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

\+ ARB. A. (COMM.) 76/2021

MINTELLECTUALS LLP .....Appellant

Through: Mr. Samrat Nigam and Ms. Arpita Rawat, Advocates.

versus

LAVA INTERNATIONAL LIMITED .....Respondent

Through: Mr. Arun Kumar Varma, Sr. Advocate with Mr. Abhay Raj Varma and Mr. Arjun Rekhi, Advocates.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

<u>O R D E R</u>

% 12.07.2024

1. This appeal, under Section 37 of the Arbitration and Conciliation Act, 1996 ["the Act"], is directed against an order dated 15.09.2021, passed by a three-member Arbitral Tribunal, by which certain interim measures of protection sought by the appellant under Section 17 of the Act, were rejected.

2. I have heard Mr. Samrat Nigam, learned counsel for the appellant, and Mr. Arun Kumar Varma, learned Senior Counsel for the respondent.

3. The arbitral proceedings are in respect of disputes between the parties under an agreement dated 01.07.2017, entitled "*Research and Collaboration Agreement*" ["the Agreement"]. The appellant is the

claimant in the arbitral proceedings. According to the appellant, the agreement includes a provision for the respondent to submit quarterly reports with regard to "Sales of Covered Devices", sold on behalf of the respondent or its affiliates, based upon which quarterly payments of royalty were to be made by the respondent to the appellant.

4. The appellant first filed a pre-reference petition under Section 9 of the Act before this Court [OMP(I)(COMM) 305/2019], which was treated as an application under Section 17 of the Act before the Tribunal, seeking security for the amounts claimed by the appellant for the period of three quarters [01.10.2018 to 30.06.2019]. The application was disposed of by the Tribunal on 02.03.2020, directing the respondent to furnish a cheque in the sum of Rs. 11,31,09,035.38/-, in terms of an undertaking recorded in the order dated 26.09.2019 passed by this Court in OMP(I)(COMM) 305/2019.

5. The appellant thereafter moved a similar application under Section 17 of the Act, for securing amounts due in the three quarters from 01.07.2019 to 31.03.2020. The Tribunal disposed of this application on 10.01.2021, in similar terms.

6. The appellant then made two further applications under Section 17 of the Act, seeking enhancement of the amount of security and also directions with regard to the nature of security. The Tribunal, by the impugned order dated 15.09.2021, disposed of these applications, noting the contention of the appellant that the sales information disclosed by the respondent for the period from 01.10.2018 to 30.09.2020 leads to liability of an average of Rs. 13.12 crores per quarter. The Tribunal declined the relief sought by the appellant on the basis that these amounts were

calculated by the appellant itself, on the basis of data available with it. The Tribunal noted that a final decision on the admissibility and the quantification of the claims was yet to be taken. The Tribunal also took the view that furnishing of a cheque by the respondent, alongwith an undertaking that the cheque would be honoured on presentation, was sufficient for the purposes of security.

7. Mr. Nigam's grievance concerns both the quantum of security directed by the impugned order dated 15.09.2021 and its form.

8. During the pendency of the present appeal, the Tribunal has passed two further orders, which are significant to the adjudication of the appeal. The first of those orders, dated 29.11.2021, was made on an application by the appellant for modification of the order dated 15.09.2021. The modification sought was on the basis that the sales figures disclosed by the respondent, showed higher sales than those accounted for in the Tribunal's orders. The Tribunal held as follows:

> *"7. It may be stated at the outset that the Tribunal, while considering the prayers made in the application and passing orders dated 15.09.2021, dealt only with the issue of enhancement of the amount of security, which was prayer (a) in the application.* ***<u>The security in respect of each quarter furnished earlier was INR 11,31,09,035.38 and the Claimant wanted it to be enhanced to INR 13.12 crore</u>****. That remained the focus of discussion in the order dated 15.09.2021 passed.* ***<u>Prayer (b) in the application, though pertains to quarterly sales between 01.10.2020 and 31.12.2020, the manner in which the prayer is couched gave the impression to the Tribunal that for this quarter also, the Claimant is simply seeking enhancement in the security amount. The fact is that it was not in the mind of the Tribunal that the Claimant is seeking to secure the amount for this particular quarter as it was not covered by the earlier orders</u>****. Therefore, there is no discussion in the order about providing the security for this particular quarter. It has happened due to lack of clarity in the prayer (b) of the Application dated 12.03.2021.*
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> 9. ***<u>In the aforesaid circumstances, the Tribunal feels that it would be</u>***

__appropriate to give liberty to the Claimant to move a fresh application with clear and categorical prayer in this behalf__. During arguments, Mr. Nigam, learned Senior Counsel for the Claimant pointed out that security for quarters for the period from 01.01.2021 has also become due. __Thus, it would be open to the Claimant to move an application for securing the amount for all these quarters. It hardly needs to be clarified that as and when such an application is moved, it will be open to the Respondent to contest the same on any or all grounds available to the Respondent in law and the Tribunal shall consider the said application on its merits__."

[Emphasis supplied.]

10. The second significant order was passed less than two months ago, on 26.05.2024, a copy of which has been handed up in Court, and is taken on record. It concerned an application by the appellant for security for subsequent quarters, described as the 12th to 20th quarters, namely 01.04.2020 till 30.06.2022. The Tribunal has taken note of certain subsequent developments, holding that the amount due in terms of the sale figures was approximately Rs. 14 crores per quarter, and granted security to the extent of 50% thereof. As far as the form of security is concerned, the Tribunal found that subsequent events render the security of a cheque ineffective. Paragraphs 24 and 25 of the order dated 26.05.2024 reads as follows:

"*J. Tribunal's Analysis*

24) The question here is as to whether the Respondent should be allowed to furnish security in the form of a Banker's cheque or it should be directed to furnish security by giving Bank Guarantee or any other suitable form of security.

25) __From the materials placed on record, the Tribunal finds that security in the form of Banker's cheque may not serve the purpose. There is a drop in the liquidity available with the Respondent even if it is not to the extent of 94% as contended by the Claimant__. Moreover, the Respondent has suffered the Consent Award in the matter of Telefonaktiebolaget L.M. Ericsson v. Lava International Ltd (supra.) which is going to be a huge liability on the Respondent. At the same time, the Tribunal is not straightaway directing the Respondent *to furnish the security by means of Bank Guarantee as the Respondent claims that it has sufficient assets and robust financial framework, the **Tribunal gives a chance to the Respondent to offer suitable security of the amount directed in this order which should adequately protect the interest of the Claimant**. This security should be offered within 15 (fifteen) days from the date of this Order and in that event, the Tribunal would take a call as to whether the security so offered is suitable and sufficient. In case the Respondent fails to offer any security within 15 (fifteen) days, in the event, the aforesaid direction of the Tribunal be substituted with the direction of furnishing a Bank Guarantee that shall have to be furnished by the Respondent within four weeks from today i.e., within two weeks after the expiry of two weeks granted to the Respondent to furnish some suitable and solvent security*."

[Emphasis supplied.]

11. Mr. Nigam submits that, in the clarificatory order dated 29.11.2021, the Tribunal has clearly understood its earlier orders to require security to the extent of Rs.11,31,09,035.38/- per quarter, whereas the said figure in the impugned order, and in the prior order dated 02.03.2020, pertains to three quarters cumulatively. Mr. Nigam states that the appellant would be satisfied at this stage if the respondent is directed to furnish security of Rs.11,31,09,035.38/- per quarter as reflected in paragraph 7 of the order of the Tribunal dated 29.11.2021.

12. Although Mr. Varma disputes this understanding of the order, it appears that the Tribunal itself has provided the appellant with a remedy in paragraph 8 of the order dated 29.11.2021, i.e., to move an application with a clear and categorical prayer. Although the appellant thereafter moved an application in respect of security for the subsequent quarters, which has been disposed of by the order dated 26.05.2024, the lack of clarity with regard to the quantification of the security, has not yet been addressed by the appellant. The appellant is free to do so.

13. On the form of security applicable to the previous quarters also, it

is Mr. Nigam's contention that the subsequent developments, which have been alluded to in the order dated 26.05.2024, make that security ineffective. As this plea is based on subsequent developments and appears, *prima facie,* to have found favour with the Tribunal in respect of subsequent quarters, I am of the view that the proper course would be for the appellant to approach the Tribunal for such further directions as it considers necessary. Mr. Varma states that the respondent has, by a communication dated 12.06.2024, offered security in some form, without prejudice to the order dated 26.05.2024. That is a matter for the Tribunal to consider.

14. The appeal is disposed of with the aforesaid observations. All rights and contentions of the parties in respect of any application that the appellant may choose to file hereafter, are reserved.

PRATEEK JALAN, J

JULY 12, 2024
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