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

+ **CS(COMM) 977/2016**

**TENXC WIRELESS INC & ANR**

..... Plaintiffs

Through: Mr. J. Sai Deepak, Mr. Sidhant Goel,  
Mr. Deepankar Mishra and Mr.  
Aditya Goel, Advs.

Versus

**MOBI ANTENNA TECHNOLOGIES (SHENZHEN)**

**CO. LTD & ORS**

..... Defendants

Through: Mr. Shantanu Tyagi and Ms. Apoorva  
Murali, Advs. for D-1.  
Mr. Ajay Kumar, Adv. for D-2&3.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**ORDER**

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**13.02.2018**

**IA No.1652/2018 (of plaintiffs for de-sealing of the sealed covers)**

1. The counsel for the defendants appearing on advance notice opposes and contends that under Section 108 of the Patents Act, 1970, the plaintiffs are entitled to either damages or account of profits. It is further contended that the defendants have also made a Counter-Claim challenging the validity of the patent and till the validity of the patent claimed by the plaintiffs is decided, the question of the plaintiffs being entitled to accounts or damages, does not arise.

2. I have however enquired from the counsel for the defendants, whether not the procedure prescribed by the Code of Civil Procedure, 1908 (CPC) and otherwise in law requires all arguments to be addressed by the counsels at one stage only and adjudication by one judgment only and whether not in

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such suits as of the genre to which this suit belongs, there is no procedure requiring first an adjudication on the validity of the patent and on the aspect of infringement and thereafter on the aspect of damages and accounts. In my opinion, the law does not permit piecemeal adjudication in such suits.

3. The counsel for the defendants agrees.

4. Once that is so, then the counsel for the plaintiffs would be required to study the accounts filed by the defendants in sealed covers in this Court, to be able to make his submission with respect thereto.

5. I have also enquired, whether not a Confidentiality Club can be constituted and whether not it is full-proof.

6. The counsel for the plaintiffs has in Court referred to para 14 of the judgment dated 1<sup>st</sup> March, 2016 in IA No.2192/2016 in CS(OS) No.764/2015 titled ***Telefonktiebolaget LM Ericsson (PUBL) Vs. Lava International Ltd.*** constituting a Confidentiality Club and which is as under:

*“14. Under these circumstances, it is directed that within one week, each party is directed to provide on an affidavit, a list of not more than three lawyers (who are not and have not been in-house lawyers of one of the parties) and not more than two external expert witnesses, who alone will be entitled to see the aforesaid confidential documents/patent license agreements. They (members of club) would be bound by confidentiality orders passed by this Court and shall not make copies or disclose the contents of the said aforesaid confidential documents/patent license agreements to anyone else or anywhere else, including in other legal proceedings, oral and written communications to the press, blog publications etc., so that the spirit of the confidentiality regime would be preserved. The inspection can only be done through the confidentiality club members and no copies will be made of such confidential*



*documents/license agreements. After the inspection, the aforesaid confidential documents/patent license agreements be resealed and again deposited with the Registrar General of this Court. It is also made clear that during recordal of evidence with respect to aforesaid confidential documents/patent license agreements etc., only the members of the confidentiality club shall be present. The proceedings of this Court, when the said documents are being looked at, would be in camera to the effect that only the members of the confidentiality club be permitted to be present.”*

7. Having gone through the aforesaid judgment, I have enquired, whether not it would be better that the members of the Confidentiality Club file an affidavit to be bound by the orders of this Court, rather than the parties filing the same.

8. The counsel for the plaintiffs agrees and states that the plaintiffs would have no objection to the members of the Confidentiality Club filing the affidavits.

9. The counsels for the defendants are agreeable to disclosure on the aforesaid terms.

10. Accordingly, the application is allowed and the following directions are issued:

(I) The plaintiffs and the defendant No.1 to, within two weeks, file an affidavit containing the particulars of not more than three lawyers (who are not and have not been in-house lawyers of the respective parties) and not more than two external expert witnesses, who alone will be entitled to see the accounts filed in this Court in sealed covers under order dated 12<sup>th</sup> April, 2012 and 24<sup>th</sup> July, 2017;



- (II) The said members of the Confidentiality Club would be bound by this order as well as any further confidentiality order passed and shall not make copies of or disclose the contents of the sealed envelopes to anyone else or anywhere else, including in any other legal proceedings, oral and legal communications to the press, blog publications etc., so that the spirit of the confidentiality regime is preserved;
- (III) The members of the Confidentiality Club to, before inspection, file in this Court affidavit agreeing to be so bound;
- (IV) The sealed envelopes be opened in the presence only of the members of Confidentiality Club and the members of the Club only be permitted inspection, without being allowed to make any copy thereof;
- (V) After the inspection, the documents be kept back in the sealed covers and the envelopes be sealed again;
- (VI) The parties may file their written submissions in two sets, with one of them pertaining to the documents in the sealed envelopes being itself in a sealed cover before the Court;
- (VII) The counsels shall be entitled to, at the time of hearing, seek in-camera hearing with respect to the submissions as to the contents of the documents in sealed cover.

11. With consent of parties, it is further ordered that the information contained in the sealed covers shall also be disclosed to senior counsels and junior counsels, and there will be no requirement for them to file affidavits in this regard.

12. The application is disposed of.

**RAJIV SAHAI ENDLAW, J.**

**FEBRUARY 13, 2018/bs..**  
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