

BEFORE THE ARBITRAL TRIBUNAL

REF No.01/2020

IN THE MATTER

SH.ANKIT SINGH

....CLAIMANT

VERSUS

DARWIN PLATFORM REFINERIES LTD. & ORS.

....RESPONDENTS

03.06.2021

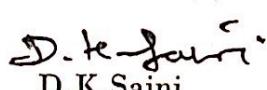
Present: Counsel for the claimant with claimant.

Counsel for the respondents.

Counsel for claimant was directed to obtain the non-judicial stamp paper of Rs.100/- for passing the Award on 03.06.2021. Accordingly non-judicial stamp paper of Rs.100/- has been handed over by counsel for claimant to the Arbitrator today.

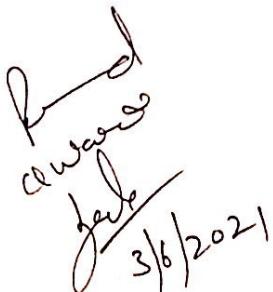
The Award has been pronounced whereby claim petition of the claimant stands dismissed. Parties have been provided with the copy of the Award.

The arbitration proceedings stand terminated.


D.K.Saini
Arbitrator


B.L.Garg
Umpire


Bharat Bhushan
Arbitrator
03/06/2021


Received
Award
Ankit Singh
3/6/2021


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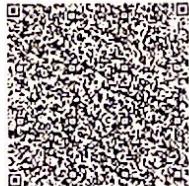
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INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

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|---------------------------|---|
| Certificate No. | IN-DL81462207012453T |
| Certificate Issued Date | 03-Jun-2021 02:29 PM |
| Account Reference | IMPACC (IV)/ dl986103/ DELHI/ DL-DLH |
| Unique Doc. Reference | SUBIN-DLDL98610361492750129143T |
| Purchased by | ANKIT SINGH |
| Description of Document | Article 12 Award |
| Property Description | Not Applicable |
| Consideration Price (Rs.) | 0 (Zero) |
| First Party | ANKIT SINGH |
| Second Party | DARWIN PLATFORM REFINERIES LTD AND OTHERS |
| Stamp Duty Paid By | ANKIT SINGH |
| Stamp Duty Amount(Rs.) | 100 (One Hundred only) |



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Please write or type below this line.....

P. H. Saini
(P. H. Saini)

ECS - 8/02
(BHARAT BHUSHAN)

Statutory Alert:

1. The authenticity of this Stamp certificate should be verified at www.nctdelhi.nic.in or using e-Stamp Mobile App of Stock Holding. Any discrepancy in the details on this Certificate and as available on the e-Stamp Mobile App renders it invalid.

BEFORE THE ARBITRAL TRIBUNAL

Ref. No.01/2020

IN THE MATTER OF:

SH.ANKIT SINGH,
S/O SH. ANTIM KUMAR INDRASAIN SINGH,
R/O SHIVAN SOCIETY, B-5,
B WING, FILM CITY ROAD,
GOREGAON, EAST,
MUMBAI-400063

....CLAIMANT

VERSUS

1. DARWIN PLATFORM REFINERIES LTD.
THROUGH ITS DIRECTOR/ C.E.O./
COMPANY SECRETARY
HAVING ITS OFFICE AT:
A-64, A BLOCK, RAJOURI GARDEN,
DELHI
2. SH. AJAY HARINATH SINGH
S/O SH. HARINATHZAMINDAR SINGH
3. SH. MANU BISHNOI
S/O SH. RAM PAL BISHNOI
4. SH. ASHISH GUPTA
S/O SH.SUBHASH CHAND GUPTA
5. SH. UMEESH KUMAR SAINI
S/O SH.PRAKASH CHAND

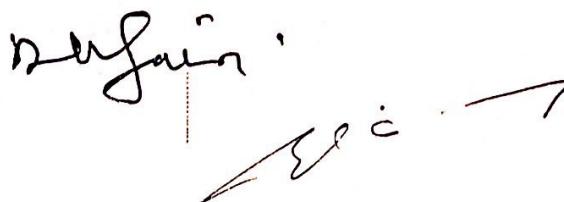
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Dh. Saini Yes - 8

D 03/06/20

6. SH. JAGDISH PRASAD
S/O SH.RATAN RAM SEVDA
7. SH. K.RAMU
S/O SH.KAVERI
8. SH. ARVIND KUMAR SINGH
S/O SH.CHANDRASHEKHAR SINGH
9. SH. SOUBHAGYA RAY
S/O SH.BHASKAR CHANDRA RAY
10. SH. SUSHEN CHANDRA MOHANTA
S/O SH.DINABANDHUMOHANTA
11. SH. RATENDRA KUMAR
S/O SH.CHANDRIKA RAM
12. SH. RAJAT PATEL
S/O SH.SUSHEEL PATEL
13. SH. NALLAGUNTLASANJEEV KUMAR
S/O SH.VENKATAIAHNALLAGUNTLA
14. SH. RAKESH KUMAR PANDEY
S/O SH.ONKARNATHPANDEY
15. SH. SAHILGAUTAM
S/O SH.SHIV KUMAR GAUTAM
16. SH. BHIMSENYADAV
S/O SH.KESHOWYADAV
17. SH. PATHANVASIMRAFIK

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Surjan

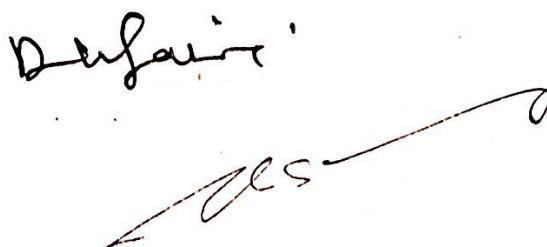


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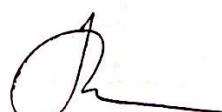
S/O SH.RAFIKWAHEDPATHAN

18. SH. KUMAR PAWAN
SH.BEERBHAN
19. SH. SHIV SHANKAR SHAH
S/O SH.SUKHALAL SHAH
20. SH. SUNIL KUMAR
S/O SH.SHIV SHANKAR PRASAD
21. SH. JITENDRA KUMAR
S/O SH.AVIND SAW
22. SH. HEMANTOBEROI
S/O SH.DHIRAJ KUMAR OBEROI
23. SH. PRASANTA PAUL
S/O SH.HARISADHAN PAUL
24. SH. VASU KUMAR
S/O SH.RAKESH KUMAR KASHYAP
25. SH. DEEPAK KUMAR
S/O SH.VIJAY SINGH
26. SH. VIKASBHADANA
S/O SH.RAMBIR SINGH BHADANA
27. SH. YUVRAJBAPUSONAWANE
S/O SH.BAPUBABURAOSONAWANE
28. SH. DEVVRATT KUMAR
S/O SH.NATTHU SINGH

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Dafair



DR

29. SH. DUKHISHYAMBEHERA
S/O SH.BANSIDHARBEHERA
30. SH. SANJEET KUMAR
S/O SH.BHAYA RAM
31. SH. DEEPAK GUPTA
S/O SH.RAMANAND GUPTA
32. SH. AVIJITMANDAL
S/O SH.GANGADHARMANDAL
33. SH. MITHUN KUMAR
S/O SH.MUNSISAH
34. SH. RAJESH RAJENDRA PRASAD MISHRA
S/O SH. RAJENDRA PRASAD MISHRA
35. MOHD. SHAJAMALSEIKH
S/O MOHD. EDANSEIKH
36. SH.RAJ SHAH
S/O SH.NARAYAN PRASAD BHOI
37. SH. RUPESHPATIL
S/O SH.BALARAMDEHUPATIL
38. SH.DHIRESH KUMAR BANGER
S/O SH.SHANKARNARASIMHABANGER
39. SH.RAJESHBHAIDHANJIBHAIGHOGHARI
S/O DHANJIBHAIHARIBHAIGHOGHARI

ALL AT:
A-64, A BLOCK,

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D.K. Jaisi

RAJOURI GARDEN,
DELHI

....RESPONDENTS

AWARD

This is the Award delivered by this Tribunal at Delhi on this
3rd day of June, 2021, in connection with the disputes which have
arisen between the above said parties.

Parties through their respective counsels gave the statement before this Tribunal for conducting the arbitration proceedings under the fast track procedure as contained in Section 29-B of the Arbitration & Conciliation Act, 1996 as amended upto date.

In the claim petition claimant has sought relief of declaration, recovery of money and permanent injunction.

Case of the claimant:

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Claimant has pleaded in the claim petition that respondent No.1 is trading in 4 stroke premium engine oil and pretends itself to be the biggest engine oil trading company in the northern and western part of India. Claimant has further pleaded that respondent No.1 has been circulating through its distributors and channel partners that if oil in bulk is purchased for a period of One Year by making the payment in advance then respondent No.1 will provide benefits, bonuses, incentives and direct income etc. to the purchaser. Brochure of the respondent No.1 mentions various levels from which person can be benefitted by booking units of engine oil in advance for a period of One Year. Claimant was influenced by the marketing scheme of the respondent No.1 and approached the respondent No.1 for purchasing 4 stroke premium engine oil in advance for a period of One Year by paying advance payment of Rs.20,00,000/- to the respondent No.1. The respondent No.1 undertook to supply the engine oil as and when purchase order will be placed by claimant upon respondent No.1.

[Signature] *[Signature]* *[Signature]*
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Purchase Agreement dated 01.10.2020 was executed between the claimant and respondent No.1 which explicitly mentions about the terms and conditions settled between the parties to the agreement. Claimant paid amount of Rs.20,00,000/- to the respondent No.1 on 01.10.2020. The price of one unit of engine Oil is Rs.11,800/- excluding statutory taxes, levies and cess.

Claimant placed purchase order dated 16.10.2020 with the respondent No.1 for the supply of 4 stroke premium engine oil but respondent No.1 despite receipt of purchase order did not supply engine oil and no plausible reason for non-supply of engine oil was given to the claimant. Claimant kept on pursuing the matter with the respondent No.1 but respondent No.1 despite all the efforts and cooperation of the claimant bitterly failed to supply the engine oil to the claimant as such respondent No.1 breached terms and conditions of the contract.

Claimant due to default on the part of the respondent No.1 terminated the contract and demanded return of Rs.20,00,000/-

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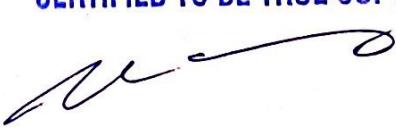
alongwithinterest from the respondents. Claimant numerous times visited the office of respondent No.1 and every time except bald excuses no specific date and time for return of money was ever given to the claimant. Claimant on 23.10.2020 met respondent No.2 in his office who promised to return the amount within two days as such claimant did not insisted for immediate return of money and patiently waited for two days. No telephonic call or any letter was received from the respondent No.1 or its directors and staff about the return of money as such claimant after a period of one week again went to the office of respondent No.1 on 02.11.2020 and was surprised to see the hostile attitude of respondent No.2 who candidly refused to return money to the claimant. The respondents also threatened claimant with dire consequences if he kept persisting for return of money. From discrete enquiry it came to the knowledge of the claimant that respondent No.1 has woven business web to cheat and defraud innocent businessmen by promising bonuses, income, profits and incentives on the advance payment.

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M C S

Innocent persons easily fall prey to the lucrative incentives and schemes as offered by respondent No.1 and finally cough up huge amount of money, which respondent No.1 never intend to return and the only purpose of respondent No.1 is to misappropriate said money for its vested interest. Respondent No.1 is not dealing in the business of engine oil but is engaged in the ponzi and multi-level marketing schemes. Respondent No.1 in order to cheat and defraud innocent people has devised scheme by offering bonus, incentives and fixed incomes on the deposited amount which bonus and incentives are never paid and rather respondents launders the money in violation of statutory provisions. Terms and conditions of the Purchase Agreement is harsh, oppressive, void and contrary to law and claimant was never afforded the opportunity to peruse the agreement and signatures of claimant were obtained on the printed format. Claimant was also not provided with the copy of agreement. Claimant has pleaded that respondent No. 2 to 39 are

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the employees/ directors of respondent No.1 and are jointly and collectively liable for return of money.

All the respondents appeared through counsel and have filed joint reply.

Case of the Respondents:

In the reply it has been stated that claimant voluntarily, willingly and consciously entered into the Purchase Agreement both dated 01.10.2020 and there was no compulsion or pressure on the claimant for the execution of agreement with the respondent No.1. Respondent No.1 is having immense goodwill and reputation before its customers and respondent No.1 adheres and follows principles and ethics in conducting its business. Respondent No.1 received payment from the claimant as mentioned in the claim petition and further respondent No.1 is always ready and prepared to supply 4 stroke premium engine oil to the claimant as per the agreement. No request for supply

D. Rajiv *M. C. O* *R*
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of engine oil was ever received from the claimant as such there was no occasion for the respondent No.1 to supply the engine oil to the claimant. Respondent No.1 time and again enquired from the claimant as to the schedule for supply of engine oil but surprisingly no delivery schedule was received by respondent No.1 from the claimant. Claimant cannot blow hot and cold in the same breath i.e. on the one hand he has never submitted delivery schedule to the respondent No.1 and on the other hand he is demanding return of money in breach of the terms and conditions of the contract. It has been further pleaded that as per clause 9 of the agreement amount once paid is non-refundable therefore claimant cannot seek refund of money contrary to the terms and conditions of the agreement.

Respondent No.1 is strictly abiding and providing bonus, benefits, perks etc. to its clients as per the brochure. Respondent No.1 is a group company of Darwin Group of Companies which is a conglomeration of 25 companies and is spear headed by respondent No.2 who is enjoying immense goodwill and

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reputation globally and has also been bestowed with awards and laurels by the national and international Forums/bodies. Darwin Platform Group of Companies is a direct selling entity with marketing plans as per the Direct Selling Guidelines-2016. Group sales team is a network of direct sellers at different levels of distribution, who introduce or recruit or sponsors further levels of direct sellers. Group is not engaged or promote any kind of ponzi, binary or pyramids schemes. The Group is into the marketing, distribution and sale of goods and services as a part of network of direct selling.

Respondent No.2 to 39 are not the necessary parties to the present arbitration proceedings as they are not the party to the Purchase Agreement dated 01.10.2020. Respondent No.2 to 39 have not threatened claimant in any manner whatsoever.

Claimant cannot approbate and reprobate in the same breath i.e. on the one hand claimant has pleaded that copy of the agreement was not handed over to him by the respondent

Dr Jain *M* *D*
C *E* *S*
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No land on the other hand claimant is relying upon the clauses of the agreement and invoked the arbitration clause contained in the agreement without possessing the copy of the same. From the acts and conduct of the claimant it is clear that claimant is having the copy of the agreement as on the strength of the agreement claimant has requested respondent No.1 to appoint the Arbitrator.

In the rejoinder contents of the reply of respondents were denied and contents of claim petition were reaffirmed.

On the pleadings of the parties following issues were framed:

1. Whether claimant is entitled for the recovery of amount of Rs.20,00,000/- from the respondents? OPC
2. Whether the Purchase Agreement dated 01.10.2020 is liable to be declared as null and void? OPC
3. Whether respondent No.1 can be debarred from continuing its engine oil trading business? OPC
4. Whether claimant is entitled for interest? If so, then at what rate and for what period? OPC

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5. Relief, if any?

The parties made statement that they file affidavits by way of evidence and no oral evidence be recorded in the present matter as the entire case is based on documents and rest on interpretation of Purchase Agreement.

Both the parties have filed their respective affidavits in evidence.

The claimant has tendered his own affidavit which is EX.CW-1/1 and exhibited brochure of respondent No.1 as EX.CW-1/A and purchase order dated 17.10.2020 as EX.CW-1/B.

Sh. Kamal KishanBhargava filed his affidavit for respondent No.1 as authorized representative and the same is Ex.RW-1/1. Respondent No.1 has exhibited Registration Certificate as EX.RW-1/A (OSR), Board Resolution as EX.RW-

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1/B, Purchase Agreement dated 01.10.2020 as EX.RW-1/C
(OSR).

Respondents No.2 to 39 adopted evidence of respondent
No.1.

Findings on Issue No. 1, 2 & 3

Issue no. 1, 2 & 3 being inter-connected are being decided
jointly.

From the records and documents placed on record jural
relationship between the parties is admitted and there is no
dispute w.r.t. the execution of Purchase Agreement dated
01.10.2020. Claimant has miserably failed to place on record any
document or correspondence disputing terms and conditions of
the Purchase Agreement.

Claimant has executed the Purchase Agreement
voluntarily and willingly and no material or evidence has been

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brought on record to show or substantiate that pressure or undue influence was exerted on the claimant for executing Purchase Agreement.

It is well established principle of law settled over a period of time that intention of the parties have to be inferred from the words used in the agreement and not what they thought at the time of executing the contract.

It has been held by Hon'ble Apex Court in AIR 1973 (SC) 2609 that:

"In construing document one must have regard, not to the presumed intention of the parties, but to the meaning of the words they have used. If two interpretations of document are possible, the one which would give effect and meaning to all its parts should be adopted and for the purpose the words creating uncertainty in the document can be ignored."

D. Rajan *R*
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M. S. R.

The Hon'ble Supreme Court of India in *Khardah Company Ltd. Raymon & CO (India) Pvt. Ltd.* (1963) 3 SCR 183 has categorically and explicitly held that:

"If on a reading of a document as a whole it can fairly be deduced from the words actually used herein, that the parties have actually agreed on a particular term, there is nothing in law which prevents them from setting up that term. The terms of a contract can be expressed or implied from what has been expressed. It is in the ultimate analyses, a question of the construction of the contract".

Mahanagar Telephone Nigam Ltd. Versus Canara Bank &Ors. Civil Appeal No.6202-6205 of 2019 dated 08.08.2019, it has been held by Apex Court that:

"the intentions of the parties must be inferred from the terms of the contract, conduct of the parties, and the correspondence exchanged, to ascertain the existence of a binding contract between the parties. If a document on record shows that the parties were ad idem, and has

D. K. Jain

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actually reached an agreement upon all material terms, then it would be construed to be a binding contract.

The Hon'ble Supreme Court of India in Bharti knitting Company Vs. DHL Worldwide Express Courier Division of Airfreight Ltd. AIR 1996 (SC) 2508 has categorically and explicitly held that :

"liability of consignee limited to certain amount by contract between the parties, contract specifically excluding liability of consignee for any damages or any indirect loss that may occur including loss of market or profits, parties are bound by such terms of contract. Award of damages for deficiency in service to extent of liability undertaken in contract between the parties is legal and binding on the parties." It has been further held that when party to the contract has signed the terms and conditions of the contract, then whether or not he has read those terms and conditions; the same are binding on him. It has been further held if the consumer has agreed to keep the company immune from, all losses or damages/

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compensation of any nature whatsoever or has limited the liability of the company to a particular amount; then it cannot turn around and plead ignorance of those terms and conditions.”

It has been held by Hon'ble High Court of Delhi in **Classic Motors Ltd. VS. MarutiUdyog Ltd., 1995 (57) DLT 677** that:

“(31) The plea of the plaintiff that clause 21 is invalid because of unequal bargaining power and duress and coercion also needs to be examined at this stage. My attention is drawn to a decision of this Court in Unikol Bottlers Ltd. Vs. Dhillon Kool Drinks, reported in 1994 (28) Drj 483. Paragraph 32 of the said judgment being relevant for my purpose is extracted below:- “For a valid contract it is essential that the parties have given their free consent for it. Section 10 of the Contract Act statutorily recognises the requirement of free consent for a valid contract. Section 13 of the Contract Act defines consent as follows:- ‘two or more persons are said to consent when they agree upon the same thing in the same sense’. Section 14 of the said Act defines ‘free consent’ as ‘consent is said to be free when it is not caused by :- (1) Coercion, as defined in Section 15; (2) undue influence, as defined in Section 16; or (3)

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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. Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake,' Section 15 & 16 define coercion and undue influence. What follows from these statutory provisions is that an agreement to be valid should be the result of free consent apart from other requirements. While dealing with the question of duress/coercion and unequal bargaining power one is really concerned with the question of free will i.e. did the parties enter into the agreement with a free will? It is the plaintiff who has raised the question of its will being dominated by the defendants and, therefore, not being a free agent. Therefore, the plaintiff is on test. It has to be ascertained whether the plaintiff exercised a free will or not while entering into the Supplemental Agreement. For this purpose there are several factors which need to be looked into. They are - (1) Did the plaintiff protest before or soon after the agreement? (2) Did the plaintiff take any steps to avoid the contract? (3) Did the plaintiff have an alternative course of action or remedy? If so, did the plaintiff pursue or attempt to pursue the same? (4) Did the plaintiff convey benefit of independent advice?"

D. Jaiswal *JKS* *DR*
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(32) Let me now examine and apply the principle of the aforesaid factors in order to test the plea of the plaintiff. The plaintiff admittedly did not make any protest before entering into the agreement but on the other hand, went ahead with its performance. The validity of a clause of the agreement is now being sought to be challenged when it was terminated. Even in the earlier two petitions filed by the plaintiff under Section 20 of the Arbitration Act, the plaintiff did not challenge the validity of the agreement. Thus the plaintiff has taken full advantage under the agreement and reaped benefits from it and now when the same was terminated, the plaintiff immediately rushes to this court challenging the validity of the agreement. Therefore, the first two questions are to be answered in the negative i.e. the plaintiff did not raise any protest before entering into or soon after entering into the agreement and also did not take any steps to avoid the agreement. Rather it affirmed the agreement and reaped all the benefits of the agreement from 1983 onwards till it was terminated. After having done so, the plaintiff is not entitled to challenge the agreement. In *North Ocean Shipping Co. Ltd. Vs. Hyundai Construction Co. Ltd.*; reported in 1978(3) All. E.R. 170, it has been held that if the party complaining of an unfair contract does not do anything to avoid it and accepts it then the

Dharmendra Mehta
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Mehta

complaining party cannot make a grievance of the contract. Therefore, the third factor also stands answered. So far the question of independent advice is concerned, from the facts delineated above, it is apparent that PW1, the Chairman and Managing Director of plaintiff is a rich and flourishing businessman having number of properties and various businesses. He, therefore, had full knowledge as to the implication of the terms of the agreement and he also had access to the best of advices and suggestions. But inspite of being placed at such an advantageous position PW1 did not react in any manner to the terms of the agreement, rather continued to reap the benefits under the agreement.

(33) From the facts available before me, it is crystal clear that the defendant did not exercise any duress on the plaintiff or that the agreement was arrived at with the plaintiff without its free consent. At paragraph 37 of the judgment in Unikol Bottlers Ltd. (Supra.) it has been held thus:- "The contracts are meant to be performed and not to be avoided. Justice requires that men who have negotiated at arm's length, be held to their bargains unless it can be shown that their consent was vitiated by fraud, mistake or duress. The real test is to first establish that the means pursued were illegitimate in the sense of amounting to or threatening a crime, tort or a breach of contract (though possible

Dafair J.C. CERTIFIED TO BE TRUE COPY

not plausible breach of contract will suffice). Secondly, one must establish that the illegitimate means were a reason, though not necessarily the pre-dominant reason for the victim's submission. Applying these tests to the facts of the present case. I am unable to persuade myself to hold that the consent of the plaintiff to enter into the Supplemental Agreement was not free or was vitiated on any of the grounds urged before me and discussed hereinbefore."

(34) *The aforesaid tests when applied to the facts of the present case bear out that the agreement was free and not vitiated by any coercion or duress. Accordingly, clause 21 of the agreement cannot be held to be invalid on that count.*

(35) *The question of a clause being against the public policy and/or arbitrary or unconscionable could definitely be advanced when the contract relates to the realm of public law. However, when such a clause relates to a private contract the law definitely would stand on a different footing. In a private contract a party can deal with a party with whom he wants to, and such a party cannot be compelled to deal with a person they are unwilling to do so. In Srilekah Vidyarthi case (supra) it has been held by the Supreme Court that there is a fundamental difference between the contract in the public law field and the private field.*

D. B. Jaiswal / *J.*
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Upholding the appointment of Public Prosecutors the Supreme Court held that the words 'without assigning any cause' would still mean there exists reason even though the same is not communicated. In Central Inland case (Supra) relied upon by the plaintiff the Supreme Court while examining the question of economic duress and unconscionability of contracts based the ratio of its judgment on the principle of Article 14 and terms of the contract. The Supreme Court however, was conscious of the fact that the law laid down therein would not be applicable when the case relates to a commercial transaction, when it observed at page 216: "This principle however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both the parties are businessmen & the transaction is a commercial transaction". The Supreme Court further held at paragraph 102 of the judgment thus:- "it is not possible to equate the employees with goods which can be bought and sold. It is equally not possible for us to equate a contract of employment with a mercantile contract between two businessmen and much less to do so when the contract of employment is between a powerful employer and a weak employee".

D. S. Jaiswal *D.*
N. C. *N. C.*
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In view of the well settled principles of law claimant cannot be permitted to dispute terms and conditions of the contract which are sacrosanct and binding on the parties.

The transaction between the parties is commercial in nature and claimant in order to multiply its profits and earning entered into contact with the respondent No.1 without there being any element of pressure or coercion. The decision of the claimant to enter into agreement with respondent No.1 for purchasing engine oil was voluntary. Claimant after understanding and reading the brochure and scheme formed the decision to enter into contractual relationship with the respondent No.1. None of the terms and conditions of the scheme and brochure reflects that respondent No.1 is engaged in ponzi or multilevel marketing schemes with an allurement of high returns on the amount tendered to respondent No.1 by the people interested in conducting business with the respondent No.1. Article 19 (1) (g) of The Constitution of India grants right to every person or

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citizen of the Country Right to Practice any Profession and to carry on any occupation, trade or business. Respondent No.1 in order to expand its business beyond the contours developed the business plans and strategies which are beneficial both to the respondent No.1 and to the persons like claimant as both gain mutually and respectably. It is needless to mention that schemes and plans of offering incentives, bonus and incomes including unit based linked incentives is common and prevalent practice in commercial business world and is adopted not only by middle class business man but also by the well-established business houses. Respondent No.1 has entered into legally enforceable agreement which complies and fulfill mandate of law and is not hit or is barred from any provisions of law. Till date neither the Government nor any Statutory Body established by the Central or State Government has framed any law prohibiting promotion or sale of product as being offered by respondent No.1. Further there is no rule, regulations or any Statutory Provision framed by or under the Securities & Exchange Board of India Act

D. S. Joshi.

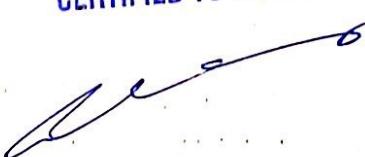
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(SEBI) rules and regulations, Reserve Bank of India Act and its rules/regulation; Chit Fund Act, the Banning of Unregulated Scheme Act, 2019, forbidding sale of product as well as schemes, incentives, bonus and income as being sold and offered by respondent No.1 in pursuant to the brochure (EX.CW-1/A) and Purchase Agreement. This Tribunal painstaking went through clause by clause of the Purchase Agreement as well as brochure and is satisfied that business activities of respondent No.1 are within the framework of law and respondent No.1 is not found indulging in money laundering/forgery/fraud/ criminal breach of trust/cheating or fabrication, as such transaction entered between claimant and respondent No.1 falls within a realm of Indian Contract Act and other Statutory provisions and law framed either by Central or State Government regulating sale-purchase of engine oil business in India.

From the evidence, documents and pleadings this Tribunal is satisfied that there is no breach of contract by respondent

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No.1 and it is the claimant who has breached the agreement by not placing the purchase order on the respondent No.1. Claimant has failed to place any document or correspondence on record to demonstrate that it has placed purchase order on the respondent No.1 for supply of engine oil. Respondent No.1 is correct in its submission that it is not able to supply the engine oil to the claimant in the absence of any supply schedule received from the claimant. Claimant has even not sought permission from this Tribunal for leading oral evidence to substantiate and support his submissions of placing purchase order on the respondent No.1 and even no permission was sought from this Tribunal to cross examine respondent No.1 on the aspect of placement of purchase order on respondent No.1 as such, no credence can be given to the EX.CW-1/B therefore, claimant has bitterly failed to prove breach of contract on the part of respondent No.1. Clause 9 of the Purchase Agreement prohibits claimant from claiming return of money as such, contract between the parties

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is sacrosanct and binding as such, claimant cannot claim return of money in view of express bar contained in the said clause.

During the course of the final arguments, counsel for the respondents without prejudice made the statement that if claimant provide supply schedule of oil to them, respondent No.1 will supply engine oil to the claimant on the same rate as were prevalent on the date of execution of the Agreement. This Tribunal appreciate bonafide gesture of the respondent No.1 and grants One Week time from the date of this Award to the claimant to provide supply schedule to the respondent No.1 for the delivery of the engine oil. In case of failure of claimant in complying the said directions, respondent No.1 is entitled to forfeit the amount received from the claimant by resorting Clause 9 of the Purchase Agreement.

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The respondent No.1 alongwith the agreement has also filed list of panel of Arbitrators who can be chosen by the parties for the adjudication of disputes. The list of Arbitrators is as under:

1. Hon'ble Mr. Justice V.N. Khare (Retd. Chief Justice of India),
2. Hon'ble Ms. Justice GyanSudha Mishra (Retd. Justice Supreme Court of India),
3. Hon'ble Mr. Justice Deepak Verma (Retd. Justice Supreme Court of India),
4. Hon'ble Mr. Kurian Joseph (Retd. Justice Supreme Court of India),
5. Hon'ble Ms. Justice UshaMehra (Retd. Justice High Court of Delhi),
6. Hon'ble Mr. Justice S.N. Aggarwal (Retd. Justice High Court of Delhi),
7. Sh. D.K. Saini (Retd. Additional District & Session Judge, Delhi).

During the course of arguments submission was made by claimant that the Arbitrators should have been appointed by the Hon'ble High Court of Delhi and parties should not have

D. J. Salvi *N* *R*
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appointed the arbitrators. The Claimant has also challenged the list of Arbitrators being maintained by respondent No.1 for adjudication of the disputes.

The list of arbitrator is exhaustive and complete transparency is followed by respondent No.1 in appointing the arbitrator.

Respondent No.1 has also filed on record ownership of properties falling in Thoothukkudi District, Tamil Nadu bearing Survey No. 1 to 367, village Varthagareddipatti admeasuring 2825 acres, Survey No. 1 to 455, Village Timmarajapuram admeasuring 2976 acres, survey No. 1 to 218, village Talavoipuram admeasuring 1425 acres, Survey No. 1 to 129, village Ramasamypuram admeasuring 860 acres, survey No. 1 to 147, village North Silukkanpatti admeasuring 1175 acres, survey No. 1 to 156. Village South Silukkanpatti admeasuring 1102 acres, survey No. 1 to 303. Village Peroorani admeasuring


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1970 acres and survey No. 1 to 51, village Ramanathapuram admeasuring 392.73 acres valuing Rs.3200Crores to demonstrate that it is having enough financial assets to meet any financial liabilities or obligations including the obligation as set out in Purchase Agreement.

In view of the findings claimant is not entitled for the reliefs claimed in the claim petition as such, claim petition stand dismissed. This Tribunal holds that commercial/ financial transaction entered between the claimant and respondent No.1 is legal, valid and in accordance with law.

Before parting it is our duty to clarify that respondents No.2 to 39 are not party to the contract as such, they cannot be impleaded as respondents by the claimant, therefore, no relief can be granted against the respondents No.2 to 39.

D.S. Jani *N. S. D.* *D.C.*

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D.C.

In view of the discussions held above issue No.1, 2 & 3 are decided against the claimant and in favour of the respondents.

Findings on the Issue No.4& 5

As issue No. No.1, 2 & 3 have been decided against the claimant no finding on the remaining issues are required..

The parties are directed to bear their respective cost. The arbitration proceedings stand terminated.

This award has been signed and published by us today the 3rd day of June, 2021.

D.K.Saini
Arbitrator
(Retd. Additional
District & Session
Judge)

B.L.Garg
Umpire
(Retd. Additional
District & Session
Judge)

Bharat Bhushan
Arbitrator
(Retd. Additional
District & Session
Judge)

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07/06/2021
B. L. GARG
Arbitrator
Adv. District & Session Judge (Retd.)
A-9, GANPATI APARTMENTS,
6, ALIPUR ROAD, CIVIL LINES,
DELHI-110054