

\$~23

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P.(I) (COMM.) 212/2016**
VISHAL VIDEO & APPLIANCES PVT.LTD.

..... Petitioner

Through : Mr Rahul Malhotra, Adv
versus

SAMSUNG INDIA ELECTRONICS PVT. LTD.

..... Respondent

Through : Mr Niraj Singh & Mr Deepak Jaiswal,
Adv

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **05.09.2016**

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
- (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 terminated the said Agreement and this 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.

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.

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.

5. 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. Such 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.

6. The prayer 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.

7. 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.

8. The petition is accordingly dismissed.

SEPTEMBER 05, 2016

M

VIBHU BAKHRU, J