

(2016) 07 CAL CK 0067

CALCUTTA HIGH COURT

Case No: GA 884 of 2016 and GA 1095 of 2016 in CS 88 of 2016.

Isha Distribution House Private
Limited - Plaintiff @HASH Aditya
Birla Nuvo Limited and Another -
Defendants

APPELLANT

Vs

RESPONDENT

Date of Decision: July 28, 2016

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 16, Section 20

Citation: (2016) AIR(Calcutta) 332 : (2017) 2 ICC 237 : (2017) 1 WBLR 209

Hon'ble Judges: Sanjib Banerjee, J.

Bench: Single Bench

Advocate: Mr. Pratap Chatterjee, Sr. Advocate, Mr. Mainak Bose, Mr. Nemani Srinivas, Mr. Amitabh Ray and Mr. Ankur Jain, Advocates, for the Plaintiff; Mr. S.N. Mukherjee, Mr. Ratnanko Banerji, Sr. Advocates, Mr. D. Basu Mallick, Mr. Kumarjit Mukherjee, Mr. Sounava

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Sanjib Banerjee, J. - The earlier petition is by the plaintiff for an interlocutory injunction. The later petition is by the first defendant for revocation of the leave granted under Clause 12 of the Letters Patent at the time of the receipt of the suit on the ground of the two distributorship agreements, which are the subject-matter of the suit, being governed by similar forum selection clauses. The distributorship agreements for the Bengal and the Bihar-Jharkhand areas contain the following forum selection clauses, respectively:

"R. Jurisdiction

In the event of any dispute under the agreement, the Civil Courts of Bangalore alone will have exclusive jurisdiction to decide on the matter."

"21. It is hereby specifically agreed and declared that in the event of a dispute regarding matters connected with, relating to or touching these presents or the transactions hereunder, the Civil Courts in Bangalore alone shall have exclusive jurisdiction."

2. Both agreements also carry a similar final clause to the effect that the relevant agreement contains the entire agreement of the parties thereto with respect to the subject-matter thereof and supersedes all prior agreements, arrangements or understanding whether oral or in writing. The distributorship agreement for West Bengal is dated July 11, 2007 and the one for Bihar-Jharkhand is dated May 21, 2008.

3. The primary ground on which the first defendant's petition is founded appears from paragraph 8 thereof:

"8. It is further stated that the Distributorship Agreements were executed by the applicant in Bangalore, outside the jurisdiction of this Hon"ble Court. It is stated that courts in Bangalore have exclusive jurisdiction to adjudicate upon the disputes arising out of and/or relating to the Distributorship Agreements in so far as the office of the defendant no.1 herein is located at M.G. House, No. 20, 4th Cross, 5th Block, Koramangala Industrial Layout, Koramangala, Bangalore 560095, within the jurisdiction of the Hon"ble Courts at Bangalore. Further the agreements as stated above were executed by the applicant at its office in Bangalore, the plaintiffs payment obligations under the terms of the Distributorship Agreements were to be performed at Bangalore being the location of the office of the defendant no.1 herein, and the plaintiff had duly made over cheques in discharge of its performance obligation under the terms of the Distributorship Agreements to the defendant no.1 at Bangalore, which were duly deposited by the defendant no.1 viz the applicant herein with the respective drawee banks at Bangalore. As such, a part of the cause of action relating to the Distributorship Agreements have arisen within the jurisdiction of the courts at Bangalore."

4. The first defendant further claims that no part of the plaintiff's cause of action on which the suit has been instituted in this court has, or could have arisen, within the territorial jurisdiction of this court. For such purpose the first defendant refers to paragraph 92 of the plaint where it is averred that a part of the plaintiff's cause of action as pleaded in paragraphs 2, 9, 10, 12, 13, 14, 39, 58 and 60 of the plaint arose within the jurisdiction of this court.

5. The first defendant seeks to suggest that frivolous matters have been referred to in the relevant paragraphs to obtain leave under Clause 12 of the Letters Patent. It is the first defendant's contention that such matters as pleaded in the relevant paragraphs in the plaint do not demonstrate any part of the plaintiff's cause of action having arisen within the jurisdiction of this court; in the alternative, it is

submitted on behalf of the first defendant that even if some part of the plaintiff's cause of action is perceived to have arisen within the jurisdiction of this court, in view of the exclusive forum selection clauses, this action could not have been launched in this court.

6. The reliefs claimed in the suit are for declaration that the termination of the distributorship agreements is void, money decree on account of alleged outstanding dues, damages and injunction. In effect, the plaintiff has sought the continuation of the distributorship agreements.

7. The initial pages of the plaint narrate the history of the relationship between the parties or their predecessors-in-interest. The agreement for Bihar-Jharkhand is claimed to have been extended till August 21, 2019; and the agreement for West Bengal is said to have expired on July 10, 2012, but an assurance was allegedly given by the first defendant to renew the tenure after its expiry in July, 2012 without issuing any formal extension. Both distributorship agreements have been terminated. The suit is, quite remarkably, for specific performance of the distributorship agreements which may, in any event, not be permissible under the Specific Relief Act, 1963. However, the entirety of the suit cannot be said to be bad because of the sundry money claims, whether on account of receivables or damages, contained therein.

8. The first defendant refers to the parent judgment on a forum selection clause reported at **(1971) 1 SCC 286 (Hakam Singh v. M/s. Gammon (India) Limited)**. Paragraph 4 of the judgment captures the essence of the legal principle:

"4. The Code of Civil Procedure in its entirety applies to proceedings under the Arbitration Act. The jurisdiction of the Courts under the Arbitration Act to entertain a proceeding for filing an award is accordingly governed by the provisions of the Code of Civil Procedure. By Clause 13 of the agreement it was expressly stipulated between the parties that the contract shall be deemed to have been entered into by the parties concerned in the City of Bombay. In any event the respondents have their principal office in Bombay and they were liable in respect of a cause of action arising under the terms of the tender to be sued in the Courts at Bombay. It is not open to the parties by agreement to confer by their agreement jurisdiction on a Court which it does not possess under the Code. But where two courts or more have under the Code of Civil Procedure jurisdiction to try a suit or proceeding an agreement between the parties that the dispute between them shall be tried in one of such Courts is not contrary to public policy. Such an agreement does not contravene Section 28 of the Contract Act."

9. The first defendant also refers to a judgment reported at **(2013) 9 SCC 32 (Swastik Gases Private Limited v. Indian Oil Corporation Limited)** where the concurring judgment wonders if it was necessary for the Supreme Court "to repeatedly affirm the legal position ad nauseam?." The lead judgment in Swastik

Gases, like several other judgments before it, refers to the law discussed in **ABC Laminart (P) Limited (reported at (1989) 2 SCC 163)** but arrives at a completely different conclusion than in ABC Laminart; though the forum selection clause in ABC Laminart was "Any dispute arising out of this sale shall be subject to Kaira jurisdiction" and the relevant clause in Swastik Gases was "The agreement shall be subject to jurisdiction of the courts at Kolkata". If anything, the clause in ABC Laminart had an expression "any dispute" but it was found to be non-exclusive; but the clause in Swastik Gases was found to confer exclusive jurisdiction to courts in Kolkata with the observation that the "use of words like "only", "exclusively", "alone" and so on are not necessary to convey the intention of the parties".

10. The first defendant also suggests that the plaint is based on falsehood with the plaintiff averring that the two distributorship agreements were executed in Kolkata though the stamp-papers pertaining to both were purchased from the Government of Karnataka. The stamp-paper pertaining to West Bengal has a reference to Koramangala, which is in Bangalore, and the one pertaining to Bihar-Jharkhand was purchased from the Benson Town Branch of the State Bank of Mysore in Bangalore. The Plaintiff, quite understandably, hides behind the age-old principle that the statements contained in the plaint should be accepted as true and correct for the purposes of a demurrer as the present one.

11. In the plaintiff's affidavit-in-opposition to the first defendant's demurrer, two documents have been disclosed as Annexures "A" and "B" thereto. The averments in connection with such documents are found at subparagraphs (f) and (g) of paragraph 3 of the plaintiff's affidavit:

"3.

(a)

(b)

(c)

(d)

(e)

(f) It would not be out of place to mention that in or about January, 2016, the Plaintiff received a letter from the first Defendant dated January 13, 2016, addressed to the Plaintiff at its office at Russel Street, within the jurisdiction of this Hon"ble Court. By the said letter the first Defendant informed the Plaintiff that the business of Madura Fashion and Lifestyle Division of Aditya Birla Nuvo Limited has merged with Pantaloon Fashion & Retail Limited with effect from January 9, 2016. A true copy of the letter dated January 13, 2016 is annexed hereto and marked as Annexure ♦ A.

(g) Immediately thereafter, the Plaintiff received another communication from the first Defendant dated January 14, 2016 with respect to the said merger. The said letter was also addressed to the Plaintiff's office at Russel Street. Both the letters were received by the Plaintiff at its office at Russel Street, within the jurisdiction of this Hon"ble Court. A copy of the letter dated January 14, 2016 is annexed hereto and marked as Annexure ♦ B.

...."

12. Curiously, both letters of the first defendant which form Annexures "A" and "B" to the plaintiff's affidavit-in-opposition had been issued from the first defendant's office in Doddakondi Village in Bangalore, which was also indicated in the second of the documents to be the "Billing Name & Address" of the first defendant with the instruction that "All invoices, communications and queries to be raised and sent on this name." The plaintiff has, however, relied on Annexure "B" of its affidavit to demonstrate that the registered office of the first defendant had been shifted to the State of Maharashtra, though the instructions in the relevant letter qua the registered office was: "Pls use this address, if to be addressed to the registered office."

13. Quite intriguingly, the plaintiff seeks to wish away the instructions pertaining to the "Billing Name & Address" of the first defendant by referring to the Explanation to Section 20 of the Code of Civil Procedure, 1908 and how such provision is quite distinct from the comparable limb of Clause 12 of the Letters Patent as applicable in this court. More than once it is submitted on behalf of the plaintiff that the "Billing Name & Address" of the first defendant is quite irrelevant, both in the context of the suit and even in the wake of the forum selection clauses being attempted to be specifically enforced by the first defendant. Indeed, the general refrain of the plaintiff is that the relevant Bangalore office of the first defendant had no nexus with the transactions between the parties or the plaintiff's cause of action in the suit.

14. The plaintiff submits that unlike under Clause 12 of the Letters Patent, by virtue whereof the situs of any office of a defendant company within the jurisdiction of this court will empower this court to entertain a suit against such defendant company notwithstanding the cause of action in such suit having no nexus with the relevant office within jurisdiction; under Section 20 of the Code, a defendant corporation may only be sued at its sole or principal office, or at any subordinate office if a part of the cause of action has arisen at such subordinate office. The argument is unexceptionable, but it may not be appropriate in the present context. But before progressing to any conclusion, it is necessary to see how the Bangalore office of the first defendant is wholly extraneous to the cause espoused by the plaintiff in this court.

15. In the plaintiff's injunction petition, GA 884 of 2016, a plethora of documents emanating from the same Bangalore office of the first defendant has been referred to and relied upon. It is not necessary to prepare an inventory of such documents, but a few of them deserve mention, particularly in the light of the confident assertion of the plaintiff that the Bangalore office of the first defendant was wholly irrelevant in the context of the suit and the first defendant's demurrer.

16. The first of the two documents at Annexure "I" to the plaintiff's injunction application pertains to the extension of the distributorship agreement of May 21, 2008 by a letter dated March 5, 2010 that was issued by the first defendant from its said Bangalore office. It is necessary to notice the words of such letter:

"This has reference to our Distributor agreement dated 21.5.2008.

The agreement is hereby renewed for a further period of three years effective from 16 February 2010.

All other terms and conditions remain unchanged. This letter is sent in duplicate. Kindly acknowledge the same in acceptance of the above modifications."

The copy document appended to the plaintiff's injunction application carries a signature on behalf of the plaintiff at the bottom-right thereof.

17. The second of the documents included as part of Annexure "I" to the plaintiff's injunction application is the 2014 extension of the Bihar-Jharkhand distributorship agreement till 2019. The relevant letter of August 21, 2014 reads thus:

"We refer to the above-mentioned agreement with you, appointing you as our distributor.

Please note that the above-mentioned agreement shall be extended for a period of 5 years till 21/08/2019.

Find enclosed the revised pricing for this distributor agreement (Amendment for Annexure I).

This understanding shall be read as part and parcel of the agreement detailed supra and except the changes mentioned herein other terms of the said agreement shall remain intact and binding between us.

This letter is sent in duplicate. Kindly acknowledge the same in acceptance of the above changes."

18. Elsewhere, at paragraph 37 of the plaint, the plaintiff has complained of the coercion and duress that the plaintiff was subjected to by the first defendant. Threatening e-mails issued by the first defendant have also been referred to. As is usually the practise, particularly in this court, the averments in the plaint are substantially reproduced in the first interlocutory petition that is moved for temporary orders. The averments in the plaint relating to the present suit, in the

most part, are included in the corresponding paragraphs of the petition pertaining to GA 884 of 2016. Paragraphs 37 of the plaint and the petition in the interlocutory matter are identical, save the last sentence in the petition which is not found in the plaint and where the alleged "threatening e-mails" are identified. Paragraph 37 of the petition alleges as follows:

"37. The Respondent No. 1 having unilaterally exhausted the credit limit under the Channel Financing Account, in gross breach of the agreed terms of such agreement, demanded payment directly from the Petitioner. Threatening e-mails were sent to the extent that unless the excess outstanding was cleared, the first Respondent would cancel and/or terminate the distributorship agreement. Copies of electronic mail dated 7th September 2015 and 13th September 2015 are annexed hereto and collectively marked as annexure "U"."

19. The first of the two e-mails referred to at paragraph 37 of the petition has been included as part of Annexure "U" thereto. It was issued by the senior Vice-President and Chief Operating Officer ♦ Peter England Business of the first defendant from Bangalore. That it was the Bangalore office of the first defendant which did business with the plaintiff is evident from many documents relied upon in the interlocutory petition, including a letter dated October 9, 2015 issued by the Bangalore office of the first defendant invoking a bank guarantee furnished at the behest of the plaintiff and a letter of the same date issued from the Bangalore office of the first defendant to the plaintiff, complaining of diverse amounts being due from the plaintiff to the first defendant and informing the plaintiff of the invocation of the bank guarantee.

20. To top it all, a detailed reply was issued by the plaintiff through one of its directors to the notice of termination of one of the distributorship agreements. Such reply of October 14, 2015 was addressed to the first defendant at its Bangalore address and to four officials of the first defendant at the same Bangalore address.

21. So much for the plaintiff's bold assertion that the Bangalore office of the first defendant had no connection with the transactions between the parties and was irrelevant in the context of the suit.

22. It is here that the bogey raised on behalf of the plaintiff under Section 20 of the Code needs to be addressed. The Explanation to the provision, in effect, governs clauses (a) and (b) thereof. Clause (b) of Section 20 of the Code is similar to clause (a) thereof, except that it contemplates either the leave of court or the acquiescence of the defendants who are outside jurisdiction for the suit to be maintained. Clause (a) of Section 20 of the Code provides that subject to the limitation as indicated in the previous provisions, every suit shall be instituted in a court within the local limits of whose jurisdiction the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain. The Explanation

provides as follows:

"Explanation ♦ A Corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place."

23. The implication of the second "or" in the Explanation is that the plaintiff suing a defendant corporation (or company) has the choice of instituting a suit in a court within the territorial jurisdiction whereof the body corporate has its sole or principal office; or, carry such suit to a court within the local limits whereof the body corporate has a subordinate office, provided that the cause of action in the suit has a nexus with such subordinate office.

24. There is a design in the plaintiff's dogged insistence that the Bangalore office of the first defendant had no nexus with the plaintiff's cause of action and no connection with the transactions between the plaintiff and the first defendant. If a part of the plaintiff's cause of action had any nexus with the first defendant's Bangalore office, then the plaintiff would have had a choice, under Section 20 of the Code, of either suing the first defendant at its principal place of business or at the Bangalore subordinate office of the first defendant. Quite apart from the fact that the plaintiff's submission that the Bangalore office of the first defendant had no nexus with plaintiff's cause of action or with transactions with the first defendant is belied by the documents connected with the averments in the plaint, the document dated January 14, 2006 specifically provided that invoices, communication and queries were to be sent to or made with the Bangalore office of the first defendant. It is true that the registered office of the first defendant was in Bangalore at the time that the last of the distributorship agreements pertaining to West Bengal and Bihar-Jharkhand areas were executed in July, 2007 and May, 2008, respectively. It is such agreements which contained the forum selection clauses. In asserting that the Bangalore office of the first defendant had nothing to do with the plaintiff's cause of action or the transactions between the parties, the plaintiff seeks to present a case that it had only a choice of either suing the first defendant at its registered office, which is now in Maharashtra, or, by virtue of Clause 12 of the Letters Patent, in this court on the basis of the first defendant having an office within this jurisdiction since, unlike Section 20 of the Code, the first defendant's office within the jurisdiction of this court need not have been an office where any part of the plaintiff's cause of action arose.

25. Since it is apparent that the Bangalore office of the first defendant was integral to the transactions between the plaintiff and the first defendant, by reason of the forum selection clauses in the two distributorship agreements, the plaintiff could only have instituted this suit in an appropriate court in Bangalore. It is ironic that while the plaintiff has sought, in effect, specific performance of the two distributorship agreements, it has acted in abject derogation of the forum selection clauses contained therein.

26. A forum selection clause, like an arbitration clause or any other clause in an agreement between two or more parties, is capable of being waived. But once an action is instituted in derogation of a forum selection clause and another party to the agreement objects to the situs of the action on such ground, such objection, for all practical purposes, amounts to a prayer or claim for the specific performance of the forum selection clause. But the mere existence of the forum selection clause in an agreement, just like the existence of an arbitration clause in an agreement, does not denude a court in receipt of the action in derogation of the forum selection or arbitration clause of all its authority. When an objection on the ground of a forum selection or arbitration clause is taken before a civil court, the court has to appreciate the efficacy thereof and, rather than the court finding itself to be denuded of authority, as a matter of public policy the court holds the parties to their bargain and ensures the specific performance of the forum selection or the arbitration clause according to the agreement. Though the enforcement of an arbitration agreement may stand on a slightly higher pedestal since its efficacy is not only before a court but also before any other judicial authority in receipt of an action in derogation of the arbitration agreement, there can be myriad grounds on which a forum selection clause may not be enforced; not the least of them being that its enforcement would be oppressively unfair to one of the parties to the action. Just as a civil court empowered to receive a suit may decline it being further prosecuted before such court on the ground of overwhelming inconvenience to a party, in exceptional cases, a forum selection clause may be repelled even if it is otherwise found to be valid. But that would be a once-in-a-blue-moon situation and not when the forum selection clause is found to be valid and effective and no case of oppressive unfairness or overwhelming inconvenience to a party is made out. And, when a valid forum selection clause is disregarded by a court on such equitable considerations, the beneficiary of such judicial benevolence has to demonstrate utmost candour and clean hands beyond the slightest reproach.

27. The plaintiff here has not demonstrated the conduct or character deserving of such consideration. There is no whisper in the plaint as to the existence of any forum selection clause, though equitable reliefs have been claimed therein.

28. It is true that the Code does not demand, unlike limitation and territorial jurisdiction, a plaintiff to plead and justify the inefficacy of the forum selection clause if such a clause were to govern the situs of the action before a civil court. But basic honesty and ordinary decency demand that when a suit is founded on an agreement containing a forum selection clause and the action is instituted before a court not covered by such clause, there would be an averment in the plaint as to the existence of the clause and some modicum of reasons to not adhere thereto. The plaint here is singularly lacking in such aspect. The plaint was prepared and lodged without the slightest reference to the forum selection clauses; and when the plaintiff has been caught out, it resorts to the falsehood of the Bangalore office of the first defendant not having any nexus with the cause of action or the transactions, despite

the documents disclosed by it revealing the close association of the Bangalore office in the relationship between the plaintiff and the first defendant.

29. The plaintiff has relied on a judgment reported at **(1991) 4 SCC 270 (Patel Roadways Limited v. Prasad Trading Company)** for the discussion therein as to the meaning of the Explanation in Section 20 of the Code. The plaintiff has also placed a judgment reported at **(2011) 7 SCC 463 (Interglobe Aviation Limited v. N. Satchidanand)** on the interpretation of a forum selection clause. The plaintiff exhorts that forum selection clause has to be strictly construed as it interferes with the natural rights of a plaintiff to choose its forum in accordance with law.

30. It is necessary that the judgment in Interglobe Aviation Limited be seen in some detail to appreciate the law that it laid down. The respondent before the Supreme Court was booked to travel on the appellant airline from Delhi to Hyderabad. The departure of the flight was delayed due to fog, low visibility and operational reasons and the passenger complained before the Permanent Lok Adalat, set up under the Legal Services Authorities Act, 1987, in Hyderabad and obtained compensation and costs for his inconvenience and suffering. The appellant airline sought to resist the complaint before the Permanent Lok Adalat at Hyderabad on, inter alia, the ground that the forum had no jurisdiction to entertain the complaint as the contract of carriage provided that only the courts at Delhi had jurisdiction. It was such aspect of the matter that primarily fell for consideration before the Supreme Court.

31. After referring to the judgment in ABC Laminart, the Supreme Court held as follows at paragraphs 21 to 23 of the report:

"21. The "exclusive jurisdiction clause", as noticed above is a standard clause that is made applicable to all contracts of carriage with the appellant, relating to passengers, baggage or cargo anywhere in the country, irrespective of whether any part of the cause of action arose at Delhi or not. If, for example, a passenger purchases a ticket to travel from Mumbai to Kolkata, or Chennai to Hyderabad, which involved travel without touching Delhi and if such ticket was purchased outside Delhi, obviously the Delhi courts will not have territorial jurisdiction as no part of the cause of action arises in Delhi.

"22. As per the principle laid down in A.B.C. Laminart, any clause which ousts the jurisdiction of all courts having jurisdiction and conferring jurisdiction on a court not otherwise having jurisdiction would be invalid. It is now well settled that the parties cannot by agreement confer jurisdiction on a court which does not have jurisdiction; and that only where two or more courts have the jurisdiction to try a suit or proceeding, an agreement that the disputes shall be tried in one of such courts is not contrary to public policy. The ouster of jurisdiction of some courts is permissible so long as the court on which exclusive jurisdiction is conferred, had jurisdiction. If the clause had been made to apply only where a part of cause of action accrued in Delhi, it would have been valid. But as the clause provides that irrespective of the

place of cause of action, only courts at Delhi would have jurisdiction, the said clause is invalid in law, having regard to the principle laid down in A.B.C. Laminart. The fact that in this case, the place of embarkation happened to be Delhi, would not validate a clause, which is invalid.

"23. There is another reason for holding the said clause to be invalid. A clause ousting jurisdiction of a court, which otherwise would have jurisdiction will have to be construed strictly. In this case, we are concerned with a clause which provides that all disputes shall be subject to the jurisdiction of the courts at Delhi only. But in this case, the respondent did not approach a "court". The claim was filed by the respondent before a Permanent Lok Adalat constituted under Chapter VI-A of the Legal Services Authorities Act, 1987 ("LSA Act" for short)."

32. It is evident that a part of the respondent's cause of action in that case arose at the Delhi Airport, but the Supreme Court found that the forum selection clause was invalid. It must be appreciated, at this stage, that the matter pertained to the standard terms unilaterally imposed by a service provider on any person who availed of its services. It was akin to the standard clauses that appear on the reverse of a bill issued by, say, a laundry or any other merchant. Though in many cases some of such conditions in fine print have been upheld by courts, including forum selection clauses contained therein, the ratio decidendi in Interglobe Aviation Limited at paragraph 21 of the report has to be seen in the context in which it was rendered. The forum selection clause in that case, on the usual test applied to the efficacy of such a clause, may otherwise have been found effective since a part of the passenger's cause of action in that case arose in Delhi. But the Supreme Court tested the clause from the point of view of any passenger availing of the services of the appellant for travel on any sector not touching Delhi. In such light, the Supreme Court cited the example of a passenger travelling from Mumbai to Kolkata or another from Chennai to Hyderabad. The ratio of the judgment appears to be that when standard terms are imposed by a service-provider on a party by virtue of such party availing of any services from the service-provider, the forum selection clause therein would be invalid since it may not be legally capable of covering all situations or individual cases. In other words, the forum selection clause in the case was repelled as a whole since it would operate oppressively in most cases, including the examples cited. Surely, such principle cannot be made applicable to a contract between two parties who may have negotiated and agreed to the terms thereof at arm's length.

33. It is not even the plaintiff's case herein that the forum selection clauses are oppressive or the enforcement thereof would be overwhelmingly inconvenient to the plaintiff. The case run by the plaintiff is that the forum selection clauses would not be attracted since the Bangalore office of the first defendant had no nexus with the cause of action or the transactions between such parties and the mere existence of the first defendant's office in Bangalore would not have permitted this suit to be

filed in an appropriate court in that city by virtue of Section 20 of the Code. Such argument has been discarded as fallacious on divers counts recorded above.

34. Indeed, the appropriate interpretation of a forum selection clause contained in an agreement arrived at after negotiations between two parties ♦ as distinct from one contained in the standard terms included in fine print while availing of the services of any service-provider ♦ would be that the forum selection clause would fasten on the parties if any suit under the agreement, irrespective of the party instituting it, is capable of being carried to the court or courts covered by such clause. But such question need not be addressed or conclusively answered in the facts of the present case since it is evident that the plaintiff herein could have carried this suit to an appropriate court in Bangalore as a part of the plaintiff's cause of action undeniably pertained to the Bangalore office of the first defendant.

35. The larger issue that this matter throws up is the blatant attempt by a suitor to mislead a court, whether in instituting the action or in seeking to maintain it in the wake of an insurmountable objection raised by one of the parties sued. If the idea was to somehow obtain an initial order to gain commercial leverage and force the parties sued into submission, it ought to be regarded as an improper motive. That the suitor perceived that it had a chance of pulling off such a stunt, may be the matter of greater concern and a cause for deeper reflection. There may also be good cause for introspection elsewhere. At the end of the day, this suit and the several judicial hours needlessly expended on it being attempted to be pursued in this court, cannot be seen to have brought any cheer to the plaintiff. Several months after the termination of its distributorship agreements, the plaintiff has achieved nothing by this action; and, it has more to lose.

36. GA 1095 of 2016 is allowed by holding that by reason of the forum selection clauses contained in the two distributorship agreements which are the subject-matter of this suit, the plaintiff ought to have carried this claim to an appropriate court in Bangalore. As a consequence, the leave granted to the plaintiff under Clause 12 of the Letters Patent in instituting CS 88 of 2016 is revoked and the plaintiff is left free to carry its claim, if otherwise entitled, to the appropriate forum in accordance with law. The suit will be recorded as disposed of as far as this court is concerned. GA 884 of 2016 stands dismissed as a result.

37. The plaintiff will pay costs assessed at Rs. 5 lakh to the first defendant and a further Rs. 1 lakh to the West Bengal State Legal Services Authority.

38. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

Later:

39. The plaintiff seeks a stay of the operation of the order, which is unhesitatingly declined.