. Whether there was any agreement undertaken by the plaintiff with the defendant on "Market Operating Price" (MOP obtained by the defendant for plaintiff's products?

ii. Whether the distribution agreement dated 11.12.2009 was continued to be adhered by the plaintiff and defendant even after 10.12.2010?

iii.Whether the defendant was the exclusive distributor of the plaintiff?

iv. Whether the defendant suffered loss as the plaintiff fixed MOP's for other distributors at a lower rate?

v. Whether the plaintiff promised to the defendant for rebate?

vi. Whether the defendant is liable to pay a sum of Rs.1,90,99,099/- to the plaintiff?

Vii. Whether the plaintiff has established that its representative did not make the statement attributed to him in the press report?

Viii. Whether the Commissioner report, newspaper report of the pendency of the suit amounts to derogatory statement in respect of the defendant?

ix. Whether the defendant is entitled to a sum of Rs.2 Crores towards damages?

x. Whether the cause of action for the counter claim is separate and cannot be considered to the same cause of action?

xi. Whether the plaintiff is entitled for interest?

Xii. To what other reliefs, the parties are entitled to?

7. On the side of the plaintiffs, Mr.Cindy Chou, who is the Vice President of the plaintiff Corporation, was examined as P.W.1 and 45 documents were marked as Ex.P1 to Ex.P45. On the side of the defendant Mr.S.Sudhir, was examined as D.W.1 and 21 documents were marked as Ex.D1 to Ex.D21. They also filed their respective proof affidavits reiterating the contents of the plaint.

8. Heard the submissions of the learned counsel on either side and perused the materials available on record.

9. The learned counsel for the plaintiffs submitted as follows :

(i) The plaintiff is the manufacturer of computer monitors, LCD Televisions, projectors, Video processors, Mobile and wireless product related peripherals and packed under the Trademarks and the defendant is a distributor of computer monitors and information Technology products in India.

(ii) The defendant was initially appointed as an non-exclusive distributor for the promotion and sale of specified products of the plaintiff along with related peripherals and ancillary products within the territory of India by way of distribution agreement entered into between the parties on 11.12.2009 and the same was valid for one year. Though the agreement was not renewed, the defendant was continued to act as a dealer of the plaintiff on the understanding to apply the essence of the expired agreement and as per usual business practice.

(iii) There was an outstanding due of sum of USD 4,54,648 as on 16.12.2011 from the defendant to the plaintiff on account of invoices, the defendant requested the plaintiff to increase the credit period for few more days and on such request, the plaintiff increased the credit period for 10 more days. The defendant again requested for further increase of the credit period, but the plaintiff rejected the same. Subsequently the defendant settled part of the outstanding amount alone and it has not come forward to pay the entire outstanding dues. Hence the plaintiff charged the interest at the rate of 10% for the late payments on the outstanding dues and the same was informed to the defendant by way of email dated 03.02.2012. Further the plaintiff sent email dated 10.02.2012 seeking payment to the tune of USD 399,241.06 to the defendant.

(iv) The defendant sent email dated 13.02.2022 seeking clarifications. Hence the plaintiff discussed with the defendant and sent a email dated 14.02.2012, rejected the request of the defendant and requested to make payments. In response to the plaintiff's demand, the defendant remitted sum of USD 19,108.36 towards part settlement of Invoice No.40074257.

(v) The defendant attempting to the actual payments as per the agreed terms whereas, it avoided the charges for late payments. The defendant is not inclined to pay the amount in accordance with the business practices and the terms of the mutual understanding and thereby the defendant is liable to pay a sum of Rs.19099099/-. Hence the plaintiff has filed the suit for recovery of money for a sum of Rs.19099099/-.

10. The learned counsel for the defendant submitted as follows :

(i) The plaintiff is a Corporation registered in Taiwan and is a manufacturer of computer monitors, LCD Televisions, Projectors, Video Processors etc., The defendant is engaged in the business of distribution. The plaintiff and the defendant entered into a Distribution Agreement on 11.12.2009. The plaintiff appointed the defendant as a distributor of its products. The term of the Distribution Agreement is one year w.e.f 11.12.2009. The defendant placed multiple purchase orders on the plaintiff for the products and the plaintiff issued proforma invoices based on these purchase orders. The price at which the products supplied by the plaintiff were to be sold at the market operative price which was provided by the plaintiff. Though the Distribution Agreement was neither renewed nor a new agreement was entered into between the parties, the defendant continued to act as a plaintiff's distributor in India. During December 2011, the plaintiff's representatives had assured the defendant that the defendant would be appointed as the exclusive distributor of the plaintiff's products in TamilNadu, Kerala, Karnataka and Andhra Pradesh. Whereas the plaintiff assigned the distribution ship of the above mentioned States to the defendant and M/s.Rashi Peripherals. When the defendant enquired about the same, the plaintiff requested the defendant to support to activate the entire activities planned by the plaintiff. On the basis of the assurance given by the plaintiff, the defendant placed huge purchase orders on the plaintiff. Later the defendant came to know that there were other distributors who were also operating in the same territory. Due to the difference in the MoP, the defendant was unable to sell the products at their purchase price and was forced to sell them at lower rate resulting in huge loss.

(ii) Further derogatory remarks made by the plaintiff, the defendant's creditors had expressed concern over its financial position, had tightened the credit terms, which caused great cash flow difficulties for the defendant. The defendant suffered with loss of Rs.2,00,00,000/- due to the defamatory statement and had issued legal notice to the plaintiff on 31.10.2013.

(iii) The plaintiff has misled the defendant by promising that they would be appointed as the Exclusive Distributor in South India, whereas the plaintiff had appointed the other entities also, as Distributors for identical products. The defendant on the belief that they were being appointed as Exclusive Distributor had placed huge purchase orders. As there were other distributors in the market dealing with identical goods, the Defendants goods fell surplus in the market. The plaintiff had fixed the market operation price (MOP)on the defendant at a very higher rate and the other distributors of the same products were selling the products at a rate which were below the defendant's rate of purchase.

(iv) The defendant has preferred a counter claim for recovery for a sum of USD 1,61,284.80 towards the loss caused to the defendant on account of the plaintiff appointed multiple distributors in the same territory with lower MoP and Rs.2,00,00,000/- towards damages on account of derogatory statement made by the plaintiff.

11. The specific case of the plaintiff is that the plaintiff is a manufacturer of computer products and wireless product related peripherals. The defendant was the distributor of the plaintiff's products. Both the plaintiff and the defendant entered into a distribution agreement on 11.12.2009. They had normal business relationship in accordance with the above agreement till its expiry. After the expiry of the said agreement, the defendant was continued to act as a dealer of the plaintiff on the understating to apply the essence of the expired agreement. Since there was an outstanding dues from the defendant to the plaintiff, there were exchange of email communications between them. Since the defendant has not come forward to pay in respect of dues, the plaintiff charged interest for the late payments and the plaintiff allowed credit memos for transactions. The defendant failed to comply the terms of the agreement and the defendant is reluctant to pay the outstanding admitted dues and interest accumulated on account of late payment, the plaintiff has filed the present suit for recovery of money for a sum of Rs.1,90,99,099/- with interest.

12. The specific case of the defendant is that the defendant was engaged in the business of distribution and distribution agreement was entered into between the plaintiff and the defendant on 11.12.2009 and the said agreement was in force for a period of one year from 11.12.2009. Though the distribution agreement was not renewed, the defendant continued to act as the plaintiff's distributor. The plaintiff forced the defendant to place purchase orders under the impression that they would be awarded exclusive distributorship. But the plaintiff had allowed the other distributors to function within the territory assigned to the defendant. Hence, the defendant was forced to sell the products at lower price which caused huge loss to the defendant. Due to derogatory remark made by the plaintiff in an Internet article, the defendant suffered irreparable damage. The defendant has no contractual obligation with regard to late payments. Further the plaintiff promised to pay compensation for the loss occurred due to fixing of MOP on the defendant.

13. Issue No.i

> *Whether there was any agreement undertaken by the plaintiff with the defendant on "Market Operating Price" (MOP obtained by the defendant for plaintiff's products?*

(a) On side of the defendant Mr.S.Sudhir, the authorised signatory of the defendant was examined as D.W.1. He has clearly admitted during the cross examination in question Nos.42 & 43 .

The Q.Nos.42 to 45 read as follows:

Q.No.42: In the same para-8 of your proof affidavit, you have stated that the plaintiff's products were being sold at lower rates than the Market Operated Price (MoP) to the other distributors than that was provided to the defendant. To prove the same have you filed any document in the suit?

A: I have not filed.

Q.No.43: Have you filed any documents to show that the plaintiff has fixed the MoP in respect of the defendant.

A: Yes. Ex.D5 filed.

Q.No.44: See Ex.D5. Ex.D5 is the e-mail sent by the defendant to the plaintiff. Can you show me where it mentioned in Ex.D5 that MoP is fixed for the defendant?

A: I could not find.

Q.No.45: I put it to you that the plaintiff never fixed MoP in the case of the defendant at any point of time.

A: I deny.

(b) Ex.D5 has not specifically stated anything about the fixation of MOP. Therefore, in the absence of any written document and also without any specific evidence, and further the plaintiff has specifically denied that the plaintiff does not know anything about the rate at which the products are to be sold in the market and which is nothing to do with the MOP and the same is controlled by the dealer only and when the defendant has specifically stated that there was an agreement or undertaking between the parties as regards the MOP, it is the duty of the defendant to prove that there was an agreement or undertaking by the plaintiff with the defendant on MOP.

(c) On a reading of the entire materials, this Court finds that the defendant has not proved that the plaintiff had breached the understanding and had allowed the other distributors to function within the territory assured to the defendant and fixed the MoP for other distributors at the rate which was lower than the cost incurred by the defendant in purchasing the plaintiff's products. Hence the plaintiff caused loss to the defendant for appointment of other distributors within the defendant's territory by fixing a lower MOP with reference to the other distributors which is contrary to the assurance given. Therefore, the defendant has also not examined any independent witness and to show that the plaintiff has fixed the MOP. There is no independent witness available to prove that the plaintiff breached the understanding and allowed the other distributors to function within the territory assigned to the defendant and fixed the MOP for other distributors at the rate which was lower than the cost incurred by the defendant in purchasing the plaintiff's products. Therefore, neither written agreement for fixing the MOP is available nor any other witness is available to prove that the plaintiff adopted the same and due to that the defendant had incurred the loss.

(d) On a perusal of the materials available on record and from the evidence, this Court finds that there was no agreement of undertaking with regard to fixing the MOP.

(e) Issue No.1 is answered accordingly.

14. ISSUE NO.2

(ii) Whether the distribution agreement dated 11.12.2009 was continued to be adhered by the plaintiff and the defendant even after 10.12.2010?

The admitted fact of the plaintiff and the defendant is that the transaction is based only on the distribution agreement dated 11.12.2009. The defendant has also admitted during the cross examination that he was doing the business nearly for 15 years. Ex.P2 is the distribution agreement dated 11.12.2009. The said agreement was in force for a period of one year only and the same was neither renewed nor any fresh agreement was entered into between the parties. Execept, Ex.P2, no other agreement has been filed either by the plaintiff or by the defendant. Both the parties are admitted that Ex.P2 is the only distribution agreement entered into between them and thereafter no renewal of the agreement was entered. According to the plaintiff, due to understanding between the parties, they continued their business with the defendant. Further, the defendant has also admitted that they had the business transaction with the plaintiff more than one year after the expiry of the distribution agreement. During the cross examination of D.W.1, for question No.2 ,he has stated as follows:

Q.No.1: Is it correct to state that the defendant company is a distributor for many other companies and name them?

A: Yes, namely, Kobian, Numeric, Western Digital and Genius.

Q.No.2: How long are you the distributor for the said companies?

A: Genius for about 6 years, Western Digital for about 5 years.

It shows that the defendant has business connection with the plaintiff for more than one year. But, there is no agreement to prove the same.

However, an agreement dated 11.12.2009 was continued to be adhered by the plaintiff and the defendant even after expiry of the said Ex.P2 agreement ie., on 10.12.2010.

Hence the Issue No.2 is answered accordingly.

15. ISSUE NO.3

(iii)Whether the defendant was the exclusive distributor of the plaintiff?

According to the defendant, the plaintiff had made promise to make him as exclusive distributor. However, except Ex.P2 original distribution agreement, there is no other agreement is available to prove the same. Ex.P2 does not show anything about the exclusive distributorship of the defendant. There is no oral and documentary evidence is also available to prove the exclusive distributorship of the defendant. The plaintiff has also not stopped the business relationship with the defendant after the expiry of the Ex.P2 agreement. There is no oral or documentary evidence is available to show that the plaintiff had made a promise or agreement for the exclusive dealership of the defendant with the plaintiff's company. A suggestion was put before P.W.1 by the defendant's counsel that what was the basis on which the defendant was distributing the products of the plaintiff to the defendant in India after the expiry of agreement Ex.P2, for which P.W.1 has replied that based on the similar understanding contained in Ex.P2. Further suggestion was put before the P.W.1 that whether this understanding is oral, for which, P.W.1 answered "yes". Hence there is no evidence is available to show that the defendant has the exclusive dealership with the plaintiff.

Issue No.iii is answered accordingly.

16. ISSUE NO.IV

Whether the defendant suffered loss as the plaintiff fixed MOP for other distributors at a lower rate?

Already issue No.1 is negatived as against the defendant. As already stated, no agreement was available for fixing MOP by the plaintiff and there is no evidence is available to show that the defendant has exclusive dealership of the plaintiff. There is no materials are produced by the defendant to show that the plaintiff fixed MOP's for other distributors at a lower rate. Hence, the defendant has not proved that the defendant suffered loss as the plaintiff fixed MOPs for other distributors at a lower rate. In the absence of any specific documentary evidence and independent witness as already stated that the defendant has not examined any independent witness to show that the plaintiff has fixed the MOP for the other distributors at the lower rate than the defendant. Issue No.IV is answered accordingly.

17. ISSUE NO.V

v. Whether the plaintiff promised to the defendant for rebate?

Except averment stated in the written statement and the proof affidavit, there is no material available to show that the plaintiff promised to the defendant for rebate.

18. ISSUE NO.VI

Whether the defendant is liable to pay a sum of Rs.1,90,99,099/- to the plaintiff?

As already stated, except averment made in the written statement, the defendant has not produced any material to show that the defendant incurred loss and in the absence of any specific oral and documentary evidence, the defendant is not entitled for the same. Whereas, the defendant admitted its dues and interest accumulated on account of late payment to the plaintiff. Hence, the defendant is liable to pay a sum of Rs.1,90,99,099/- to the plaintiff. Therefore issue No.vi is answered accordingly as against the defendant.

19. ISSUE NO.VII

Whether the plaintiff has established that its representative did not make the statement attributed to him in the press report?

Though the defendant has taken the defence that the plaintiff had given statement in the press report which has caused irreparable loss to the defendant, he has not examined any witness to establish the same. Except the averments made in the written statement and proof affidavit, no other oral and documentary evidence are produced by the defendant to substantiate their defence. Issue No.vii is answered accordingly.

20. ISSUE NO.VIII

Whether the Commissioner report, newspaper report of the pendency of the suit amounts to derogatory statement in respect of the defendant?

The defendant has not proved that there is an agreement between the parties for fixing the MOP. There is no material is available to show that the defendant is the exclusive distributorship of the plaintiff. The defendant has also not proved that the defendant suffered loss as the plaintiff fixed the MOP for other distributors at the lowest rate. There is no evidence is available to show that the plaintiff promised to the defendant for rebate. As already stated, except the authorised signatory of the defendant, no independent witness was examined. Hence issue no.viii is answered as against the defendant.

21. ISSUE NO.IX

Whether the defendant is entitled to a sum of Rs.2 crores towards damages?

Except the averments made in the proof affidavit, the defendant has not produced any material evidence to show that the defendant incurred loss. Hence the defendant is not entitled to sum of Rs.2 Crores towards damages. Though distribution agreement Ex.P2 dated 11.12.2009 was entered into between the parties, the defendant has not proved that he has the exclusive distributorship with the plaintiff and no other distributor is having any right and entitled to deal with the plaintiff. Further, there is no evidence to show that the plaintiff made a promise that the plaintiff will not engage any other distributors except the defendant.

In the absence of any specific agreement to show that the defendant is the exclusive distributor and also there is a violation of MOP and also there was an oral promise made by the plaintiff and the plaintiff breached the promise, the defendant is not entitled to get any damages.

22. ISSUE NO.X:

Whether the cause of action for the counter claim is separate and cannot be considered to the same cause of action?

The case of the plaintiff is that the defendant was appointed as an non-exclusive distributor with the plaintiff. According to the defendant, the plaintiff made promise to keep the defendant as exclusive distributor of the plaintiff. The plaintiff has filed the suit for recovery of money for the unpaid invoices. However the defendant has stated that there was a breach of promise and the plaintiff made a promise that it would keep the defendant as exclusive distributor of the plaintiff. As already discussed, neither written agreement nor written commitment was produced by the defenant and no independent witness was examined to show that the defendant was initially engaged by the plaintiff as the only exclusive distributor. The plaintiff filed the suit for recovery of money. However, the defendant has stated that there was a breach of agreement and hence he filed the counter claim for damages. Therefore, the cause of action for the counter claim is separate is not acceptable. Hence the contention that the cause of action is not connected to the suit claim or suit transaction is not acceptable. Hence issue No.x is answered accordingly.

23. ISSUE NO.XI

Whether the plaintiff is entitled for interest?

Though the period of agreement is one year, after the period of one year also, the defendant has not stopped the business with the plaintiff or the plaintiff has also stopped their business with the defendant. The business relationship between the parties are continuing after expiry of the agreement. Once the claim of the plaintiff is admitted and also there is delay in payment by the defendant, the plaintiff is entitled for the interest. Hence the issue No.XI is answered accordingly.

24. ISSUE NO.XII

To what other releifs the plaintiff is entitled to?

The plaintiff has proved its case that the defendant was the distributor of the plaintiff. It is seen from the Exs.P2 to P22 and also the email communications between the plaintiff and the defendant and the officials of the plaintiff and the defendant which clearly show that the plaintiff has proved its claim. Since the defendant admitted the Ex.P2 agreement, the initial burden of the plaintiff is proved, as such, the onus has been shifted on the defendant. Then, it is for the defendant to prove contrary to Ex.P2. It is the duty of the defendant to prove either through oral or documentary evidence or atleast by the conduct of the plaintiff. It is true that there is an exclusive distributorship agreement between the plaintiff and the defendant. Here, the plaintiff has proved the initial burden, but, the defendant has not rebutted the presumption. Therefore, this Court finds that the plaintiff has proved his case in the manner known to law and the defendant has not proved his counter claim in the manner known to law.

25. In the result, the suit is decreed with costs. The defendant is liable to pay sum of Rs.1,90,99,099/- together with interest at the rate of 9% per annum from the date of plaint till the date of decree and after the date of decree of suit till the date of realisation, the defendant is liable to pay 6% per annum and the defendant is directed to pay the sum within a period of three months from the date of receipt of a copy of this judgment. Consequently, connected application is also closed.

03.01.2025

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Plaintiff's witness: P.W.1 – Mr.Cindy Chou
Defendants' witness: D.W.1 – Mr.S.Sudhir

Documents exhibited by the plaintiff:

SNo	Exhibit	Date	Description of the document
1	Ex.P1	06.02.2015	Letter of authorisation dated 06.02.2015 given by the plaintiff
2	Ex.P2	11.12.2009	Original distribution agreement dated 11.12.2009 entered into between the plaintiff and the defendant
3	Ex.P3	30.12.2011	Original credit memo No.20044453 dated 30.12.2011
4	Ex.P4	30.12.2011	Original credit memo No.26630 dated 30.12.2011
5	Ex.P5	19.01.2012	Original credit memo No.26687 dated 19.01.2012
6	Ex.P6	02.02.2012	Copy of invoice No.3093358 dated 02.02.2012
7	Ex.P7	02.02.2012	Copy of invoice No. dated 02.02.2012
8	Ex.P8	09.12.2011	Copy of invoice No.3092391 dated 09.12.2011
9	Ex.P9	09.12.2011	Copy of invoice No.3092392 dated 09.12.2011
10	Ex.P10	06.03.2012	Original remittance in the Bank SinoPac dated 06.03.2012
11	Ex.P11	19.03.2012	Original remittance in the Bank SinoPac dated 19.03.2012
12	Ex.P12	30.03.2012	Original credit memo No.20044858 dated 30.03.2012
13	Ex.P13	23.04.2012	Original remittance in the Bank SinoPac

			dated 23.04.2012
14	Ex.P14	07.05.2012	Original remittance in the Bank SinoPac dated 07.05.2012
15	Ex.P15	14.05.2012	Original remittance in the Bank SinoPac dated 14.05.2012
16	Ex.P16	22.05.2012	Original remittance in the Bank SinoPac dated 22.05.2012
17	Ex.P17	11.06.2012	Original remittance in the Bank SinoPac dated 11.06.2012
18	Ex.P18	25.06.2012	Original remittance in the Bank SinoPac dated 25.06.2012
19	Ex.P19	13.08.2012	Original remittance in the Bank SinoPac dated 13.08.2012
20	Ex.P20	31.08.2012	Original remittance in the Bank SinoPac dated 31.08.2012
21	Ex.P21	08.10.2012	Original remittance in the Bank SinoPac dated 08.10.2012
22	Ex.P22	26.11.2012	Original remittance in the Bank SinoPac dated 26.11.2012
23	Ex.P23	16.12.2011	E-mail dated 16.12.2011 sent by Love Sharma to S.Kumar with copy to Raghavan alongwith the certificate issued by Kang, Ming-Yih
24	Ex.P24	19.12.2011	E-mail dated 19.12.2011 sent by S.Kumar to Love Sharma with copy to Raghavan
25	Ex.P25	20.12.2011	E-mail dated 20.12.2011 sent by Love Sharma to S.kumar with copy to Raghavan, Kurmar, Venki@inspaninfotech.com, Ajay Sharma, Deepak Deveshwar
26	Ex.P26	21.12.2011	E-mail dated 21.12.2011 sent by Love

			Sharma to S.Kuamr and Raghavan with copy to Raghavan, Kumar, Venki@inspaninfotech.com, Ajay Sharma, Deepak Deveshwar and Sudir.
27	Ex.P27	22.12.2011	Ex.P27 is an e-mail dated 22.12.2011 sent by S.Kumar to Love Sharma and Raghavan with copy to Kumar, Venki@inspaninfotech.com, Ajay Sharma, Deepak Deveshwar, Sudir, Erica Lien-VSIfin, Amy Wu.
28	Ex.P28	26.12.2011	Ex.P28 is an e-mail dated 26.12.2011 sent by Love Sharma to S.Kumar and Raghavan with copy to Kumar, Venki@inspaninfotech.com, Ajay Sharma, Deepak Deveshwar, Sudir, Erica Lien VSIfin, Amy Wu.
29	Ex.P29	26.12.2011	Ex.P29 is an e-mail dated 26.12.2011 sent by S.Kumar to Love Sharma and Raghavan with copy to Kumar, Venki@inspaninfotech.com, Ajay Sharma, Deepak Deveshwar, Sudir, Erica Lien-vSIfin, Amy Wu.
30	Ex.P30	02.01.2012	Ex.P30 is an e-mail dated 02.01.2012 sent by Love Sharma to S.Kumar, Raghavan with Copy to Kumar, Ajay Sharma, Deepak Deveshwar, Sudir, Erica Lien-VSIfin, Amy Wu.
31	Ex.P31	02.01.2012	Ex.P31 is an e-mail dated 02.01.2012 sent by S.Kumar to Love Sharma and Raghavan with copy to Kumar, Ajay Sharma, Deepak Deveshwar, Sudir, Erica Lien-VSIfin, Amy Wu.

32	Ex.P32	05.01.2012	Ex.P32 is an e-mail dated 05.01.2012 sent by Love Sharma to S.Kumar, Raghavan and Erica Lien-VSIfin with copy to Kumar, Ajay Sharma, Deepak Deveshwar, Amy Wu, Venki@inspaninfotech.com and Sudir.
33	Ex.P33	05.01.2012	Ex.P33 is an email dated 05.01.2012 sent by S.Kumar to Amy Wu, Love Sharma and Erica Lien-VSIfin, with copy to Kumar, Ajay Sharma, Deepak Deveshwar, Venki@inspaninfotech.com, Sudir and Raghavan.
34	Ex.P34	10.01.2012	Ex.P34 is an e-mail dated 10.01.2012 sent by S.Kumar to Love Sharma with a copy to Raghavan, Venki@inspaninfotech.com, Ajay Sharma and Kumar.
35	Ex.P35	17.01.2012	Ex.P35 is an e-maill dated 17.01.2012 sent by Love Sharma to S.Kumar with copy to Raghavan Venki@inspaninfotech.com, Ajay Sharma , Kumar, Erica Lien-VSIfin, Sudir and Deepak.
36	Ex.P36	30.01.2012	Ex.P36 is an e-mail dated 30.01.2012 sent by Amy Wu to Love Sharma, S.Kumar and Raghavan with copy to Venki@inspaninfotech.com, Ajay Sharma, Kumar, Erica Lien-VSIfin, Sudir, Deepak Deveshwar, Cindy Chou and Vera Huang.
37	Ex.P37	03.02.2012	Ex.P37 is an e-mail dated 03.02.2012 sent by Erica Lien-VSIfin to Raghavan with copy to Venki@inspaninfotech.com, Ajay Sharma, Kumar, Sudir, Deepak Deveshwar, Cindy Chou, Vera Huang, Amy Wu, S.Kumar and Love Sharma.

38	Ex.P38	10.02.2012	Ex.P38 is an e- mail dated 10.02.2012 sent by Erica Lien-VSIfin to Raghavan and S.Kumar with copy to Venki@inspaninfotech.com, Kumar, Sudir, Ajay Sharma, Deepak Deveshwar, Love Sharma, Cindy Chou, Vera Huang, Amy Wu, Jerry Wang and Shannon Wang.
39	Ex.P39	13.02.2012	Ex.P39 is an e-mail dated 13.02.2012 sent by Raghavan to Erica Lien-VSIfin and S.Kumar with copy to Venki@inspaninfotech.com, Kumar, Sudir, Ajay Sharma, Deepak Deveshwar, Love Sharma, Cindy Chou, Vera Huang, Amy Wu, Jerry VWang and Shannon Wang.
40	Ex.P40	14.02.2012	Ex.P40 is an e-mail dated 14.02.2012 sent by Ajay Sharma to Raghavan, Erica Lien-VSIfin and s.Kumar with copy to Venki@inspaninfotech.com, Kumar, Sudir, Deepak Deveshwar, Love Sharma, Cindy Chou, Vera Huang, Amy Wu, Jerry Wang and Shannon Wang.
41	Ex.P41	16.02.2012	Ex. P41 is an e-mail dated 16.02.2012 sernt by Ajay Sharma to Ajay Sharma, Kumar and Venki with copy to Sudir, Love Sharma and Deepak Deveshwar.
42	Ex.P42	16.02.2012	Ex.P42 is an e-mail dated 16.02.2012 sent by Ajay Sharma to Ajay Sharma, Kumar and Venki with copy to Sudir, Love Sharma, Deepak Deveshwar and Amy Wu.
43	Ex.P43	16.02.2012	Ex.P43 is an e-mail dated 16.02.2012 sent by Ajay Sharma to Ajay Sharma, Kumar, Venki and Raghavan with copy to Sudir, Love Sharma, Deepak Deveshwar, Amy Wu, Erica Llen-VSIfin, Cindy Chou, Vera

			Huang, Amy Wu, Jerry Wang and Shannon Wang.
44	Ex.P44	27.02.2012	Ex.P44 is an email dated 27.02.2012 sent by Love Sharma to Ajay Sharma, Kumar, Venki and Erica Lien-VSIfin, Cindy Chou, Vera Huang, Amy Wu, Jerry Wang and Shannon Wang.
45	Ex.P45	29.02.2012	Ex.P45 is an e-mail dated 29.02.2012 sent by Shannon Wang to Kumar, Venki and Raghavan with copy to Sudir, Deepak Raghavan with copy to Sudir, Deepak Deveshwar, Willy Lee, Amy Wu, Erica Lien-vSIfin, Cindy Chou, Vera Huang, Jerry Wang, Love Sharma and Ajay Sharma.

Documents exhibited by the Defendant:

SNo	Exhibit	Date	Description of the document
1	Ex.D1	05.01.2012	E-mail dated 05.01.2012 from Mr.Ajay Sharma to the plaintiff
2	Ex.D2	09.01.2012	E-mail dated 09.01.2012 from Mr.Ajay Sharma to the defendant
3	Ex.D3	10.01.2012	E-mail dated 10.01.2012 from Mr.Ajay Sharma to the defendant
4	Ex.D4	27.01.2012	E-mail dated 27.01.2012 from the defendant to the plaintiff
5	Ex.D5	13.02.2012	E-mail dated 13.02.2012 sent by the defendant to the plaintiff
6	Ex.D6	11.05.2012	E-mail dated 11.05.2012 sent by the defendant to the plaintiff
7	Ex.D7	09.01.2012	E-mail dated 09.01.2012 sent by the

			plaintiff to the defendant
8	Ex.D8	17.05.2013	Photocopy of the article " ViewSonic Files Rs.1.96 crore claim against Inspan" published on 17.05.2013 in the web magazine "The DQ Week".
9	Ex.D9	10.05.2012	Original Board resolution dated 10.05.2012
10	Ex.D10	-	Original of purchase invoices were issued vide e-mails, along with section 65 B certificate under the Indian Evidence Act
11	Ex.D11	14.11.2014	Copy of the letter dated 14.11.2014 addressed by the defendant to the publisher of Cyber Media (India) Limited may be marked
12	Ex.D12	28.11.2014	Print out of reply of E-mail dated 28.11.2014 along with Section 65 B certificate under the Indian Evidence Act
13	Ex.D13	23.05.2013	Original Letter addressed by Kobian dated 23.05.2013 to the defendant
14	Ex.D14	25.06.2012	Original letter addressed by Kobian dated 25.06.2012 to the defendant
15	Ex.D15	-	Attested copy of the 10th Annual report for the year ending March 2011
16	Ex.D16	-	Attested copy of the 11th Annual report for the year ending March 2012 may be marked
17	Ex.D17	-	Attested copy of the 12th Annual report for the year ending March 2013 may be marked
18	Ex.D18	-	Attested copy of the 13th Annual report for the year ending March 2014 may be marked

19	Ex.D19	30.10.2012	Copy of Legal notice dated 30.10.2012 issued by the defendant to the plaintiff and others
20	Ex.D20	-	Tracking status of legal notice from India post web site
21	Ex.D21	15.03.2013	Copy of order dated 15.03.2013 in C.P.No.151 of 2011 filed against the defendant

03.01.2025

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<u>P.VELMURUGAN, J.</u>

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<u>C.S.No.280 of 2013</u>
<u>and</u>
<u>A.No.1953 of 2013</u>

03.01.2025