



2024:DHC:4547-DB



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 31.05.2024

+ **FAO(OS) (COMM) 47/2024 and CM Nos.15791/2024,
15792/2024 15793/2024 and 15794/2024**

GUANGDONG OPPO MOBILE TELECOMMUNICATIONS
CORP. LTD. & ORS. Appellants

versus

INTERDIGITAL TECHNOLOGY
CORP. & ORS Respondents

AND

+ **FAO(OS) (COMM) 48/2024 and CM Nos.15798/2024,
15799/2024 15800/2024 and 15801/2024**

GUANGDONG OPPO MOBILE TELECOMMUNICATIONS
CORP. LTD. & ORS Appellants

versus

INTERDIGITAL VC HOLDINGS
INC. & ORS Respondents

Advocates who appeared in this case:

For the Appellants : Mr Saikrishna Rajagopal, Mr Sidharth Chopra, Ms Julien George, Ms Anu Paarcha, Mr Avijit Kumar, Mr Vivek Ayyagari, Mr Aniruddh Bhatia, Mr Arjun Gadhoke, and Ms N. Parvati, Advocates.



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For the Respondents : Mr Gourab Banerji, Senior Advocate with Mr Pravin Anand, Ms Vaishali Mittal, Mr Siddhant Chamola, Ms Pallavi Bhatnagar, and Ms Gitanjali Sharma, Advocates for R-1 to 4.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MS JUSTICE TARA VITASTA GANJU

JUDGMENT

VIBHU BAKHRU, J

1. The appellants have filed the present appeals impugning a common judgment dated 21.02.2024 (hereafter *the impugned judgment*) passed by the learned Single Judge disposing of various applications moved in CS(COMM) 692/2021 and CS(COMM) 707/2021.
2. The appellants have no grievance in regard to the impugned judgment disposing of IA No.11485/2022 in CS(COMM) 692/2021 and IA No.11484/2022 in CS(COMM) 707/2021, which were filed by the appellants seeking constitution of a Confidentiality Club. The present appeals are confined to the directions issued by the learned Single Judge to deposit of a sum of [REDACTED], with the Registry of this Court to cover license fee for the past sales for the year 2021-22, 2022-23 and 2023-24, and a further sum of [REDACTED] if the trial of the aforementioned suits is not completed by 31.03.2025. Additionally, the learned Single Judge had also imposed costs quantified at ₹5,00,000/-.
3. The learned Single Judge rejected the applications [IA No. 4065/2023 in CS(COMM) 692/2021 and IA No. 4066/2023 in



CS(COMM) 707/2021] filed by the appellants, *inter alia*, seeking to permit the appellants to secure the respondents by bank guarantees of an Indian Bank, in lieu of the global bank guarantee. In terms of the impugned judgment, the learned Single Judge modified the earlier order dated 06.10.2022, whereby the respective applications filed by the respondents under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (hereafter *CPC*) were disposed of. The aforementioned order dated 06.10.2022 was passed in view of the consent terms arrived at between the parties, whereby the respondents were secured by bank guarantees furnished by HSBC Continental Europe, 38 avenue, Kléber, 75116, Paris (hereafter *HSBC Paris*).

4. The appellants contend that the appellants have been penalised on account of defaults for non-compliance of directions by the third parties (HSBC India and HSBC Paris). They claim that the appellants were not responsible for non-compliance by the said entities and had also volunteered to secure the respondents by a bank guarantee of an Indian Bank. However, the Court had erroneously faulted the appellants for non-compliance of directions by HSBC Paris and HSBC India. They also contend that the learned Single Judge has not provided any cogent reason for rejecting the applications filed by the appellants for securing the respondents by bank guarantees from an Indian Bank instead of bank guarantees by HSBC India. Additionally, they contend that the learned Single Judge has passed the impugned judgment on irrelevant considerations. The launch of investigations by the concerned authorities or the alleged dismal financial condition of the appellants



were not relevant considerations as the appellants' applications were to secure the plaintiffs by an unconditional bank guarantee.

5. The respondents have stoutly contested the present appeals and contend that there are no grounds to interfere with the discretion exercised by the learned Single Judge.

6. It is contended on their behalf that the directions to make a deposit is a *pro tem* measure as the appellants had defaulted in ensuring that the earlier consent terms are complied with. It is also contended that the impugned judgment has been passed under Section 151 of the CPC and therefore, is not appealable under Section 13(1A) of the Commercial Courts Act, 2015.

CONTEXT

7. Before proceeding to address the controversy in these appeals, it would be necessary to briefly note the factual context in which the present controversy arises.

8. Interdigital Technology Corporation; Interdigital Inc.; Interdigital Holdings Inc.; and Interdigital Patent Holdings Inc., have instituted the suit, CS(COMM) 692/2021, *inter alia*, claiming a decree of injunction interdicting the appellants – Guangdong Oppo Mobile Telecommunication Corporation Ltd.; OPPO Mobiles India Private Limited; Oneplus Technology (Shenzhen) Co. Ltd.; Oneplus Technology India Pvt. Ltd. and Realme Mobile Telecommunication (India) Private Limited (hereafter *the defendants*) – from infringing



certain patents as well as decrees for damages, rendition of accounts, delivery etc. The above-mentioned plaintiffs, who are arrayed as respondent nos.1 to 4 in the present appeal, FAO(OS)(COMM) 47/2024, claim that they are pioneers in wireless technology and hold approximately 7% to 10% of the standard essential patents (hereafter SEPs) mapped to telecommunication technological standards including 2G, 3G, 4G, 5G etc. The respondents in FAO(OS)(COMM) 47/2024 claim that they are involved in development of the standards for the telecommunication industry and the SEPs held by them are necessary for implementing the 3G and 4G standards. They also claim that they have more than 470 (four hundred and seventy) patents in India including those in respect of which applications have been made.

9. The defendants are, *inter alia*, engaged in manufacturing, assembling, importing and selling mobile telecommunication devices under the brand names Oppo, Realme and OnePlus. The respondents in FAO(OS)(COMM) 47/2024 claim that since the defendants are engaged in selling mobile telephonic devices mapped to standards including 2G, 3G, 4G and 5G and the suit patents are SEPs mapped to those standards, the defendants are liable to be interdicted in using the said patents without obtaining a license from Interdigital.

10. Interdigital VC Holdings Inc., Interdigital Inc. and Interdigital Holdings Inc have instituted the suit, CS(COMM) 707/2021, claiming reliefs in respect of three SEPs, which relate to H.265 High Efficiency



Video Coding (HEVC) Standard. They claim that the defendants are infringing the said SEPs as they have not obtained a license from them.

11. The plaintiffs in the suits CS(COMM) 707/2021 and CS(COMM) 692/2021, are jointly and separately, as may be apposite in the given context, referred to as *the plaintiffs*. The SEPs, which are the subject matter of the two suits¹ are hereafter referred to as '*the SEPs*'

12. The plaintiffs had filed applications in the said suits seeking interim reliefs under Order XXXIX Rule 1 and 2 of the CPC being IA Nos.17456/2021 in CS (COMM) 707/2021 and IA 17314/2021 in CS (COMM) 692/2021. Apart from the above, the plaintiffs had also filed applications being IA No.17315/2021 in CS(COMM) 692/2021 and IA No.17457/2021 in CS (COMM) 707/2021, praying that the defendants be directed to make a payment in respect of each mobile device sold by them. In IA 17315/2021 in CS (COMM) 692/2021, the plaintiffs sought

¹ A. CS(COMM) 692/2021– involve 5 Standard Essential Patents (hereinafter, 'SEPs') that relate to wireless communication technology standards. Suit patents are as follows:

Sr. No.	Patent	Indian App. No.	PCT App. No.
1.	IN 262910	8446/DELNP/2007	PCT/US2006/015275
2.	IN 295912	1233/DELNP/2009	PCT/US2007/018440
3.	IN 313036	6660/DELNP/2008	PCT/US2007/002571
4.	IN 319673	2730/DELNP/2009	PCT/US2007/022759
5.	IN 320182	4977/DELNP/2009	PCT/US2008/001344

B. CS(COMM) 707/2021– involve 3 SEPs that relate to H.265 high efficiency video coding (hereinafter, 'HEVC') standard. Suit patents are as follows:

Sr. No.	Patent	Indian App. No.	PCT App. No.
1.	IN 242248	142/DELNP/2005	PCT/US2003/021735
2.	IN 299448	1137/DELNP/2009	PCT/US2003/021735
3.	IN 308108	2576/DELNP/2009	PCT/US2007/022795



directions that the defendants be paid amount equal to 0.40% of sale price of their 3G compliant devices; 0.50% of the sale price of the these 4G compliant devices; and 0.60% of the sale price of their 5G compliant devices. In IA No.17457/2021 in CS (COMM) 707/2021, the plaintiffs sought directions for the defendants to pay an amount equal to USD 0.10 for sale of each device complying with HEVC/H.265 technology till the disposal of their interim application. The applications filed by the plaintiffs for *pro tem* payments were heard together.

13. Whilst the defendants are contesting the suits, they also claim that the parties are in negotiations for licence of the said patents. The defendants had received offers for licensing the SEPs and made counter offers. In furtherance of their offers, the defendants had furnished bank guarantee(s) to cover their counter offers to the extent of [REDACTED]. However, the said bank guarantee(s) was objected to as the same were furnished by the bank in China and was encashable only in China.

14. The order dated 12.09.2022 passed by the learned Single Judge also records the contention that the said bank guarantees were issued pursuant to the proceedings between the parties in Germany.

15. The said bank guarantee(s) were to cover the offer for a global license of the SEPs. During the course of the hearing held on 12.09.2022, before the learned Single Judge, the counsel for the defendants submitted that Guangdong Oppo Mobile Telecommunication Corporation Ltd. (hereafter also referred to as



Oppo) had furnished following two bank guarantees dated 08.09.2022 issued by HSBC Paris:

“(i) Bank Guarantee No. PEBPRT649005 for an amount of [REDACTED] and

(ii) Bank Guarantee No. PEBPRT649062 for [REDACTED].”

16. It was contended on behalf of the defendants that the said bank guarantees adequately secured the plaintiffs and their objections to the bank guarantees furnished earlier – that the same were issued by Bank in China and was encashable in China – were addressed. It was also the defendants’ stand that the bank guarantees (hereafter referred to as *the Global Bank Guarantees*) were agnostic of any jurisdiction and covered the defendants’ counter offer for a global license.

17. At a subsequent hearing held on 12.09.2022, the learned counsel appearing for the plaintiffs sought time to take instructions whether *the Global Bank Guarantees* referred to by the defendants had been received by them and whether the same were acceptable. Copies of the Global Bank Guarantees furnished by the defendants were also taken on record.

18. Thereafter, on 15.09.2022 the learned counsel confirmed that the Global Bank Guarantees issued by HSBC Paris were handed over to the learned counsel for the plaintiffs in Germany on 13.09.2022. It was, thus, contended on behalf of the defendants that the plaintiffs’ prayer



for a *pro tem* arrangement on the ground that the financial conditions of the defendants was not good or that it was unsecured, was addressed.

19. Whilst the plaintiffs acknowledged that the Global Bank Guarantees were received by them, the learned counsel appearing for the plaintiffs contended that the safeguards needed to be incorporated so as to ensure that the Global Bank Guarantees act as a security for the proceedings pending before this Court and the hearing was adjourned. Considering the aforesaid contention, the learned Single Judge issued directions that the Global Bank Guarantees would be subject to certain conditions, which would require to be accepted by the defendants to specifically cover the disputes currently being adjudicated in India.

20. Paragraph nos.7 and 8 of the order dated 15.09.2022 is relevant and are set out below:

“7. This Court has heard the submissions of the parties and has also perused the bank guarantees and proposed safeguards. This Court notes that the bank guarantees have been furnished and shown to the Court at this stage, when the submissions in the *pro tem* application are almost at the stage of conclusion. Even so, the terms of the bank guarantees have been set out in the previous order dated 12th September, 2022. A perusal of the bank guarantees would show that the terms state that the amount would be payable to the Plaintiffs by HSBC Continental Europe, 38 Avenue Kléber, 75116, Paris, upon receipt of demand from the Plaintiffs.



8. However, considering the fact that the bank guarantees do not refer specifically to the disputes currently being adjudicated in India, i.e., the two suits before this Court, in order for these bank guarantees to act as security qua the amounts contained in the counter-offer, as also for securing the Plaintiffs for sales made by the Defendants in India, both in the past and going forward, the said bank guarantees would be subject to the following conditions which would be required to be agreed to by the Defendants:

- i) That the said bank guarantees shall not be cancelled by the Defendants during the pendency of the present proceedings;
- ii) That the said bank guarantees would act as security for any orders passed by this Court in these proceedings, for payment of monetary sums by the Defendants to the Plaintiffs;
- iii) That the furnishing of the said bank guarantees shall not be deemed to be a determination of FRAND rates or rates payable by the Defendants to the Plaintiffs;
- iv) The said bank guarantees shall be subject to the jurisdiction of this Court and no proceedings in any jurisdiction, in respect of the said bank guarantees shall be initiated by the Defendants for seeking return of the same, while the present suits are pending, without the permission of this Court;



v) The bank guarantees shall not be construed as a liability of the Defendants to pay any amount to the Plaintiffs and the same shall only be considered as a pro tem arrangement.

vi) If the said bank guarantees stand encashed or discharged due to orders passed in any other jurisdiction where the parties are contesting against each other, the parties would be free to approach this Court at that stage including for furnishing of adequate security.

vii) Upon the above terms being agreed to by the Defendant, the Plaintiff would not press for grant of any interim injunction or for any other security/pro tem arrangement and the trial in the suits shall be expedited. An endeavour shall be made for conclusion of trial within one year.”

21. Thereafter, the applications [IA Nos.17457/2021 and 17456/2021] for making payments were taken up on 06.10.2022. At the said hearing, the learned counsel appearing for the defendants contended that the defendants were agreeable to the conditions specified in the order dated 15.09.2022, however, proposed a modification, which was accepted by the learned counsel for the plaintiffs. In view of the above, the learned Single Judge passed an order with the consent of the parties. The relevant extract of the said order is relevant and is set out below:



“18. Today, Ms. Julien George, Id. Counsel appearing for the Defendants, submits that the Defendants are broadly agreeable for the conditions which were specified in the previous order dated 15th September, 2022. However, she proposes that in place of point number (iii) contained in paragraph 8 of the said order, the following language maybe used:

“The amount of the said bank guarantees shall not be deemed to be a final determination of applicable FRAND rates.”

19. This modification is acceptable to the Id. Counsel for the Plaintiffs.

20. Accordingly, in view of the above discussions and the background of the matters as discussed above, with the consent of parties, the following directions are issued:

- i. The bank guarantees issued by HSBC, Paris, bearing numbers **PEBPRT649005** and **PEBPRT649062** dated 8th September, 2022 for

██████████ and ██████████

respectively, i.e., for a total sum of ██████████

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are taken on record. The originals of the same shall remain in the custody and control of the Plaintiffs.

- ii. The said bank guarantees, the originals of which have been handed over by the Defendants to Id.



Counsel for the Plaintiffs in Germany - Dr. Marina Wehler, counsel at M/s Arnold Ruess, shall remain valid and renewed during the pendency of the present two suits and shall not be cancelled by the Defendants, without permission of this Court.

- iii. The said bank guarantees would act as the security for any orders passed by this Court, in these proceedings, including for the payment of monetary sums by the Defendants to the Plaintiffs, if any;
- iv. The said bank guarantees shall be subject to the jurisdiction of the Delhi High Court and no proceedings in any jurisdiction in respect of the said bank guarantees shall be initiated by the Defendants, whether for seeking return of the same or cancellation, withdrawal, etc., during the pendency of the present suits, without permission of this Court;
- v. The amount of the said bank guarantees shall not be deemed to be a final determination of applicable FRAND rates;
- vi. The bank guarantees shall not be construed as a liability of the Defendants to pay any amount to the Plaintiffs and shall only be considered as a *pro tem* arrangement to secure the Plaintiffs during the pendency of these suits;



vii. If the said bank guarantees stand encashed or discharged due to orders passed in any other jurisdiction where the parties are contesting against each other, the parties would be free to approach this Court at that stage for appropriate orders including for furnishing of adequate security.

viii. Upon the above conditions being complied with by the Defendants and the relevant affidavits being submitted as below, the Plaintiffs would not press for grant of any interim injunction or for any other security/*pro tem* arrangement, and the trial in the suits shall be expedited. An endeavour shall be made for conclusion of trial within one year.

21. In order to ensure that the above conditions are duly operative upon the Defendants, a competent official who is duly authorized by all the Defendants, as also an official of HSBC, India shall appear before the worthy Registrar General of this Court for acceptance of these bank guarantees, to the satisfaction of the worthy Registrar General. A duly authorized competent official of the Plaintiffs shall also be present on the said date for recordal of the statements on behalf of the Plaintiffs.

22. In this regard, the affidavit of the duly authorized official of the Defendants shall be filed within a period of two weeks, along with an affidavit / certificate from the duly authorized / competent official of HSBC, India.



23. The matters be now placed before the Id. Registrar General for the purpose of recording of the statements of the parties as also HSBC, India, on **2nd November, 2022**.

24. Accordingly, the applications under Order XXXIX Rule 1 and 2 CPC and for *pro tem* arrangement, being ***I.A. 17314/2021, I.A. 17315/2021, I.A. 17456/2021, and I.A. 17457/2021***, are disposed of in the above terms.

25. It is made clear that the present order shall not be construed as an opinion on merits.”

22. On the next date of hearing, that is, on 02.11.2022, the learned counsel for the defendants reported that HSBC India had refused to authorise any official to appear before the Registrar as all Branches of HSBC India were separate entities. However, HSBC Paris had issued certificate that the respective Global Bank Guarantees would be honoured, but did not confirm whether an official of the Bank would appear for verification of the Global Bank Guarantees.

23. In the aforesaid backdrop, the defendants filed applications (being IA Nos.18113/2022 and 18112/2022), *inter alia*, praying that order be issued directing the officials of HSBC India to appear before the worthy Registrar General for recording the statement relating to the Global Bank Guarantees issued by the HSBC Paris. The said applications were listed before the learned Single Judge on 09.11.2022 and the learned counsel for the defendants reported that HSBC India had not consented to send any official to confirm the Global Bank



Guarantees issued by HSBC Paris. However, the certificates issued by HSBC Paris were taken on record.

24. In view of the above, the learned Single Judge directed issuance of notice to HSBC India as well as HSBC Paris and listed the matter before the worthy Registrar General of this Court on 24.11.2022 for the aforesaid purpose. The said applications moved by the defendants were disposed of in terms of the said order.

25. The learned Single Judge was of the view that since HSBC Paris had issued the Global Bank Guarantees, the corresponding Branch of HSBC in India was duty bound to appear before the worthy Registrar General to confirm the issuance of the bank guarantees and undertake all formalities. Paragraph nos.7 to 11 of the said order are relevant and are set out below:

“7. In so far as the confirmation by HSBC, India is concerned, today, Mr. Saikrishna, Id. Counsel for the Defendants, submits that HSBC, India is not consenting to send an official to confirm the certificates and Bank Guarantee issued by HSBC, Paris in terms of order dated 6th October, 2022.

8. Considering the directions given in the order dated 6th October 2022, it is made clear that as the Defendants have relied upon the certificates issued by HSBC, Paris in the present suits, the corresponding branch of HSBC in India would be duty-bound to appear before the worthy Registrar General of this Court and confirm the issuance of the said bank guarantees and undertake all the other



formalities which may be directed. The Defendants shall also ensure that the bank guarantees are accepted by the worthy Registrar General to his satisfaction.

9. Accordingly, the worthy Registrar General shall issue notice to HSBC, India at HSBC Bank, Institutional Plot No.68, Sector 44, Gurgaon-122002 (**Email ID:** pratyushsharma@hsbc.co.in), as also to HSBC Continental Europe, 38 avenue Kleber, 75116, **Paris** (**Email ID:** henri.saliou@hsbc.fr).

10. List before the worthy Registrar General on 24th November, 2022, for this purpose.

11. ***IA.18113/2022*** and ***LA. 18112/2022*** are disposed of accordingly.”

26. In compliance with the aforesaid order, notices were issued to HSBC Bank, Gurgaon as well as HSBC Paris (HSBC Continental Europe, 38 Avenue Kléber, 75116, Paris) with the directions to depute a competent official to join the proceedings through video conferencing for confirming the Global Bank Guarantees.

27. The matter was listed on a few dates thereafter, but none appeared on behalf of HSBC Paris. However, HSBC India filed an application (IA No.21356/2022) seeking modifications of the directions issued on 09.11.2022. It sought to contest the observations that HSBC India was duty bound to appear before the worthy Registrar General to confirm the issuance of the Global Bank Guarantees. Submissions regarding the said application [IA No.21356/2022 in CS(COMM) 692/2021] were heard on 14.02.2023 and the judgment was reserved.



28. Thereafter, the defendants filed two applications [being IA No. 4065/2023 in CS(COMM) 692/2021 and IA No. 4066/2023 in CS(COMM) 707/2021] for furnishing bank guarantees from an Indian Bank. In view of the said applications, the learned Single Judge released IA No. 21356/2022 as reserved and directed that the said application along with two applications would be heard together.

29. The said applications were listed before this Court and were finally heard on 01.05.2023. However, two other applications [IA No.11485/2022 in CS(COMM) 692/2021 and IA No.11484/2022 in CS (COMM) 707/2021], which were pending remained part heard and were heard on various dates. In this regard, the learned Single Judge also directed that IA No.11485/2022 and IA No.11484/2022 as well as IA No.21356/2022 to be treated as part heard.

30. The judgment in the said applications was reserved on 13.12.2023.

SUBMISSIONS

31. Mr. Saikrishna, learned counsel appearing for the defendants submitted that the directions issued to make a deposit and not permit furnishing of a bank guarantee is disproportionate. He submitted that the said directions were issued solely on account of failure of third parties to comply with the directions issued by the court, for which the defendants were not responsible. He submitted that, in fact, the defendants had volunteered to secure the plaintiffs by an independent



bank guarantee from an Indian Bank. However, the same was rejected. He further submitted that the learned Single Judge had modified the consent order dated 06.10.2022 without the consent of the parties and to the detriment of the defendants inasmuch as the defendants are now required to make a deposit instead of securing the plaintiffs by a bank guarantee as volunteered. He submitted that the learned Single Judge had erred in not appreciating that the defendants could not have compelled HSBC India or HSBC Paris to appear before the Court. The defendants had however secured Certificate of Authenticity as provided by HSBC Paris and there is no allegation that the Certificate of Authenticity is not genuine.

32. He submitted that defendants' applications for furnishing a bank guarantee of an Indian Bank, was rejected on the ground that it would place the defendants in a better position than as contemplated under the order dated 06.10.2022. He submitted that this was patently erroneous as furnishing a bank guarantee of an Indian Bank in lieu of a bank guarantee from HSBC Paris did not place the defendants in a better position. Next, he submitted that the learned Single Judge had failed to consider that the Global Bank Guarantees furnished by the defendants were not jurisdiction specific but were agnostic of any jurisdiction. The fact that the Global Bank Guarantees issued by HSBC Paris had been handed over to the counsel for the plaintiffs in Germany did not imply that the Global Bank Guarantees were limited to amounts determined in the said jurisdiction or were subject to directions of the courts in that jurisdiction alone. He submitted that the Global Bank Guarantees were



in respect of global sales and not in respect of sales in any particular jurisdiction or in respect of any particular proceedings.

33. He further submitted that the learned Single Judge had erred in proceeding on the basis that the immovable assets worth over [REDACTED] of OPPO Mobiles India Pvt. Ltd. (arrayed as defendant no.2) were encumbered. He submitted that the affidavit furnished by defendant no.2 clearly affirmed that the immovable properties were unencumbered. He submitted that notwithstanding that the officials of HSBC India and HSBC Paris had not appeared before the Court, the conditions imposed regarding confirmation of authenticity of the Global Bank Guarantees and ensuring that the same are not cancelled during the pendency of the proceedings, were accepted and complied with.

34. He submitted that the learned Single Judge had modified the consent order without the consent of the defendants and without examining the *prima facie* case of the parties. He stated that it was the defendants' case that the suit patents were not essential or valid, however, no *prima facie* view was taken by the learned Single Judge in regard to the said defence.

35. He pointed out that three out of the five patents asserted in CS(COMM) No.692/2021 had been invalidated in foreign jurisdiction and the defence raised by the defendants was not unsubstantiated. He also submitted that the learned Single Judge had proceeded to take into accounts irrelevant considerations. He submitted that the financial condition of the defendants was not relevant as the plaintiff was secured



by an unconditional bank guarantee. The defendants had proposed furnishing a bank guarantee from IDBI Bank Ltd. and there is no doubt as to solvency of the said bank. The fact that investigations had been commenced by authorities in India in respect of certain allegations, was also not relevant for rejecting the defendants' applications for securing the plaintiffs by bank guarantees from an Indian Bank.

36. Next, he submitted that the parties had been in negotiations for a considerable period and the defendants had made serious counter offers, which were backed by bank guarantees, however, the negotiations were not concluded. He contended that unless the license fee demanded by the plaintiffs is determined to be compliant with FRAND terms, the defendants could not be faulted for not concluding the licensing arrangement. He submitted that High Court of Justice Business & Property Courts of England and Wales Intellectual Property List (Patent Court) in *Interdigital Technology Corporation v. Lenovo Group Ltd.:* [2023] EWHC 539 (Pat) had found that the rates offered by the plaintiffs were Supra FRAND, however, the said decision was completely ignored by the learned Single Judge.

37. He submitted that the observations of the learned Single Judge that the defendants' sales in India range from 23 to 25% of the global sales is without any basis. He contended that even according to the plaintiffs, the sales of the defendants in India constitute approximately 18.7% of their global sales. The application filed by the defendants for



submission of a bank guarantee from an Indian bank was also premised on the said basis.

38. Mr. Gourab Banerji and Mr. Pravin Anand, learned counsel advanced submissions on behalf of the plaintiffs.

39. Mr. Banerji submitted that it was necessary that an urgent order be issued as patents have limited life and the patents involved in the suit are expiring within a period of three to five years. He further submitted that the impugned judgment could not be faulted for the following reasons:

- (i) that the defendants have been using the SEP without paying any amount as license fees and have dominated the market;
- (ii) that the patents involved are SEPs and there can be no dispute that the same are used in the mobile telephones manufactured and sold by the defendants as they mapped the relevant standards;
- (iii) that the defendants are facing severe financial constraints and apart from one of the defendants, none of the others have any immovable property in India;
- (iv) that despite orders for expediting trial, the trial has not been completed; and
- (v) that it is well accepted that that orders of deposit can be made as a *pro tem* measure.



40. He also countered the submission that the learned Single Judge was required to take a *prima facie* view before issuing directions for deposit of money as a pro-term measure. He submitted that the court was not required to evaluate the defence before issuing directions for *pro tem* measures. He referred to the decision of the Coordinate Bench of this Court in ***Nokia Technologies OY v. Guangdong OPPO Mobile Telecommunications Corp. Ltd. & Ors.: Neutral Citation 2023:DHC:4465-DB*** in support of his contentions. He also submitted that the Court had in other cases, namely, ***Xiaomi Technology & Anr. V. Telefonaktiebolaget LM Ericsson (Publ) & Anr., FAO (OS) No.522/2014*** dated 16.12.2024, ***Telefonaktiebolaget LM Ericsson (Publ) v. Mercury Electronics & Anr.: CS(OS) No.442/2023*** and in ***Koninklijke Philips N.V. v. Xiaomi Inc. & Ors.: CS(COMM) No.502/2020*** passed *pro tem* orders for making a security deposit.

41. Lastly, he submitted that the impugned order is not appealable as they are not orders passed under Order XXXIX Rules 1 & 2 of the CPC but orders passed under Section 151 of the CPC and thus not appealable under Section 13(1A) of the Commercial Courts Act read with Order XLIII of the CPC.

42. Mr. Pravin Anand also advanced submissions on similar lines as advanced by Mr. Banerji.

REASONS & CONCLUSION

MAINTAINABILITY



43. The first question to be addressed is whether the present appeals are maintainable. It was earnestly contended by Mr. Gourab Banerji that the present appeals are not maintainable as the impugned orders have been passed under Section 151 of the CPC and such orders are not appealable under Section 13(1A) of the Commercial Courts Act, 2015 read with Order XLIII Rule 1 of the CPC. He contended that the impugned order could not be construed as an order under Order XXXIX Rules 1 and 2 of the CPC as it is a *pro tem* order under Section 151 of the CPC and not a temporary injunction under Order XXXIX of the CPC.

44. We find the aforesaid contention unpersuasive. It is relevant to note that the plaintiffs had filed applications under Order XXXIX Rules 1 and 2 CPC, *inter alia* praying for a temporary injunction restraining the defendant from manufacturing, assembling, distributing, advertising or dealing in any manner with the mobile devices that comply with the relevant standards [3G, 4G & 5G in CS(COMM) No.692/2021 and HEVC standards in CS(COMM) No.797/2021]. However, in the alternative, the plaintiffs had sought directions for the defendants to pay the stated amounts to secure their interests. The alternative directions sought in IA No.17314/2021 and IA No.17456/2021 filed under Order XXXIX Rules 1 and 2 of the CPC in CS(COMM) No.692/2021 & CS(COMM) No.707/2021 respectively, are set out below:

IA No.17314/2021 in CS(COMM) No.692/2021:



“(ii) Alternatively, in lieu of an order of temporary injunction as prayed in paragraph 32(i) above, an order directing the Defendants to pay a security of an amount equal to 0.40% of sales price of their 3G complaint devices; 0.50% of sales price of their 4G compliance device and 0.60% of sales price of their 5G complaint devices, including but not limited to Oppo A53, Oppo A74 5G, Oppo Reno 5 Pro, OnePlus 9 Pro, OnePlus 8, OnePlus 9R 5G, Realme 8 5G, Realme C 25, and Realme 8 Pro or any device that infringes the Plaintiffs’ portfolio of 3G, 4G, 5G SEPs, representative candidates where are Indian patent nos.262910, 295912, 313036, 320182 and 319673 or any other patent that the Plaintiff may additionally add to these proceedings upon seeking leave of this Hon’ble Court.”

IA No.17456/2021 in CS(COMM) No.707/2021

(ii) Alternatively, in lieu of an order of temporary injunction as prayed in paragraph 35 (i) above, an order directing the Defendants to pay a security of an amount equal to USD 0.10 per unit for the sale of each device including but not limited to Oppo A53, Oppo A74 5G, Oppo Reno 5 Pro, OnePlus 9 Pro, OnePlus 8, OnePlus 9R 5G, Realme 8 5G, Realme C 25, and Realme 8 Pro or any device that infringes the Plaintiffs’ portfolio of HEVC SEPs, representative candidates where are Indian patent nos. 242248, 299448 and 308108 or any other patent that the Plaintiff may additionally add to these proceedings upon seeking leave of this Hon’ble Court.”



45. It is apparent from the above, that the directions for payment of stated sums were sought in lieu of temporary injunction restraining the defendants from using the patented technologies (the SEPs) in question and as a condition for continuing their use pending adjudication of the suits.

46. The plaintiffs had also filed applications styled as applications under Section 151 of the CPC (being IA No.17315/2021 and IA No.17457/2021) along with the aforementioned applications under Order XXXIX Rules 1 & 2 of the CPC. It is relevant to refer to the prayers made in the said applications styled as applications under Section 151 of the CPC. The same are set out below:

IA No.17315/2021 in CS(COMM) No.692/2021:

- “a) A direction to the Defendants for the payment of monies directly to the Plaintiff, equivalent to to 0.40% of sales price of their 3G compliant devices; 0.50% of sales price of their 4G compliant devices and 0.60% of sales price of their 5G compliant devices, i.e., as per the Plaintiffs’ program rates on the sales of “Oppo” “OnePlus” and “Realme” branded devices made by the Defendants, including but not limited to Oppo A53, Oppo A74 5G, Oppo Reno 5 Pro, OnePlus 9 Pro, OnePlus 8, OnePlus 9R 5G, Realme 8 5G, Realme C 25, and Realme 8 Pro, which infringe the Plaintiffs’ 3G, 4G, 5G SEPs, or
- b) A direction to the Defendants to pay any other amount as considered appropriate by this Hon’ble Court in



order to secure the rights and interests of the Plaintiffs during the pendency of the Plaintiffs' interim injunction application.”

I.A. 17457/ 2021 in CS (Comm.) 707/ 2021:

- “a) A direction to the Defendants for the payment of monies directly to the Plaintiff, equivalent to USD 0.10 per sale of each device compliant with HEVC/H.265 technology, as per the Plaintiffs' program rates on the sales of “Oppo”, “OnePlus” and “Realme” branded devices made by the Defendants, including but not limited to Oppo A53, Oppo A74 5G, Oppo Reno 5 Pro, OnePlus 9 Pro, OnePlus 8, OnePlus 9R 5G, Realme 8 5G, Realme C 25, and Realme 8 Pro, which infringe the Plaintiffs' HEVC SEPs, or
- b) A direction to the Defendants to pay any other amount as considered appropriate by this Hon'ble Court in order to secure the rights and interests of the Plaintiffs during the pendency of the Plaintiffs' interim injunction application;”

47. It is apparent from the above that the alternative prayers made in IA No.17314/2021 in CS(COMM) No.692/2021 and IA No.17456/2021 in CS(COMM) No.707/2021 (being the applications filed under Order XXXIX Rules 1 and 2) are similar to the prayers made in the applications styled as applications under Section 151 of the CPC.

48. It is also apparent that the prayers in the aforementioned applications are in the nature of seeking interim orders for securing part of the claims and in effect as a condition for not interdicting use of the



SEPs at the ad interim stage. The nature of the orders sought thus falls within the broad scope of injunctive orders under Order XXXIX of the CPC.

49. The said applications under Section 151 of the CPC and the applications under Order XXXIX Rules 1 and 2 of the CPC were disposed of by an order dated 06.10.2022. This is expressly stated in paragraph 24 of the said order, which reads as under:

“24. Accordingly, the applications under Order XXXIX Rules 1 and 2 CPC and for *pro tem* arrangement, being I.A. 17314/2021, I.A. 17315/2021, I.A. 17456/2021, and I.A. 17457/2021, are disposed of in the above terms.”

50. The impugned judgment dated 21.02.2024 modifies the order dated 06.10.2022 principally for the reason that certain other directions issued by the learned Single Judge in the order dated 06.10.2022 were not complied with. Clearly, an order modifying an earlier order issued under Order XXXIX Rules 1 and 2 of the CPC cannot be construed as an order other than an order passed under Order XXXIX Rules 1 and 2 of the CPC because the effect of it is to put in place a modified set of directions issued under Order XXXIX Rules 1 and 2 of the CPC.

51. The expression “*pro tem*” literally means ‘for the time being’ in Latin. It is clear that *pro tem* orders are interim or ad-interim orders. The applications filed by the plaintiffs under Section 151 of the CPC also sought ad-interim orders till the pendency of the applications seeking directions for payments of amounts pending consideration of



the application for interim injunction. Thus, essentially, the plaintiffs had sought ad-interim orders. However, in terms of the order dated 06.10.2022, the Court had also disposed of the applications for interim injunctions (applications under Order XXXIX Rules 1 and 2 of the CPC) and the interim relief granted would be operative till conclusion of the trial.

52. Concededly, an order passed on an application under Order XXXIX Rules 1 and 2 of the CPC is appealable under Section 13(1A) of the Commercial Courts Act, 2015 as such an order is specifically mentioned under Order XLIII Rule 1 of the CPC.

MODIFICATION OF CONSENT TERMS

53. The next question to be examined is whether the Court could issue the impugned order modifying the order dated 06.10.2022, without the consent of the parties.

54. It is trite law that a consent order cannot be modified save and except with the consent of the parties. It is material to note that the counsel for both the parties – Mr. Saikrishna and Mr. Gourab Banerji – had relied on the said principle although in different contexts. Mr. Saikrishna had contended that the order dated 06.10.2022 being a consent order, could not be modified except by consent of the parties; therefore, the impugned judgment is liable to be set aside. Mr. Banerji, on the strength of the same principle, contended that the defendants' applications for securing the plaintiffs by a bank guarantee issued by an



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Indian Bank for a lesser value covering only Indian sales, could not be accepted as the same would amount to altering the consent terms. Thus, it is thus common ground that a consent order could not be modified without the consent of the parties.

55. It is material to note that the impugned judgment disposed of three applications. This included IA No.21356/2022 filed by HSBC India seeking recall of the directions issued in terms of the order dated 09.11.2022, whereby an official of HSBC India was directed to appear before the Registrar General of this Court and confirm the issuance of the Global Bank Guarantees and to undertake all other formalities, which may be directed. The Court had also issued directions for issuance of notice to HSBC Paris as well. The said application was allowed and HSBC India was discharged.

56. The impugned judgment also rejected the two applications filed by the defendants proposing to substitute the Global Bank Guarantees by Guarantees from an Indian bank. It is apparent that the learned Single Judge had *suo motu* modified the order dated 06.10.2022, which was a consent order. As noted above, the same is impermissible.

57. It is material to note that the learned Single Judge had rejected the applications filed by the defendants for accepting bank guarantees from an Indian bank (IDBI Ltd.) on the ground that the plaintiffs were not willing to accept the same and the order dated 06.10.2022 being a consent order could not be modified.



58. The Learned Single Judge had thus proceeded to relook at the plaintiffs' application for *pro tem* measures. However, it is apparent that the learned Single Judge had not recalled the order dated 06.10.2022 and revived the application for *pro tem* measures for a fresh adjudication but had proceeded to modify the order dated 06.10.2022 in terms of the impugned judgment.

REASONS FOR THE IMPUGNED PRO TEM DIRECTIONS

59. The impugned order indicates that the learned Single Judge had rejected the defendants' offer to furnish bank guarantees of an Indian Bank as a *pro tem* measure for several reasons including the following. First, that HSBC India was duty bound to comply with the orders passed by the learned Single Judge but was unwilling to assure the Court that the Global Bank Guarantees would be subject to orders of the Court and a considerable amount of judicial time was expended for the said reason. Second, that the defendants had an obligation to ensure that HSBC India or HSBC, Paris appear before the Court and subject the bank guarantees to the jurisdiction of the Court but the defendants had failed to fulfil their obligation. Third, that the Global Bank Guarantees were subject to the jurisdiction of the German Courts or other Courts and therefore could not serve as a security for the plaintiffs in India. Fourth, that the financial conditions of the defendants did not inspire confidence and there was a doubt whether the plaintiffs' rights could be safeguarded by a bank guarantee. Fifth, despite furnishing the Global Bank Guarantees, the Munich Court in Germany had granted an



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injunction against the defendants. And sixth, that the defendants could not be placed in a better position than they were in terms of the consent order dated 06.10.2022.

60. It is material to note that the defendants do not, at the interim stage, seek to contest that the rights of the plaintiffs to be protected to the extent of the counter offers made by them. They had also offered bank guarantees of an Indian bank for the amount payable in respect of the sales in India. However, the defendants stoutly contest that the defendants were in breach of any of their obligations and that their offer for furnishing bank guarantees of an Indian bank would place them in a better position than the consent terms, which were noted in the order dated 06.10.2022. The defendants also dispute that the bank guarantees of an Indian bank do not adequately protect the rights of the plaintiffs.

61. In the aforesaid background the principal questions that are required to be answered are: (i) whether the defendants have breached the terms of their obligations under the consent order and if so, whether the same would warrant rejection of their offer to furnish the bank guarantees from an Indian bank; (ii) whether furnishing of a bank guarantee of an Indian bank would place the defendants in a better position than that as agreed to earlier; (iii) and if so, whether that could be a ground to reject the defendants' application and to direct that they deposit the amount in the court; (iv) whether there was any doubt that the plaintiffs rights could not be safeguarded by way of a bank guarantee.



COURSE OF PROCEEDINGS BEFORE THE LEARNED TRIAL COURT

62. Before proceeding further, it is relevant to note the progression of the proceedings that led to the passing of the impugned judgment. As noted above, the Court had passed orders for interim injunctions and *pro tem* measures (IA No.17314/2021 & IA No.17456/2021 and IA No.17315/2021 & IA No.17457/2021). At the initial stage², when the applications for interim injunction and *pro tem* orders [in CS(COMM) No.692/2022] were taken up for hearing, the learned counsel appearing for the plaintiffs informed the Court that the parties were in negotiations for several months and offers and counter offers had been exchanged. In the aforesaid context, he had submitted that the *pro tem* arrangement ought to be put in place to bind the defendants “*at least to deposit the admitted counter offer amount*”. He had supported his request for such prayer on the ground that the financial condition of the defendants was precarious. It was contended that although the defendants’ revenues were in the range of [REDACTED], they were showing losses. The learned counsel for the defendants had countered the aforesaid submissions and submitted that the defendants had valuable immovable properties in India and had sought time to file an affidavit of assets. Although there was delay in bringing the affidavits on records, the defendants were permitted to do so on payment of costs³. The

² Order dated 21.04.2022 in CS(COMM) No.692/2022

³ Common order dated 26.05.2022 passed in CS(COMM) No.692/2021 & CS(COMM) No.707/2021



applications filed in CS(COMM) No.707/2021 were also taken up together with the applications filed in CS(COMM) No.692/2021.

63. The oral submissions on behalf of the plaintiffs in support of their plea for a *pro tem* demand were concluded on 15.07.2022. The learned counsel for the defendants had also completed the arguments in part and the matters were listed on 25.07.2022. During the course of proceedings, the learned Single Judge issued the following directions to the plaintiffs:

“7. On the next date of hearing, Id. Counsel for the Plaintiffs shall place before the Court a chart, in a sealed cover, consisting of the royalty rates or per device rates being paid by other similarly placed implementers in a tabular form. The corresponding agreements thereof shall also be carried in a sealed cover, by the Id. Counsel for the Plaintiffs for producing before the Court, if the Court so directs during the course of hearing.”⁴

64. On the next date of hearing, that is on 25.07.2022, the submissions on behalf of the defendants were partly heard. It is apparent from the proceedings that the plaintiffs had submitted charts containing figures of royalty rates, pursuant to the order dated 15.07.2022 passed by the learned Single Judge. The Court considered the figures in the chart and, *inter alia*, issued the following directions:

“3. Considering the figures contained in the charts, the technical expert(s) of the parties, as also in-house executives of both parties who are involved in and are familiar with the

⁴ Order dated 15.07.2022



inter-se negotiations in these matters, shall remain present either virtually or physically, on the next date of hearing.”

65. In the meanwhile, the defendants also filed counterclaims, which were directed to be numbered. Thereafter on 05.08.2022, the Court also interacted with the technical experts in regard to offers and counter offers between the parties⁵. The court also perused the license agreement with another party produced by the plaintiffs and constituted the Confidentiality Club to provide a fair opportunity to the defendants to analyze the said agreement⁶. Submissions were heard on the applications on 05.09.2022 and 12.09.2022.

66. The applications for ad-interim injunction / interim injunction were heard by the learned Single Judge on number of occasions. It is clear from the orders that the submissions centered around the interim relief sought by the plaintiffs to the effect that the defendants be directed to deposit the admitted counter offer amount⁷.

67. It is apparent from the above that the learned Single Judge had considered the offers and counter offers and also interacted with the experts involved in negotiations. Whilst, the matter remained thus, the learned counsel for the defendants reiterated that the plaintiffs would be secured by a Global Bank Guarantee to the extent of [REDACTED]. The Court noted that the parties were in litigation in another jurisdiction

⁵ Recorded in paragraphs 2 and 3 of the order dated 05.08.2022

⁶ Order dated 16.08.2022.

⁷ Order dated 21.04.2022 passed by the learned Single Judge

⁸ Noted as [REDACTED] in the order dated 12.09.2022 which was subsequently rectified by the order dated 15.09.2022.



including Germany and United Kingdom apart from India and bank guarantees had been furnished by the defendants to secure the counter offers. However, the same were objected to as they were from a bank in China and were encashable only in China.

68. The learned counsel reported that the said objection was addressed as the Global Bank Guarantees⁹(two) had been issued in favour of the plaintiffs by HSBC Continental Europe, Paris (HSBC Paris). According to the defendants, the issuance of the Global Bank Guarantees addressed the objections raised by the plaintiffs and thus the plaintiffs were secured to the extent of the counter offers made by the defendants. It is material to note that the Global Bank Guarantees were unconditional and HSBC Paris is liable to pay the amount if the Global Bank Guarantees are invoked. The Global Bank Guarantees contained a term that read: “This guarantee is subject to uniform rules for demand guarantees (URDG) 2010 Revision, ICC Publication No.758. In case of any subject matter not covered by the Rules, the German Rule shall apply.”. Copies of the Global Bank Guarantees were taken on record¹⁰.

69. It was subsequently confirmed¹¹ to the Court that the Global Bank Guarantees, which were taken on record, had been received by the plaintiffs. The learned counsel for the defendants also confirmed that the Global Bank Guarantees for a total sum of [REDACTED] could

⁹ Bank Guarantee No.PEBPRT649005 for [REDACTED] and Bank Guarantee No.PEBPRT649062 for [REDACTED].

¹⁰ Order dated 12.09.2022

¹¹ As noted in the order dated 15.09.2022



not be cancelled¹². At that stage, it was contended on behalf of the plaintiffs that certain further safeguards need to be incorporated if the Global Bank Guarantees were to be accepted by the Court in order to ensure that the same act as security for the proceedings, which are pending in the Court. The counsel also handed over a proposed list of safeguards.

70. The Global Bank Guarantees did not specifically refer to the disputes pending in India (in particular the two suits). The Court also observed that in order for the Global Bank Guarantees to act as a security *qua* the amounts contained in the counter offer, the Global Bank Guarantees were required to be subject to certain conditions. It is important to note that these included the following two principal conditions, which are pivotal to the controversy that ensued. First that the bank guarantees would act a security for orders passed by this Court in these proceedings for payment of monetary sums by defendants to the plaintiffs. And second, that the Global Bank Guarantees would be subject to jurisdiction of this Court. The said conditions were accepted by the Court with slight modification in respect of one clause. Accordingly, the Court issued the following directions with the consent of the parties¹³:

“20. Accordingly, in view of the above discussions and the background of the matters as discussed above, with the consent of parties, the following directions are issued:

¹² Order dated 06.10.2022.

¹³ Paragraph 20 of the order dated 06.10.2022.



- i. The bank guarantees issued by HSBC, Paris, bearing numbers **PEBPRT649005** and **PEBPRT649062** dated 8th September, 2022 for [REDACTED] and [REDACTED] respectively, i.e., for a total sum of [REDACTED] ([REDACTED]) are taken on record. The originals of the same shall remain in the custody and control of the Plaintiffs.
- ii. The said bank guarantees, the originals of which have been handed over by the Defendants to Id. Counsel for the Plaintiffs in Germany - Dr. Marina Wehler, counsel at M/s Arnold Ruess, shall remain valid and renewed during the pendency of the present two suits and shall not be cancelled by the Defendants, without permission of this Court.
- iii. The said bank guarantees would act as the security for any orders passed by this Court, in these proceedings, including for the payment of monetary sums by the Defendants to the Plaintiffs, if any;
- iv. The said bank guarantees shall be subject to the jurisdiction of the Delhi High Court and no proceedings in any jurisdiction in respect of the said bank guarantees shall be initiated by the Defendants, whether for seeking return of the same or cancellation, withdrawal, etc., during the pendency of the present suits, without permission of this Court;



- v. The amount of the said bank guarantees shall not be deemed to be a final determination of applicable FRAND rates;
- vi. The bank guarantees shall not be construed as a liability of the Defendants to pay any amount to the Plaintiffs and shall only be considered as a pro tem arrangement to secure the Plaintiffs during the pendency of these suits;
- vii. If the said bank guarantees stand encashed or discharged due to orders passed in any other jurisdiction where the parties are contesting against each other, the parties would be free to approach this Court at that stage for appropriate orders, including for furnishing of adequate security.
- viii. Upon the above conditions being complied with by the Defendants and the relevant affidavits being submitted as below, the Plaintiffs would not press for grant of any interim injunction or for any other security/*pro tem* arrangement, and the trial in the suits shall be expedited. An endeavour shall be made for conclusion of trial within one year.”

71. The learned Single Judge also issued further directions for implementation of the above conditions and directed that the officials of HSBC India shall appear before the Registrar General of this Court for acceptance of the bank guarantees to the satisfaction of the Registrar General¹⁴.

¹⁴ Paragraph 21 of the order dated 06.10.2022.



72. However, officials from HSBC India did not appear before the Registrar as directed. At the instance of the defendants, notice was issued to HSBC India and HSBC Paris. As noted herein before, HSBC India declined to confirm or accept any liability in respect of the Global Bank Guarantees. However, HSBC Paris issued certificates confirming the Global Bank Guarantees but were reportedly reluctant to appear until notice was served in accordance with the Mutual Legal Assistance Treaty between India and France.

73. In the given circumstances, the defendants made an alternate offer for securing the plaintiffs in respect of their counter offer by furnishing Bank Guarantees from an Indian Bank. The said offer was rejected by the impugned order.

GLOBAL BANK GUARANTEES

74. Clearly, the directions for the officials of HSBC India to appear before the Registrar General of this Court for acceptance of the Global Bank Guarantees and to accept the same as the security for any orders passed by this Court, in these proceedings, including for the payment of monetary sums by the Defendants to the Plaintiffs were flawed. It is apparent that the controversy that followed stems from the said error.

75. It is trite law that the bank guarantee is an independent contract between the bank and the beneficiary. The Global Bank Guarantees furnished by HSBC Paris constitute separate contracts. The same are required to be performed strictly in terms of the said bank guarantee and



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there is no scope for adding or subtracting any further conditions other than that already incorporated. It is thus relevant to refer to the terms of the Global Bank Guarantees (with the amounts redacted). One of the Global Bank Guarantees is set out below:

“BANK GUARANTEE

GUARANTEE NO. PEBPRT649005

ISSUING DATE:8TH SEPTEMBER 2022

TO: INTERDIGITAL TECHNOLOGY CORPORATION

WHEREAS, INTERDIGITAL TECHNOLOGY CORPORATION,
200 BELLEVUE PARKWAY, SUITE 300, WILMINGTON, DE
19809-3727, USA, REPRESENTED BY THE BOARD OF DIRECTORS, IBID.

(HEREINAFTER CALLED THE “IDT”)

AND

GUANGDONG OPPO MOBILE TELECOMMUNICATIONS
CORP. LTD, NO 18 HAIBIN ROAD, WUSHA, CHANG’AN,
DONGGUAN, PEOPLE’S REPUBLIC OF CHINA, LEGALLY
REPRESENTED BY ITS DIRECTORS, IBID, (HEREINAFTER
CALLED THE “OPPO”)

ARE HAVING A DISPUTE OVER A PORTFOLIO OWNED BY
IDT WHICH IS DECLARED AS BEING ESSENTIAL FOR
CELLULAR TELECOMMUNICATION STANDARDS (“3G, 4G,
AND 5G”).

THE PARTIES ARE ENGAGED IN LICENSING
NEGOTIATIONS AS OPPO WOULD LIKE TO TAKE A
LICENSE FROM IDT ON TERMS WHICH ARE FRAND (FAIR,
REASONABLE AND NON-DISCRIMINATORY). BOTH
PARTIES HAVE MADE SEVERAL OFFERS THAT HAVE
BEEN REJECTED BY THE RESPECTIVE COUNTERPARTY
AS NOT BEING BASED ON FRAND TERMS. OPPO
PROVIDED IDT WITH A LATEST COUNTEROFFER ON 20TH,
MAY, 2022 WHICH INCLUDES INTER-ALIA AN



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OBLIGATION OF A PAYMENT TO IDT OF [REDACTED] IDC
REJECTED OPPO'S SAID COUNTEROFFER ON 23TH,
JUNE,2022.

TO SECURE IDT'S CLAIM TO BE COMPENSATED IN THE
AMOUNT OFFERED BY-OPPO IN THE OFFER DATED 20TH,
MAY, 2022, OPPO UNDERTAKES TO PROVIDE TWO BANK
GUARANTEES UP TO A TOTAL AMOUNT OF
[REDACTED] THE AMOUNT
OF ONE BANK GUARANTEE IS
[REDACTED] AND THE OTHER
IS [REDACTED]

IN THIS CONTEXT, HSBC CONTINENTAL EUROPE, WITH
OUR REGISTERED ADDRESS AT 38 AVENUE KLEBER 75116
PARIS FRANCE, ISSUE AN IRREVOCABLE,
UNCONDITIONAL AND DEMAND GUARANTEE UP TO A
MAXIMUM AGGREGATE AMOUNT OF [REDACTED]

UNDER THIS GUARANTEE, WE UNDERAKE TO PAY TO
THE ACCOUNT OPENED IN YOUR NAME AND
DESIGNATED BY YOU, ANY SUM OR SUMS YOU MAY
CLAIM FROM US UP TO BUT NOT EXCEEDING THE ABOVE
AMOUNT WITHIN 7 WORKING DAYS UPON OUR RECEIPT
OF YOUR ORIGINAL FIRST DEMAND IN WRITING THE
PLEA OF ANTICIPATORY ACTION IS WAIVED.

THE GUARANTEE EXPIRES AS SOON AS THE ORIGINAL OF
THIS GUARANTEE IS RETURNED TO US, BUT
IRRESPECTIVE OF A RETURN OF THE ORIGINAL LATEST
ON 30 JANUARY 2028, IF WE DON'T RECEIVE ANY
COMPLYING DEMAND UNDER THE GUARANTEE BY THAT
DATE AT ADDRESS MENTIONED BELOW:

HSBC CONTINENTAL EUROPE
GTRF, INTERNATIONAL GUARANTEES DEPARTMENT
38, AVENUE KLEBER, 75116 PARIS, FRANCE
THIS GUARANTEE IS NOT TRANSFERABLE OR
ASSIGNABLE BY YOU.

THE GUARANTEE IS SUBJECT TO THE UNIFORM RULES
FOR DEMAND GUARANTEES (URDG) 2010 REVISION, ICC
PUBLICATION NO. 758. IN CASE OF ANY SUBJECT MATTER
NOT COVERED BY THE RULES, GERMAN LAW SHALL
APPLY."



76. It is not disputed that the Global Bank Guarantees issued by HSBC Paris were issued for securing the plaintiffs in respect of their counter offers made by the defendants in respect of the global sales. It is apparent that the decision to encash the Global Bank Guarantees rested solely with the plaintiffs. The decision to encash the bank guarantees would obviously be contingent on the plaintiffs accepting the counter offer made by the defendants. In this eventuality, the plaintiffs would receive the entire amount either directly by the defendants or by encashment of the Global Bank Guarantees.

77. Whilst the Global Bank Guarantees secure the plaintiffs in respect of the counter offer made by the defendants, they do not secure compliance of any orders that may be passed by this Court – that is not the subject matter of security under the Global Bank Guarantees. Thus, unless the terms of the Global Bank Guarantees were amended to specifically include the liability of HSBC to cover any obligation to make payment (obviously subject to HSBC Paris agreeing to the same) pursuant to orders of the court, the same would not cover such a liability. The question of the Global Bank Guarantees securing the plaintiffs in respect of non-compliance of any orders by the defendants did not arise. No orders were issued for amendment of the Global Bank Guarantees – the original of which were with the plaintiffs – nor did the defendants undertake to secure any such amendment. They however accepted that they would not cancel or withdraw the Global Bank Guarantees during the pendency of the suit without the permission of the Court. Further, if the Global Bank Guarantees were encashed or



discharged due to orders passed in any other jurisdiction where the parties were engaged in a contest, the parties could approach the Court for appropriate orders. The defendants also agreed that they would not initiate any proceedings in any jurisdiction in respect of the Global Bank Guarantees, whether to return, cancel, or withdraw the same during the pendency of the said suits.

78. The defendants agreed that the Global Bank Guarantees would act as a security for any orders passed by this Court, however, the same did not entail amendment of the Global Bank Guarantees, the original of which were with the plaintiffs. It is necessary to understand the import of the said condition as agreed by the defendants. It is to the effect that if the defendants fail to comply with the orders passed by this Court including payment of any monetary sums, the plaintiffs could invoke the Global Bank Guarantees. As noted above, the Global Bank Guarantees are unconditional and in terms of the Global Bank Guarantees, HSBC Paris is obliged to pay the amount covered under the bank guarantees without protest. However, the import of such invocation would be that the plaintiffs accept the counter offer, which is secured by the Global Bank Guarantees. In view of the defendants agreeing to the condition that the same would act as a security in respect of any orders passed by this Court, it would be open for the plaintiffs to recover the amounts by invoking the Bank Guarantees and claim that invocation of the Global Bank Guarantee pursuant to the orders passed by the Court would not bind the plaintiffs to the terms of the counter offer. It is also important to note that since the order dated 06.10.2022



was to secure the plaintiffs to the extent of counter offer made by the defendants – which was also the subject matter of Global Bank Guarantees – the plaintiffs were secured to the said extent.

DIRECTIONS/NOTICE ISSUED TO HSBC

79. It is also apparent that no directions could be issued to HSBC India to appear in this Court for acceptance of the bank guarantees to the satisfaction of the Registrar General. The Global Bank Guarantees were not issued by HSBC India. It is a separate entity and had no role to play in either issuance of the bank guarantees or the agreement between the parties. It is not a party to the suit and no directions could be issued to HSBC India to confirm the Global Bank Guarantees issued by HSBC Paris.

80. Notwithstanding that HSBC India was not a party to the suit and had no role to play in the issuance of the Global Bank Guarantees, the defendants filed applications for modification of the order (IA No.18113/2022 & IA No.18112/2022) and sought that directions be issued to HSBC India officials to appear before the worthy Registrar General for recording their statements relating to the Global Bank Guarantees issued by HSBC Paris. The learned Single Judge fell in error in allowing the said applications by the order dated 09.11.2022 on the premise that HSBC India being the corresponding branch of HSBC Paris is duty bound to appear before the Registrar General of this Court to confirm the issuance of the Global Bank Guarantees. Paragraphs 8 and 9 of the said order dated 09.11.2022 are set out below:



“8. Considering the directions given in the order dated 6th October 2022, it is made clear that as the Defendants have relied upon the certificates issued by HSBC, Paris in the present suits, the corresponding branch of HSBC in India would be duty-bound to appear before the worthy Registrar General of this Court and confirm the issuance of the said bank guarantees and undertake all the other formalities which may be directed. The Defendants shall also ensure that the bank guarantees are accepted by the worthy Registrar General to his satisfaction.

9. Accordingly, the worthy Registrar General shall issue notice to HSBC, India at HSBC Bank, Institutional Plot No.68, Sector 44, Gurgaon-122002 (**Email ID:** pratyushsharma@hsbc.co.in), as also to HSBC Continental Europe, 38 avenue Kleber, 75116, Paris (**Email ID:** henri.saliou@hsbc.fr).”

81. The said directions were plainly erroneous. HSBC India is an independent banking company and functioning under the framework of Indian law. It was not obliged to undertake any steps in regard to the Global Bank Guarantees.

82. As noted above HSBC India filed an application for recall of the directions issued in paragraph nos. 8 and 9 in the order dated 09.11.2022 as passed by the learned Single Judge which was allowed in terms of the impugned judgment. The decision in that regard cannot be faulted.

83. It is in the aforesaid context that the learned Single Judge proceeded to issue directions to the defendants to make a deposit as a *pro tem* measure. It is apparent that the same materially alters the



consent terms as defendants had not given any consent in this regard. As noted above, the parties had agreed to comply with the conditions as recorded in the order dated 06.10.2022. Plainly, if the consent order dated 06.10.2022 could not be worked, the only course open was to recall the said order and decide the applications for *pro tem* measures/interim reliefs on merits.

84. Although, the learned Single Judge, proceeded to relook at the said applications, it did so from the stand point that the defendants had breached the consent terms and could not be placed in a position that was better than as recorded in the order dated 06.10.2022.

WHETHER THE DEFENDANTS BREACHED THEIR OBLIGATIONS

85. This brings us to the questions whether the defendants have breached the terms of their obligations under the consent order and if so whether the same warranted rejection of their offer to furnish the bank guarantees from an Indian bank.

86. It is material to note that the plaintiffs have not filed any application claiming that their earlier applications for *pro tem* measure or under Order XXXIX Rules 1 and 2 of the CPC be restored, on the ground that the order dated 06.10.2022 is unworkable.

87. It is also material to note that the defendants do not seek to resile from the consent terms recorded in paragraph 20 of the order dated 06.10.2022. It is not disputed that the originals of the Global Bank Guarantees are with the plaintiffs. The defendants have committed not



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to cancel the same without permission of the Court. The defendants have also consented that they would not seek the cancellation or withdrawal of the bank guarantees during the pendency of the suit without the permission of the Court. There is no question of the defendants not accepting the jurisdiction of this Court. The only bone of contention appears to be the conditions 3 and 4 namely whether the bank guarantees would act as a security for the orders passed by this Court, and whether the bank guarantees would be subject to the jurisdiction of this Court.

88. As observed earlier, it is difficult to accept that the said consent terms are required to be construed as HSBC Paris agreeing to abide by the jurisdiction of this Court. Clearly the consensus between the parties in that regard is immaterial as HSBC Paris is an independent entity. It is bound by the terms of the guarantee issued by it and no further. No directions can be issued to HSBC Paris by the Court in respect of the Global Bank Guarantees. However, the terms of the Global Bank Guarantees clearly indicate that they are subject to the Uniform Rules for Demand of Guarantees 2010 Revision ICC Publication No.758. It also specifies the matters which are not covered by the said Rules, the German law would apply.

89. Article 20 of the said Rules mandate that the guarantor shall pay on the guarantee on determining that the demand is compliant. HSBC Paris has also issued certificates confirming the same. The fact that the officials of HSBC India did not appear before the Registrar General of



this Court does not, *prima facie*, in any manner dilute the consent terms recorded in the order dated 06.10.2022.

90. There is no material on record to indicate that the Global Bank Guarantees furnished by the defendants cannot be invoked on their own terms. The counsel for the plaintiffs has not pointed out any defect or flaw in the Global Bank Guarantees that would leave them uncovered in respect of the counter offer made by the defendants. As noted above, HSBC has also issued certificates confirming the Global Bank Guarantees.

91. It appears that the only ground for finding that the defendants are in breach is that HSBC Paris who has furnished the bank guarantees did not appear before the Registrar General of this Court to confirm the Global Bank Guarantees. However, there is no dispute as to the terms of the Global Bank Guarantees. More importantly, HSBC Paris has highlighted its concern of being called upon to disclose information unless properly served. It claims that in terms of the Mutual Legal Assistance Treaty between India and France, it is required to be served through the Ministry of Law and Justice, India.

92. It is, however, contended on behalf of the plaintiffs that the Global Bank Guarantees ought to be subject to the jurisdiction of this Court otherwise the same are no guarantees. The said contentions were also accepted by the learned Single Judge. However, we are not sure as to what is exactly meant by the guarantees being subject to the jurisdiction of the Court. The Global Bank Guarantees are not confined



to any one jurisdiction. The bank guarantees are subject to ICC Publication 758 which is a widely accepted Code. HSBC is bound to honour the same in terms of the Global Bank Guarantees. Nothing has been pointed out to this Court to indicate that the Global Bank Guarantees are conditional and cannot be invoked by the plaintiffs.

93. We are unable to accept that there has been any breach on the part of the defendants in furnishing the Global Bank Guarantees. The Global Bank Guarantees were already furnished to the plaintiffs and the details of the same were shared with the Court. The Court has proceeded on the oral submissions that the Global Bank Guarantees furnished by the defendants are no guarantees at all or are improper guarantees that do not serve as a security to cover the counter offer made by the defendants. There is no basis for this submission. There is no dispute that the Global Bank Guarantees cover the counter offer made by the defendants. However, HSBC Paris has not guaranteed payment of any amount as may be directed by the court. And, subjecting the Global Guarantees to the jurisdiction of this court would not alter the terms of the Global Bank Guarantees.

RELOOK AT THE PRO TEM MEASURES

94. In any view, even if it is concluded that the consent terms were not workable on account of HSBC India not confirming the liability of HSBC Paris to guarantee the compliance of directions of the court to the defendants to make monetary payments to the plaintiffs, the



question whether the plaintiffs were entitled to *pro tem* orders, was required to be determined.

95. The learned Single Judge had proceeded to relook at the application for *pro tem* payment without recalling the consent order dated 06.10.2022 and notwithstanding that there was no application moved by the plaintiffs to the said effect. More importantly, the applications for grant of *pro tem* measures were not revived. The impugned judgment has been passed in applications moved by the defendants seeking to furnish bank guarantees from an Indian Bank.

96. It is also relevant to note that directions to make a deposit equal to an amount that would be payable in terms of the counter offer made by the defendants could be passed only for the purpose of securing the plaintiffs and not as a punitive measure against the defendants. The reasoning of the learned Single Judge that the defendants must not be placed in a better position than as placed under the consent order, is erroneous. Once the learned Single Judge concluded that the consent terms were not implemented and that the applications for *pro tem* measures required a relook, the said applications were required to be considered a fresh on their own merits.

PRO TEM ORDERS

97. The record of the proceedings indicate that the plaintiffs had sought *pro tem* directions to cover at least “the counter offer made by the defendants” pending consideration of the matter including in regard



to interim orders. It is also apparent that the defendants were agreeable to the same. As noticed above, the expression *pro tem* literally means ‘for the time being’. *Pro tem* measures are granted where the circumstances of the case warrant, pending consideration of the interim orders. *Pro tem* measures are thus protective orders and mostly in the nature of ad-interim orders.

98. Since the learned Single Judge had come to the conclusion that the plaintiffs’ application for *pro tem* order were required to be relooked it was necessary for the Court to consider the same afresh.

99. The contention that there is no necessity to form a *prima facie* view before issuing *pro tem* orders is erroneous. *Pro tem* measures are also in the nature of an interim / ad-interim measures. It is thus necessary that in a contested case the court form a *prima facie* before granting any interim relief. The reliance on the decision of the Coordinate Bench of this Court in ***Nokia Technologies OY v. Guangdong OPPO Mobile Telecommunications Corp. Ltd. & Ors.(supra)*** is misplaced. In the said case, the Division Bench of this Court had observed that “normally speaking a *pro tem* deposit should be directed only after a *prima facie* finding of essentiality and validity of the suit patents have been recorded”. However, in the peculiar facts of that case, the Court had proceeded to direct *pro tem* deposit as it found that respondents had licensed the SEPs of the appellants (hereafter *Nokia*) in consideration of royalty payments for a period of three years and, thus, had admitted its obligation in law to secure a new



license for the SEPs. The Court held that there was a *prima facie* presumption that the challenge to the essentiality and validity of Nokia's patent was merely an afterthought. The Court accepted Nokia's contention that at the *prima facie* stage it would be fair to infer that no one pays good money for disputed patents and thus there was no real dispute regarding the validity of the patents in question. The Court had also noted the course of negotiations between the parties. It also noted that the respondents had agreed to make interim payments to Nokia and had also filed a suit for determination of FRAND. The decision in ***Nokia Technologies OY v. Guangdong OPPO Mobile Telecommunications Corp. Ltd. & Ors. (supra)*** is not an authority for the proposition that *pro tem* deposits/payments can be ordered without even considering the defenses raised by the defendants and taking a *prima facie* view.

100. However, in the facts of the present case, the reliefs sought by the plaintiffs were limited. As noted above, the plaintiffs had prayed that at least to the extent of counter offers made, the plaintiffs be secured pending consideration of their prayer for ad-interim injunction. It is clear that the defendants had agreed to secure them by a bank guarantee. In view of the above, we find no infirmity with the approach of the learned Single Judge to ensure that the plaintiffs are duly secured.

101. It is in the aforesaid context that the defendants volunteered to secure the plaintiffs by a bank guarantee from an Indian bank.



102. As noticed hereinbefore, Mr. Banerji had submitted that *pro tem* measures were warranted in the present case as the defendants were using the SEPs without paying any amount as license fee and had achieved a dominant position in the market. He submitted that since the patents involved were SEPs there could be no dispute that the same are being used in the mobile phones manufactured and sold by the defendants as the said phones are admittedly mapped to the relevant standards. It is also contended that the defendants were facing severe financial constraints.

103. There appears to be no serious dispute that the SEPs are being used by the defendants. The defendants are contesting the suits, *inter alia*, on the assertion that the SEPs are invalid. The said contentions are yet to be evaluated. It is not necessary for this Court to examine this aspect in any detail as the defendants are ready and willing to accept the *pro tem* measures to secure the plaintiffs to the extent of the offer made by them.

104. As noted above, the defendants' applications for furnishing a bank guarantee from an Indian bank to cover the amount offered in respect of Indian sales was rejected mainly for the reasons that; (i) the defendants have breached their obligations under the consent terms; (ii) the financial conditions of the defendants did not inspire confidence; (iii) the defendants could not place in a better position than the consent terms; (iv) the Courts in Munich, Germany had granted injunction; and,



(v) it was doubtful whether the Indian bank guarantees would adequately protect the plaintiffs.

105. None of the aforesaid reasons except the last support a view that a security by way of deposit in the Court is preferable as against the defendants offer for securing the plaintiffs by unconditional bank guarantees from an Indian bank.

106. As observed hereinbefore, *pro tem* orders are not required to be imposed as punitive measures. It was also erroneous to proceed on the basis that the defendants were required to be placed in the same or a worse position than as agreed by them. We are also unable to accept that permitting the defendants to furnish the bank guarantees from an Indian bank would place them in a better position than as agreed by them.

107. However, none of these issues are material as the principal objective of the *pro tem* order was to secure the plaintiffs at least to the extent of the counter offer made by the defendants. The only relevant reason indicated in the impugned judgment for directing deposit instead of furnishing of a bank guarantee is that a bank guarantee would not sufficiently secure the plaintiffs. However, there is no reason to entertain any such doubt. The learned Single Judge had held that the financial condition of the defendant was not good and the state authorities were investigating the defendants. However, the financial conditions of the defendants are not relevant as a bank guarantee is an independent obligation of the concerned bank and the same would be



honoured irrespective of the financial state of the person at the instance of whom the bank guarantees are furnished. There is no reason to doubt that the Indian bank (IDBI Bank) was not solvent to honour its guarantee.

108. We find that there are no grounds for rejecting the defendants offer for securing the plaintiffs by an unconditional bank guarantee of an Indian bank and insisting on a deposit with the Registry of this Court. This Court had pointedly asked the counsel as to what is the plaintiffs' real objection as to furnishing an unconditional bank guarantee instead of a deposit in cash with the Registry of this Court. Apart from mentioning that interests would accrue on deposits, there was no effective response to the said query. Mr. Banerji had submitted that the bank guarantees had other problems and banks sometimes refuse to accept their liability. We find the said contention to be without any basis. He has not been able to cite one single instance where a bank has defaulted in honouring an unconditional bank guarantee furnished to this Court, which has been invoked in accordance with its terms.

AMOUNT TO BE SECURED

109. Mr. Saikrishna has also assailed the computation of the amount for which security was required to be provided as determined by the learned Single Judge. He had submitted that the defendants had stated that the India sales were in the vicinity of 18.7% of the global sales. The defendants had accepted the same to be the basis for directing a deposit as a *pro tem*. However, the learned Single Judge had proceeded on the



basis that 23% to 25% of the global sales were attributable to India. He contended that there was no basis for this assumption. Mr. Gourab Banerji, learned senior counsel appearing for the defendants, did not contest the above observation. He submitted that the learned Single Judge had proceeded on the basis that India sales were to the extent of 23% to 25% of the global sales as a submission to that effect was made by the learned counsel appearing for the defendants before the learned Single Judge. However, Mr. Saikrishna disputed the same. He stated that no such statement was made on behalf of the defendants. In view of the above, Mr. Gourab Banerji had fairly stated that he would not contest that the estimation of India sales were required to be pegged at 18.7% of the global sales at the present stage.

110. It is stated that in addition to the Global Bank Guarantees, OPPO had furnished a bank guarantee for a sum of [REDACTED]¹⁵ (the third Global Guarantee). Thus, the defendants have submitted bank guarantees securing the plaintiffs for a sum of [REDACTED] ([REDACTED]).

111. The defendants had offered to furnish the bank guarantee from an Indian Bank (IDBI Bank) for a sum of [REDACTED] being 18.7% of the last counter offer given by the defendants for a sum of [REDACTED] ([REDACTED]). The defendants had proposed

¹⁵ Bank Guarantee No. LG5147723000012 dated 17.01.2023



that the said amount be reduced from the third Global Guarantee issued for [REDACTED].

112. The defendants have submitted bank guarantees for a sum of [REDACTED] in respect of the global sales and at the present stage India sales are required to be considered as 18.7% of the global sales. Thus, we consider it apposite to direct the defendants to furnish an unconditional bank guarantee from IDBI Bank Ltd. or any other public sector bank for a sum equivalent to [REDACTED] ([REDACTED] [REDACTED]) plus an additional 6% of the said amount to cover the possible interest, in favour of the Registrar General of this Court and to his satisfaction, within a period of eight weeks from date. If the defendants furnish the said bank guarantee, they will not be interdicted from using the SEPs till further orders. Failing which, the defendants are directed to deposit the aforesaid amount with the Registry of this Court. The plaintiffs are at liberty to take steps for enforcement of the said direction. The plaintiffs would also be at liberty to move the learned trial court to revive their application for interim relief.

113. The defendants have also sought that the third Global Guarantee for a sum of [REDACTED] be returned to them and they be permitted to replace the same with a bank guarantee of the said sum less the amount of the bank guarantee furnished by an Indian bank. We do not propose to pass any order to the said effect as the said Global Bank Guarantees were not furnished pursuant to the orders passed by this Court. The question as to how the parties will adjust the said bank



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guarantees, if at all, is left to them. We, however, clarify that this order would not preclude the defendants from seeking reduction of the amount of the Global Bank Guarantees furnished pursuant to this order.

114. The Registry is directed to keep this order in a sealed cover and not upload it on the website of the Court. However, a copy of the same be provided to the learned counsel for the parties.

115. At the request of the counsel for the parties, a redacted version of the judgement will be issued by the Court Master of this Court. The Registry is directed to upload the said redacted version on the Court's website.

116. The appeals are disposed of in the aforesaid terms. All pending applications are also disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

MAY 31, 2024

RK/gsr