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

+ CS(OS) 442/2013

% *Judgment dated 12.11.2014*

TELEFONAKTIEBOLAGET LM ERICSSON(PUBL)..... Plaintiff

Through: Ms.Prathiba M. Singh, Sr. Adv. with Ms.Saya  
Choudhary Kapur, Mr.Ashutosh Kumar, Mr.B.  
Prashant Kumar and Mr.Saurabh Anand, Advs.

versus

MERCURY ELECTRONICS & ANR ..... Defendant

Through: Mr.Saikrishna Rajagopal, Mr.Sunil Dalal,  
Mr.Rajiv K. Choudhary and Ms.Rachel  
Mamatha and Ms.Savni Dutt, Advocates

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**

**G.S.SISTANI, J (ORAL)**

**I.A. 3825/2013 (STAY) & I.A. 4694/2013 (O 39 R 4 = By D-2)**

1. Subsequent to the last order dated, 14.10.2014, the parties have appeared and made submissions. Ericsson, as per the directions of the court and upon being asked by the court has produced 26 license agreements. Micromax has asked for agreements/offers by Ericsson with other Indian parties. After hearing submissions and perusing the rates which were contained therein, the court directs as follows:
2. The Defendants shall pending trial of the suit, pay the following rates of royalty directly to the Plaintiff for sales made in India from the date of filing of suit till 12.11.2015:

- i. For phones/ devices capable of GSM - 0.8% of net selling price;
  - ii. For phones/ devices capable of GPRS + GSM - 0.8% of net selling price;
  - iii. For phones/devices capable of EDGE + GPRS + GSM - 1% of net selling price;
  - iv. WCDMA/ HSPA phones/devices, calling tablets - 1% of the net selling price.
  
3. The Defendants shall pending trial in the suit, pay the following rates of royalty directly to the Plaintiff for sales made in India from 13.11.2015 to 12.11.2016:
  - i. For phones/ devices capable of GSM - 0.8% of net selling price;
  - ii. For phones/ devices capable of GPRS + GSM - 0.8% of net selling price;
  - iii. For phones/devices capable of EDGE + GPRS + GSM - 1.1% of net selling price;
  - iv. WCDMA/ HSPA phones/devices, calling tablets - 1.1% of the net selling price.
  
4. The Defendants shall pending final trial in the suit, pay the following rates of royalty directly to the Plaintiff for sales made in India for the period from 13.11.2016 to 12.11.2020:
  - i. For phones/ devices capable of GSM - 0.8% of net selling price;
  - ii. For phones/ devices capable of GPRS + GSM - 1% of net selling price;

- iii. For phones/devices capable of EDGE + GPRS + GSM - 1.3% of net selling price;
- iv. WCDMA/ HSPA phones/devices, calling tablets - 1.3% of the net selling price.

*(The Net Selling Price means with respect to each company product sold by the company or any of its affiliates the Selling Price charged by the company or its affiliate for such company product unless such sale has not been made on arms length basis in which case the net selling price will be the selling price which the seller would realize from an unrelated buyer in an arms length sale of an equivalent product in an equivalent quantity and at the equivalent time and place as such sale.*

*Selling Price shall mean the selling price charged by the company for the company product in the form in which it is sold whether or not assembled and without excluding therefrom any components or sub-assemblies thereof (gross price) less 3% representing a deduction which shall cover usual trade discounts actually allowed to unrelated buyers on a regular basis, actual packing costs actual costs of insurance and transportation etc.,)*

5. Micromax has submitted that it has negligible operations outside India and agrees to negotiate the FRAND global rates if and when it expands internationally.
6. Both the parties agree that for the period prior to the filing of the suit, the payments, if any, by the defendant shall be as per the judgment of the court post-trial of the suit.
7. Insofar as the deposits already made by Micromax in the court, the rates

specified above shall be applied from the date of filing of the suit till the present date, for all sales made by Micromax in India. Upon applying the said rates, the computation of the amounts shall be submitted jointly by the parties. Upon receipt thereof, payments shall be made to Ericsson directly by way of demand draft drawn by the Registrar, Delhi high Court, subject to Ericsson furnishing a surety bond for the exact amount in favor of Micromax, to the satisfaction of the Registrar. The banking details shall be submitted to the Registrar by counsel for Ericsson. The remaining amount shall be released to Micromax.

8. The Defendants shall continue to make payments to Ericsson as per the rates specified above on a quarterly basis for sales made after the date of this order. The defendant shall continue to give intimation to the plaintiff of the arrival of the consignments at customs and seek NOC of the Plaintiff. Post inspection, the Plaintiff will forthwith inform the Customs that it has no objection to the release of the consignment so that the consignment could immediately be handed over to the Defendants. In respect of royalty payments made by Micromax after the passing of this order, Ericsson undertakes to furnish surety bonds in favor of Micromax for the amounts received on quarterly basis with advance copies to Micromax.
9. It is made clear that the above order is purely an interim arrangement and is not a determination of the FRAND rates for the Ericsson portfolio. The defendant shall not rely upon the above rates before the competition authorities or any other forums as it is not final in nature.
10. The trial of the suit is expedited. It is directed that the trial in any event will be completed not later than 31st December, 2015. Final arguments will commence immediately thereafter. The parties have no objection to the aforesaid arrangement and shall remain bound the same.

11. I.A. 3825/2013 and I.A. 4694/2013 stand disposed of.

**CS(OS) 442/2013 & CCNOS.56/2013, 57/2013, 58/2013, 59/2013, 60/2013, 61/2013, 62/2013, 63/2013, I.A. 3831/2013, I.A.3204/2014 & I.A. 3205/2014**

12. List this matter before Court for framing of issues on 18.12.2014, when parties shall bring suggested issues to Court. On 18.12.2014, the order for fixing schedule for trial and appointment of Local Commissioner for recording the evidence of the parties shall also be passed.
13. Parties shall append their signatures on the order sheet in token of their acceptance.

**G.S.SISTANI, J**

**NOVEMBER 12, 2014**  
msr