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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) No.267/2017, IA No.4399/2017 (under Order XXXIX Rules 1&2 CPC), IA No.5030/2017 (of defendants no.1&2 under Section 8(1) of Arbitration & Conciliation Act, 1996) and IA No.5031 (of defendants no.1&2 under Order VII Rule 10 read with Section 151 CPC).

ANDRITZ AG & ANR

..... Plaintiffs

Through: Mr. Sandeep Sethi, Sr. Adv. with Mr. Sudeep Chatterjee and Mr. Rohan Swarup, Advs.

versus

DATANG ENVIRONMENTAL TECHNOLOGIES & ENGINEERING CO. LTD & ORS

..... Defendants

Through: Mr. Darpan Wadhwa, Sr. Adv. with Mr. Tariq Muneer, Sharubh Shrivastava and Mr. Anirudh Tyagi, Advs. for D-1&D-2.
Mr. Shaheen for Mr. Puneet Taneja, Adv. for NTPC.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **05.05.2017**

1. The plaintiffs have sued to restrain the defendants no.1&2 viz. Datang Environmental Technologies & Engineering Co. Ltd., China and Datang Technologies & Engineering India Pvt. Ltd., India, from marketing the technology of the plaintiff for desulphurization of flue gas to the defendant no.3 NTPC Ltd.

2. It is *inter alia* the case of the plaintiffs i) that the plaintiff no.1 had entered into an agreement with the defendant no.1, a Chinese company, licensing the said technology to the defendant no.1 for use in China only; ii) that the defendant no.1, after the expiry of the said licence, now appears to

have set up the defendant no.2 Datang Technologies & Engineering India Pvt. Ltd. and which is bidding for the tenders floated by the defendant no.3 NTPC Ltd. for the said technology.

3. Mr. Tan Xiaode of the defendant no.1 on 26th April, 2017 stated that neither the defendant no.2 nor the defendant no.1 in the bid to the defendant no.3 NTPC Ltd. is using or intending to use the technology of the plaintiffs.

4. In view of the aforesaid statement made in the Court, it was in the order dated 26th April, 2017 observed that the suit itself can be disposed of recording the said stand of the defendants no.1&2. Accordingly, affidavits to the said effect of the defendants no.1&2 were directed to be filed.

5. The defendants no.1&2 have yesterday filed affidavits in the Court and time was given to the counsel for the plaintiffs to peruse the same.

6. The senior counsel for the plaintiffs today states that though in paragraph 18 of both the affidavits, the defendants no.1&2 respectively have stated that neither of them in the bid to the defendant no.3 NTPC Ltd. is using or intending to use the technology of the plaintiffs but have not stated that the defendants for other bids / contracts will not use the said technology.

7. The senior counsel for the defendants no.1&2 has drawn attention to para 14 of both the affidavits where it is stated that the technology used by the defendants no.1&2 is different.

8. The senior counsel for the plaintiffs states that the defendants should also make a statement that the defendants in future also shall not use the technology of the plaintiffs.

9. The senior counsel for the defendants no.1&2 on instructions states that the defendants no.1&2 are not using and shall in future also not use the

technology aforesaid of the plaintiffs.

10. The senior counsel for the plaintiffs states that though the plaintiffs do not admit the contents of the affidavits of the defendants but otherwise have no objection to the suit being disposed of accepting the aforesaid statement of the defendants no.1&2 and binding the defendants no.1&2 therewith.

11. The senior counsel for defendants no.1&2 states that the plaintiffs have been writing to all the prospective customers / clients of the defendants no.1&2, complaining that the defendants no.1&2 are violating the agreement with the plaintiffs and mischievously using technology of the plaintiffs.

12. The senior counsel for the plaintiffs on instructions states that the plaintiffs will henceforth not write to any party but shall be entitled to inform the parties of the statements made by the defendants no.1&2 in this proceeding and if find the defendants no.1&2 to be in violation of the statements, shall take appropriate action therefor.

13. Binding the parties to the statements made and cautioning the parties that breach of the said statements would entail consequences in this proceeding as prescribed in law, the suit is disposed of leaving the parties to bear their own costs.

Decree sheet in terms of today's order be prepared.

RAJIV SAHAI ENDLAW, J

MAY 05, 2017

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