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

+ **CS(OS) 2269/2010**

MICROMAX MEDIA PVT LTD Plaintiff

Through: Ms. Shilpa Singh, Ms. Divyanshi
Bansal, Proxy Counsels for Mr.
Rajeev Agarwal, Advocate.

versus

M/S HEWLETT PACKARD INDIA SALES PVT LTD & ORS.

..... Defendants

Through: Mr. Rishu Rant Sharma, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

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20.09.2022

I.A. 3970/2019 (U/O XI Rules 1 & 5 r/w Section 151 of CPC, 1908)

1. The present application has been filed under Order XI Rules 1 and 5 read with Section 151 of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC, 1908"*) on behalf of the plaintiff seeking directions to the defendant Nos. 2 to 5 to answer the interrogatories attached with the present application.

2. It is submitted in the application that the defendants in their Written Statement-cum-Counter Claim have admitted the entitlement of the plaintiff to the MVC rebates and bonus for the period from December, 2008 till June, 2009 which is the claim of the plaintiff in the present Suit. However, the defendants have alleged set off and raised a counter-claim of Rs. 5,69,00,000/- against the plaintiff alleging that the plaintiff has received

excess payments from November, 2007 to April, 2009 which was discovered during the audit. However, no document has been placed by the defendant No. 1 on the basis of which it is claiming excess payment to the plaintiff.

3. The defendant No. 4, Praveen Kumar was the Regional Manager North Supplies Business of defendant No. 1 and as MVC Manager, was required to monthly visit to the MVC customers and check and verify the supplies made by the plaintiff on day-to-day basis and consumptions with the MVC customers. After the end of every month, the plaintiff sent photocopy of all invoices raised to MVC customers to the MVC team of the defendant No. 1 at Bangalore. The plaintiff also filed MVC sheets provided by the defendant No. 1 and sent it back to the defendant No. 1.

4. The defendant No. 3, Vibhor Bansal as Country Category Manager/Head of MVC team approved and sanctioned the rebates to the plaintiff. The defendant No. 2, Ravi Aggarwal as President of Imaging and Printing Group of the defendant No. 1 ratified and approved the MVC claims of the plaintiff. It is only after such ratification and approval of that the claims of the plaintiff were forwarded for disbursal to defendant No. 5-Baskar Laguduva Rajaram, who headed the Finance Division of the defendant No. 1.

5. It is submitted that the defendant Nos. 3 and 4 were keeping hour to hour online information about the status of the purchases made by the two-tier distributors like the plaintiff, from the registered wholesalers of the defendant No. 1. However, the defendant Nos. 1 to 5 in their consolidated Written Statement have only made bald denial of specific averments made by the plaintiff in the plaint and have evaded to refer to their relevant record

on the basis of which the averments of the plaintiff have been denied. The averments made by the plaintiff in paragraphs 17 and 18 of the plaint have been vaguely responded and the response to specific averments has been avoided. It is submitted that there is a suppression of material record on the basis of which the Counter-Claim has been filed by the defendant No. 1.

6. It is asserted that the Legal Notice dated 28th May, 2018 was served upon the defendants despite which, the relevant documents have not been produced. An application under Order 11 Rule 12 of CPC, 1908 was filed, but the same has also not been complied with.

7. It is claimed that the material information has been suppressed by the defendants and hence, the present application has been filed requesting the defendants to answer the specific interrogatories which read as under:

“1. Is it correct, that as President of M/s. Imaging and Printing Group of the Defendant No. 1, you finally approved for disbursal the rebates, which were verified, tallied, finalized for approval by Defendant No. 3 and 4, on the basis of sales transactions and records of the Tier-1 Distributors, Tier-2 Distributors and MVC Customers and then forwarded to your office for final approval and disbursal to the Tier-2 Distributors like Plaintiff.

If so, please furnish the full particulars of the said records of the Defendant No. 1.”

8. **Learned counsel on behalf of the defendant No. 1 in its Reply** has taken a preliminary objection that the answering defendant has nowhere admitted to the entitlements of the plaintiff to the alleged MVC rebates. On the contrary, it has been specifically pleaded that the plaintiff has wrongly claimed MVC rebates. Moreover, the interrogatories sought to be administered to the defendants is nothing but a fishing expedition tantamounting to embarking on a roving enquiry.

9. It is claimed that the questions that may be relevant during cross-examination, may not be necessarily relevant as interrogatories. It is submitted that the present application is without any merit and is liable to be dismissed.

10. **Submissions heard.**

11. The provisions of Order 11 Rule 1 of CPC, 1908 are intended to curtail evidence thereby expediting trial of the Suit and saving time of the Court and costs of litigation. The interrogatories must be used liberally by the parties. One of the great object of the interrogatories when properly administered is to save evidence i.e., to diminish the burden of proof which was otherwise on the plaintiff. The object is not merely to discover the facts but also to save the expense of proving a part on the case. Interrogatories are not limited to giving the plaintiff the knowledge of that which is not already known, but includes getting admission of anything which he has to prove on any issue which is raised between him and the defendant. Order 11 gives a party a right to interrogate with a view to obtain an admission from his opponent of everything which is material and relevant to the issue raised in the pleadings.

12. In Transport Corporation of India Ltd. (supra), it was observed that the pleadings may not sufficiently disclose the case of the parties and in order to make good the deficiencies, this rule has been enacted.

13. Similar observations have been made in Smt. Sharda Dhir vs. Sh. Ashok Kumar Makhija and Ors. 2003 AIR(Del) 288, wherein it was observed that the Court should not be hyper technical at the stage of interrogatories. While it cannot be used as a means for obtaining information which may be admissible during the oral cross-examination of a party and

its witnesses, but at the same time, interrogatories cannot be disallowed merely because of the party interrogating has other means of proving the facts in question.

14. The plaintiff in detail has explained that it had claimed various MVC rebates and has given the detailed process by which the rebates are verified after which the plaintiff became entitled to said rebates. The defendants in their Written Statement had not only denied the said rebates but had also filed a Counter-Claim claiming that in the audit, it was pointed out that the excess amount has been paid to the plaintiff by way of MVC rebates.

15. The plaintiff admittedly has filed an earlier application under Order 11 Rule 12 of CPC, 1908 seeking the documents from the defendants in support of its Counter-Claim to demonstrate how there was an excess payment on account MVC rebates, but the said application had been dismissed *vide* Order dated 12th March, 2020.

16. Essentially, the objective of interrogatories is to narrow the controversy and to facilitate framing of issues only in respect of the disputed facts. However, the interrogatories cannot be used by the plaintiff for substituting its burden of proving of things by adducing relevant evidence.

17. Learned counsel on behalf of the plaintiff has placed reliance on the decision in Canara Bank vs. Rajiv Tyagi & Associates 2010 (166) DLT 523, wherein it was held that the Suit was based on accounts and interrogatories were served in respect of 84 bills. It was held that the interrogatories have to be judged in the light of nature of the Suit. The Suit of the plaintiff was based on the accounts and the interrogatories were sought by the defendant in respect of the bills on which the plaintiff was placing his reliance. In that context, it was held that the interrogatories were answerable by the plaintiff.

The facts in hand are clearly distinguishable because it is the plaintiff who is seeking to prove his case by compelling the defendant to answer the interrogatories in support of his case. The judgement is clearly distinguishable.

18. Learned counsel on behalf of the plaintiff has also placed reliance on the decision in Transport Corporation of India Ltd. vs. Reserve Bank of India & Anr. 2017 (243) DLT 168, wherein it was held that at the stage of administration of interrogatories, the Court has to only consider whether the answer to the interrogatories would have some bearing on the issues involved in the case. In the said case the plaintiff had sought the interrogatories to be administered to the defendant to solicit the admissions about having entered into transactions with the entities and if they had facilitated/brokered several transactions for and on behalf of the defendants. The information sought through interrogatories was that which was in the private domain of the defendants and thus was required to be furnished by the defendants. The facts as involved are again distinguishable from the facts in hand.

19. From the detailed explanation given by the plaintiff, it is evident that there was multiple-tier process for enquiring into the MVC rebates due to plaintiff, which according to the plaintiff had been stringently followed and there are no excess payment made. It is for the plaintiff to prove its case in regard to its entitlements and the interrogatories sought by the plaintiff do not meet the criteria of interrogatories and cannot be permitted. The documents sought from the defendants are those which pertain to the Counter-Claim of the defendants and if the defendants fail to produce and/or prove the documents, the consequence would be the dismissed of the

Counter-Claim. However, these documents do not in any manner shorten the controversy or narrow the scope of evidence that the plaintiff would have to necessarily prove in support of its claim.

20. In view of the facts and submissions made, the present application is without merit and is hereby dismissed in the above terms.

CS(OS) 2269/2010 & CC 33/2012

List on 18th January, 2023.

NEENA BANSAL KRISHNA, J

SEPTEMBER 20, 2022

S.Sharma