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

+ CS(COMM) 65/2020 & I.As. 2063/2020, 2064/2020, 2065/2020

ESSJAY ERICSSON PRIVATE LIMITED Plaintiff

Through: Mr. Dayan Krishnan, Sr. Adv. with
Mr. Saurav Gupta and Ms. Niharika
Kaul, Advs.

versus

ELCOM INNOVATIONS PRIVATE LIMITED Defendant

Through:

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **13.02.2020**

I.A. 2065/2020 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

I.A. 2064/2020 (under Order)

This is an application filed by the applicant / plaintiff seeking permission to file additional documents. For the reasons stated in the application, the same is allowed. Additional documents be filed within two weeks.

Application stands disposed of.

CS(COMM) 65/2020

Summons be issued in the suit to the defendant returnable before Joint Registrar on May 21, 2020.

Summons shall state that the written statement shall be filed by the defendant within 30 days from the date of receipt of summons. The defendant shall file their affidavit of admission and denial of documents filed by the plaintiff.

Replication shall be filed within 30 days of the receipt of the written statement / documents. The replication shall be accompanied by the affidavit of admission denial of documents filed on behalf of the defendants. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the time lines.

IA. 2063/2020

1. It is the submission of Mr. Dayan Krishnan, learned Sr. Counsel appearing for the plaintiff that the plaintiff is engaged in the business concerning manufacturing and sale of telecommunication equipment and rendering telecom service activities. It is specialized in designing and manufacturing telecommunication equipment, meant for the Defence sector. The plaintiff's product PTR 1000 has gained prominence and the plaintiff was successful in selling large quantities of the said product to the Ministry of Defence, Government of India. The plaintiff obtained copyright in such business under the Designs Act, 2000. He refers to the fact that an Algerian Company wanted to procure PTR 1000 through a Norwegian Company, known as Kongsberg Defence and Aerospace A.S. It is his stand that the Norwegian Company did a tie up with the Coral Telecom Limited for the supply of the telecommunication equipment and particularly PTR 1000 in CKD Form from the plaintiff. It is agreed between the parties that such equipment was to be supplied by the plaintiff to Coral Telecom Ltd. for onward supply to the Ministry of Defence, Govt. of Algeria, through Norwegian Company under two purchase orders. Pursuant thereto, the plaintiff completed the supply under the above two purchase orders and did not receive any payment in accordance with the terms and conditions made therein.

2. The defendant approached the plaintiff and represented that the field telephone business of Coral Telecom Limited had been substantially taken over by the defendant. It is his submission that it was represented by the defendant that defendant was aware of the default committed by Coral Telecom Limited and that it would settle the matter with the plaintiff, inter alia, by making payments, and would take over the liability of Coral Telecom Limited towards the plaintiff. He submits that on June 18, 2014 a licence agreement was entered between the plaintiff and the defendant to manufacture PTR 1000, a proprietary product of the plaintiff and soliciting enquiries and orders from the Ministry of Defence, Government of India for supply of the same to Indian Defence Sector. Pursuant to the above agreement, the plaintiff made over information, personnel, infrastructure and know-how to the defendant. The defendant thereafter under authority of the said agreement solicited orders directly from the Ministry of Defence, Government of India. On the basis of such request for orders, Ministry of Defence, Government of India issued an order for 15000 units of field telephone sets PTR 1000 to the defendant. Between 2016-2017, the purchase order of the Ministry of Defence, Govt. of India with regard to 15000 units was effected. Defendant has also paid royalty for 15000 units on PTR 1000 to the plaintiff. It is the submission of Mr. Krishnan that by efflux of time and also vide letter of termination dated March 22, 2018, the agreement dated June 18, 2014 between the plaintiff and the defendant came to an end and the plaintiff requested the defendant for balance royalty fees and for return of plant, machinery, production aids and documents which were made over to the defendant initially. The defendant vide letter dated April 5, 2018 represented that die cast of the phone was with a third party

and that it had allegedly become the owner of the plant and machinery. As the plaintiff has come to know that the defendant is supplying to the company in Norway, the plaintiff had written e-mails to the company in Norway informing that the defendant had neither the right to manufacture Field Telecom Set PTR 1000 nor right to sell the same or even the spares or parts or assemblies thereof.

3. After deliberations on July 24, 2018 in the meeting between the plaintiff and the defendant a re-arrangement was arrived at as regards the payment of dues / interests, profit sharing on spares and future agreement for supply of new orders emerging from the company in Norway under a fresh agreement. He submits that defendant had assured the plaintiff that no modification of product has been done by the defendant. Despite this, it is the submission of Mr. Krishnan that the plaintiff has come to know that the product in question of Field Telephone Set PTR 1000 has been converted by the defendant into a product, which the defendant supplied under model name AFT-1000 and AFT-1001. He concedes to the fact that the material with regard to the said product could not be placed on record for maintaining confidentiality as the same would cater to the needs of the Ministry of Defence, Govt. of India. In any case, he states, this conversion and selling of the product by the defendant, as its own creation, is in violation of the Design / registration of the plaintiff copyright in its favour under the Designs Act, 2000. Apart from that, it is a case of passing off by the defendant as if the products are that of the plaintiff. In this regard, he has placed before me a user handbook issued by the Ministry of Defence. It has the photograph of the Field Telephone Set PTR-1000 as well as the Field Telephone Set under AFT-1000 as being alleged to be manufactured and

sold by the defendant to contend that the telephone Set AFT – 1000 is identical to the design of the telephone Set PTR – 1000. He has also drawn my attention to Page viii of the user handbook relating to both the products to contend that the general view of the Field Telephone Set PTR – 1000 and Field Telephone Set AFT – 1000 is also identical.

4. Having heard the learned Sr. Counsel for the plaintiff, a *prima facie* case is made out and even the balance of convenience is also in favour of the plaintiff for grant of ad interim injunction. Accordingly, defendant, their men, agents, assigns or representatives are restrained from encroaching or passing off the plaintiffs registered design No.208418 or from manufacturing or selling any product which is manufactured by the same design in any manner whatsoever till the next date of hearing.

5. In view of the fact that the user handbooks pertaining to both the products are confidential, permission is granted to the plaintiff to place the same in a sealed cover.

6. Issue notice to the defendant returnable before Court on August 19, 2020.

7. The provisions of Order XXXIX Rule 3 CPC be complied within 10 days.

V. KAMESWAR RAO, J

FEBRUARY 13, 2020/jg