

**BEFORE THE COURT OF CIVIL JUDGE NO.1, KAMRUP**  
**(METROPOLITAN) AT GUWAHATI**

**T. S. CASE NO. \_\_\_\_\_/2018**

1. [PLAINTIFF NAME/FIRM], A proprietorship firm, having its registered office at [Address], Represented by its proprietor [PROPRIETOR NAME], Wife of [Name], Resident of [Address].

2. [PROPRIETOR NAME], Wife of [Name], Resident of [Address].

**.....Plaintiffs**

**-VERSUS-**

[DEFENDANT NAME/COMPANY], A Company incorporated under the Companies Act, 1956, Having its registered office at [Address], Represented by its Director.

**.....Defendant**

Suit for declaration and permanent injunction.

The suit is valued at Rs.1,00,00,000/- (Rupees One Crores) only for the purpose of jurisdiction and for the purpose of the court fees fixed court fee of Rs.22/- is paid for declaration thereon. Injunction is valued at Rs.100/- and ad-valorem court fee of Rs.11/- is paid thereon separately.

The total court fee of Rs.33/- is paid thereon.

The humble petition of the plaintiffs above named.

**MOST RESPECTFULLY SHEWETH:**

1. That the plaintiff no. 1 is a proprietorship firm, having its registered office at \_\_\_\_\_, Assam, represented by its proprietor \_\_\_\_\_, resident of \_\_\_\_\_, Assam, and the plaintiff no. 2 is the proprietor of the plaintiff no. 1 and as such they are entitled to all the rights, privileges and protections given to a citizen of India guaranteed by the constitution of India and the rules framed thereunder.

A copy of the Trade Licence is filed as **DOCUMENT-1.**

2. That the defendant is a Company incorporated under the provisions of the Companies Act, 1956, having its registered office at \_\_\_\_\_, Assam, presently having office at \_\_\_\_\_, Assam, represented by its director, and is engaged in the business of trading and distribution of mobile phones and its accessories under the brand name "\_\_\_\_\_".

3. That the plaintiffs beg to state that the defendant had entered into a Distributor Agreement dated 01/04/2016 with the plaintiffs, and vide the aforesaid agreement the defendant had appointed the plaintiffs as a distributor for promotion and marketing of mobile handsets and other related services under the brand name "\_\_\_\_\_" to the potential buyers of products of the defendant.

A copy of the Distributor Agreement dated 01/04/2016 is filed as **DOCUMENT-2.**

4. That the plaintiffs beg to state that Clause 11 of the Distributor Agreement dated 01/04/2016 provides for Termination and under Clause 11 (11.1) (i) of the Distributor Agreement dated 01/04/2016 it is provided that either party of the agreement may terminate the agreement by giving one month notice to the other party in writing, without assigning any reason whatsoever. Further under Clause 11 (11.1) (iii) of the Distributor Agreement dated 01/04/2016 it is provided that notwithstanding hereinabove what is stated herein above, Company (Defendant) shall have the sole right to terminate this agreement forthwith by giving notice in writing addressed to the distributor (Plaintiffs) at its last known address, in case of happening or occurrence of events including but not restricted to the following:
  - a. Breach of any of the terms or conditions of this agreement or non-performance by distributor (Plaintiffs) and such breach/non-performance is not cured within fifteen days' notice by company (Defendant),
  - b. Prosecution for any criminal offence, committed by any of the partner's, director's, sole proprietor etc. of the distributor (Plaintiffs),
  - c. False claims towards refunds, credits, warranty claims, false financial information reports or any other data including but not limited to reporting requirements of Company (Defendant),
  - d. If distributor (Plaintiffs) has any overdue payments towards Company during the subsistence of this agreement.
  - e. If the appointment or continuance of distributor (Plaintiffs) under this agreement is likely to result in loss of goodwill or reputation of company (Defendant),
  - f. If distributor (Plaintiffs) commits any misconduct, fraud, cheating, misappropriation or any act lacking in good faith.
5. That the plaintiffs beg to state that Clause 24 of the Distributor Agreement dated 01/04/2016 provides for Notice. It states that

any notice or other communication required or permitted to be given between the Parties under this agreement shall be given in writing at the address of the parties as mentioned earlier on the first page of the Distributor Agreement dated 01/04/2016 or such other addresses as may be intimated by the parties in writing from time to time.

6. That the plaintiffs beg to state that the plaintiffs had received an email dated 24/10/2018 at 10:54 PM from the defendant vide email id \_\_\_\_\_@gmail.com stating that the defendant is receiving a lot of complains from the dealers of Dibrugarh Town, regarding doing business with the plaintiffs, and the dealer have said that they will stop business of "\_\_\_\_\_" as they face lots of problems to do business with the plaintiffs. So the defendant had asked the reason behind such problems to the plaintiffs. The defendant has also provided the names of the dealers who made complaints in the aforesaid email.
7. That the plaintiffs beg to state that in reply of the defendant's email dated 24/10/2018 at 10:54 PM the plaintiffs had sent an email dated 24/10/2018 at 5:01 AM stating that billing of all those dealers were blocked as their payment crossed 25 days and all are in negative stock, and the dealers have sold the stock of the plaintiffs and with the same money the dealers are purchasing online products like realme, xiami and others, but they have failed to make payments to the plaintiffs and as such the plaintiffs has stopped the billing of the dealers.
8. That the plaintiffs beg to state that the plaintiffs had received an email dated 25/10/2018 at 9:06 AM from the defendant vide email id \_\_\_\_\_@gmail.com stating that if all these dealers are doing business with other brands smoothly and they are facing problem only with "\_\_\_\_\_" then there is a problem, and the defendant had requested the plaintiffs to find out the problem.

9. That the plaintiffs beg to state that again the plaintiffs had received an email dated 25/10/2018 at 9:50 AM from the defendant vide email id \_\_\_\_\_@gmail.com stating that payment recovery is completely the call of the plaintiffs and the same depends on the plaintiff's ability and quality of the plaintiff's staff at the same time. The defendant demanded that no outlet should run out of stock at any given moment and the defendant has also demanded the plaintiff's 100% compliance should be met for promoter outlets and 90% compliance for non-promoter outlets.
10. That the plaintiffs beg to state that in reply of the defendant's email dated 25/10/2018 at 9:50 AM the plaintiffs had sent an email dated 25/10/2018 at 12:04 PM where the plaintiffs has provided all the details of outstanding amount of the dealers who has given complaint to the defendant that the plaintiffs has stopped giving goods to the dealers. The total outstanding amount payable by the dealers to the plaintiffs is Rs.27,65,710/- (Rupees Twenty Seven Lakh Sixty Five Thousand Seven Hundred and Ten) only, out of which the dealer have sold products worth Rs.15,58,048/- (Rupees Fifteen Lakh Fifty Eight Thousand Forty Eight) only but the dealers have not paid a single penny to the plaintiffs. The total stock remaining to be sold by the dealers is Rs.12,07,662/- (Rupees Twelve Lakh Seven Thousand Six Hundred and Sixty Two) only.
11. That the plaintiffs beg to state that again the plaintiffs had received an email dated 25/10/2018 at 12:15 PM from the defendant vide email id \_\_\_\_\_@gmail.com stating that these sort of problems will persist anyway and demanded the plaintiffs to make sure stock availability with the dealers.
12. That the plaintiffs beg to state that the plaintiffs had received an email dated 27/10/2018 at 12:29 PM from the defendant vide email id \_\_\_\_\_@gmail.com stating that as the plaintiffs

did not agree to Company Policy so it is better to wind up the plaintiffs's business with the defendant.

13. That the plaintiffs beg to state that in reply of the defendant's email dated 27/10/2018 at 12:29 PM the plaintiffs had sent an email dated 27/10/2018 at 1:16 PM whereby the plaintiffs has asked the defendant about what company policy they are talking about as the plaintiffs has never violated any company policy.
14. That the plaintiffs beg to state that the plaintiffs had received an email dated 27/10/2018 at 1:45 PM from the defendant vide email id \_\_\_\_\_@gmail.com stating that the defendant has already briefed the plaintiffs several time and there is no point in discussing the same thing again and again and it is better in the interest of business that the defendant should close the relation with the plaintiffs.

A copy of the Emails is filed as  
**DOCUMENT-3.**

15. That the plaintiffs beg to state that the plaintiffs had received an email dated 31/10/2018 at 11:25 AM from the defendant vide email id \_\_\_\_\_@gmail.com stating that the plaintiffs's performance in the operational area is below expectation and so the defendant are issuing an official letter regards to restrict business with the defendant of the plaintiffs. The plaintiffs is given 10 days period time from 31<sup>st</sup> October 2018 to 9<sup>th</sup> November 2018 to collect the plaintiffs's payments from the retailers and settle the plaintiffs's pending dues as soon as possible from excluded areas.

A copy of the email dated 31/10/2018 filed  
as **DOCUMENT-4.**

16. That the plaintiffs beg to state that the defendant has falsely cited that the plaintiffs's performance in the operational area is below expectation and so the defendant is issuing an official letter regards to restrict business with the defendant. All the

allegation of the defendant upon the plaintiffs regarding the plaintiffs's performance in the operational area is false because the plaintiffs has fulfilled the target of the defendant for the past four months regularly.

17. That the plaintiffs beg to state that in the month of July, 2018 the sale target placed by the defendant before the plaintiffs is 270 units of \_\_\_\_\_ mobile and the plaintiffs has sold 310 units of \_\_\_\_\_ mobile.

A copy of the target of the defendant and achievement of the plaintiffs for the month of July, 2018 is filed as **DOCUMENT-5 and 6.**

18. That the plaintiffs beg to state that in the month of August, 2018 the sale target placed by the defendant before the plaintiffs is 311 units of \_\_\_\_\_ mobile and the plaintiffs has sold 530 units of \_\_\_\_\_ mobile.

A copy of the target of the defendant and achievement of the plaintiffs for the month of August, 2018 is filed as **DOCUMENT-7 and 8.**

19. That the plaintiffs beg to state that in the month of September, 2018 the sale target placed by the defendant before the plaintiffs is 450 units of \_\_\_\_\_ mobile and the plaintiffs has sold 532 units of \_\_\_\_\_ mobile.

A copy of the target of the defendant and achievement of the plaintiffs for the month of September, 2018 is filed as **DOCUMENT-9 and 10.**

20. That the plaintiffs beg to state that in the month of October, 2018 the sale target placed by the defendant before the plaintiffs is 600 units of \_\_\_\_\_ mobile and the plaintiffs has sold 525 units of \_\_\_\_\_ mobile, and thereafter the defendant stopped

billing and supply of products without any intimation to the plaintiffs and as such the target could not be achieved otherwise the plaintiffs would have also achieved the same.

A copy of the target of the defendant and achievement of the plaintiffs for the month of October, 2018 is filed as **DOCUMENT-11 and 12.**

21. That the plaintiffs beg to state that therefore it is crystal clear that the defendant has arbitrarily and without any valid reason has restricted the business with the plaintiffs and has stopped all services to the plaintiffs. The ground stated by the defendant is totally false and baseless that the plaintiffs's performance in the operational area is below expectation as because the plaintiffs has regularly without any fail meted the target of the defendant in excess, as such the restriction of the plaintiffs by the defendant is bad in law.
22. That the plaintiffs beg to state that the defendant's demand that the plaintiffs should supply products to the dealers inspite of failure of the dealer to pay the outstanding amount of Rs.27,65,710/- (Rupees Twenty Seven Lakh Sixty Five Thousand Seven Hundred and Ten) only to the plaintiffs is also arbitrary, as the plaintiffs has already distributed on credits goods of so much worth to the dealers and if the dealers fails to pay or does not pay the plaintiffs then the plaintiffs will suffer from irreparable loss and the defendant will then deny to indemnify the plaintiffs, as such the restriction of the plaintiffs by the defendant is bad in law.
23. That the plaintiffs beg to state that the defendant has also not followed clause 11 of the Distributor Agreement dated 01/04/2016 which provides for Termination. The defendant has not given any notice to the defendant as required under clause 11.1 (i) of the Distributor Agreement dated 01/04/2016 as the

defendant has provided any written one month prior notice to the plaintiffs, as such the restriction of the plaintiffs by the defendant is bad in law.

24. That the plaintiffs beg to state that the defendant has also not followed clause 24 of the Distributor Agreement dated 01/04/2016 which provides for Notice. Clause 24 specifically provides that any notice or other communication required or permitted to be given between the Parties under this agreement shall be given in writing. But the defendant has not provided any such written notice to the plaintiffs; as such the restriction of the plaintiffs by the defendant is bad in law.
25. That the plaintiffs beg to state that it is pertinent to mention herein that the plaintiffs has also applied for loan from the Central Government under the scheme namely Stand Up India Scheme and the same has been sanctioned in favour of the plaintiffs. The loan has been applied by the plaintiffs for the current business with the defendant and the defendant has prejudiced the plaintiffs drastically by restricting the business of the plaintiffs arbitrarily.

A copy of the Sanction Letter dated  
06/09/2017 is filed as **DOCUMENT-13**.

26. That the plaintiffs beg to submit that the business of the plaintiffs which has been restricted by the defendant is the sole source of earning bread and butter of the plaintiffs and the action of the defendant of arbitrarily restricting the business of the plaintiffs has caused serious financial loss to the plaintiffs and if the arbitrary action of the defendant is not interfered with by this Hon'ble Court then the plaintiffs will come to road and will further suffer serious financial loss which cannot be measured in terms of money.
27. That the plaintiffs beg to submit that the arbitrary action of the defendant of arbitrarily restricting the business of the plaintiffs

has caused serious financial loss and mental agony to the plaintiffs.

28. That the plaintiffs beg to state that the outstanding amount to be recovered by the plaintiffs from various dealers amounts to Rs.64,90,053/- (Rupees Sixty Four Lakh Ninety Thousand Fifty Three) only and the defendants has provided the plaintiffs vide email dated 31/10/2018 only 10 (Ten) days time to recover such a huge amount which is totally irrational and if this Hon'ble Court does not interfere with the arbitrary action of the defendant the plaintiffs will come to road and the life of the plaintiffs will be ruined totally.

A copy of the Outstanding Amount to be recovered from the various dealer by the plaintiffs is filed as **DOCUMENT NO.14**.

29. That the plaintiffs beg to state that as per the Distributor Agreement dated 01/04/2016 the defendant cannot restrict the business of the plaintiffs without terminating the Distributor Agreement dated 01/04/2016 as per the norms laid down in the same agreement as such the email dated 31/10/2018 is illegal, arbitrary and not binding upon the plaintiff.
30. That it may be mentioned herein that the reasons cited by the defendant for restricting the business of the plaintiffs is false and baseless because the month wise sale of the mobile till October, 2018 given by the plaintiffs clearly shows that the performance of the plaintiffs is much more than the target set by the defendant. Hence the action of the defendant but to victimize the plaintiffs and to inflict financial loss as well as loss of goodwill of the plaintiffs because for running this business the plaintiffs have taken a loan from the bank and at present there is an outstanding due of Rs.64,90,053/- (Rupees Sixty Four Lakh Ninety Thousand Fifty Three) only in the market to be recovered by the plaintiffs as such if the defendants restrict the business by

giving only 10 days then it is not possible on the part of the plaintiffs to recover all those amount from the market apart from the fact that if the business of the plaintiffs goes then there is possibility of plaintiffs becoming defaulter in re paying the loan amount taken from the bank. As such the action of the defendant will bring the plaintiffs on road which may make the survival of the plaintiffs and her family members difficult. It also amount to ruining the life and business of the plaintiffs. As such if the defendant is not restrained in case the plaintiff will suffer from irreparable loss and injury which cannot be measured and compensated in terms of money.

31. That on 01/11/2018 it came to the knowledge of the plaintiff that the defendant is going to appoint other distributor in place of the plaintiffs within a day or two and if it happens then the plaintiff will suffer from irreparable loss and injury which cannot be measured and compensated in terms of money and same may lead to multiplicity of proceedings.
32. That under the circumstances as aforesaid plaintiff pray for permanent injunction restraining the defendants, its men, agent, workmen and associates from giving effect to the email dated 31/10/2018 and plaintiff also prays for permanent injunction restraining the defendants, its men, agent, workmen and associates from appointing new distributor for the Dibrugarh territory in any manner.
33. That the cause of action for the suit arose on 01/04/2016, 24/10/2018, 25/10/2018, 26/10/2018, 27/10/2018, 31/10/2018 and on each date subsequent thereafter within the territorial jurisdiction of this Hon'ble Court.
34. That the suit is valued at Rs.1,00,00,000/- (Rupees One Crores) only for the purpose of jurisdiction and for the purpose of Court fee, fixed court fee of Rs.22/- is paid for declaration thereon.

Injunction is valued at Rs.100/- and ad-valorem court fee of Rs.11/- is paid thereon separately

It is therefore prayed that your Honour may be pleased to pass a decree for:

- i. Declaration that the Distributor Agreement dated 01/04/2016 is still in force and is binding upon the plaintiffs and the defendant.
- ii. Declaration that the email dated 31/10/2018 is illegal, void, inoperative and non-binding upon the plaintiffs.
- iii. Permanent injunction restraining the defendants, its men, agent, workmen and associates from giving effect to the email dated 31/10/2018 and plaintiff also prays for permanent injunction restraining the defendants, its men, agent, workmen and associates from appointing new distributor for the Dibrugarh territory in any manner.
- iv. Any other relief/ relief(s) to which the plaintiffs are entitled from this Hon'ble Court under the law and equity.
- v. Cost of the suit.

**VERIFICATION**

I, [PLAINTIFF NAME/FIRM], A proprietorship firm, having its registered office at [Address], Represented by its proprietor [PROPRIETOR NAME], Wife of [Name], Resident of [Address], do hereby state and verify that the statement made in paras

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are true to my knowledge and those made in paras

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are true to my information as derived from records and rests are my humble submission.

And I sign this verification on this 2<sup>nd</sup> day of November, 2018 at Guwahati.

***Signature***

**A F F I D A V I T**

I, [PLAINTIFF NAME/FIRM], A proprietorship firm, having its registered office at [Address], represented by its proprietor [PROPRIETOR NAME], Wife of [Name], Resident of [Address] do hereby solemnly affirm and declare as follows: -

1. That I am the plaintiff no. 2 in the instant plaint and I am the proprietor of the plaintiff no. 1 and as such I am fully conversant with the facts and circumstances of this case and competent to swear this affidavit.
2. That the statements made in this affidavit and those made in the accompanying petition at paragraphs \_\_\_\_\_ are true to my knowledge, those made in paragraphs \_\_\_\_\_ are true to my information derived from the records which I believe to be true and the rest are my humble submissions before this Hon'ble Court.

**"O A T H"**

"I swear that this my declaration is true, that it conceals nothing, and that no part of it is false, so help me God."

And I sign this affidavit on this 2<sup>nd</sup> day of November, 2018 at Guwahati.

Identified by me

Advocate

***D E P O N E N T***