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

+ **FAO(OS) 574/2015**

GIONEE COMMUNICATION EQUIPMENT CO LTD & ANR..... Appellants

Through : Mr Sai Krishna Rajagopal, Mr J.Sai Deepak,
Ms Rachel Mamatha, Ms Savni Dutt and Mr
Avijt Sharma, Advocates.

versus

TELEFONAKTIEBOLAGET LM ERICSSON (PUBL) Respondent

Through : Mr C.S.Vaidyanathan, Senior Advocate with
Mr C.M.Lall, Ms Saya Chaudhary,
Mr Ashutosh Kumar and Mr Rohit Kaushal,
Ms Metali Aggarwal and Mr S.Jane, Advocates.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

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19.10.2015

Cav. 1094/2015

The learned counsel for the respondent is present.

The caveat stands discharged.

CM No.23309/2015(exemption)

Exemption is allowed, subject to all just exceptions.

FAO(OS) 574/2015 & CM No.23308/2015(stay)

Counsel for the parties state that they have arrived at an interim arrangement,
which shall enure during the period of trial. The interim arrangement is as under:-

1. The Defendants shall, pending trial in the suit, make interim payments directly to the Plaintiff for sales made in India from the date of filing of the suit till 19.10.2015 based on the following rates:
 - i. For phones/devices capable of GSM – 0.8% of net selling price;

- ii. For phones/devices capable for GPRS + GSM – 0.8% of net selling price;
 - iii. For phones/devices capable of EDGE + GPRS + GSM – 1% of the net selling price;
 - iv. WCDMA/HSPA phones/devices, calling tablets – 1% of the net selling price.
2. The defendants shall, pending trial in the suit, make interim payments directly to the Plaintiff for sales made in India from 20.10.2015 to 19.10.2016 based on the following rates:
 - i. For phones/devices capable of GSM – 0.8% of net selling price;
 - ii. For phones/devices capable for GPRS + GSM – 0.8% of net selling price;
 - iii. For phones/devices capable of EDGE + GPRS + GSM – 1.1% of net selling price;
 - iv. WCDMA/HSPA phones/devices, calling tablets – 1.1% of the net selling price.
3. The Defendants shall, pending trial in the suit, make interim payments directly to the Plaintiff for sales made in India for the period from 20.10.2016 to 19.10.2020 based on the following rates:
 - i. For phones/devices capable of GSM – 0.8% of net selling price;
 - ii. For phones/devices capable of GPRS + GSM – 1% of net selling price;
 - iii. For phones/devices capable of EDGE + GPRS + GSM – 1.3% of net selling price;
 - iv. WCDMA/HSPA phones/devices, calling tablets – 1.3% of the net selling price.

(The Net Selling Price means with respect to each company product sold by the company or any of its affiliates the Selling Price charged by the company or its affiliate for such company product unless such sale has not been made on arms-length basis in which case the net selling price will be the selling price which the seller would realize from an unrelated buyer in an arms-length sale of an equivalent product in an equivalent quantity and at the equivalent time and place as such sale. Selling price shall mean the selling price charged

by the company for the company product in the form in which it is sold whether or not assembled and without excluding therefrom any components or sub-assemblies thereof (gross price) less 3% representing a deduction which shall cover usual trade discounts actually allowed to unrelated buyers on a regular basis, actual packing costs actual costs of insurance and transportation etc.).

4. Both the parties agree that with respect to the interim deposits initially made for sales of USD 24 Million for the period prior to the institution of the suit, the rates as specified in paragraph 1 would be applied. Upon applying the said rates, a joint computation of the amount to be paid to the plaintiff shall be submitted. Upon submission of such joint computation, appropriate payments shall be made to the Plaintiff directly by way of wire transfer by the Registrar, Delhi High Court, subject to the Plaintiff furnishing a Bank Guarantee for the exact amount in favour of the Registrar General of the Delhi High Court, to his satisfaction. As regards the balance, the Defendants would be entitled to withdraw such amount subject to a Bank Guarantee being furnished favouring the Registrar General for the said amount, for the said amount.
5. Insofar as the deposits made for the period after the institution of suit i.e. CS(OS) No.2010/2013 and pursuant to the order dated 31.10.2013, by the Defendants in the Court, the rates specified in Paragraph 1 shall be applied for all the said amounts. Upon applying the said rates, the computation of the amounts shall be submitted jointly by the parties. Upon receipt thereof, payments shall be made to the Plaintiff directly by way of wire transfer by the Registrar, Delhi High Court, subject to the Plaintiff furnishing a Bank Guarantee for the exact amount in favour of the Registrar General of the Delhi High Court, to his satisfaction. The banking details shall be submitted to the Registrar by counsel for the Plaintiff. The remaining amount shall be returned to the Defendants. At this stage, the interest that is accrued on the deposit shall be paid to the Defendants, subject to the Defendants furnishing a Bank Guarantee for the exact same amount in favour of the Registrar General of the Delhi High Court to his satisfaction.
6. Going forward, interim payments shall be made to the Plaintiff as per the rates specified above on a quarterly basis for sales made after the date of this order. Further, the Defendants shall continue to give intimation to the Plaintiff of the arrival of the consignments at customs and seek a No Objection Certificate (NOC) from the Plaintiff. Post inspection, the Plaintiff will forthwith inform the

Customs that it has no objection to the release of the consignment so that the consignment could immediately be handed over to the Defendants. In respect of interim payments made by the Defendants after the passing of this order, the Plaintiff undertakes to furnish Bank Guarantees for the exact amounts in favour of the Registrar General of the Delhi High Court to his satisfaction.

7. The Defendants shall not rely upon the above rates before the competent authorities or any other forums as it is not final in nature.”

It is also necessary to record that the Plaintiff’s submission that it has offered to the Defendants a Global Patent License Agreement (GPLA) on FRAND terms. However, the Defendants have refused to negotiate a GPLA and are only willing to enter into an interim arrangement for India pending trial. Without entering into the merits of the issue as to whether or not the Defendants are under an obligation to take a global FRAND license from the Plaintiff, this Court directs that purely as an interim arrangement, the parties will abide by the aforementioned conditions and rates pending trial in the suit. Further, it is clarified that the Plaintiff is entitled to pursue its legal remedies in other jurisdictions against the Defendants, as per laws of those jurisdictions.

It is also made clear that the above order is purely an interim arrangement and is not a determination of the FRAND rates for the plaintiff’s portfolio. Further, in future if the need arises, both the parties may seek variation/vacation of the interim arrangement which shall be subject to the orders of the Court.

The trial of the suit be expedited and it is directed that the same be completed, not later than 31.12.2016. The final arguments will commence immediately thereafter. The

parties have no objection to the aforesaid arrangement and shall remain bound by the same.

With the disposal of this appeal, IA Nos.17578/2013 (O.XXXIX R.4 CPC) and 16750/2013 (O.XXXIX R.1 & 2 CPC), which are pending before the learned Single Judge also stand disposed of in terms of the interim arrangement.

In view of the above-stated interim arrangement, no further directions are necessary in this appeal. The same stands disposed of.

Dasti.

BADAR DURREZ AHMED, J

OCTOBER 19, 2015
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SANJEEV SACHDEVA, J