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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 1429/2016 & IAs No.12940/2016 (u/O XXXIX R-1&2 CPC), 14185/2016 (u/S 151 CPC), 14186/2016 (of D-3 u/O XXXIX R-4 CPC), 14490/2016 (of D-3 u/O XI R-5(1) CPC), 15474/2016 (of D-1 for condonation of 2 days delay in filing reply to IA No.14185/2016), 15475/2016 (of D-2 for condonation of 2 days delay in filing reply to IA No.14185/2016), 15476/2016 (for condonation of 10 days delay in filing rejoinder in IA No.14186/2016) & 15477/2016 (of D-3 for condonation of 2 days delay in filing reply to IA No.14185/2016)

DOLBY INTERNATIONAL AB & ANR Plaintiffs

Through: Mr. C.M. Lall, Sr. Adv. with Ms. Saya C. Kapur, Mr. Vivek Ranjan, Mr. Devanshu Khanna, Mr. Palash Maheshwari, Mr. Sajan S. Prasad, Ms. Nancy Roy & Ms. Niharica Khanna, Advs.

Versus

UNIVERSAL DIGITAL CONNECT LIMITED & ORS.... Defendant

Through: Mr. Mudit Sharma, Ms. Snigdha & Ms. Himani Chaturvedi, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **15.01.2020**

1. The two plaintiffs, viz. Dolby International AB and Dolby Laboratories Inc., instituted this suit against the three defendants, viz. (i) Universal Digital Connect Ltd., (ii) Planet Mobiles Pvt. Ltd. and (iii) Videocon Industries Ltd., for permanent injunction to restrain the defendants from infringing the Patent Nos. IN 230121, IN 264129, IN 224775 and IN 242206 of the plaintiffs and for recovery of damages and rendition of accounts.

2. The suit was entertained and summons thereof ordered to be issued and vide ad-interim order dated 20th October, 2016, the defendants restrained from manufacturing / assembling, importing, selling or offering for sale cell phones, tablets and televisions which are ISO/IEC 14496-3:2009(E) compliant and have High Efficiency Advanced Audio Coding v1 (“HE-AAC v1”) technology (sometimes also referred to as aacPlus v1, eAAC, AAC+ or CT-aacPlus) and High Efficiency Advanced Audio Coding v2 (“HE-AAC v2”) technology (sometimes also referred to as aacPlus v2, eAAC+, AAC++ or Enhanced AAC+) and commission issued to visit the premises of the defendants to seize the infringing goods.
3. The defendant no.3 filed an application under Order XXXIX Rule 4 of the CPC and vide order dated 17th November, 2016 thereon the defendant no.3 permitted to continue with manufacture, sale and import of devices subject to the payment specified therein.
4. All the three defendants have since filed their written statements.
5. The orders dated 18th September, 2017, 20th September, 2017 and 23rd May, 2018 record that settlement talks were underway.
6. On 26th September, 2018 it was informed that proceedings for insolvency of the defendant no.3 had been initiated and moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 (IBC) had come into force.
7. On 29th July, 2019, attention of the counsels was drawn to ***SSMP Industries Ltd. Vs. Perkan Food Processors Pvt. Ltd.*** 2019 SCC OnLine Del 9339 and which in turn relies upon ***Power Grid Corporation of India Ltd. Vs. Jyoti Structures Ltd.*** (2018) 246 DLT 485 and it was enquired, why

in view thereof the proceedings in this suit should remain suspended.

8. The senior counsel for the plaintiffs informs that prior to the moratorium coming into force, the plaintiffs and the defendant No.3 had negotiated and were at the threshold of signing a licence agreement but which could not fructify.

9. The counsel for the Interim Resolution Professional (IRP) with respect to the defendant no.3 has today in Court handed over the affidavit of the Resolution Professional appointed with respect to defendant No.3, by way of status report and Minutes of the Sixth Meeting of the Committee of Creditors with respect to defendant no.3 held on 24th December, 2019. The same are taken on record and be tagged to Part I Volume I file.

10. The counsel for the Resolution Professional states that the Committee of Creditors (COC) with respect to defendant no.3 has rejected the settlement proposal negotiated by the ex-management of defendant no.3 with the plaintiffs.

11. The senior counsel for the plaintiffs has contended, that (i) in terms of the third paragraph of page 11 of the documents handed over today, the defendant no.3 has not been using the technology qua which the present suit was filed and does not intend to do so; (ii) the Resolution Professional in paragraph 4 of his affidavit handed over today has stated that the plaintiffs were yet to file a suitable claim for any amount claimed by them; (iii) amounts are due to the plaintiffs from the defendant no.3 under the Settlement which was reached by the plaintiffs with the ex-management of the defendant no.3; (iv) the COC, in the Minutes of the Meeting held on 24th December, 2019 have not rejected the claim but has merely recorded that no

preferential treatment could be given to the plaintiffs; (v) the plaintiffs are willing to file their claim before the COC with respect to the defendant no.3 and pursue the matter there, instead of before this Court; (vi) the suit claim against the defendants no.1 and 2 who were merely distributors of the defendant no.3, is not pressed; and, (vii) since the defendant no.3 is now not indulging in the act of infringement, there is no need to press the relief of permanent injunction and liberty be granted to the plaintiffs to sue again if any cause of action arises.

12. The aforesaid proposal of the senior counsel for the plaintiffs is found to be reasonable, and the suit is disposed of, (a) qua defendants no.1 and 2 viz. (i) Universal Digital Connect Ltd. and (ii) Planet Mobiles Pvt. Ltd., as not pressed; (b) qua defendant no.3 Videocon Industries Ltd., insofar as for the relief of permanent injunction, in view of the Minutes of the Meeting held on 24th December, 2019 of the COC of the defendant no.3 to the effect that the defendant no.3 has not been using the Dolby technology and does not intend to do so and with liberty to the plaintiffs to sue the defendant no.3 again for the relief of permanent injunction if the defendant no.3 at any time in future again infringes the patent of the plaintiffs; and, (c) qua defendant no.3 insofar as for recovery of money, with liberty to the plaintiffs to pursue the money claims before the COC or such other forum as may be permissible under the IBC.

13. Needless to state, that if any fresh cause of action arises against defendants no.1 and 2, the plaintiffs shall have liberty to sue on the basis thereof.

The parties are left to bear their own costs.

RAJIV SAHAI ENDLAW, J

JANUARY 15, 2020/‘gsr’..

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