* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved On: 30th December, 2017
Pronounced on: 15th January, 2018

\+ **O.M.P. (I) (COMM.) 559/2017**

PARSOLI MOTORS WORKS PRIVATE LIMITED

..... Petitioner

Through Mr. Chetan Sharma, Senior Advocate with Mr. Arjun Seth, Mr. Arvind Kumar, Mr. C. S. Chauhan and Mr. Henna George, Advocates

versus

BMW INDIA PRIVATE LITMITED ..... Respondent

Through Mr. Arun Kathpalia, Senior Advocate with Mr. Diwakar Maheshwari, Mr. Karun Mehta and Ms. Pratishtha Vij, Advocates

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

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1. The petitioner before us is, as Mr. Chetan Sharma, learned Senior Counsel appearing for the petitioner, felicitously put it, a "purveyor of niche cars", the "niche cars" in question being manufactured by *Bayerische Motoren Werke* – translated, into English, as "Bavarian Motor Works", and popularly known, to the layman as "BMW" – a Munich-based automobile-manufacturing company, or was, till the 31st of December 2017, when its "purveyorship" was brought to an end, by the respondent, by the simple act of refusing to renew its contract with the petitioner.

Incensed, the petitioner has moved this court, purportedly under Section 9 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as "the 1996 Act").

2. This matter was mentioned on 29th December 2017, and allowed for listing for the same date. In view of the volume of material involved, I had re-listed the matter for the next day, i.e. 30th December 2017, on which date I put it, to learned senior counsel for the petitioner, that the case could be re-listed before the regular roster bench after vacation on 2nd January 2018. Both counsel, however, submitted that, as the petitioner's dealership was coming to an end on 31st December 2017, the matter brooked no delay. With consent of learned counsel, therefore, I heard the matter at length, and proceeded to decide the same.

3. It is made clear, however, that the observations and findings in this judgement – which has, in dealing with the detailed submissions advanced by both sides before me, become prolix – are limited to the application, of the petitioner, under Section 9 of the 1996 Act, and are intended only towards decision thereon. They shall not, therefore, prejudice either party in any proceedings that may arise, between them, at any later point of time.

4. The facts are easily stated. In or around May 2008, the respondent – which is a wholly owned subsidiary of BMW, Germany – entered into an agreement with the petitioner, whereby the petitioner

was granted dealership, to sell BMW cars in the State of Gujarat. The said dealership was renewed *vide* agreement dated 05th January 2009. Clause 1.1.1 thereof appointed the petitioner as a non-exclusive dealer, of BMW cars, in the state of Gujarat. Clause 11.1 read with the 7th Schedule to the agreement, stipulated that the agreement would be deemed to have commenced on 1st January 2009, and would continue for a period of one calendar year, at the end of which it would automatically expire, unless terminated or cancelled earlier. The clause also empowered the respondent to, *"in its sole and unfettered discretion and without any obligation or expectation to do so"*, renew the agreement for one calendar year, by entering into a renewal agreement. Such renewal agreement, however, it was stipulated, had to be entered into not less than one month prior to the date of expiry of the agreement, i.e. not later than 1st December, 2009. Clause 13.4 was an arbitration clause, providing for reference to arbitration in the case of disputes arising between the appellant and respondent.

5. Though Clause 11.1 of the aforementioned agreement dated 5th January 2009 was clear, categorical and unequivocal, para 7 of the present petition pleads thus:

> "That the duration of the dealership agreement was for a period of one year with the right to renew on the part of the Respondent. That the duration in spite of being for one year only in writing, *the understanding of the parties, was that each year the renewal would take place (unless some major default/breach which was not capable of been remedied had taken place)*,because considering the amount of time, money, energy that is spent in setting up the infrastructure,

> training the manpower, bringing in the machineries/tools etc, specific to the sale and service of BMW cars, as per the strict requirements of the Respondent, it is not commercially feasible for any person to simply execute this dealership agreement only for the duration of one year. Hence, in light of such understanding, the dealership agreement was renewed from year to year from 2008 till 2017 onwards".
>
> (Emphasis supplied)

6. It may be noted, here, that the above statement, by the petitioner, in Para 7 of the petition, that there was an "understanding", between the petitioner and the respondent, that the agreement would be renewed year to year, is not supported by any clause in the agreement, or any other material which is available on record in the present proceedings.

7. It appears that the dealership between the petitioner and the respondent was, in fact, renewed year to year. Having said that, extension of the dealership, for the period 2015-2016, was granted, to the appellant, by the respondent, not by a mere renewal of the earlier existing agreement, but by a fresh agreement, made on 14th January 2015. For all intents and purposes, the various clauses of the agreement dated 14th January 2015, were substantially similar to the corresponding clauses in the aforementioned agreement dated 5th January 2009. A few relevant clauses of the new Agreement may be reproduced, as under:

> 1. BASIS OF THE AGREEMENT
>
> "1.1 Distribution Rights for Contract Goods

1.1.1 Subject to the satisfaction of the condition precedent specified in Clause 1.1.2 below, BMW hereby appoints the Dealer to be a non-exclusive dealer in Contract Goods at the Authorized Premises in the Territory as hereinafter defined on the terms and conditions hereinafter appearing, and the Dealer accepts such appointment and undertakes to perform its duty and obligations appended to such appointment as specified in this Agreement or otherwise.

It is distinctly agreed that BMW will always have the right to appoint, extend, terminate any dealer or in any territory or appoint any additional dealer on additional terms and conditions as it may impose in its commercial interest."

2. THE AUTHORISED PREMISES AND TERRITORY

"2.5 Activity outside the Territory

The Dealer will not outside the Territory with respect to the Contract Goods:

2.5.1 Maintain branches, workshops or delivery depots; or

2.5.2 Entrust a third party with the distribution or servicing of Contract Goods; or

2.5.3 Engage in promotional activities unless the Dealer uses an advertising medium such as local news media, which covers mainly the Territory but also extends beyond it".

"**11. DURATION OF THE AGREEMENT AND TERMINATION**

11.1 Commencement and Duration

This Agreement shall cancel and supersede any and all previous agreements between the Dealer and BMW or any of BMW's Connected Undertaking in any capacity whatsoever and accordingly any Contract Goods on order from BMW or any of its Connected Undertakings at the date of commencement of this Agreement shall be deemed to have been ordered subject to the terms of this Agreement. The provisions of this Sub-Clause shall not have the effect of releasing the Dealer from any liability to BMW arising from any previous agreement or any prior breach.

This Agreement will commence or will be deemed to have commenced on the Commencement Date shown in the Eighth Schedule and will continue thereafter (unless terminated or cancelled earlier in accordance with the Agreement) for a period of 1 (ONE) calendar year unless renewed in accordance with the provisions of this Clause 11.1. Upon the expiry of such calendar year, this Agreement (and the appointment and rights of the Dealer hereunder) shall (subject to the provisions of Clause 12) expire. BMW may (in its sole and unfettered discretion and without any obligation or expectation to do so) renew this Agreement for a period of 1 (ONE) calendar year by entering into a renewal agreement (on terms and conditions acceptable to BMW) with the Dealer no later than 1 (ONE) month prior to the expiry of this Agreement.

11.2 Termination for cause by BMW

The following events shall entitle BMW to terminate this Agreement forthwith:

11.2.1 the Dealer breaching any of its obligations in terms of this Agreement and failing to rectify the situation within 14 (FOURTEEN) days of notice in writing to do so, it being understood that a rectification shall only be possible if in BMW's sole and absolute opinion that rectification is able to fully reinstate its business interests; or

11.2.1 the Dealer defaulting or delaying in making any payment due, whether formally demanded or not or suspends or threatens to suspend making any payments (whether of principal or interest) with respect to all or any class of its debts; or

11.2.3 the Dealer having any financial facility, which has been arranged by BMW or the Dealer for the payment of Contract Goods, withdrawn for any reason whatsoever; or

11.2.4 BMW's brand products, services or personnel is brought into disrepute or are likely to on account of any act or omission on the part of the Dealer in BMW's opinion, which decision thereon will be final and binding; or

11.2.5 the Dealer fails to comply with BMW procedures or

instructions in relation to Authorised Premises and/or setting up and maintenance of 4S facility; or

11.2.6 the Dealer being sequestrated, declared bankrupt, subject to suspension of payments proceedings, insolvent or otherwise unable to pay or admits in writing its inability to pay its debts as they fall due, placed under judicial management, effecting a compromise or arrangement with creditors or general assignment in favour of creditors, having a special administrator appointed over it, permitting an act of insolvency or bankruptcy or having an order of court of competent jurisdiction is made (whether pursuant to the Companies Act, 1956 or otherwise) or an effective resolution is passed or a petition is presented for the winding-up or dissolution of the Dealer or if the Dealer shall apply or petition for a winding-up or administration order in respect of itself (except for the purpose of reconstruction, amalgamation, reorganization, merger or consolidation with the written consent of BMW and the surviving or transferee entity assuming all the obligations of the Dealer); or

11.2.7 the Dealer being subject to or effecting any change in the control (board, shareholding, financial or otherwise) of the Dealer or any Connected Undertaking without BMW's written consent first being had and obtained; or

11.2.8 the Dealer changing or threatening to change the nature or scope of its business, suspending or threatening to suspend a substantial part of the present business operations which it now conducts directly or indirectly, or any governmental authority expropriates or threatens to expropriate all or part of its assets; or

11.2.9 if any representation or warranty or statement which is made (or acknowledged to have been made) by the Dealer in connection with the execution and delivery of or in this Agreement shall be found to have been incorrect in any material and adverse respect, or if repeated at any time with reference to the facts and circumstances subsisting at such time would not be accurate in all material respects and if capable of remedy, such breach has not been remedied within 14(FOURTEEN) days after written notice of such breach shall have been given to the Dealer by BMW; or

11.2.10 if a receiver and/or manager over the Dealer's property

assets or undertaking or any part thereof is appointed; or

11.2.11 if a distress or execution or other similar or equivalent process of a court of competent jurisdiction is levied or issued against any of the properties of the Dealer and such distress or execution or other process as the case may be is not discharged, withdrawn stayed within 14 (FOURTEEN) days from the date thereof; or

11.2.12 if any event or events shall occur or a situation shall exist which could or might, in the reasonable opinion of BMW prejudice the ability of the Dealer to perform its obligations under this Agreement; or

11.2.13 if any material licence authorization approval or consent required by the Dealer to carry on its business is revoked or withheld or is otherwise not granted ; or

11.2.14 it is or will become unlawful for the Dealer to perform or comply with any one or more of their respective obligations under this Agreement or this Agreement is or becomes, for any reason, invalid or unreasonable; or

11.2.15 the Dealer shall fail to satisfy any judgment passed against the Dealer by any court of competent jurisdiction and no stay of execution has been obtained and no notice of appeal against such judgement has been taken to any appropriate appellate court within the time prescribed by the relevant rules; or

11.2.16 anything analogous to any of the events specified above occurs under the laws of any applicable jurisdiction;

In the event of the occurrence of any of the above events, then, notwithstanding anything else contained herein, BMW shall be entitled to terminate and cancel this Agreement immediately by the giving of written notice to the Dealer.

11.3 Termination for the cause by the Dealer

The following events shall be events entitling the Dealer to terminate this Agreement.

11.3.1 any governmental authority expropriates or threatens to expropriate all or part of BMW'sassets;

11.3.2. it is or will become unlawful for BMW to perform or comply with any one or more of their respective obligations under this Agreement or this Agreement is or becomes, for any reason, invalid or unenforceable;

In the event of the occurrence of any of the above events, then, notwithstanding anything else contained herein, the Dealer shall be entitled to terminate and cancel this Agreement immediately by the giving of written notice to BMW."

13. OTHER PROVISIONS

"13.4.2 All disputes differences, disagreements, controversies or claims arising out of or in connection with this Agreement shall be settled amicably through consultation between the Parties. If the Parties fail to reach an amicable settlement within 15 days of a written request for such consultation being served by either Party on the other, all such disputes and differences arising out of or in relation to this Agreement, including the validity, effect and interpretation thereof, shall be resolved by Arbitration by three Arbitrators, one each to be appointed by the Parties and the third Arbitrator to be appointed by the two Arbitrators so appointed, or in the absence of agreement between them within 15 days, by the President of the Indian Arbitration Council, Delhi.

13.4.3 Arbitration proceedings shall be in English and will be conducted in accordance with the Indian Arbitration and Conciliation Act, 1996 and the rules made thereunder and/or any amendments thereof (the "Rules")."

8. As is noticed hereinabove, Clause 11.1 of the agreement deemed the agreement to have commenced on the commencement date shown in the Eighth Schedule and stipulated that it would continue thereafter, for a period of one year, unless terminated or

cancelled earlier, subject to the right of the respondent to renew the agreement further. Clause 4 in the Eighth Schedule to the Agreement read thus:

> **"4. COMMENCEMENT DATE**
>
> The Commencement Date in accordance with Clause 11.1 of this Agreement shall be 1st January 2015 and in deviation of Clause 11.1 this Agreement will continue thereafter (unless terminated or cancelled earlier in accordance with the provisions of this Agreement) *until 31st December 2015, whereupon it shall automatically expire unless renewed in accordance with the provisions of Clause 11.1 of this Agreement*".

9. The agreement, therefore, leaves no manner of doubt that its duration was from 01st January 2015 to 31st January 2015 and that it automatically came to an end on 31st December 2015, subject to the right, of the respondent, to renew it. The said right of renewal was also, specifically, limited to a period of one calendar year.

10. In exercise of the aforementioned right, the respondent wrote on 01st December 2015 to the petitioner, offering renewal of the aforementioned agreement dated 14th December 2015 from 01st January 2016 till 31st December 2016, clearly stating that the terms and conditions contained in the agreement dated 14th January 2015 would also apply to the said agreement. As if to leave no stone unturned in making its intention explicit, the second para of the letter read thus:

> "Upon expiration of the New Dealer Agreement *you are neither entitled to a continuation of the business relationship* nor to any compensation based upon or in connection with the expiration of

the New Dealer Agreement".

11. The said letter, dated 01st December 2015, and the terms thereof were "agreed and accepted" by the petitioner, without demur, under the signature of its Managing Director (MD), Mr. Talha Sareshwala.

12. A further extension of the dealership was granted, by the respondent, to the appellant, for the period 01st January 2017 till 31st December 2017, *vide* letter dated 09th January 2017, which may be reproduced, for ready reference as under:-

"Parsoli Motor Works Pvt. Ltd.
Ground Floor & First Floor
Signature 1 Building, Near Makarba Circle
S.G.Road
Ahmedabad – 380 051

Your reference: Renewal of Dealer Agreement

Department/From B3-IN-H/Mandeep Singh
Telephone +91 124 4566600
Fax +91 124 4566602
E-mail Mandeep.Singh @bmw.in

Date January 9th 2017

Subject **Renewal of the Dealer Agreement for BMW Vehicles and BMW Parts.**
Dear Mr. Talha Sareshwala,

In accordance with Clause 11.1 of the Dealer Agreement dated January 14th, 2015 (Dealer Agreement), we hereby offer to renew the said Dealer Agreement for BMW Vehicles and BMW Parts for the duration of one year commencing from 1st January, 2017 until 31stDecember, 2017.

> The other terms and conditions of the Dealer Agreement dated January 14th, 2015 shall continue to apply during the period of 1st January, 2017 until 31st December 2017.
>
> Upon expiration of the above-said period, you are neither entitled to a continuation of the business relationship nor to any compensation based upon or in connection with the Dealer Agreement.
>
> May we kindly ask you to confirm your consent to the above by countersigning and returning the enclosed copy to us.
>
> Yours sincerely,
>
> For BMW India Pvt.Ltd.
> -sd-
> Frank-Emanuel Schloeder
> President
>
> Agreed & Accepted for Parsoli Motor Works Pvt. Ltd.
> For, Parsoli Motor Works Pvt. Ltd.
> -sd-
> Mr. Talha Sareshwala
> Authorised Signatory / Director
> Managing Director
> (Sign and Stamp)"

13. The petitioner has candidly admitted, in para 12 of the present petition, that, though it had met the sales targets set by the respondent in earlier years, it was unable to do so in the years 2016 and 2017. It, however, attributes its failure to do so, to "territory infringement by dealers of BMW cars outside Gujarat selling to customers based in Gujarat". Such ex-Gujarat dealers, the petition contends, had an advantage, owing to a lower indirect tax regime outside Gujarat, which acted as an incentive for the respondent, to allow sale in Gujarat, by such ex-Gujarat dealers. The petitioner contends that it

addressed several e-mails to the respondent, requesting that such "territory infringement" be stopped as the business of the petitioner was suffering as a result thereof. Despite such communications, it is contended that the respondent took no action to stop the territory infringement, resulting, as already noted above, in the petitioner failing to meet its sales targets in the years 2016 and 2017.

14. Para 13 of the petition further contends that, in order to ensure a "fair exit" for the petitioner, it was mutually agreed, between the petitioner and the respondent, that a valuer be appointed, who would value the business of the petitioner, which, then, could be sold to a third party. Pursuant to this understanding, the petition contends that KPMG was appointed as a valuer towards the latter half of 2016 and that, pursuant to a report received from KPMG, certain interested parties bid for purchasing the business of the petitioner. Such bids, it is stated, were received as late as July 2017. Even so, the petitioner contends, the respondent did not communicate, to the proposed purchasers or to KPMG, the proposal regarding sale of the petitioner's business to a third party.

15. In these circumstances, the petitioner contends, in para 15 of the present petition, it was "shocked" to receive a letter, dated 07th December 2017, from the respondent, stating that the respondent was not interested in renewing the last dealership agreement (dated 9th January 2017 *supra*) entered into between the petitioner and the respondent. The said letter deserves to be reproduced *in extenso*, being

the *causamimmediatam* for the present proceedings, thus:

"BMW
GROUP
India

Parsoli Motor Works Pvt. Ltd.
Ground Floor & First Floor,
Signature 1 Building, Near Makarba Circle,
S.G. Road, Ahmedabad- 380 051

Your reference	Nil
Your message dated	Nil
Department/From	B3-IN-H/ Manish Sachdev
Telephone	+91 124456600
Fax	+ 91 24 4566602
E-mail	Manish.Sachdev@bmw.in
Date	07 December, 2017

Subject **Dealer Agreement for BMW Vehicles and Genuine BMW Parts**

Dear Mr. Talha Sareshwala,

This is in reference to the existing Dealer Agreement, which was renewed vide our mutual letter dated 9th January 2017, for a period of one year commencing from 1stJanuary 2017 and automatically expiring on 31stDecember, 2017. Though not a contractual requirement, however, in view of our ongoing discussion we wish to put this on record for not renewing the Dealer Agreement beyond 31st December, 2017. You are requested to kindly adhere to all the closure formalities, as agreed in our Dealer Agreement.

Kindly acknowledge the receipt.

Yours sincerely

For BMW India Pvt. Ltd.

-sd- -sd-

Vikram Pawah Colin Brenner

President Development | Director-Sales Channel

Agreed & Accepted
For Parsoli Motor Works Pvt. Ltd.

Mr. Talha Sareshwala
Managing Director
(Sign and Stamp)"

16. The present petition – as well as Mr. Chetan Sharma, learned senior counsel espousing the cause pleaded therein –objects strongly to the use of the words "ongoing discussions", asserting that no such discussion had ever taken place. It is emphatically contended, by the petitioner, that the letter dated 07th December 2017 was a bolt from the blue, which has thrown all its affairs into disarray, especially given the enormous expenditure incurred by the petitioner. Para 16 of the petition asserts that, in view of the fact that "the Petitioner has incurred significant expenditure, has set up various facilities and infrastructure, has in its possession large no. of demo vehicles (BMW cars), where the entire set up is specific to the sale and servicing of BMW cars, it is unreasonable that a contract which has been renewed for a period of nine years, each year, is suddenly being put to an end by about three weeks' notice, which evidently is an insufficient period to allow the petitioner to transition from this business to another business".

17. Having set out its grievance thus, the petitioner states in para 21 of the petition that there was an apparent dispute between the petitioner and the respondent which, by virtue of Clause 13.4 of the

agreement dated 14th January 2015, read with letter dated 09th January 2017 (*supra*), was arbitrable. It is in these circumstances, that the present petition has been filed, purportedly under Section 9 of the 1996 Act.

18. Though the petition contains a multitude of prayers, Mr. Chetan Sharma, learned senior counsel appearing on behalf of the petitioner, submits that his client only desires a reasonable time to exit from its relationship with the respondent- "say about 9 to 10 months". Given the expenditure that his client has incurred, in setting up its establishment, at the instance, and conforming to the specifications, of the respondent, this request, Mr. Sharma would submit, is eminently reasonable.

19. In support of prayers made by his client, Mr. Chetan Sharma raises the following contentions, apart from those raised in the petition, which have already been noticed hereinabove:

(i) The respondent was estopped from refusing to renew the agreement entered into by it with the petitioner. He presses into service, in this connection, Section 115 of the Indian Evidence Act, 1872 read with the proviso to Section 94 thereof, as well as the judgment of the Supreme Court in ***State of Orissa v Mangalam Timber Products Ltd, (2004) 1 SCC 139***.

(ii) In view of the fact that the petitioner's dealership had been renewed continuously for nine years, without any failure or breach, it was not open to the respondent to decide, one fine

morning, to discontinue the relationship. For this proposition, learned senior counsel relies on ***Rajesh Maanv. Delhi Metro Rail Corpn., 2009 (164) DLT 309.***

(iii) The petitioner had an enforceable right against the respondent, as its entire establishment, the appurtenances and fixtures thereto and therewith, and the service rendered by it, were BMW-specific. It was not, therefore, as though, consequent to severance of its relationship with the respondent, the petitioner could start dealership with some other automobile manufacturer.

(iv) The provision, in Clause 11.1 of the contract, permitting breakage of relationship with the petitioner, on 21 days notice, was, *ex facie*, unreasonable, in the context of a contract of ten years' vintage. Mr.Sharma, relies for this proposition on ***Manjunath Anandappa v Tammanasa,(2003) 10 SCC 390***, in particular, on paras 12 and 13 of the judgement in ***Veeravee Ammal v Seeni Ammal, AIR 2001 SC 2920***, as quoted, and relied upon, in the said decision**.**

(v) The year to year renewal clause was required, in law, to be treated as directory, and subject to the right, of the respondent to terminate the agreement in case of breach. Para 28 of the judgment of this Court in ***Classic Motors Ltd. v Maruti Udyog Ltd, 1995 (57) DLT 677*** was pressed into service, by Mr. Sharma, in this regard.

(vi) The use of the words "ongoing discussion", in the letter dated 07th December 2017, was clearly indicative of

arbitrariness on the part of the respondent. Mr. Sharma emphasized that no such discussion had taken place.

(vii) Clause 11.1, as figuring in the agreement, could not be read in isolation but had to be understood in the conspectus of the entire agreement.

(ix) The letter, dated 07th December 2017, had assigned no reason, whatsoever, to discontinue the petitioner's dealership.

(x) The petitioner's sales, in 2016 and 2017, had fallen only because of the action, of the respondent, in allowing ex-Gujarat dealers to trade in BMW automobiles in Gujarat. Having thus prejudiced the petitioner's dealership, the respondent could not be allowed to use the fall in sales of the petitioner, as a justification to refuse to renew the petitioner's dealership, as that would amount to allowing the respondent to take advantage of its own wrong.

(ix) The petitioner was also entitled to relief, applying the doctrine of legitimate expectation. For this proposition, reliance was placed on the oft cited decision in ***Central England Water Transport Corporation Ltd. v Brojo Nath Ganguly, (1986) 3 SCC 156***, which, according to Mr. Chetan Sharma, applied the principles of legitimate expectation in the private law domain.

(x) The petitioner had exceeded the targets set for it in every year from 2010 and 2014, and was awarded for the services rendered by it, on several occasions.

20. The aforementioned submissions, according to Mr. Chetan

Sharma, learned senior counsel appearing on behalf of the petitioner were sufficient to warrant an order, under Section 9 of the 1996 Act, in terms of the prayers contained in the petition. Even so, Mr. Sharma would contend, as already noticed hereinabove, that he was only seeking a window period of 9 to 10 months, for his client to be able to wind up its business and move on.

21. Arguing in opposition, on behalf of the respondent, Mr. Arun Kathpalia, learned senior counsel, would submit thus:

(i) The reliance, by Mr. Chetan Sharma, on ***Classic Motors Ltd v Maruti Udyog Ltd, 1995 (57) DLT 677*** [hereinafter referred to as *"**Classic Motors (1)**"*] was entirely improper, as the said decision was in the nature of an order of injunction, passed at the interlocutory stage in the suit. The said decision had been challenged, by the defendant, therein, before the Supreme Court, by way of SLP (C) 4490/1995, which was decided, by the Supreme Court by an order dated 03rd November 1995, setting aside the interlocutory order dated 03rd February 1995, *(supra)* passed by this court (on which Mr Sharma had placed reliance) and leaving all questions open to be decided at the time of disposal of the suit.

(ii) The suit was finally disposed of, by this court, *vide* judgement dated 13th December 1996, reported as ***Classic Motors Ltd. v Maruti Udyog Ltd, 65 (1997) DLT 166*** [hereinafter referred to as *"**Classic Motors (2)**"*]. A perusal of the said decision revealed that the dealership agreement, in that

case, was, perpetual till termination, unlike the present case, in which the dealership was for a stipulated fixed term of one year, unless and until the respondent chose to renew it.

(iii) The agreement, dated 14th January 2015, was a fresh agreement, constituting an entirely new contract between the parties. It was not, therefore, as though the original agreement dated 5th January 2009 had continued till 2017.

(iv) Clause 11.1 of the agreement dated 14th January 2015, specifically provided that the contract would expire at the end of one year by efflux of time, subject to the right, of the respondent, to renew the same, at its sole discretion, on mutually agreeable terms and conditions (as would be apparent from the use of the words "acceptable to BMW" used in the said clause).

(v) The grievance, of the appellant, regarding sale, of BMW automobiles, in Gujarat, by ex-Gujarat dealers, was without substance, as it was made clear, in clause 1.1.1 of the agreement dated 14th January 2015, that the dealership given by the respondent was "non-exclusive" in nature.

(vi) By efflux of time, therefore, the agreement dated 14th January 2015, as renewed thereafter, expired on 31st December 2017. Clause 11.1 made it absolutely clear that the appellant had no legal right to have the agreement renewed. *Sans* any legal right, there could be no enforceable right. *Sans* any enforceable right, there could be no question of grant of any injunction. Mr. Kathpalia drew my attention, in this context, to

Sections 38 and 39 of the Specific Relief Act, 1963 (hereinafter referred to as "the Specific Relief Act").

(vii) The contract between the appellant and respondent being time-bound, and determinable, the relief sought by the petitioner was barred by Section 14 (a) and (c) of the Specific Relief Act. Mr. Kathpalia also sought to invoke Section 41 (e) of the Specific Relief Act, relying, in this context, on the decisions of the Supreme Court in ***Indian Oil Corporation Ltd v Amritsar Gas Service, JT 1990 (4) SC 601*** and ***Cotton Corporation of India Ltd v United Industrial Bank Ltd. AIR 1983 SC 1272***, as well as the judgement of this court in ***Rajasthan Breweries Ltd v Stroh Brewery Company, AIR 2000 Del 450***.

(viii) An order, under Section 9 of the 1996 Act, could only be issued in aid to a final award, for which proposition reliance was again placed on ***Cotton Corporation of India Ltd (supra)***. As held by the Supreme Court in ***O.N.G.C. v Saw Pipes, (2003) 5 SCC 705***, the arbitrator would be bound by the terms of the contract between the parties. Where, therefore, the arbitrator could not have extended the dealership of the respondent beyond 31st December 2017, it was, *pari passu*, not permissible for this court to do so, either, under Section 9 of the 1996 Act.

(ix) The petitioner was, essentially, requesting this court to amend the contract between the parties, and create a new contract. This was outside the province of jurisdiction of the civil court.

(x) Grant of relief prayed for by the petitioner would amount to allowing the claim finally at the interim stage, as nothing would survive thereafter. It would be akin to decreeing the suit on day one.

(xi) The petitioner having no *prima facie* case in its favour, no injunction could be sought by it.

(xii) In view of the admission, by the petitioner, that it had failed to meet the targets, set by the respondent, during the years 2016 and 2017, the respondent could not be legally bound to continue with the petitioner any longer. Any such continuance was also deleterious to the respondent's reputation. On considerations of balance of convenience, too, therefore, no case for grant of injunction was made out.

(xiii) Sections 91 and 92 of the Indian Evidence Act, 1872 (hereinafter referred to as "the Evidence Act") forebore the court from reading, into the contract, what was not contained therein. There was no question, therefore, of reading, into the agreement between the petitioner and respondent, any unfettered tenure of dealership, in view of Clause 11.1. A written contract was conclusive, and exclusive, evidence of its terms.

(xiv) The judgements relied upon by the petitioner were in the realm of public law. There was no question of applying the principle of legitimate expectation in the private law domain.

(xv) ***Manjunath Anandappa (supra)*** was concerned with Article 54 of the Limitation Act, 1963, read with Section 16 of

the Specific Relief Act. The issue in the present case was totally different.

22. Arguing in rejoinder, learned senior counsel for the petitioner reiterated that the doctrine of legitimate expectation was applicable as much in the private law, as in the public law domain. He also invited my attention to an e-mail, dated 21st August, 2015, from the respondent to the petitioner, which reads thus:

> "Hope you had sent all these retail claims earlier the infringing dealers? Rest assured that Parsoli Motors will get the count of all those cases as long as the documents are in place as per the Policy."

This document, learned counsel for the petitioner would submit, was also evidence for the fact that, even as per the respondent's understanding, sale of BMW cars, in Gujarat, by ex-Gujarat dealers, was an "infringement". In fine, learned senior counsel for the petitioner reiterated the submission that all that was being sought, by the petitioner, was a window period, of 9 to 10 months, so that it could wind up its activities and have a fair exit.

Analysis

Scope of Section 9 of the 1996 Act:

23. Section 9 of the 1996 Act reads as under:

> "**9. Interim measures, etc. by Court. –**
>
> A party may, before or during arbitral proceedings or at any

time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—

(i) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely:—

(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it."

24. The guiding principles, regarding exercise of jurisdiction, under Section 9 of the 1996 Act, in a case such as the present, stand well-delineated in the judgement of Supreme Court in ***Adhunik Steels Ltd v Orissa Manganese and Minerals (P) Ltd., (2007) 7 SCC 125***. In that case, M/s Orissa Manganese and Minerals (P) Ltd (hereinafter referred to as "OMM") entered into an agreement, dated 14th May 2003, with

Adhunik Steels (hereinafter referred to as "Adhunik"), for raising manganese ore on its behalf. The term of agreement was 10 years, w.e.f. 18th May 2003, with the option, to Adhunik, to seek renewal for a further term. Pursuant to the agreement, Adhunik mobilised huge resources, and incurred considerable expenditure. Just six months after entering into the agreement, on 24th November 2003, OMM issued a notice, to Adhunik, purporting to terminate the agreement. The justification, cited by OMM for doing so, what is that it had realised that the contract was in violation of Rule 37 of the Mineral Concession Rules, 1960, and that, therefore, OMM was in danger of losing its rights as a lessee, necessitating termination of the contract. As Adhunik had incurred considerable expenditure, as well as losses, it moved the District Court, under Section 9 of the 1996 Act, for an injunction, restraining OMM from terminating the contract and from dispossessing it from the site. *Vide* order dated 18th August, 2004, the District Court allowed the application and restrained OMM from acting on the letter of termination dated 24th November 2003, and from dispossessing Adhunik from the mines. In so holding, the District Court opined that Rule 37 of the Mineral Concession Rules, 1960, were not applicable to the arrangement between OMM and Adhunik. OMM appealed, thereagainst to the High Court of Orissa. The High Court reversed the decision, of the District Court, on the ground that the loss, if any, that Adhunik may have had to sustain, were the contract between OMM and Adhunik to be terminated, could be compensated in terms of money and that, therefore, by virtue of clause (c) of Section 14 (3) of the Specific Relief Acts, injunction, as

prayed for by Adhunik, could not be granted. Appeals, thereagainst, were filed, before the Supreme Court, by both Adhunik as well as OMM. The Supreme Court embarked on a detailed analysis of Section 9 of the 1996 Act, which is of considerable guidance to this court. Para 11 of the report, containing the opening observations in this regard, reads thus:

> "It is true that Section 9 of the Act speaks of the court by way of an interim measure passing an order for protection, for the preservation, interim custody or sale of any goods, which are the subject-matter of the arbitration agreement and such interim measure of protection as may appear to the court to be just and convenient. *The grant of an interim prohibitory injunction or an interim mandatory injunction are governed by well-known rules and it is difficult to imagine that the legislature while enacting Section 9 of the Act intended to make a provision which was dehors the accepted principles that governed the grant of an interim injunction.* Same is the position regarding the appointment of a receiver since the section itself brings in the concept of "just and convenient" while speaking of passing any interim measure of protection. *The concluding words of the section, "and the court shall have the same power for making orders as it has for the purpose and in relation to any proceedings before it" also suggest that the normal rules that govern the court in the grant of interim orders is not sought to be jettisoned by the provision.* Moreover, when a party is given a right to approach an ordinary court of the country without providing a special procedure or a special set of rules in that behalf, the ordinary rules followed by that court would govern the exercise of power conferred by the Act. *On that basis also, it is not possible to keep out the concept of balance of convenience, prima facie case, irreparable injury and the concept of just and convenient while passing interim measures under Section 9 of the Act."*
>
> (Emphasis supplied)

Thereafter, paras 14 and 15 of the report proceeded to hold as under:

> "14. Professor Lew in his *Commentary on Interim and Conservatory Measures in ICC Arbitration Cases*, has indicated:

> *"The demonstration of irreparable or perhaps substantial harm is also necessary for the grant of a measure. This is because it is not appropriate to grant a measure where no irreparable or substantial harm comes to the movant in the event the measure is not granted. The final award offers the means of remedying any harm, reparable or otherwise, once determined."*

15. The question was considered in ***Channel Tunnel Group Ltd. v. Balfour Beatty Construction Ltd. [1993 AC 334 : (1993) 2 WLR 262 : (1993) 1 All ER 664 (HL)]*** The trial Judge in that case took the view that he had the power to grant an interim mandatory injunction directing the continuance of the working of the contract pending the arbitration. The Court of Appeal thought that it was an appropriate case for an injunction but that it had no power to grant injunction because of the arbitration. In further appeal, the House of Lords held that it did have the power to grant injunction but on facts thought it inappropriate to grant one. In formulating its view, the House of Lords highlighted the problem to which an application for interim relief like the one made in that case may give rise. The House of Lords stated at AC p. 367: (All ER p. 690*g-h*)

> *"It is true that mandatory interlocutory relief may be granted even where it substantially overlaps the final relief claimed in the action; and I also accept that it is possible for the court at the pre-trial stage of a dispute arising under a construction contract to order the defendant to continue with a performance of the works. But the court should approach the making of such an order with the utmost caution, and should be prepared to act only when the balance of advantage plainly favours the grant of relief.* In the combination of circumstances which we find in the present case I would have hesitated long before proposing that such an order should be made, even if the action had been destined to remain in the High Court." "

(Emphasis supplied)

Applying these principles to the fact-situation before it, the Supreme Court observed, in para 21 of the report, as under:

> "It is true that *the intention behind Section 9 of the Act is the issuance of an order for preservation of the subject-matter of an arbitration agreement.* According to learned counsel for Adhunik Steels, the subject-matter of the arbitration agreement in the case on hand, is the mining and lifting of ore by it from the mines leased to OMM Private Limited for a period of 10 years and its attempted abrupt termination by OMM Private Limited and the dispute before the arbitrator would be the effect of the agreement and the right of OMM Private Limited to terminate it prematurely in the circumstances of the case. *So viewed, it was open to the court to pass an order by way of an interim measure of protection that the existing arrangement under the contract should be continued pending the resolution of the dispute by the arbitrator. May be, there is some force in this submission made on behalf of Adhunik Steels. But, at the same time, whether an interim measure permitting Adhunik Steels to carry on the mining operations, an extraordinary measure in itself in the face of the attempted termination of the contract by OMM Private Limited or the termination of the contract by OMM Private Limited, could be granted or not, would again lead the court to a consideration of the classical rules for the grant of such an interim measure. Whether an interim mandatory injunction could be granted directing the continuance of the working of the contract, had to be considered in the light of the well-settled principles in that behalf."*
>
> (Emphasis supplied)

25. Having thus interpreted Section 9 of the 1996 Act, and the scope of the jurisdiction of the Court thereunder, the Supreme Court, adjudicating the controversy before it, set out the issue, for consideration, as being "whether in the circumstances, an order of injunction could be granted restraining OMM Private Ltd from interfering with Adhunik Steels' working of the contract which OMM Private Ltd has sought to terminate". Significantly, no injunction, restraining OMM from acting on its decision to terminate the contract with Adhunik, was granted. The only interim direction that was passed was in the form of restraint, against OMM, from entering into a

similar contract with any other entity, till the conclusion of the arbitral proceedings. The *raison d' etre* for granting the said relief is also relevant. The Supreme Court made it clear (in para 24 of the report) that it was granting the said relief only because the justification provided by OMM for cancelling the agreement with Adhunik, i.e., that the agreement was hit by Rule 37 of the Mineral Concession Rules, 1960, would apply, equally, to any agreement which OMM would seek to enter into with any other entity. It is important to note that, unlike the present case, OMM had not chosen to terminate the agreement with Adhunik because of any shortcoming in the manner in which Adhunik was discharging its obligations under the agreement. The ground for termination was a perceived statutory embargo, on OMM, from entering into such an agreement, which, according to OMM, it had failed to notice at the time of entering into the agreement with Adhunik. Para 24 of the report makes it apparent that it was owing to this peculiar ground, cited by OMM for terminating the agreement, that the Supreme Court thought it appropriate not to allow OMM to enter into any other similar agreement, pending the arbitration proceedings. Even so, the Supreme Court did not stay or injunct the proposed termination, by OMM, of its contract with Adhunik, but allowed OMM to continue mining on its own, and the reason for issuing the said direction, as contained in para 25 of the report, is also relevant:

> "At the same time, we see no justification in preventing OMM Private Limited from carrying on the mining operations by itself. It has got a mining lease and subject to any award that may be passed by the arbitrator on the effect of the contract it had entered into with

> Adhunik Steels, it has the right to mine and lift the minerals therefrom. *The carrying on of that activity by OMM Private Limited cannot prejudice Adhunik Steels, since ultimately Adhunik Steels, if it succeeds, would be entitled to get, if not the main relief, compensation for the termination of the contract on the principles well settled in that behalf.* Therefore, it is not possible to accede to the contention of learned counsel for Adhunik Steels that in any event OMM Private Limited must be restrained from carrying on any mining operation in the mines concerned pending the arbitral proceedings."
>
> (Emphasis supplied)

26. The proposition that the exercise of jurisdiction under Section 9 of the Arbitration Act is subject to the restrictions and limitations contained in the Specific Relief Act was reiterated in ***Arvind Constructions Ltd. v. Kalinga Mining Corporation (2007) 6 SCC 798***.

27. In ***Firm Ashok Traders v Gurmukh Das Saluja, (2004) 3 SCC 155***, the Supreme Court opined that "the court under Section 9 is only formulating interim measures so as to protect the right under adjudication before the Arbitral Tribunal from being frustrated".

28. Dalveer Bhandari, J. (as his Lordship then was) observed thus, regarding the power of the court to grant injunctions under Section 9 of the 1996 Act, in ***Olex Facas Pvt. Ltd v Skoda Export Co. Ltd, AIR 2000 Del 161***:

> "In my view, though the Court is vested with the powers to grant interim relief, but *the Court's discretion must be exercised sparingly and only in appropriate cases. The Courts should be extremely cautious in granting interim relief in cases of this nature. The*

> *Court's discretion ought to be exercised in those exceptional cases when there is adequate material on record, leading to a definite conclusion that the respondent is likely to render the entire arbitration proceedings infructuous, by frittering away the properties or funds either before or during the pendency of arbitration proceedings or even during the interregnum period from the date of award and its execution.* In those cases, the Courts would be justified in granting interim relief."
>
> (Emphasis supplied)

29. In ***Reliance Infocom v. BSNL (2004) 195 DLT 219***, it was further held that "the powers vested in this, by virtue of Section 9 of the Arbitration Act must be exercised in consonance with the equity which tempers the grant of any discretionary relief". In ***Dr. Kumar Das v. Indian Medical Practitioner Pharma Store Ltd., (2007) 95 DRJ 618***, it was held that "Section 9 of the Arbitration & Conciliation Act, 1996 empowers this Court to pass such order as are necessary *"to preserve the subject matter of the arbitration*". In respect of sub Clause (c) of the Clause (ii) Section 9 (i) of the 1996 Act, the Division Bench of Madras High Court, speaking through R. Banumathi, J. (as she then was) ruled thus:

> "The purpose of Section 9 is to provide an interim measure of protection to the parties to prevent the ends of justice from being defeated. Section 9(2)(e) vests the Court with the power to grant such interim measures of protection as may appear to be just and convenient. The jurisdiction under the "just and convenient" clause is quite wide in amplitude, but must be exercised with restraint. Interim measures are to be granted by the Court so as to protect the right in adjudication before the arbitral tribunal from being frustrated. It does not allow the Court the discretion to exercise unrestrained powers and frustrate the very object of arbitration".

30. In ***Gujarat Bottling Company v Coca Cola AIR 1995 SC 2372***,

the Supreme Court held thus:-

> "The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the Plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the Plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the Plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable+ in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The Court must weigh one need against another and determine where the "balance of convenience" lies".

31. The above dictum was invoked, by the High Court of Bombay, in ***Percept Talent Management Pvt. Ltd. v. Yuvraj Singh 2008 (2) ARB LR 49 (Bom).*** Para 10 of the said report, which is relevant, reads as under:

> "10. Specific performance of such a contract would prima facie be barred by Clauses (a), (b) and (D) OF Sub-Section (1) of Section 14 of the Specific Relief Act, 1963. The Contract between the parties is essentially a contract for personal services of which specific performance cannot prima facie be granted. The balance of convenience would weigh against the grant of an injunction because whereas the Petitioners could be fully compensated in monetary terms if they finally succeed in the arbitral proceedings, the First Respondent would be irrevocably prejudiced by being compelled to enter into a contract with a party with whom he does not desire to deal. The Court, therefore, would not be justified particularly at the interlocutory stage in directing a sportsman to employ an agent or manager in whom there is a loss of confidence".

32. In ***Vishal Gupta v. Uday K. Lauria, 2009 (4) Arb LR 51 (Del)***, this Court held that the purpose of Section 9 was "to preserve the subject matter of the dispute and it is not to preserve the interest of one of the parties at the cost of the other".

33. The position that emerges from the above authorities is, therefore, that power to grant injunctive relief, under Section 9 of the 1996 Act, has to abide by the provisions of the Specific Relief Act. Injunction which cannot be granted under Section 41 of the Specific Relief Act, cannot be granted under Section 9 of the 1996 Act, either. Neither can relief be granted, under Section 9, as would amount to specific enforcement of a contract which, by nature, is determinable, in view of Section 41 of the Specific Relief Act. The power to grant injunctive relief, under Section 9 of the 1996 Act, is essentially intended to protect the subject matter of the contract, and to avoid frustration of arbitral proceedings which may be initiated with respect thereto. Such relief can be granted only if the three pre-requisites, governing grant of injunctive relief, i.e. existence of a *prima facie* case, balance of convenience being in favour of the claimant and possibility of irreparable loss that would ensue to the claimant were such relief not granted, stand fully satisfied. Even in cases where a contract is being sought to be terminated, in violation of the terms thereof, if it appears that the party who suffers as a result of such termination could be adequately compensated in terms of money at the stage of final adjudication of the dispute, no injunctive relief, under Section 9 of the 1996 Act, would be granted.

The judgment in ***Classic Motors (1)***:

34. I may, before proceeding further, make it clear that there can be no question of taking into consideration the order, of this Court, in ***Classic Motors (1) (supra)***. This Court, in ***Classic Motors (2)***, has recorded, as under, regarding ***Classic Motors Ltd. (1)*** and the litigation in the Supreme Court that resulted therefrom:

> "9. The plaintiff instituted the present suit where summons in the suit and notices on the application were directed to be issued. By order dated 29th November 1994 this Court ordered that in the interest of justice status quo as of that day would continue till the next date and on the next date i.e. 30th November 1994 the interim order was continued and finally by order dated 3.2.1995 this Court stayed the implementation of the show cause notice dated 31st August 1994issued by the defendant.
>
> 10. Being aggrieved by the aforesaid order the defendant approached the Supreme Court through a Special Leave Petition which was registered as SLP(C) No. 4490/1995. By order dated 28.2.1995 the Supreme Court stayed the operation of the order dated 3.2.1995 passed by the High Court and also stayed the further trial of the present suit and to avoid any further confusion in the matter it was made clear that no order of any kind be passed by the High Court during the pendency of the matter in the Supreme court. The Supreme Court byorder dated 3.11.1995 remanded the matter back to the High Court by setting aside the order of injunction granted by this Court on 3.2.1995 in the present suit leaving all questions of fact and law between the parties open for decision by this Court at the time of disposal of the suit itself."

35. On his attention being drawn to the fact that *vide* order dated 03rd November 1995, the Supreme Court set aside the interlocutory order dated 03rd February 1995, of this Court, on which he was placing reliance, Mr. Chetan Sharma, learned senior counsel appearing for the

petitioner, sought to contend that the Supreme Court had not set aside the order, dated 03rd February 1995, of this Court, qua the points being raised by him. This submission is obviously unacceptable. There is nothing, in the recital regarding the proceedings in the Supreme Court and the order, dated 03rd November 1995 passed by it, as recorded in ***Classic Motors (2)***, which would indicate that any caveat had been entered by the Supreme Court, while setting aside the order of this court. That being so, the order, dated 03rd February 1995, of this court in ***Classic Motors (1)*** has clearly been set aside *in toto* and no reliance can, therefore, be placed thereon. I, therefore, refrain from making any observation regarding the merits of those submissions, of Mr. Chetan Sharma, which would depend, for sustenance, on ***Classic Motors (1).***

The judgment in Indian Oil Corporation Ltd. Vs. Amritsar Gas Service (supra)

36. Inasmuch as considerable reliance was placed by Mr. Kathpalia appearing for the respondent, on the judgment of the Supreme Court, in ***Indian Oil Corporation Ltd.*** (*supra*), it is thought expedient to deal with the said judgement, before proceeding to examine the contentions of the parties.

37. ***Indian Oil Corporation Ltd.*** *(supra)* arose from Suit No. 376/1983, filed by Amritsar Gas Service (hereinafter referred to as "AGS") against Indian Oil Corporation Ltd. (hereinafter referred to as "IOCL"). IOCL filed an application, under Section 34 of the Arbitration Act, 1940 (hereinafter referred to as "the 1940 Act"), for

stay of the said suit. The application was dismissed, *vide* order dated 19th October 1983, of the learned Sub Judge. Revision thereagainst, was dismissed by the learned ADJ, *vide* order dated 28th July 1984 and Civil Revision, preferred thereagainst, was also dismissed by the High Court of Punjab & Haryana on 5th November, 1984. IOCL moved the Supreme Court.

38. The facts obtaining in ***Indian Oil Corporation Ltd. (supra)***, as set out in para 2 and the paragraphs that follow thereafter, in the judgment of the Supreme Court, reveal that an agreement, dated 1st April 1976, was entered into between IOCL and AGS whereby the latter was appointed a distributor of the former, for sale of IOCL's Liquified Petroleum Gas cylinders. Clause 27 of the agreement provided for termination thereof by IOCL, on the happening of certain specified events. Clause 28 permitted either party to, without prejudice to clause 27, terminate the agreement by giving 30 days' notice to the other party, without assigning any reason. Clause 37 provided for arbitration of disputes.

39. Consequent to receipt, by it, of complaints regarding the working of the distributorship granted to AGS, IOCL invoked Clause 27 of the Distributorship Agreement and, *vide* letter dated 11th March 1983, terminated the distributorship, of AGS, forthwith. Aggrieved thereby, AGS filed a suit, before the learned Sub-Judge, for a declaration that the termination of its distributorship was illegal and void, and consequently, for continuance of the distributorship.

40. IOCL, thereupon, filed an application, under Section 34 of the Arbitration Act 1940, for stay of the suit. The said application was, rejected by the learned Sub Judge, whose order was affirmed, as already noted hereinabove, in revision by the learned ADJ and, further, in further revision by the High Court. IOCL carried the matter to the Supreme Court.

41. *Vide* order dated 16th December 1985, the Supreme Court opined that the disputes between the IOCL and AGS could appropriately be disposed of by arbitration and therefore, appointed an arbitrator to arbitrate thereon.

42. The arbitrator held that IOCL had committed breach of contract and that it was liable, therefore, to remedy the breach by restoration of the dealership of AGS and payment of compensation.

43. Civil Misc. Petition No. 3053/1987 was filed, by AGS, before the Supreme Court, in the aforementioned Civil Appeal of the IOCL, to direct the arbitrator to file the award before the court, and to make the award rule of court and pass a decree in terms thereof. IOCL filed objections, thereto, under Section 30 of the Arbitration Act, 1940. The said Civil Misc. Petition No. 3053/1987, and the objections filed by IOCL to the arbitral award, were decided by the Supreme Court, by holding thus:

(i) As the suit was based on breach of contract and the remedies flowing therefrom, and the award of the arbitrator also

proceeded on that basis, the case had to be decided in the realm of private law, governed by the general law relating to contract, with reference to the provisions of the Specific Relief Act, which proscribed enforceability of certain species thereof.

(ii) Inasmuch as the agreement between IOCL and AGS provided for termination thereof, at the instance of IOCL, the contract was determinable in nature and, therefore, attracted Clause (c) of Section 14(1) of the Specific Relief Act. Consequently, no relief, for restoration of distributorship, could be granted, as grant of any such relief would be contrary to Section 14(1). The direction of the learned Arbitrator, to IOCL, to restore the distributorship of AGS was, therefore, held to suffer from an error of law apparent from the face of the award and consequently, unsustainable. For ready reference, Section 14 of the Specific Relief Act may be reproduced thus:

> "**14. Contracts not specifically enforceable.—**
>
> (1) The following contracts cannot be specifically enforced, namely:-
>
> (a) contract for the non-performance of which compensation in money is an adequate relief;
>
> (b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms;
>
> (c) a contract which is in its nature

determinable;

(d) a contract the performance of which involves the performance of a continuous duty which the court cannot supervise.

(2) Save as provided by the Arbitration Act, 1940 (10 of 1940), no contract to refer present or future differences to arbitration shall be specifically enforced; but if any person who has made such a contract (other than an arbitration agreement to which the provisions of the said Act apply) and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

(3) Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub-section (1), the court may enforce specific performance in the following cases:-

(a) where the suit is for the enforcement of a contract, -

(i) to execute a mortgage or furnish any other security for securing the repayment of any loan which the borrower is not willing to repay at once: Provided that where only a part of the loan has been advanced the lendor is willing to advance the remaining part of the loan in terms of the contract; or

(ii) to take up and pay for any debentures of a company;

(b) where the suit is for,—

(i) the execution of a formal deed of partnership, the parties having commenced to carry on the business of

> the partnership; or
>
> (ii) the purchase of a share of a partner in a firm;
>
> (c) where the suit is for the enforcement of a contract for the construction of any building or the execution of any other work on land: Provided that the following conditions are fulfilled, namely:-
>
> (i) the building or other work is described in the contract in terms sufficiently precise to enable the court to determine the exact nature of the building or work;
>
> (ii) the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for non-performance of the contract is not an adequate relief; and
>
> (iii) the defendant has, in persuance of the contract, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed."

(iii) The Supreme Court further went on to notice that the termination had been made because of complaints against the AGS, which affected the reputation of IOCL, and was, therefore, within the province of Clause 27 of the contract. However, in view of the finding, of the learned arbitrator, that Clause 27 was not available to IOCL, the Supreme Court proceeded to examine the relief that could be granted to AGS on

that basis. If Clause 27 was not applicable, it was held that the agreement, being revocable by either party under Clause 28 by giving 30 days' notice, the only relief that could be granted to AGS was by way of compensation for the said notice period of 30 days.

44. Accordingly, the Supreme Court disposed of the miscellaneous petition and the objections of IOCL, by setting aside the award of the Arbitrator and directing compensation to be paid to AGS.

The Judgment in Classic Motors (2):

45. The facts in ***Classic Motors (2)*** are interesting and instructive.

46. *Vide* agreement executed in 1985, M/s Competent Motors (hereinafter referred to as "Competent") was granted dealership of the respondent Maruti Udyog Ltd (hereinafter referred to as "MUL"), for sale and service of vehicles manufactured by the latter. Huge investments had to be made by Competent, therefor. In 1986, a dispute arose between the partners of Competent, as a result whereof they arrived at a settlement for availing the dealership of MUL by separating the assets between themselves. MUL, *vide* letter dated 9th January 1988, allowed the two partners to separate and establish independent dealerships. Consequent thereupon, on 20th January 1988, Competent surrendered its dealership, and separate dealerships were granted, by MUL, to the erstwhile partners of Competent, in the

names of M/s Competent Automobiles Pvt. Ltd. and M/s. Classic Motors (hereinafter referred to as "Classic"). Classic, too, made substantial investments, pursuant to the said dealership and incurred huge loans, by way of overdraft facilities, to fulfil the obligations cast by the agreement.

47. On 6th April 1991, a show cause notice was issued to Classic by MUL, alleging certain breaches. Classic filed a petition under Section 20 of the Arbitration Act 1940, which was registered on the original side of this Court as a suit, praying for reference of the disputes between it and MUL, to an arbitrator. On an application filed by Classic, this Court granted an *ex parte* injunction, restraining MUL from terminating the dealership of Classic, which was confirmed on 18th November 1991.

48. The said order, dated 18th November 1991, was challenged, by MUL, by way of SLP (C) 837/1992, before the Supreme Court. *Vide* order dated 18th August 1994, the said SLP was disposed of, by the Supreme Court, directing fresh consideration of the matter, by this court, taking into account all points urged by both sides. It was further directed that the observations, contained in the order dated 18th November 1991 (*supra*) of this court, would be treated as its tentative opinion only. The Supreme Court also ordered that the injunction granted by this court against MUL, would not be construed as restraining MUL from exercising power under Clause 21 of the agreement and that, such power, if exercised, would entitle both

parties to their respective rights, legally flowing as a result thereof.

49. Thereafter, *vide* order dated 31st August 1994, MUL terminated the dealership of Classic with 90 days' notice. Aggrieved thereby, Classic filed another petition, before the original side of this Court, under Section 20 of the Arbitration Act 1940, which was registered as Suit No. 2005/1994. An interim application, under Section 41 of the said Act was also filed therewith, on which an interim order, dated 9th September 1994, was passed by this Court, permitting Classic to book vehicles upto 29th November 1994.

50. The said order dated 9th September 1994 was again challenged, by MUL, before the Supreme Court, by way of SLP(C) 15796/1994, which was disposed of, *vide* order dated 26th September 1994, which set aside the order dated 9th September 1994 passed by this Court, and directed that the matter be disposed of finally *without any such interim orders being made in the suit.*

51. Suit No. 2005/1994 was finally heard by this Court, and judgment was reserved thereon. The plaintiff, however, filed IA 10014/1994, seeking leave to withdraw the petition under Section 20 of the 1940 Act (i.e. Suit 2005/1994) as he had taken recourse to original proceedings by way of Suit No. 2544/1994, also filed on the original side by this Court. *Vide* order dated 22nd November 1994, IA 10014/1994 was allowed, and Classic was permitted to withdraw Suit 2005/1994.

52. Summons, in Suit No. 2005/1994 of Classic, as well as on the interlocutory application filed therewith, were issued. *Vide* order dated 3rd February 1995, this Court stayed the implementation of the show cause notice, dated 31st August 1994 (*supra*), issued by MUL.

53. This compelled MUL to approach the Supreme Court a third time, by way of SLP(C) 4490/1995, challenging the order dated 3rd February 1995. As in the case of the two earlier SLPs filed by MUL, SLP(C) 4490/1995 was also disposed of, by the Supreme Court, *vide* order dated 3rd November 1995, setting aside the order of this Court and remanding the matter to this Court leaving all questions of fact and law open for decision to this Court, at the time of disposal of this suit.

54. This Court, *vide* its judgment in ***Classic Motors (2),*** adjudicated the suit, finally dismissing it with costs. The ratio of the said decision is not of particular relevance to the present case. What is, however, important to note is that the Supreme Court, on three occasions, categorically observed that interim directions, restoring the dealership of Classic, ought not to have been passed by this Court.

Other relevant judgments

55. In ***E. Venkatakrishna Vs. Indian Oil Corporation Ltd., 2007 SCC 764*** the facts were similar to ***Indian Oil Corporation*** (*supra*).

The appellant, in that case, was appointed as dealer of M/s. Indian Oil Corporation (hereinafter referred to "IOC"), to distribute LPG. The contract contained a clause authorising IOC to terminate distributorship, if the appellant did anything prejudicial to its interests or reputation. IOC's contention was that the appellant had sold spurious gas cylinders and that, for this reason, its dealership was terminated. The matter was carried to arbitration, wherein E. Venkatakrishna prayed for setting aside the termination, as well as for damages and restoring of his distributorship. The learned Arbitrator directed restoration of the distributorship of E. Venkatakrishna. IOC challenged the award, under Section 30 of the 1940 Act, before the High Court of Madras. The challenge was rejected by a Single Judge; however, on further appeal, the Division Bench of the High Court opined that there could be no question of restoration of distributorship, under the agreement between E. Venkatakrishna and IOC, and that the arbitrator had no jurisdiction to direct such restoration. The Supreme Court, in the appeal preferred by E. Venkatakrishna ruled, in para 6 of its judgment, thus:

> "In our view, the Division Bench was right. All that the arbitrator could do, if he found that the termination of the distributorship was unlawful, was to award damages, as any civil court would have done in a suit".

56. ***Rajasthan Breweries Ltd v Stroh Brewery Company, AIR 2000 Del 450***, authored by Devinder Gupta, J (as his Lordship then was), speaking for a Division Bench of this Court, was a case which, on facts, closely parallelises the present. In expectation of entering

into a distributorship agreement with Stroh Brewery Company (hereinafter referred to as "Stroh"), to distribute its brand of beer, M/s Rajasthan Breweries Ltd (hereinafter referred to as "RBL") made huge investments, over an extended period of time, following which, on 22nd July 1994 and 7th October 1994, two agreements were executed, by it, with Stroh, whereby and whereunder exclusive license, to produce Stroh Beer, was granted to RBL, for 9 years, renewable successively for 3 years at a time. It was an admitted position that RBL had successfully introduced Stroh's brandname in India, and established a popular consumer base, for the beer sold thereunder. Even so, on 19th January 1999, Stroh issued two termination notices, to RBL, alleging that RBL had failed to meet the quality and standards of Stroh. Denying all allegations made against it, RBL moved a petition, under Section 9 of the 1996 Act, seeking temporary *ad interim* injunction, staying the termination notices dated 19th of January 1999, issued by Stroh. This writ petition was dismissed by the learned Single Judge of this court, on the ground that, as the contracts between RBL and Stroh were determinable in nature, injunction could not be granted, owing to the proscription contained in Section 14(1)(c) read with Section 41 of the Specific Relief Act. RBL appealed, thereagainst, to the Division Bench, which led to the judgement under discussion. The Division Bench of this court ruled, in para 14 to 17 of the report, as under:

> "14. The effect of breach of a contract by a party seeking to specifically enforce the contract under the Indian law is enshrined in Section 16(c) read with Section 41(e) of the Specific Relief Act, 1963. *Clause (e) of Section 41 of the Specific Relief Act provides that*

injunction cannot be granted to prevent the breach of contract, the performance of which would not be specifically enforced. Clause (c) of Section 41 enumerates the nature of contracts, which could not be specifically enforced. Clause (c) to sub-section (1) of Section 14 says that a contract which is in its nature determinable cannot be specifically enforced. Learned Single Judge thus was justified in saying that if it is found that a contract which by its very nature is determinable, the same not only cannot be enforced but in respect of such a contract no injunction could also be granted and this is mandate of law. This, however, is subject to an exception, as provided in Section 42 that where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstances that the court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement.

15. Learned Single Judge considered various covenants of the agreement and referred to clause 8 of the Technical Assistance Agreement regarding termination saying that similar provision is incorporated in the Technical Know-how Agreement and both agreements provide that the same could be terminated even by the appellant at its option at the occurrence of any of the events, which are specifically mentioned in the agreement. Learned Single judge extracted clauses relating to Technical Assistance Agreement under which the respondent could terminate the contract and as the termination had to take place at the instance of the respondent Therefore, events under which the appellant could terminate are not extracted. We were taken through various clauses and it is not disputed and has also rightly been pointed out by learned Single Judge that there is no negative covenant in the agreements in question. As there was no negative covenant, it was observed by learned Single Judge that agreements could be terminated by the respondent on the happening of any of the events mentioned in clause 8 of the Technical Assistance Agreement and under similar corresponding clause in Technical Know-how Agreement. Accordingly, learned Single Judge held that since agreement was determinable at the behest of respondent Therefore, the same was determinable in nature and is revocable at the option of both the parties at the happening of any of the events mentioned therein.

> 16. Learned counsel for the appellant contended that the word "determinable" used in clause (c) to Sub-section (1) of Section 14 means that which can be put an end to. Determination is putting of a thing to an end. The clause enacts that a contract cannot be specifically enforced if it is, in its nature, determinable not by the parties but only by the defendant. Although clause does not add the word "by the parties or by the defendant" yet that is the sense in which it ought to be understood. Therefore, *all revocable deeds and voidable contracts may fall within "determinable" contracts and the principle on which specific performance of such an agreement would not be granted is that the Court will not go through the idle ceremony of ordering the execution of a deed or instrument, which is revocable at the will of the executant. Specific performance cannot be granted of a terminable contract.*
>
> *17. We are unable to persuade ourselves to accept the submissions put forth on behalf of the appellant that when a contract is determinable by the parties, the same cannot be treated as such a contract as is referred to in clause (c) to sub-section (1) of Section 14 in a contract, which in its nature is determinable*."
>
> (Emphasis supplied)

57. This Court, thereafter, proceeded to rely on the judgement of the Supreme Court in ***Indian Oil Corporation Ltd. (supra),*** holding that the facts of the case before it were identical to those before the Supreme Court "inasmuch as the agreements in the instant case are also terminable by the respondent on happening of certain events". Thereafter, observing that the question of whether the termination was wrongful or not, the events purportedly constituting the basis thereof had happened or not, or Stroh was, or was not justified in terminating the agreements, were yet to be decided, the Court reiterated that there was, nevertheless, "no manner of doubt that the contracts by their nature (are) determinable." Relying, thereafter, on ***Classic Motors (2) (supra)***, this Court went on, in para 20 of the report, to hold as under:

> "*Even in the absence of specific clause authorising and enabling either party to terminate the agreement in the event of happening of the events specified therein, from the very nature of the agreement, which is private commercial transaction, the same could be terminated even without assigning any reason by serving a reasonable notice. At the most, in case ultimately it is found that termination was bad in law or contrary to the terms of the agreement or of any understanding between the parties or for any other reason, the remedy of the appellants would be to seek compensation for wrongful termination but not a claim for specific performance of the agreements and for that view of the matter learned Single Judge was justified in coming to the conclusion that the appellant had sought for an injunction seeking to specifically enforce the agreement. Such an injunction is statutorily prohibited with respect of a contract, which is determinable in nature.* The application being under the provisions of Section 9(ii)(e) of the Arbitration and Conciliation Act, relief was not granted in view of Section 14(i)(c) read with Section 41 of the Specific Relief Act. It was rightly held that other clauses of Section 9 of the Act shall not apply to the contract, which is otherwise determinable in respect of which the prayer is made specifically to enforce the same."
>
> (Emphasis supplied)

58. In ***S. K. Gupta v Hyderabad Allwyn Ltd, AIR 1988 Del 324***, the petitioner, as proprietor of M/s Rohini Times (hereinafter referred to as "RT") was appointed as exclusive stockist, of M/s Hyderabad Allwyn Ltd (hereinafter referred to as "HAL"), for sale of watches, *vide* Memorandum of Understanding (hereinafter referred to as "MoU") dated first of August 1984. The said MoU was to remain in force for a period of 6 months, subject to the right, of HAL to terminate the same place or without notice, at any time and without assigning any reason. Alleging that HAL had committed breach of the terms of the agreement, by marketing its products through various other dealers, RT filed a suit for permanent injunction, before the

learned Senior sub judge, Delhi, along with an application, under Order XXXIX Rules 1 and 2 of the CPC, for an interim injunction, restraining HAL from supplying watches to any other dealer in Delhi except through RT. *Vide* order dated 8th May, 1987, the Sub Judge granted an injunction, restraining HAL from supplying watches to other dealers in Delhi, except through RT, till the decision in the suit. This order was, however, reversed, by the Senior Sub Judge, *vide* order dated 30 of June 1987, on the ground that, as the petitioner could be adequately compensated by money, a suit for permanent injunction was barred under Section 41(e) of the Specific Relief Act. Consequently, the learned Senior Sub Judge held that no *prima facie* case, meriting grant of temporary injunction, was made out. This court proceeded to hold thus:

> "Even in the absence of specific clause authorising and enabling either party to terminate the agreement in the event of happening of the events specified therein, from the very nature of the agreement, which is private commercial transaction, the same could be terminated even without assigning any reason by serving a reasonable notice. At the most, in case ultimately it is found that termination was bad in law or contrary to the terms of the agreement or of any understanding between the parties or for any other reason, the remedy of the appellants would be to seek compensation for wrongful termination but not a claim for specific performance of the agreements and for that view of the matter learned Single Judge was justified in coming to the conclusion that the appellant had sought for an injunction seeking to specifically enforce the agreement. Such an injunction is statutorily prohibited with respect of a contract, which is determinable in nature. The application being under the provisions of Section 9(ii)(e) of the Arbitration and Conciliation Act, relief was not granted in view of Section 14(i)(c) read with Section 41 of the Specific Relief Act. It was rightly held that other clauses of Section 9 of the Act shall not apply to the contract, which is otherwise determinable in respect of which the prayer is made

specifically to enforce the same."

It is relevant to note that, in the same para, this Court went on to observe that, even if a negative covenant were present in the agreement, "if remedy by way of damages is found to be efficacious the court should grant injunction only in exceptional cases".

59. There are several other decisions which proceed on similar lines, among which may be cited in ***Pepsi Foods vs. Jai Drinks Pvt. Ltd., 1996 (36) DRJ 711***, ***Shivansh Auto Zone Pvt. Ltd. v Honda Cars India Ltd., MANU/DE/0957/2016***, ***Interkardio Pvt. Ltd. vs. Gyrus Group PLC, (2007) ILR 2 Delhi 1137***and ***ITE India Pvt. Ltd v D.T.T.D.C., MANU/DE/0299/2016.*** It is important to note that ***Pepsi Foods*** *(supra)*, ***Shivansh (supra)*** and ***Interkardio Pvt. Ltd.*** *(supra)* were decisions in which the dealership/distributorship, of the applicant seeking injunction from the court, was being terminated, and the termination was assailed by the applicant, as being in breach of the terms of the contract. Consequently, the primary relief sought, in these cases was, a declaration that the termination was illegal. Renewal/continuance of the contractual relationship, if at all, was claimed only as a consequence thereof. It was in these circumstances that the various benches of this court which deal with these matters, refused to grant the relief prayed for, citing Clause (e), of Section 41 of the Specific Relief Act, which, applies specifically to grant of injunction against a party committing breach of contract. The said clause states that, if the contract itself was not specifically enforceable,

by virtue of Section 14 of the said Act, no injunction, restraining a party from committing breach thereof, could be granted.

60. In ***ITE India Pvt. Ltd. Vs. D.T.T.D.C., MANU/DE/0299/2016,*** the petitioner (hereinafter referred to as "ITE") was awarded a 10 years-contract to operate and maintain the facility of the respondent (hereinafter referred to as "DTTDC"). Possession was, handed over, to ITE, on 23rd August 2015. Clause 1.4 of the agreement, which dealt with renewal of the contract, was worded thus:

> "1.4 Renewal of Contract.
>
> At the end of the stipulated contract period of 10 years, DTTDC may further extend the contract for tenure of 5 years based on mutually agreeable terms and condition."

61. ITE employed various sub-Contractors and requested for "No Objection Certificate" (NOC) from DTTDC. It was alleged, by ITE, that, owing to delay, on the part of the DTTDC, in granting NOC, it suffered, as it was not able to utilise the space properly. NOC was belatedly granted after four years. Thereafter, consequent to certain disputes arising between ITE and DTTDC,the latter sent a show cause notice to the former. Efforts at resolving the dispute by conciliation failed, whereupon an arbitrator was appointed by this court, to arbitrate thereon. During the pendency of the said arbitral proceedings, ITE paid, to DTTDC, the entire amount claimed by it. On the ground that such payment resulting in restoration of the original lease agreement dated 08th August 2005, ITE requested that the tenure of the agreement be extended by four years, which was the time lost

allegedly owing to non-grant of space of DTTDC. As per ITE, its request was placed, by DTTDC, before a committee of four of its senior officers which, after due deliberation, decided that ITE's contract be extended for a further period of five years. As per ITE, DTTDC further acted on the said decision, by providing water connection, lighting, hindrance-free movement and security, to facilitate ITE in discharging its obligations under the agreement. Reliance was also placed, by ITE, on a letter, dated 10th June 2015, issued by DTTDC to it, withdrawing its earlier letter dated 13th October 2011, whereby the contract between ITE and DTTDC had been terminated, and extending the contract for five more years w.e.f 9th August 2015, subject to certain specified terms. The letter sought the consent of ITE, which was granted by ITE vide response dated 12th June 2015, along with an advance cheque, as required by the communication of DTTDC. The receipt of the advance cheque was also acknowledged by DTTDC, *vide* its letter dated 12th June 2015, which further confirmed extension of the contract between ITE and DTTDC, for a further period of five years w.e.f 9th August 2015. ITE contended that, thereafter, an agreement, incorporating the terms and conditions contained in the letter dated 10th June 2015 (*supra*), was approved between DTTDC and it, and had been signed by its representative. However, no signature was appended thereon by the representative of DTTDC. ITE sought to allege that this inaction on the part of the DTTDC was because it was expecting illegal gratification from ITE.

62. The grievance of ITE, which persuaded it to knock at the doors on this Court again, stemmed from a communication, dated 04th August 2015, by DTTDC, whereby the earlier letters, dated 10th June 2015 (*supra*) and 12th June 2015 (*supra*) were withdrawn by it. Alongwith the said letter, the post-dated cheques issued by ITE were also returned.

63. This Court, when moved by ITE in the matter, relied, again on ***Indian Oil Corporation Ltd***. (***supra***) and ***E. Venkatakrishna***(***supra***) to hold that, in the light of Clauses (a) and (c) of Section 14 (1) of the Specific Relief Act, the contract between ITE and DTTDC was not specifically enforceable. It was also opined that in view of Section 41 (e) of the said Act, it was not permissible to grant injunction to prevent breach of a contract, the performance of which could not be specifically enforced. In these circumstances, this Court, speaking through the learned Single Judge, expressed its inability to grant any injunctive relief to ITE, holding that even if the termination of the distributorship of ITE, by DTTDC, was found unlawful, the only relief that could be granted to it was by way of damages compensation, for the notice period provided in the contract. Para 18 of the judgment of this Court merits reproduction:-

> "18. Therefore, the relief cannot be granted being contrary to the provisions of the Special Relief Act. Even if the termination of the agreement was found to be unlawful, the only relief which could have been granted is damages compensation for the period of notice as provided in the contract. However, in the present case, the situation is more worse. Even the formal fresh agreement for renewal of the allotment has not been executed. Before expiry of the

> earlier period of contract, the decision was taken by the respondent not to renew the contract any further. Thus, the suggestion for renewal of the contract for further five years before the expiry of earlier contract and in the absence of the fresh execution, the arguments of the petitioner cannot be accepted. The petitioner is merely an agent. The only remedy lies with the petitioner is to claim damages or compensation, if any, as per law. The relief sought in the present petition cannot be granted while dealing with the application under Section 9 of the Act. None of the decisions referred to by the petitioner is applicable to the facts of the present case, as in those cases, the formal fresh agreement between the parties has not been executed".

The resultant legal position *qua* the facts of the present case

64. As already noticed hereinabove, though the present petition prays for a number of reliefs, learned senior counsel appearing for the petitioner has, during arguments, confined his case to his client being granted a "window period" of 9 to 10 months, so that his client is able to make a "fair exit". Injunction, restraining the respondent from acting on its letter dated 17th December 2017, has also been sought, only toward the said end. I, therefore, propose to confine my consideration only to the aspect of whether the law permits me to grant such an injunction, under Section 9 of the 1996 Act.

65. A reading of the judgements cited hereinabove, starting from ***Indian Oil Corporation Ltd. (supra)***, reveals that almost all the decisions deal with cases where the contract between the parties was terminated, and such termination was alleged to be violative of the terms of the contract itself. It was in these circumstances that, in the said decisions, clause (e) of Section 41 of the Specific Relief Act was

pressed into service, by the courts, to hold that grant of injunctive relief was proscribed by statute. This was obviously because the termination of the contract was alleged, by the aggrieved party, to be violative – and, therefore, in breach – of the terms of the contract, and clause (e) of Section specifically bars grant of injunction "to prevent the breach of contract the performance of which could not be specifically enforced". The philosophy behind all these decisions is that the contract, being one which could not be specifically enforced by virtue of Section 14 of the Specific Relief Act, injunction, to restrain a party from breaching the said contract, was also incapable of being granted, because of clause (e) of Section 41 thereof.

66. ***ITE India Pvt. Ltd.(supra)*** was, however, a case in which the issue involved was whether, in view of the fact that the DTTDC had taken a decision not to renew the contract, before the expiry thereof, ITE could maintain a prayer for injunction against such non-renewal. The learned Single Judge, in that case, relied on, *inter alia*, ***Indian Oil Corporation Ltd (supra)***, and held, thereafter, that the only remedy available to ITE was to sue for compensation/damages. To that extent, the said decision covers the present case.

67. Having said that, I have my reservations regarding the applicability of clause (e) of Section 41 of the Specific Relief Act to a case in which - as in the present - there is no termination of the contract*, no breach thereof is, consequently, alleged by the claimant*, a decision not to renew the contract further beyond its expiry is taken

prior to such expiry, and the only relief sought by the claimant, before this court, is to injunct the said decision being acted upon, and, consequently, for the contract to be renewed for a further period. Where no breach of contract is alleged by the petitioner before this court, the applicability of clause (e) of Section 41 of the Specific Relief Act appears, to my mind, to be excluded altogether. Section 14 of the said Act, however, still appears to be applicable, and would be addressed hereinafter.

68. I, therefore, proceed to examine the merits of the petitioner's case *de hors* Section 41 of the Specific Relief Act, and the judgements relying thereon, including ***Indian Oil Corporation Ltd (supra)*** and ***Classic Motors (2) (supra)***.

69. While examining the rival claims the parties, this court is required to be guided by the following dictum, regarding the manner in which contracts are to be interpreted and applied, as laid down in para 74 of the recent judgement in ***Nabha Power Ltd v Punjab State Power Corporation Ltd, 2017 SCC Online SC 1239***:

> "We may, however, in the end, extend a word of caution. It should certainly not be an endeavour of commercial courts to look to implied terms of contract. In the current day and age, making of contracts is a matter of high technical expertise with legal brains from all sides involved in the process of drafting a contract. It is even preceded by opportunities of seeking clarifications and doubts so that the parties know what they are getting into. Thus, normally a contract should be read as it reads, as per its express terms."

70. In the said decision, the Supreme Court further held that implied

terms could be read into a contract only in exceptional cases, where the following "penta-test", postulated by Lord Simon of Glaisdale in ***BP Refinery (Westernport) Pty Ltd. v. Shire of Hastings (1977) 180 CLR 266, 282-283***:

> "(1) it must be reasonable and equitable; (2) it must be necessary to give business efficacy to the contract, so that no term will be implied if the contract is effective without it; (3) it must be so obvious that 'it goes without saying' (4) it must be capable of clear expression; (5) it must not contradict any express term of the contract."

71. Applying the above principles, how does the agreement, dated 14th January 2015, between the rival parties, read?

72. Clause 1.1.1 of the agreement clearly states that the dealer appointed by BMW – i.e., in the present case, the petitioner – would be "a non-exclusive dealer". This matter is made more explicit by the immediately following para, in the same clause, which confers, on BMW, "the right to appoint, extend, terminate any dealer or in any territory or appoint any additional dealer on additional terms and conditions as it may impose in its commercial interest". Clause 11.1 is clear and unequivocal, and, read with the Eighth Schedule to the agreement, stipulates that the agreement would commence on 1st January 2015, and would continue thereafter till 31st December 2015 (unless cancelled or terminated, earlier, by BMW), *on which date it would automatically expire*. The agreement is saved from certain death, on 31st December 2015, only if BMW renews the agreement in accordance with the said clause. Such renewal may, under the said

Clause 11.1, be effected, by BMW, for a period of one calendar year, by entering into a renewal agreement on terms and conditions acceptable to BMW, no later than one month prior to the expiry of the original agreement, i.e. no later than 30th November 2015. Clause 11.2 of the Agreement set out, in its various sub-clauses, the circumstances in which BMW could terminate the agreement forthwith; however, in this case, BMW never exercised its right to terminate the agreement, so that it is not necessary to dwell further on Clause 11.2, or the various sub-clauses thereof.

73. In exercise of the power conferred by Clause 11.1 *supra*, of the agreement dated 14th January 2015, BMW, *vide* letter dated 01st December 2015, addressed to the petitioner, offered to renew the agreement for a further period of one year, i.e. from 01st January 2015 till 31st December 2015, on the same terms and conditions as were contained in the agreement dated 14th January 2015. Though this stipulation – i.e., of the terms and conditions, contained in the agreement dated 14th January 2015, being *mutatis mutandis* applicable to the renewal dated 01st December 2015, was sufficient to subject the said renewal to all the rigour of Clause 11.1 of the Agreement dated 14th December 2015, any possible doubt, on this aspect, was set at rest, by the second para of the letter dated 1st December 2015, which stands reproduced in para 8 *supra*, and which clarified, in clear and unexceptionable terms, that expiration of the agreement dated 01st December 2015 would not entitle the petitioner to a continuation of the business relationship, or for any compensation in connection with

such expiration. Renewal of the aforementioned agreement, for the period 01st January 2017 till 31st December 2017, was offered, by BMW to the petitioner, *vide* letter dated 9th January 2017, which, like the earlier letter dated 01st December 2015, categorically stipulated that (i) the terms and conditions of the agreement dated 14th January 2015 would continue to apply during the period 01st January 2017 to 31st December 2017, and (ii) on expiration of the said period, the petitioner was neither entitled to a continuation of the business relationship, nor to compensation based upon or in connection with the Agreement. The petitioner was asked to confirm its consent, to the above terms, by countersigning and returning the copy of the said letter, which the petitioner duly did, under the signature and stamp of its Managing Director. No objection, to any term of the agreement, was ever voiced by the petitioner, at any point of time, starting from the first agreement in 2009. Learned senior counsel for the petitioner Mr. Chetan Sharma has drawn my attention to the fact that, though Clause 11.1 of the agreement required renewal to be effected not later than a month prior to the expiry of the agreement, renewal, for the period 1st January 2017 to 31st December 2017 was effected only on 9th January 2017. This may be true; however, the petitioner having relished the fruits of the dealership of BMW, for the entire calendar year of 2017, without demur, cannot seek to make capital out of the delay in issuance of the renewal letter, for the period 01st January 2017 to 31st December 2017. The petitioner cannot be allowed to run with the hare and hunt with the hounds.

74. There is no ambiguity in the terms of the agreement, however

unhappy the petitioner might be therewith, or howsoever he may feel injured thereby. *Ubi jus*, as the adage goes, *ibi remedium*. For every right, there is a remedy; sans a right, however, there is no remedy.

75. Mr. Kathpalia correctly points out that the agreement dated 14th January 2015 (*supra*), the terms of which were incorporated, by reference, into the letter of renewal dated 9th January 2017 (*supra*), did not clothe the petitioner with any right to have the agreement renewed. It is also correctly pointed out, by Mr. Kathpalia, that the agreement of 14th January 2015 was a fresh agreement, and not a mere renewal of the original agreement entered into, between the petitioner and the respondent, in May 2008, or on 5th January 2009. Clause 11.1 of the agreement dated 14th January 2015 is clear and categorical in its terms. The clause makes it explicitly clear that the agreement would come to an end on the 31st December. Read in conjunction with the letter dated 9th January 2017, therefore, the agreement between the petitioner and respondent came to end on 31st December 2017. Clause 11.1 clearly indicates that there would be no automatic renewal of the agreement. This aspect was underscored, by BMW, in its letter dated 9th January 2017 (*supra*), by emphasizing that, on expiration of the period dated 1st January 2017 to 31st December 2017, the petitioner was neither entitled to continuation of the business relationship nor to any compensation. The said terms were accepted, without demur or objection, by the petitioner, by appending, on the body of the said communication, the signature and stamp of its Managing Director. It would be facile, therefore, for the petitioner to seek to submit that

there was any ambiguity, in the agreement between it and the BMW, regarding the fact that the said agreement would come to an end on 31st December 2017, by efflux of time. Clause 11.1, as Mr. Kathpalia rightly submits, authorised BMW to renew the agreement, for a period of one calendar year, on terms acceptable to it. In fact, the stipulation, in the said renewal clause, to the effect that the renewal would be only for one calendar year, in my opinion, further emphasizes the fact that the agreement would come to an end on the expiration of one year and would not automatically stand renewed thereafter. Renewal had, therefore, to be a conscious act on the part of BMW, upon terms and conditions acceptable to BMW. It is not in dispute that, in the present case, the said power of renewal was not exercised. It is not possible, therefore, for this Court, at least at an ad interim stage in exercise of its power under Section 9 of the 1996 Act, to direct BMW mandatorily to renew the contract with the petitioner.

76. It is of fundamental importance, in this connection, to note, at the cost of reiteration, that the agreement between the parties came to an end on 31st December 2017 – or was on the threshold of coming to an end, when the matter was argued before me on 30th December 2017. There is no clause, in the agreement, which contemplates continuance of the agreement, beyond the date of its expiry, i.e. beyond 31st December 2017, in any circumstance whatsoever. The only manner in which a contractual relationship between the petitioner and respondent could continue to exist, after 31st December 2017, would be by way of a fresh renewal, by BMW, of the said

relationship, in exercise of the power conferred, by clause 11.1, on it to do so. This Court cannot, quite obviously, create such a new agreement between the petitioner and respondent, which would commence from 1st January 2018. Mr. Kathpalia submits – and, in the opinion of this Court, correctly – that grant of the request made by Mr. Chetan Sharma on behalf of his client would effectively require this Court to create a new agreement, between the petitioner and BMW, starting from 1st January 2018. We peregrinate, in these proceedings, within the four corners of the contract, and there is no question, therefore, of acceding to the request, of learned senior counsel Mr. Chetan Sharma, of granting, to the petitioner, a "window period" of 9 to 10 months, for enabling his client to wind up its affairs. This Court can neither continue the contractual relationship between the parties, nor does it have the power to create a fresh contract between them. That being so, there is no question of exercising any equitable jurisdiction, continuing the said relationship, by grant of injunctive relief under Section 9 of the 1996 Act. No such exercise of power is contemplated, expressly or by necessary implication, in Section 9. This Court would be wildly transgressing the boundaries of its jurisdiction under Section 9, if it attempts to grant any such relief.

77. Apparently aware of the legal position in this regard, learned senior counsel Mr. Chetan Sharma has chosen to pitch his case on the principles of promissory estoppel and legitimate expectation, also relying for the said purpose, of Section 115 of the Evidence Act.

Re. the doctrine of legitimate expectation

78. Insofar as the principle of legitimate expectation is concerned, the judgment of the Supreme Court in ***U.O.I v Hindustan Development Corporation, (1993) 3 SCC 499*** clearly enunciates that the doctrine of legitimate expectation is a creature of public law, and was aimed basically at combating arbitrariness in executive action by public authorities. The Supreme Court, in the said decision, further held as under:

> "Time is a three-fold present: the present as we experience it, the past as a present memory and future as a present expectation. *For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire or a hope may be and however confidently one mat look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only is it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence.*Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense."
>
> (Emphasis supplied)

79. Even more decisive is the following passage, from ***Ram Pravesh Singh v State of Bihar, (2006) 8 SCC 381***:

> "What is legitimate expectation? *Obviously, it is not a legal right. It is an expectation of a benefit, relief or remedy, that may ordinarily flow from a promise or established practice. The term "established*

> *practice" refers to a regular, consistent, predictable and certain conduct, process or activity of the decision-making authority. The expectation should be legitimate, that is, reasonable, logical and valid. Any expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be a legitimate expectation. Not being a right, it is not enforceable as such.* It is a concept fashioned by the courts, *for judicial review of administrative action*. It is procedural in character based on the requirement of a higher degree of fairness in administrative action, as a consequence of the promise made, or practice established. In short, *a person can be said to have a "legitimate expectation" of a particular treatment, if any representation or promise is made by an authority, either expressly or impliedly, or if the regular and consistent past practice of the authority gives room for such expectation in the normal course. As a ground for relief, the efficacy of the doctrine is rather weak as its slot is just above "fairness in action" but far below "promissory estoppel".* It may only entitle an expectant: (*a*) to an opportunity to show cause before the expectation is dashed; or (*b*) to an explanation as to the cause for denial. In appropriate cases, the courts may grant a direction requiring the authority to follow the promised procedure or established practice. *A legitimate expectation, even when made out, does not always entitle the expectant to a relief. Public interest, change in policy, conduct of the expectant or any other valid or bona fide reason given by the decision-maker, may be sufficient to negative the "legitimate expectation".* The doctrine of legitimate expectation based on established practice (as contrasted from legitimate expectation based on a promise), can be invoked only by someone who has dealings or transactions or negotiations with an authority, on which such established practice has a bearing, or by someone who has a recognised legal relationship with the authority. A total stranger unconnected with the authority or a person who had no previous dealings with the authority and who has not entered into any transaction or negotiations with the authority, cannot invoke the doctrine of legitimate expectation, merely on the ground that the authority has a general obligation to act fairly."
>
> (Emphasis supplied)

From the above, it is obvious that there is a distinction between legitimate expectation and mere hope or anticipation of an event

occurring. The legitimacy of the expectation has to be established. *Bona fide* justification, for the action impugned, is an absolute defence, to a plea of legitimate expectation.

80. In ***Jitender Kumar v. State of Haryana, (2008) 2 SCC 161,*** the Supreme Court observed thus, regarding the doctrine of legitimate expectation (in para 58 of the report):

> "A legitimate expectation is not the same thing as an anticipation. It is distinct and different from a desire and hope. It is based on a right. [See ***Chanchal Goyal (Dr.) v. State of Rajasthan [(2003) 3 SCC 485 : 2003 SCC (L&S) 322***] and ***Union of India v. Hindustan Development Corpn. [(1993) 3 SCC 499]*** It is grounded in the rule of law as requiring regularity, predictability and certainty in the Government's dealings with the public. We have no doubt that the doctrine of legitimate expectation operates both in procedural and substantive matters."

81. S.B. Sinha, J, who authored the decision in ***Jitender Kumar (supra)*** also observed on the doctrine of legitimate expectation, while sitting singly on the bench of the Hon'ble Calcutta High Court, thus, in ***D. Wren International Limited v. Engineers India Ltd., AIR 1996 Cal 424:***

> "The principles of legitimate expectation cannot apply in a contractual field in view of the fact that a procurement contract when granted cannot stand on a higher pedestal than a legitimate expectation. *As soon as a contract becomes concluded, the expectation, if any, comes to an end; whereafter the parties will be bound only by the terms thereof. If the doctrine of legitimate expectation is invoked in the matter of enforcement of condition of contract, the same would result in an absurdity*, as it is well known that this Court cannot grant a decree for specific performance of contract."
>
> (Emphasis supplied)

82. The inadvisability of invoking the doctrine of legitimate expectation, in the area of contract, is also apparent from reading of the Indian Contract Act, 1872 (hereinafter referred to as "the Indian Contract Act"). Section 10 thereof clearly states, *inter alia*, that "all agreements or contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void." "Consent" is defined, in Section 13, by stating that "two or more persons are set to consent when they agree upon the same thing *in the same sense*". "Free consent" is defined, in Section 14, thus:

> "Consent is said to be free when it is not caused by –
>
> (1) coercion, as defined in section 15, or
>
> (2) undue influence, as defined in section 16, or
>
> (3) fraud, as defined in section 17, or
>
> (4) misrepresentation, as defined in section 18, or
>
> (5) mistake, subject to the provisions of sections 20, 21 and 22."

83. *Consensus ad idem* is, therefore, the *sine qua non* of any valid contract. If there is *consensus ad idem*, obviously, there can be no question of "expectation", as the parties would be bound by the contract, and the terms thereof, to which they have mutually consented. Any right that is claimed has, therefore, to be claimed within the four corners of the contract, and its terms, and cannot be founded on any abstract principle of legitimate expectation. It is additionally for this reason that the doctrine of legitimate expectation is judicially recognised as having limited, if any, application in the

arena of private contract law, where the lis relates to implementation, and consequent interpretation, of the terms of a contract between the parties.

84. The terms of the contract, between the rival parties in the present case, are so transparent, and unequivocal, that it is not necessary to dilate further on the applicability, to them, of the doctrine of legitimate expectation. The contract between the petitioner and respondent states, quite clearly that it would come to an end on 31st December, and that renewal thereof would be subject to a decision in that regard by the respondent, on terms and conditions acceptable to it. The mere fact that the respondent may have renewed the contract in the past, cannot justify entertainment, by the petitioner, of any expectation that the respondent would continue to renew the contract in perpetuity. Any such expectation, even if entertained, would not be "legitimate", especially, in view of the undisputable position that in the years 2016 and 2017, the petitioner was unable to meet the targets set by the respondent. Whether the said failure on the part of the petitioner, to do so, was attributable to the petitioner or the respondent, does not call for examination in the present case. The situation having radically changed in 2016, the petitioner could have no justification to continue to expect the respondent to renew its contract, year to year. Clause 11.1 of the agreement makes it clear that the petitioner had no right to insist on such renewal, and that the issue of whether to renew the agreement or not was a matter entirely left to the discretion of the respondent. The respondent having chosen not to

do so because of the petitioner having been unable to meet its targets two years running, no arbitrariness can be imputed to such action. The petitioner, needless to say, had no business to expect perpetual renewal of the contract when, year after year, it was unable to meet the targets set for it. Rather, the consideration, owing to which the respondent decided not to renew the contract of the petitioner any further, is clearly *bona fide*, and affords a complete defence to the plea of legitimate expectation, being sought to be raised by the petitioner, applying ***Ram Pravesh Singh (supra)***. In view of the admitted position that, in 2016 and 2017, the petitioner was unable to meet the targets set by the respondent, in contradistinction to the position that existed prior thereto, it is impossible to comprehend how the petitioner can seek to contend that its "expectation", even after it had failed to meet the targets, to have its contract renewed, can be regarded as "legitimate". Any such expectation, on the petitioner's part, can only be regarded as thoroughly misguided.

85. Though I have examined the applicability of the principle of legitimate expectation on merits, I may reiterate that, in actual fact, the said principle applies only within the domain of public law. The decision in ***Central Inland Water Transport Corporation (supra)*** and ***Rajesh Maan (supra)***, operate within the realm of public law, and are clearly distinguishable on facts. Legitimate expectation, jurisprudentially, was a device created in order to maintain a check on arbitrariness in state action, and cannot govern operation of contracts between private parties. Even otherwise, as observed by Sinha, J. (as

his Lordship then was) in ***D. Wren International (supra)***, in view of the fact that the petitioner and respondent had, between them, a concluded contract, the question of invoking the doctrine of legitimate expectation could not arise, the rights and expectations of the parties being necessarily governed by the terms of the contract.

Re. the doctrine of promissory estoppel

86. The "doctrine of promissory estoppel is not really based on principle of estoppel but is a doctrine evolved by equity in order to prevent injustice."[***A.P. Transco v Sai Renewable Power (P) Ltd, (2011) 11 SCC 34***] It is jurisprudentially *sui generis,* and does not depend, for its existence, on Section 115 of the Indian Evidence Act, 1962, which deals with the general principle of "estoppel", and stipulates that "when one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing".

87. In ***Mohd. Jamal v U.O.I., (2014) 1 SCC 201,*** it was held that "the doctrine of promissory estoppel and legitimate expectation, as canvassed on behalf of the appellants and the petitioners, *cannot be made applicable to these cases where the leases have been granted by the landowners on definite terms and conditions*, without any

indication that the same were being entered into on a mutual understanding between the parties that these would be temporary arrangements …"

88. Insofar as the doctrine of promissory estoppel is concerned, it is clear, *ex facie*, firstly, that the respondent has never held out any promise, to the petitioner, to renew its dealership agreement in perpetuity, even after failure, on the part of the petitioner, to meet the targets set by the respondent and, secondly, that the petitioner cannot be said to have altered its position as the result of any such promise held out by the respondent.

89. The following passages, from the judgement of a learned Single Judge of this court, in ***Mohd. Haroon v New Delhi Municipal Council, 2016 SCC Online Del 2616***, answer a similar submission, made by the petitioner in that case, and eloquently speak for themselves:

> "**9.** I have however enquired from the counsel for the petitioner as to how the principle of promissory estoppel is applicable to the present facts. Supreme Court in ***State of Himachal Pradesh v. Ganesh Wood Products (1995) 6 SCC 363*** held that the doctrine of promissory estoppel was evolved to protect a promisee who acts on the faith of a promise/representation made by promisor and alters his position even though there is no consideration for the promise and even though the promise is not recorded in the form of a formal contract. It was further held that the doctrine of promissory estoppel cannot however be put on a higher pedestal than the written contract between the parties and a representation made or undertaking given in a formal contract is as good as, if not better than, a mere representation. It was yet further held that where there is a contract between the parties containing certain terms but the

government resiled from the contract and terminated the same, the promisee will then have to file a suit for specific performance of the contract in which case the Court will decide, having regard to the facts and circumstances of the case and the provisions of the Specific Relief Act, whether the plaintiff should be granted specific performance of the contract or only a decree for damages for breach of the contract.

10. The present is a case where the rights which the petitioner is claiming/asserting are governed by Licence Deed and once there is a contract in writing the relationship of the parties is to be governed thereby and the question of promissory estoppel does not arise. The said Licence Deed was admittedly for a period of five years only and which is long back over and was otherwise also as per Clause 25 thereof revocable at any time and did not vest a right even for a period of five years in favour of petitioner. Applying the principles of Specific Relief Act, 1963, the licence is not renewable/enforceable. A Division Bench of this Court recently in the ***Pradeshiya Industrial & Investment Corporation of U.P. Ltd. v. Pacquik Industries Ltd. 2016 SCC Online 531*** reiterated that the doctrine of promissory estoppel being an equitable doctrine must yield when the equity so requires and the government should not be held bound by a promise not enforceable in law. Reference may also be made to the judgment of this Court in ***Kaveri Infrastructure P. Ltd. v. N.D.M.C. ILR (2007) I Delhi 1080*** holding that for promissory estoppel, the petitioner has to demonstrate that there was a definite representation by the State agency which led the petitioner to alter his position by acting on such representation and suffer detriment; the principles of promissory estoppel were held not applicable merely from the unilateral act of the petitioner without any representation on the part of the respondent.

11. The actions of the respondent NDMC, to which attention is invited by the counsel for the petitioner, can at the most show that the respondent NDMC, notwithstanding the deed of licence having expired and not been renewed, consented to the petitioner continuing as a licencee but cannot confer in the petitioner any rights in excess of that mentioned in the deed of licence.

12. Thus the sole ground urged of promissory estoppel has no applicability to the facts of the case."

90. The reliance, by learned senior counsel Mr. Chetan Sharma, on the doctrine of promissory estoppel, is, therefore, *ex facie* misconceived. ***Mangalam Timber Products (supra)***, which was pressed, by learned senior counsel, into service for this purpose, dealt with a situation in which a promise, albeit unwritten, was held out by the State Government, on the basis whereof the petitioner had altered his position to his detriment. No such situation arises in the present case, as already noted hereinabove.

Section 14 of the Specific Relief Act:

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

finally found to be acceptable. The principle that a contract, which is determinable in nature, should not be directed to be specifically enforced as, even if the contract is enforced, it could be terminated immediately, would apply, on all fours, to the present case as well. On this ground, too, no justification, for grant of any interim injunction, as prayed for by the petitioner, can be said to exist in the present case.

Conclusion

92. In view of the above discussions, I am unable to convince myself that the petitioner has been able to make out a case justifying the grant, to it, of any "window period" to wind up its affairs beyond 31st December 2017, or for any other form of injunctive relief, against the respondent. The contract between the petitioner and respondent has come to an end by efflux of time, on 31st December 2017, and no case for grant of any injunction, directing the respondent, to continue the contract, thereafter, or to restrain the respondent from acting on the communication dated 7th December 2017 (*supra)* addressed by it, to the petitioner, is made out.

93. It is reiterated, before closing this judgement, that, as extensive arguments on merits were advanced, by both learned senior counsel, at the bar, I have had to deal with the issue in detail. Even so, it is clarified that the above observations are intended only to express a *prima facie* view, for the purposes of disposal of the present

application under Section 9 of the 1996 Act and examining whether a case for grant of interim injunction, to the petitioner thereunder, is made out. Should the petitioner be advised to invoke the arbitral clause, contained in the agreement between the petitioner and the respondent, or seek any other remedy against the respondent, the observations contained in this judgment shall not stand in the way thereof.

94. As a result, the present petition, under Section 9 of the Arbitration and Conciliation Act, 1996, is dismissed.

95. There shall be no order as to costs.

C. HARI SHANKAR
(JUDGE)

JANUARY 15th, 2018
neelam/nitin