

Sole Selling Agents

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Introduction

- SSA **not defined** in Act;
- **Relationship** b/w Co. & SSA is that of **Principal & Agent**;
- Generally, SSA means a person:
 1. Having an **exclusive right**;
 2. To sell the goods of company in a **particular area**;
 3. To the **exclusion of all others** including the company
- Section 294, 294A & 294AA applies to SSA in case of **all companies**;
- Body **corporate or Firm can also be appointed** as SSA;
- Act **do not** puts any restrictions on SSA remuneration

True Test of SSA

- **Case Law: Shalagram Jhajharia vs. National Company Limited**
- 1. **Description of parties** in the Agreement (whether buyer & seller or Principal & Agent);
- 2. **Dealings** as specified in the Agreement (whether its on principal to principal basis);
- 3. **Tenor** of the Agreement (whether the sole distributor or not)
If its principal to principal basis and sole distributor then SSA

Appointment of SSA [Section 294]

- **Conditional appointment**, i.e., there should be clause that appointment is subject to first GM approval;
- Appointment to be **approved at first GM** held after such appointment;
- If appointment **not made conditional** then **void ab initio**;
- **Even shareholders approval** in first GM **will not validate** appointment if clause was absent [*Arantee Manufacturing Corporation vs. Bright Bolts Private Limited*];
- Appointment of SSA will become invalid w.e.f. GM date;
- Notice of GM to disclose material facts regarding the exact nature of the agreement;
- **Appointment (including Reappointment) ≤ 5 years**

Restrictions on Appointment [Section 294AA]

- **CG may prohibit** SSA appointment;
- **Prohibition Conditions:**
 1. CG opines about **excess demand** for specified category of product & thus SSA not required;
 2. CG issues **notification**;
 3. Notification to **specify products & time period**;
- **SSA having substantial interest** in Company:
 1. **Prior approval of CG** required;
 2. Substantial Interest = beneficial interest in shares > Rs. 5 lakhs or 5% of paid up capital, lower
 3. Beneficial Interest = Individual/ Relatives/ Firm/ Partners/ Body Corporate/ Directors/ Relatives

CG Prohibitions

- Central Government has issued notification No. GSR 272(E) dated 5-4-2007, prohibiting appointment of sole selling agents for bulk drugs, drugs and formulations for three years., i.e. upto 4-4-2010;
- There is no prohibition to appoint sole selling agents for sale of bulk drugs in export market;
- The prohibition will not apply to any bona fide preparation included in Ayurvedic (including Siddha) or Unani (Tibb) system of medicine or homeopathic system medicine

Restrictions on Appointment [Section 294AA]

- **Section 294AA do not have retrospective effect;**
- On contravention, appointment is void;
- **Companies having $\geq$ Rs. 50 lakhs paid up capital:**
 1. SR required in first GM;
 2. CG approval (can be obtained after SSA appointment);
 3. If SR not passed or CG disapproves, SSA appointment invalid

Investigation by CG [Section 294]

- **Investigation where Company appoints SSA:**
 1. CG may call info. if it appears that there are good reasons;
 2. Info. to determine whether T&C of SSA appointment prejudicial to co.;
 3. CG can appoint inspectors if co. do not furnish info.;
 4. CG may vary the T&C of SSA appointment;
 5. **CG has no power to terminate SSA;**
 6. Principle of natural justice be followed [*Nanavati & Company Pvt. Ltd. vs. R. C. Dutt*]

Investigation by CG [Section 294]

- **Investigation where Company appoints ≥ 2 SA:**
 1. CG may call info. if it appears that there are good reasons;
 2. Info. to determine whether any of those SA to be declared as SSA;
 3. CG can appoint inspector if co. do not furnish info.;
 4. CG empowered to declare any SA as SSA and/ or variant T&C of appointment;
 5. Co. to produce books/ papers/ other info./ assist inspectors [Section 294(7)]

Compensation for Loss of Office [Section 294A]

- **Prohibition of Compensation:**
 1. SSA resignation b'coz of reconstruction/ amalgamation and is appointed as SSA in resulting co.;
 2. SSA voluntary resignation;
 3. SSA appointment disapproved in first GM;
 4. Guilty of fraud/ breach of trust/ gross negligence;
- If BOD fails to put resolution at first GM, SSA entitled to compensation [*Kerala Chlorates & Chemicals vs. ROC*];
- SSA entitled for work done in intervening period (i.e. from appointment till GM)

Compensation for Loss of Office [Section 294A]

Amount of Compensation:

- Lower of:
 1. unexpired tenure of SSA; **or**
 2. 3 years
- Basis would be **Average Remuneration** for period served;
- Compensation = Step A x Step B

Provisions applicable to SBA

- All the provisions apply *mutatis mutandis*;
- Compensation for loss of office N.A.
