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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON: 29.11.2013

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PRONOUNCED ON: 20.12.2013

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RFA (OS) 79/2012
CM APPL.15464/2012

TIMES OF MONEY LTD Appellant
Through: Mr. Hemant Singh with Mr. Sachin
Gupta, Advocates.

versus

REMITHOME CORPORATION & ANR Respondents
Through: Mr. Rajiv Virmani, Sr. Advocate with
Mr. Shambhu Sharan, Mr. Yaman Kumar,
Ms. Shreya Maheshwari and Mr. Shreeyansh,
Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S.RAVINDRA BHAT

1. The present appeal arises from the order dated 13.08.2012 made by the Learned Single Judge in CS (OS) 456 of 2011 by which the plaint filed by the appellant/plaintiff was returned on the ground of lack of jurisdiction.

2. The appellant, Times of Money, is engaged in the business of online money transfers from one continent to other. It adopted the domain name "*remit2india.com*" for online money transfers from the US to India in the year 2000. It further adopted domain names

“remit2home.com” and *“remit2home1.com”* in 2004. The first respondent, who had secured registration of the mark “REMITHOME” in United States, sought the transfer of the appellant’s domain names *“remit2home.com”* and *“remit2home1.com”* on the ground that it owns a registered trademark in the United States. The domain name was directed to be transferred in favour of the said respondent by US based administrator in accordance with Uniform Dispute Resolution Policy (UDRP) drafted by the World Intellectual Property Organization (WIPO) and adopted by the Internet Corporation for Assigned Names and Numbers (ICANN).

3. The appellant urged that acting under erroneous advice and treating the administrator’s decision as an arbitration award, it filed a Petition under Section 34 of the Arbitration and Conciliation Act, 1986 (hereafter “the Act”) before the District Court, Gautam Budh Nagar, Noida, on 4.03.2008. Later, realizing that the said decision is not an award (as held by the judgment of this Court to that effect in the case reported as *Beiersdorf A.G. v. Ajay Sukhwani and Anr.*, 2009(39) PTC 38 (Del)), the appellant filed a suit, CS(OS) 456/2011, seeking a decree for declaration of the right to use the impugned domain names and injunction preventing the second respondent (the Registrar) from transferring the impugned domain names in favour of the first Respondent.

4. By the impugned judgment, the learned Single Judge held that no cause of action arose at Delhi and since the plaintiff had earlier invoked the jurisdiction of the Noida Court on the ground of

respondent (the domain name Registrar) having its “*principal place of business*”, it cannot be now permitted to invoke the jurisdiction of this Court on the ground that the “principal office” of the Respondent (Registrar) is at Delhi.

5. The appellant urges, firstly, that the Single Judge erroneously held that this Court has no jurisdiction to entertain and try the present suit since the cause of action for institution of the suit has arisen at Noida. In this regard, it is urged that the principal office of the respondent is undeniably in Delhi and that as a result this Court possesses jurisdiction to entertain and try the suit. Counsel highlighted that the Single Judge ignored the material pleadings in that regard in the plaint.

6. It is argued that an overall reading of the provisions of the defendant’s complaint would reveal that the first defendant submitted itself to the jurisdiction of Court where the second defendant’s principal office is situated, which is its registered office. Therefore, the appellant urges that the defendant/respondent is estopped from canvassing to the contrary. Elaborating on the argument, it was contended that the term “principal office” means a place where all the higher officials including the chief executive officer of the company sit, transacts business and takes major decisions in relation to the management of the company. Here the Supreme Court decision in *Morgan Stanley Mutual Fund v. Kartick Das* (1994) 4 SCC 225 was relied on to say that the residence of the company is its registered office or principal place of business.

7. It was next contended that the plaintiff had never submitted to the jurisdiction of the NOIDA Court, nor indicated it to be the exclusive forum in which disputes could be adjudicated. It was submitted that the Single judge fell into error in construing Clause 4 (k) of the UDRP and the declaration made. Counsel stressed upon the fact that filing of a petition which was not maintainable in a Court which did not possess any jurisdiction did not amount to acquiescence, because that Court did not possess jurisdiction inherently, and had been approached on the basis of wrong and mistaken advice.

The relevant condition, Clause 4(k) UDRP, reads as follows:

k. Availability of Court Proceedings. The mandatory administrative proceeding requirements set forth in Paragraph 4 shall not prevent either you or the complainant from submitting the dispute to a court of competent jurisdiction for independent resolution before such mandatory administrative proceeding is commenced or after such proceeding is concluded. If an Administrative Panel decides that your domain name registration should be canceled or transferred, we will wait ten (10) business days (as observed in the location of our principal office) after we are informed by the applicable Provider of the Administrative Panel's decision before implementing that decision. We will then implement the decision unless we have received from you during that ten (10) business day period official documentation (such as a copy of a complaint, file- stamped by the clerk of the court) that you have commenced a lawsuit against the complainant in a jurisdiction to which the complainant has submitted under Paragraph 3(b)(xiii) of the Rules of Procedure. (In general, that jurisdiction is either the location of our principal office or of your address as shown in our Who is database. See Paragraphs 1 and 3(b)(xiii) of the Rules of Procedure for details.) If we receive such documentation within the ten (10) business day

period, we will not implement the Administrative Panel's decision, and we will take no further action, until we receive (i) evidence satisfactory to us of a resolution between the parties; (ii) evidence satisfactory to us that your lawsuit has been dismissed or withdrawn; or (iii) a copy of an order from such court dismissing your lawsuit or ordering that you do not have the right to continue to use your domain name."

The relevant clause in the policy of UDRP, Clause 3, to the extent it is material, reads as follows:

"Paragraph 1 Definitions

Mutual Jurisdiction means a court jurisdiction at the location of either (a) the principal office of the Registrar (provided the domain-name holder has submitted in its Registration Agreement to that jurisdiction for court adjudication of disputes concerning or arising from the use of the domain name) or (b) the domain-name holder's address as shown for the registration of the domain name in Registrar's Who is database at the time the complaint is submitted to the Provider

3. The Complaint

(a) Any person or entity may initiate an administrative proceeding by submitting a complaint in accordance with the Policy and these Rules to any Provider approved by ICANN.

.....
(xiii) State that Complainant will submit, with respect to any challenges to a decision in the administrative proceeding canceling or transferring the domain name, to the jurisdiction of the courts in at least one specified Mutual Jurisdiction;"

8. Clause 4(k) states that the jurisdiction of the court shall vest at the place where the complainant has submitted to the jurisdiction of the forum in the complaint under paragraph 3 (b) (xiii) of the rules of procedure. Upon reading the complaint it is evident that the first

defendant did not submit itself to the jurisdiction of the Delhi Court; instead it submitted to the jurisdiction of the courts at Gautam Budh Nagar where the office of the second defendant is situated.

9. It is unfeasible to infer any intention by reading into something which is not present in the clauses of the agreement. Clearly, the first defendant had indicated its choice of mutual jurisdiction in which the plaintiff is deemed to have concurred; there is no indication of any protest by it with respect to this condition at the stage of the dispute resolution proceeding under ICANN. Once it is stated that the jurisdiction will vest in the court where the office of the registrar is situated and thereafter the specification of the place of such office is made, i.e Uttar Pradesh, then for all practical reasons it is agreed between the parties that Noida Court where principal office is situated would have jurisdiction and the argument that principal office is somewhere else and, therefore, that court having territorial jurisdiction over such place would also entertain the suit is insubstantial. What is clear from the documents filed by the defendants is that the second defendant always represented before the domain registrar and internationally that its principal office is in Noida. The defendant has filed the documents wherein the resolutions are passed in Noida and annual reports are prepared in Noida. Thus, it cannot be now held that the principal office of the second defendant is not situated in Noida but is its registered office in Delhi.

10. This Court is of the opinion, therefore, that, once it is represented by the defendants that the principal office is in Noida and the dispute resolution mechanism allowed to proceed without demur,

there can be no dispute; the plaintiff is estopped by its pleadings from contending to the contrary. The action of the plaintiff in instituting the (misconceived objections) in the NOIDA court by filing objections against the award, only underlines to reinforce this understanding that the parties understood that the NOIDA court, amongst two or more courts possessing jurisdiction, was the agreed forum choice, to the exclusion of others. The plaintiff had voluntarily approached the Noida Court while preferring the objections challenging the award dated 21st February, 2008 passed by the National Arbitration Forum and in the said objection petition invoked the jurisdiction on the basis of what has been agreed to by the complainant in the complaint. Once the plaintiff approached the Noida court on the basis of the same premise that such Court would have the jurisdiction as the complainant had mentioned that to be the court of choice of both parties, the plaintiff cannot be allowed to approbate and reprobate.

11. It is an established principle of law that territorial jurisdiction of a plurality of courts in cases where there are contracts is to be examined on the basis of applicability of maxim *expression unius est exclusion alterius* which means that the expression of one implies the exclusion of other. The said maxim has been time and again applied by the court in various cases. In *Moser Baer India Ltd. v. Koninklijke Philips Electronics NV & Ors* 151(2008) DLT 180 this court held that in the cases where the words “alone”, “only” or “exclusive” are not mentioned in the clauses relating to agreement, even then the jurisdiction can be discerned on the basis of applicability of this maxim. In *A.B.C Laminart Pvt. Ltd. & Anr. v. A.P. Agencies* AIR

1989 SC 1239, the Supreme court noted that even without such words, in appropriate cases, the maxim may be applied. The jurisdiction clause in the present case clearly stipulates that the disputes between the parties in connection with the DPLAs shall be submitted to the competent courts of the Hague, the Netherlands. This is coupled with the proviso that in case the first defendant (Philips) is the plaintiff, it may at its sole discretion submit such a dispute either to the competent courts in the venue of the plaintiff's registered office or to any of the competent courts in the territory as defined under the agreements.

12. It is, therefore, apparent that once the complaint clearly and expressly stated that the complainant would submit to the jurisdiction at the place where Principal Office of Registrar, which the said party spelt out to be the address at Uttar Pradesh, the Noida court alone would have jurisdiction. This and no other meaning would be attributable to the parties, or else the object of having to spell out the jurisdiction of one forum (amongst others) would be defeated. This Court holds therefore that, it would be improper or super impose any such intention upon the other party when the terms of the contract/clause in the policy themselves are clear and thus by the virtue of applicability of the said maxim, it cannot be said that delhi court would have jurisdiction.

13. The appellant had relied on *Patel Roadways Ltd. v. Prasad Trading Company* (1991) 4 SCC 270 to say that the said decision nowhere supports the case of the defendants. The Court had held there that:

“It is not as if that in all the cases a corporation shall be deemed to be carrying on business at the principal office even if there is a subordinate office situated at different territory proximate to the cause of action and in those cases, the jurisdiction of the court will vest in that office and not at the place where the principal office is situated.”

This same view has been reiterated in *New Moga Transport Co. v. United India Insurance Co. Ltd and Ors* (2004) 4 SCC 677. Applying the above principles, it is held that though Delhi Courts may otherwise possess territorial jurisdiction over the subject matter of the dispute, the choice indicated by the complainant, of the forum in case of further disputes, and the absence of comment or protest by the plaintiff, coupled with the latter's approaching the NOIDA Court, indicates the consensus of the parties that the NOIDA Court alone was the forum of choice, and that it had to be approached in the event of dispute by one or other party, to the exclusion of other courts.

14. This court is of the opinion, in view of the above findings and reasons, that there is no infirmity with the impugned judgment and order of the learned single judge. The appeal consequently fails, and is dismissed without any order as to costs.

**S. RAVINDRA BHAT
(JUDGE)**

**NAJMI WAZIRI
(JUDGE)**

DECEMBER 20, 2013