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

\+ O.M.P.(I) (COMM.) 210/2016 & IA Nos.8520/2016 & 9325/2016

VISHAL VIDEO & APPLIANCES PVT. LTD. ..... Petitioner

Through: Mr Sachin Dutta, Senior Advocate with Mr Vijay Nair, Mr Rahul Malhotra, Mr Tanuj Arora and Ms Kanupriya, Advocates.

versus

SAMSUNG INDIA ELECTRONICS PVT. LTD. ..... Respondent

Through: Mr Rajeev Nayar, Senior Advocate with Mr Niraj Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **04.08.2016**

1. The petitioner has filed this petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia,* praying as under:-

> "(a) Issue a direction restraining the Respondent, its officers and representatives from in any manner from giving effect to the alleged termination notice dated 01.07.2014 pending clearance of unsold stocks lying with the Petitioner including the defective stocks and till payment of various incentives schemes, credit notes adjustment, pay-outs, grant of receivables from the retailers; and
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> (b) Issue a direction to the Respondent, its officers and representatives to put forth a definitive and time-bound plan to clear the unsold stocks including the defective

stocks, DOA stocks etc.; and

(c) Issue a direction restraining the Respondent, its officers and representatives from appointing any other distributor in the territory of the petitioner till the final adjudication of disputes between the parties in accordance with the terms and conditions of the Agreement dated 01.07.2014; and

(d) Issue a direction restraining the Respondent, its officers and representatives from directly dealing with any of the retailers of the petitioner since the petitioner is entitled to recover huge amounts from the said retailers in lieu of the supplies made to them by the petitioner and

(e) Award the costs of the petition in favour of the petitioners."

2. It is stated that the petitioner had entered into Sale and Supply Agreement dated 01.07.2014 with the respondent and in terms thereof was appointed as a distributor of the respondent's products. Certain disputes have arisen between the parties; the respondent has terminated the said Agreement and this has led the petitioner to file the present petition.

3. This matter was taken up by this court on 31.05.2016 and on the said date, the following order was passed:-

> "1. Mr. Sandeep Sethi, learned Sr. Counsel for the petitioner states that once again the inventory of the stock shall be given to the respondent during the course of the day.
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> 2. Mr. Rajiv Nayar, learned Sr. Counsel for the respondent states on receipt of such inventory, respondent shall verify the stock within two weeks and ensure that the stock is diverted to the new distributor.

> 3. Mr. Rajiv Nayar also states that respondent shall ensure that the new distributor gives proper credit on the stock diverted by the petitioner and the distributor pay the requisite amount to the petitioner for the stock diverted at the earliest.
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> 4. It is made clear that the petitioner shall not make fresh sales to the retailers and would be at liberty to make recovery of past sales."

4. The learned counsel for the parties state that in terms of the above order (statement made on behalf of the respondent), the stocks were jointly inventoried by the parties and most of the stocks have already been transferred by the respondent to its new distributor(s). The petitioner has also been credited in respect of the stocks diverted to the new distributors. However, certain controversies still persist as there is a difference in the value of the inventoried stocks and the amount received by the petitioner. In respect of the city of Delhi, the difference is ₹6,95,756/- and in respect of Jaipur the difference is ₹1,00,000/-. The stocks in the city of Lucknow have been inventoried but no payments have been made against the said inventory to the petitioner as yet.

5. Mr Nayar, the learned senior counsel appearing for the respondent states that insofar as the stocks at Lucknow is concerned, 90% of the amount has been received from the new distributor and the same would be paid to the petitioner by 07.08.2016. He states that the difference in the value of stocks and the amount paid for stock transferred in Delhi and Jaipur is mainly for the reason that certain stocks were found to be damaged.

6. Mr Dutta, the learned Senior counsel appearing for the petitioner disputes the said contention and states that there can be no controversy as to

the value of the goods because the value of the inventory was fixed after taking into account the defective goods.

7. Section 9 of the Act entitles a party to an arbitration agreement to apply to the court for interim measures of protection. The above dispute, that is, what is the value of the stocks and whether the petitioner is entitled to the value as claimed cannot be considered in the present proceedings; these disputes are clearly beyond the scope of section 9 of the Act. The petitioner would be at liberty to agitate all issues including the amount of payment received against transfer of stocks in the arbitration proceedings.

8. The prayer as made for restraining the respondent from terminating the Agreement cannot be granted as the petitioner has an adequate remedy by way of damages. Further, the Sale and Supply Agreement is determinable and therefore the same is not specifically enforceable.

9. At this stage, the learned counsel for the petitioner states that it is necessary that interim arrangement be made with respect to unsold stocks lying with the retailers to whom the petitioner has sold the goods. He further states that it requires to be clarified as to who would be responsible for any defective goods that are returned by the retailers in future. The aforesaid controversy also cannot be considered at this stage for the reasons as indicated above.

10. The petition is accordingly dismissed.

VIBHU BAKHRU, J

AUGUST 04, 2016
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