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

\+ O.M.P. (T) (COMM.) 56/2020 & I.A.8479/2020, I.A.8646/2020, I.A. 783/2020

SAMSUNG INDIA ELECTRONICS PRIVATE LIMITED ..... Petitioner

Through: Mr. Tarang Agarwal, Adv.

versus

BLUEFLUX DIGITAL PRIVATE LIMITED ..... Respondent

Through: Mr. Rahul Kumar, Adv.

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

O R D E R (O R A L)

% **18.01.2021**

I.A.783/2020 ***(under Order XXII Rule 3 of CPC)***

1. By this joint application, the parties seek disposal of the present petition as the disputes between them have been amicably settled under the aegis of the Delhi High Court Mediation & Conciliation Centre. The terms of settlement have been placed on record and shall be treated as an annexure to the present order. They may, for ready reference be reproduced thus:

"**1. TERMS OF SETTLEMENT**

1.1. The Parties agree and acknowledge that the Sales and Supply Agreement dated 14.09.2018 executed between the Parties hereto stands fully terminated with effect from 24.09.2020 and all rights and obligations thereunder stand fully satisfied/ concluded. Subject to compliance of the terms of this Settlement Agreement by Samsung BlueFlux hereby undertakes not to question or challenge the termination of the Agreement, in any manner whatsoever.

1.2. The Parties hereby further agree and acknowledge that Samsung shall, on a '·*without prejudice*' and '*no admission*' basis and only for the purposes of the present settlement, transfer/ divert only the transferable stock specified in Schedule - II to its new distributor(s), subject to the following terms and conditions:

(a) The transferable stock shall *be* transported by BlueFlux (at its own costs) to the new distributor(s) of Samsung (as intimated to BlueFlux by Samsung), within a period of ten (10) days from the date of execution of this Settlement Agreement. BlueFlux shall give prior notice (in writing) of atleast 24 hours to Samsung communicating the place and time from where the transferable stock would be transported so that Samsung can ensure that the representative is present to verify the transferable stock specified in Schedule - II.

(b) BlueFlux shall ensure that the transferable stock is in the same condition as found during the joint physical verification held in November, 2020. In case, during verification at the time of transportation by BlueFlux, any product(s) or package(s) from the transferable stock is found to be different and/ or in a damaged condition (as per the judgment of Samsung), the said product(s) would be rejected by Samsung/its distributor(s) and no amounts would be payable to BlueFlux for those product(s).

(c) Simultaneous to the delivery of the transferable stock to the new distributor(s) of Samsung, BlueFlux shall raise GST invoice(s) and E-way bill(s), as required under applicable GST laws, upon the new distributor(s) of Samsung.

(d) Subject to points above, Samsung shall ensure that the distributor to whom the transferable stocks would be transferred pays the total amount of Rs. 1,00,43,971/-(Rupees One Crore Forty Three Thousand Nine Hundred and Seventy One only) being the amount payable towards transferable stock, inclusive of all applicable taxes, excluding the GST input tax amount, as per Schedule-II. to this Settlement Agreement, or such other deducted amount, in case any damaged product(s) is/are found at the time of inspection at the premises of BlueFlux (as mentioned in (a) above), directly to BlueFlux within a period of one (1) week from the delivery of the transferable stock and/ or raising of GST invoice(s) by BlueFlux, whichever is later.

(e) BlueFlux agrees to be fully liable to pay/transfer GST input tax amount of Rs.18,43,930/- (Rupees Eighteen Lakhs Forty-Three Thousand Nine Hundred and Thirty only) as per applicable GST laws.

(f) Subject to points above, Samsung shall ensure that the distributor to whom the transferable stocks would be transferred submits two post-dated cheques of Rs. 9,21,965/- (Rupees Nine Lakhs Twenty One Thousand Nine Hundred and Sixty Five) each dated 25.01.2021 and 25.02.2021 respectively, being the amount equivalent to GST input tax amount, as per Schedule-II to this Settlement Agreement, or such other deducted amount, in case any damaged product(s) is/ are found at the time of inspection at the premises of BlueFlux (as mentioned in (a) above), with BlueFlux, within a period of one (1) week from the delivery of the transferable stock and/or raising of GST invoice(s) by BlueFlux, whichever is later.

(g) BlueFlux agrees and undertakes to furnish proof of payment of GST input tax amounts to Samsung towards the Stock transferred in the month of December 2020 on or before 23.01.2021 and towards the Stock transferred in the month of January 2020 on or before 23.02.2021, post which BlueFlux shall become entitled to deposit the aforesaid post-dated cheques (as mentioned in (f) above).

(h) Parties agree that in case of failure of BlueFlux to furnish proof of payment of GST input tax amounts to Samsung (i) Samsung will be entitled to forfeit the amount of Rs. 18,43,930/- (Rupees Eighteen Lakhs

Forty-Three Thousand Nine Hundred and Thirty only) and consequently, be entitled to stop payment towards the aforesaid cheques (as stated in (f) above) deposited with BlueFlux; and (ii) BlueFlux would be liable to compensate the distributor/ Samsung, as the case may be, for the entire tax amount, denial of input credit, including interest and penalty, to be determined by concerned authorities. In such an eventuality, if the said post-dated cheques (as referred in clause (f) above) are presented by BlueFlux and dishonoured due to "stop payment" on account of reasons set out in this clause, it is hereby agreed and acknowledged that BlueFlux shall not be entitled to initiate any proceedings against Samsung for such dishonour of cheque(s). It is hereby expressly agreed and acknowledged that the present clause shall not be construed to be barred under Section 28 of the Indian Contract Act, 1872, and the present negative covenant shall be entitled to be specifically performed in terms of Section 42 of the Specific Relief Act, 1963 (as amended).

1.3. The Parties further agree and acknowledge that in view of BlueFlux's request, Samsung, only as a gesture of goodwill and with a view to mitigate financial loss suffered by BlueFlux, on a *'without prejudice'* basis and without admitting any liability in this regard whatsoever, is agreeable to assist BlueFlux in relation to its outstanding dues from its dealers/retailers as mentioned in **Schedule-III**, in the following limited manner and based upon the terms and conditions stipulated hereinafter:

(a) the representatives of Samsung would assist BlueFlux by doing joint calls alongwith representatives of BlueFlux to the dealers/ retailers of BlueFlux, as mentioned in Schedule-III;

(b) the representatives of Samsung would make joint visits with the representatives of BlueFlux to the offices/shops of dealers/retailers of BlueFlux, as mentioned in Schedule-III;

(c) this exercise would be conducted by Samsung for a maximum period of forty (40) days starting 15 January 2021.

1.4. BlueFlux agrees and acknowledges that Samsung has not verified the list contained in Schedule-III (neither the names of the dealers/retailers mentioned therein nor the alleged amounts shown as outstanding therein from the respective dealers/retailers). BlueFlux further agrees and acknowledges that since Samsung has no privity or contractual or legal relationship with the dealers/retailers of BlueFlux, Samsung assumes no liability, of any nature whatsoever, towards BlueFlux for making recoveries from its dealers/retailers or from any other third party.

1.5. BlueFlux further agrees and acknowledges that no liability can be fastened upon Samsung or its representatives/ affiliates, in case any amount sought to be recovered by BlueFlux from its dealers/retailers or third parties is not fully or partially recovered or remains outstanding.

1.6. BlueFlux further agrees that in no event would Samsung be made a party or be called as a witness in any legal proceeding(s) initiated between BlueFlux and or any of BlueFlux's dealers/retailers or any third party in any of their *inter-se* dispute in relation to any outstanding amounts or delivery of Samsung products or for any other reason whatsoever. BlueFlux assures and confirms Samsung that if any legal proceeding(s), claim(s) and/ or action(s) are initiated against Samsung, or if Samsung is dragged in any legal proceeding as a co-Defendant, in an *inter-se* dispute between BlueFlux with its dealer(s), retailer(s), in such an event, BlueFlux shall be accountable and responsible, and hereby undertake to take steps to defend all such proceeding(s), claim(s) and/ or action(s), if any, on behalf of Samsung, at its own costs, risks and expenses and also indemnify Samsung and bear the costs, charges, fees (professional or otherwise), court fees etc. incurred by Samsung, as a result of, arising from, or in connection with, or relating to any such proceeding(s) claim(s) and/ or action(s).

1.7. Within one week of execution of this Settle1nent Agreement, Samsung shall refund credit balance of Rs.

2,35,247/- (Rupees Two Lakhs Thirty-Five Thousand Two Hundred and Forty-Seven) to BlueFlux.

l.8. Within one week of execution of this Settlement Agreement, Samsung shall return the original bank guarantee bearing no. 0123320BG0000010 dated 16.06.2020 of Rs. 10,00,000/-(Rupees Ten Lakhs only) to BlueFlux, which was furnished by BlueFlux pursuant to the terms of the Agreement.

1.9. BlueFlux further agrees and undertakes to irrevocably release and covenant not to sue, or commence or continue any action, suit or proceeding, against Samsung in respect of (a) the settle1nent in relation to the lifting/ diverting of the transferable Stocks; and/ or (b) the limited assistance being provided by Samsung to BlueFlux in relation to the outstanding amount being recoverable by BlueFlux from its dealers/retailers; and/or (c) the outstanding amount purportedly recoverable by BlueFlux from its dealer(s)/retailer(s); and/or (d) refund of credit balance as mentioned in Clause 1.7 above; and/ or (e) bank guarantee as mentioned in Clause 1.8 above.

1.10. The Parties agree and acknowledge that pursuant to completion of the obligations of the Parties under this Settlement Agreement, Samsung shall not be liable to pay any amounts to BlueFlux, on any account whatsoever.

2. CESSATION OF LEGAL PROCEEDINGS AND RELEASE OF CLAIMS

2.1. As a pre-condition to the Clause 1 above, BlueFlux agrees to, on or before the next date of hearing i.e. 11.01.2021, unconditionally withdraw the Section 9 Petition filed before the Ld. District Judge, Commercial Court-III, Patiala House Couse, New Delhi, by filing an appropriate application.

2.2. As a pre-condition to Clause 1 above, the Parties agree to treat the purported arbitration proceedings (alongwith all Orders passed and proceedings presided over by the Ld. Sole Arbitrator) initiated by BlueFlux as null and void for all intents and purposes. BlueFlux further agrees to unconditionally withdraw the said purported arbitration proceedings within *two* weeks from the date of execution of this Settlement Agreement.

2.3. The Parties shall, within two (2) weeks from the execution of this Settlement Agreement, file a joint application before the Hon'ble High Court of Delhi in the Section 14 Petition for placing on record this Settle1nent Agreement and disposing off the Section 14 Petition in terms of this Settlement Agreement. A copy of the joint application duly executed and verified by the Parties is appended to this Settlement Agreement as Schedule-IV and the original thereof is being retained by Samsung for filing the same before the Hon'ble Delhi High Court.

2.4. The Parties hereto agree and acknowledge that they have amicably resolved all the disputes arising out of, relating to, or having any connection with the Agreement, including all the claims in the proceedings initiated by either Party, and have no further claims or demands against each other arising out of the same, in any manner whatsoever."

2. In view of the fact that disputes stand settled, this petition does not survive for consideration or adjudication. It is accordingly disposed of in terms of the aforesaid settlement. The parties shall remain bound by the terms of settlement.

3. In view of the fact that the disputes stand settled, the orders passed in the arbitral proceedings do not survive, and would accordingly stand set aside.

4. The petition stands disposed of in the aforesaid terms.

C.HARI SHANKAR, J

JANUARY 18, 2021/kr