

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

% **Date of order : 15<sup>th</sup> February, 2023**

+ **O.M.P.(I) (COMM.) 20/2023**

**AFFLE INDIA LIMITED**

..... Petitioner

Through: Mr. Rajshekhar Rao, Senior  
Advocate with Mr. Bharat Chugh,  
Mr. Siddharth Shivkumar, Mr.  
Areeb Amanullah and Ms. Prachi  
Dubey, Advocates

versus

**TALENT UNLIMITED ONLINE SERVICES PRIVATE**

**LIMITED AND ANOTHER**

..... Respondents

Through: Mr. Darpan Wadhwa, Sr. Advocate  
with Mr. Sandeep Das, Mr. Vipin  
Tyagi, Ms. Kritika Mundra and  
Mr. Sankalp Udgate, Advocates

**CORAM:**

**HON'BLE MR. JUSTICE CHANDRA DHARI SINGH**

**ORDER**

**CHANDRA DHARI SINGH, J (Oral)**

**I.A. 3061/2023(for condonation of delay of 3 days in filing of rejoinder)**

1. The instant application has been filed on behalf of the petitioner under Section 151 of the Code of Civil Procedure, 1908 seeking condonation of three days' delay in filing the rejoinder.
2. Learned senior counsel for the respondent submitted that he has no objection if the application is allowed. In view of the above, the instant

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application is allowed and the delay of 3 days in filing of rejoinder is condoned.

3. Rejoinder filed by the petitioner be taken on record.

4. Accordingly, the application stands disposed of.

**O.M.P.(I) (COMM.) 20/2023**

1. The present petition has been filed on behalf of the petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act, 1996) seeking the following reliefs:

*“a. issue an interim and / or an ad-interim injunction in favour of the Petitioner and against the Respondents restraining Respondents Nos. 1 and 2 from terminating the Global Monetization Partnership Agreement dated 8.8.2020 (“GMPA”) alongwith its two addendums dated 14.02.2022 (“GMPA-1”) and 29.08.2022 (“GMPA-2”) until the Arbitral Tribunal is constituted and till the pendency of proceedings before the Arbitral Tribunal;*  
*b. pass such other order(s) as it may deem fit and proper in the facts and circumstances of the case.”*

2. Mr. Rajshekhar Rao, learned senior counsel appearing on behalf of the petitioner submitted that the petitioner is a multinational technology firm that offers its services to brands and business-to-consumer enterprises. The respondent no. 1, on the other hand, is a Company that creates and develops input tools for mobile platforms, including virtual keyboards like Bobble Keyboard, Mint Keyboard, etc. It is submitted that the petitioner holds the biggest percentage of shares of respondent no. 1 i.e., 26.24%.

3. It is submitted that in May, 2020, the respondent no. 2 contacted the petitioner on behalf of respondent no. 1 to seek an investment,

collaboration, or synergy. A few months later, the petitioner invested in respondent no. 1.

4. It is submitted by learned senior counsel on behalf of the petitioner that on 8<sup>th</sup> August, 2020, the parties agreed to execute a Global Monetization Partnership Agreement (GMPA) in order to increase respondent no. 1's income.

5. It is submitted that in accordance with the GMPA, the respondents had to make "Touch Points" in accordance with Clause 1.12 on the virtual keyboard namely "Bobble Properties" enabling the petitioner to display advertisements for its advertisers, collect advertising money, and divide that revenue with respondent no. 5.

6. Learned senior counsel appearing on behalf of petitioner submitted that as per clause 1.3 of the contract, respondent no. 1 was entitled to a portion of the profits made from the aforementioned Touch Points.

7. It is further submitted that clauses 7.3 and 7.5 of the GMPA gave petitioner the right to determine the consideration payable to respondent no. 1 and the right to deduct, set-off, claw back, or charge back any money that respondent no. 1 may have earned through dishonest or illegal means (or through actions that violate the GMPA) and that it may owe to the petitioner under the Agreement.

8. Learned senior counsel appearing on behalf of the petitioner submitted that respondent no. 1 was unwilling to take any precise commitments regarding the provision of certain placements of the petitioner's advertisements or their frequency. Yet, the petitioner's ability to satisfy its income obligations depends heavily on these precise placements of Advertisements in key areas.

9. It is submitted by learned senior counsel appearing on behalf of the petitioner that in the context of this connection, advertisements (as defined by Article 1.2 of the GMPA) consist of two main parts:

- i. *First*, the icon, picture, or graphic element (supplied by the advertisers), which should be displayed on touch points like the emoticon bar icon.
- ii. *Second*, the user is instantly sent to the underlying URL or link given by the advertiser when clicking or touching the symbol, picture, or graphic.

10. Learned senior counsel appearing on behalf of the petitioner submitted that the ribbon pointed above was supposed to direct the user to the underlying URL(s) as provided by the advertisers. It is further submitted on behalf of the petitioner that the petitioner suddenly learned that this was not the way the advertisements on the Bobble Properties (digital/virtual keyboard) worked. The respondent No. 1 had altered the advertisement by sending it to its own App Discovery Hub rather than the advertiser's website.

11. In order to strengthen his arguments, learned senior counsel appearing on behalf of the petitioner relied upon the above-shown pictorial representation. While elaborating the said pictorial representation, it has been pleaded by way of illustration that the 'ribbon' pointed by the arrows above, comprises of an image representing the brand "*makemytrip*", when a user says anything pertinent or linked to this advertisement, this shows on the emoticons bar. The symbol or emblem should take the user to the Google Play Store so they may

download the *makemytrip* App after clicking it. It is submitted that according to the GMPA-1, this is how things were intended to work. In light of the example elaborated above, the aforementioned was the process to be followed however; the user upon clicking on the flashed logo would be taken to the Bobble App Discovery page and would be served content there.

12. It is submitted that it is public knowledge that the respondents unilaterally changed the links given by the Advertisers through the Software Development Kit ("SDK") on the emoticons bar icon to direct users to a Bobble link or App Discovery Page in place of and instead of the links provided by the Advertisers. It is further submitted that this would defeat both the advertiser's and the user's intent and result in a significant loss of revenue.

13. Learned senior counsel appearing on behalf of petitioner submitted that for the purposes of Clause 1.6, which defines fraudulent activity, this anomaly made these impressions, invalid, misleading, and false because the advertisers did not provide the Bobble links, and users who clicked on these impressions were misled into visiting a Bobble product page (known as the Discovery Hub) rather than the URL links of the advertisements, which point directly to the Google Play Store, as provided by Affle's SDK.

14. It is submitted by learned senior counsel appearing on behalf of the petitioner that when the user clicks on the icon advertisement and is supposed to be taken to the advertiser landing page (being the Play store),

respondent no. 1 blocks the click and redirects them to the discovery hub instead. This is done by tampering with the advertisement content/service and creating a special code that, simply put, covers the icon.

15. It is submitted that the petitioner being aggrieved by the acts of the respondent, the petitioner was forced to order an internal audit to look into the amount of money that was overpaid to the respondents for these unlawful/invalid advertisements. Advertisements were not delivered on emoticons bar suggestions, and as a result, these transactions were not approved, according to the internal audit.

16. It is further submitted that the revised revenue sharing ratio, which was to be applied after GMPA-1 was to be 65% with the respondent no. 1 and the rest with the petitioner, was accidentally not incorporated in the programme, and consequently, the respondent no. 1 was overpaid. Also, certain reductions had to be made in order to prevent undue enrichment.

17. Learned senior counsel appearing on behalf of petitioner submitted that due to deception on their part and an unintentional factual error, the respondent no. 1 was in unjust enrichment of these sums and was obligated to reimburse the petitioner. The respondent no. 1 was properly informed of the instance *vide* email dated 22<sup>nd</sup> December, 2022.

18. It is submitted that the respondents disagreed with this reasonable request and announced their intention to unilaterally and unjustly terminate the agreement *vide* notice dated 11<sup>th</sup> January, 2023.

19. Learned senior counsel appearing on behalf of petitioner submitted

that the respondent no. 1 is in material violation of the GMPA-1, and in a typical instance of "pot calling the pot black" and taking advantage of its own wrong, has threatened to take the most drastic action reasonably possible by terminating the GMPA.

20. It is submitted that as the respondent is suspected of terminating the GMPA in an irregular manner, the current petition is presented in order to obtain an injunction preventing respondent no. 1 from doing so while the Arbitral Tribunal is being constituted and its proceedings are still ongoing.

21. *Per contra*, Mr. Darpan Wadhwa, learned senior counsel appearing on behalf of the respondents vehemently opposed the instant petition and submitted that the instant petition filed on behalf of the petitioner, is devoid of any merit and should be dismissed.

22. It is further submitted that for Android-based devices, the respondent no. 1 created the Bobble Keyboard app in the late summer of 2016. The software was widely praised and gradually amassed a sizeable user base. As a result, several financial and strategic investors also expressed a lot of interest and made to the respondent considerable proposals. It is further submitted that the petitioner, in order to make an investment in the respondent company, approached the same through one of its officers namely, Mr. Ayush Aggarwal.

23. Learned senior counsel appearing on behalf of respondent submitted that the petitioner made a lot of exaggerated claims and promised the answering respondent that by designating the petitioner as

the "exclusive Ad monetization partner" and integrating the petitioner's SDK with the company's application, the respondent would be able to produce a sizeable amount of long-term advertising revenue.

24. It is submitted that precisely stated, the parties' understanding of the Agreement was that the respondent would select certain locations on its keyboard for the petitioner's advertisements to appear, and the petitioner would embed its SDK there. According to the GMPA, these Advertisements may take the shape of static graphics or links that may be clicked. The petitioner was required to provide the respondent a part of the advertising revenue. It is further submitted that the clickable and non-clickable advertisements have been published since the Agreement's establishment. The petitioner always had the full knowledge and awareness of the form and manner in which the Advertisements were disseminated.

25. Learned senior counsel appearing on behalf of respondent submitted that the respondent believes that the plan described above was designed to harm the respondent. The respondent has a reasonable suspicion that the revenue statistics were fabricated in order to fulfill their desire to buy respondent company's shares at a significantly reduced price.

26. It is submitted that when the respondent started to uncover and decipher the plan of the petitioner, the petitioner started creating fictitious concerns under several agreements made between the parties, including the GMPA.

27. It is further submitted that in this pretext, the petitioner started making GMPA related claims against the respondent which were unjustified and lacked merit. It is also submitted that these accusations are wholly false and are made only to harass a small firm which lacks the means to compete with a powerful behemoth like the petitioner. It is submitted that it is a reasonable apprehension of the respondent that the petitioner has used extortionate litigation against start-ups in the past, following a similar pattern, and is doing so even in the instant case.

28. Learned senior counsel appearing on behalf of the respondent submitted that the instant petition filed by the petitioner is malicious and barred by law. The following are the grounds that have been raised on behalf of the respondent, in order to support the said contention:

- i. Since the petitioner has violated the agreement's key provisions, the requested relief is forbidden.
- ii. Since the Agreement constitutes a determinable contract, the requested remedy is precluded.
- iii. The claim is precluded since any harm caused can be properly made up for by damages.
- iv. The requested remedy is ineligible because it entails the ongoing work that a court cannot monitor.
- v. The restrictions laid down in Micro, Small and Medium Enterprises Development Act, 2006 prevent the relief.
- vi. It fails to meet the requirements for a *prima facie* case, the balance of convenience being in favour of the petitioner, and that of irreparable harm being caused.

29. During the course of arguments, learned senior counsel appearing on behalf of the parties have fairly conceded that the dispute involved is arbitral in nature and have no objection if this Court appoints an arbitrator for redressal of disputes between the parties.

30. Learned senior counsel appearing on behalf of the petitioner prays for liberty to file an appropriate application before the Arbitral Tribunal in accordance with Section 17 of the Act, 1996. It is further submitted that *status quo* may be granted in favour of the petitioner to injunct the respondent from terminating the GMPA and other agreements executed between the parties.

31. Heard learned senior counsel for the parties and perused the record.

32. There is also no controversy as to the contents of the instant dispute being arbitrable in nature. The learned senior counsels also have no objection if this Court appoints a tribunal to adjudicate the disputed that has arisen between the parties *qua* the subject matter in question.

33. As agreed on behalf of the parties, it is evident that the parties intend this Court to refer the disputes to arbitration, by appointing a sole arbitrator. In view of the request made on behalf of the parties, all the disagreements arising between the parties are referred to arbitration, by appointing an arbitral tribunal. Hence, the following order:

**ORDER**

- (i) Justice R.S. Chauhan, former Chief Justice, Uttarakhand High Court is appointed as the sole arbitrator to adjudicate

the disputes between the parties which have arisen under the Global Monetization Partnership Agreement dated 8<sup>th</sup> August, 2020;

- (ii) The learned sole arbitrator, before entering the arbitration reference, shall ensure the compliance of Section 12(1) of the Arbitration and Conciliation Act, 1996;
- (iii) The learned sole arbitrator shall be paid fees as prescribed under the Delhi International Arbitration Centre (DIAC) (Administrative Cost And Arbitrators Fees) Rules, 2018 as amended on 15<sup>th</sup> November, 2022;
- (iv) At the first instance, the parties shall appear before the learned sole arbitrator within 10 days from today on a date which may be mutually fixed by the learned sole arbitrator; and
- (v) All contentions of the parties are expressly kept open.

34. In view of the averments made by the parties, this Court finds it pertinent to direct the petitioner to file an appropriate application under Section 17 of the Act, praying for the reliefs as sought in the instant petition, before the appointed tribunal within 15 days from the date of this Order.

35. This Court is also of the opinion that since the essence of the dispute between the parties is contained in the GMPA, it is imperative to direct the parties to maintain *status quo*, till the aforementioned application is decided by the Arbitral Tribunal. The Arbitral Tribunal is directed to decide the said application as expeditiously as possible. It is

however made clear that in case, the application as directed herein is not preferred by the petitioner with the prescribed period, the stay shall automatically stand vacated.

36. The petition is disposed of in the aforesaid terms along with pending applications, if any.

37. Nothing stated hereinabove shall however amount to any expression on the merits of case.

38. The order be uploaded on the website forthwith.

A copy of the order be forwarded to the learned sole arbitrator on the following address:

Justice R.S. Chauhan,  
Former Chief Justice, Uttarakhand High Court  
D-31, II Floor, Nizamuddin East  
New Delhi - 110013  
Mobile No. - +91- 7022891674  
E-mail Id – office.jrsc@gmail.com

**CHANDRA DHARI SINGH, J**

**FEBRUARY 15, 2023**

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[Click here to check corrigendum, if any](#)