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

+ **C.A.(COMM.IPD-PAT) 12/2024 & I.A. 7866-68/2024**

YAP CHENG KANG COMPASS

.....Appellant

Through: Mr. Ranjan Narula, Ms. Suvarna Pandey, Mr. Shakti Priyan Nair and Mr. Parth Bajaj, Advocates.

versus

**THE ASSISTANT CONTROLLER OF PATENTS
AND DESIGNS**

.....Respondent

Through: Mr. Nishant Gautam, CGSC with Mr. Vardhman Kaushik, Mr. Vipul Verma and Mr.Prithvi, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

20.03.2025

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1. Present appeal is filed on behalf of the Appellant under Section 117A of the Patents Act, 1970 ('Patents Act') laying a challenge to order dated 15.12.2023 passed by the Respondent in Indian Patent Application No.1948/DELNP/2015 as also for a direction for grant of patent.

2. Case of the Appellant is that it filed a Patent Application bearing No.1948/DELNP/2015 for grant of patent on 11.03.2015, claiming priority from 24.09.2012 from the PCT Application PCT/SG2012/000356. Request for examination was filed by the Appellant on 06.05.2015 under Section 11B and Rule 24B of Patents Act and Patents Rules, 2003, respectively. The application was published on 07.08.2015. As per procedure laid down under Sections 12 and 13 of the Patents Act, First Examination Report ('FER') was issued on 22.11.2019, wherein objections were raised under Section 2(1)(j) of the Patents Act on ground of lack of inventive step, citing D1 [US

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20100063877/A1 (Millennial Media LLC)] and D2 [Data Structures for Java (William H. Ford, William R. Topp) (2005)] as prior art documents.

3. Appellant avers that it filed reply to the FER on 22.04.2020 and also filed Form 3 dated 22.04.2020 bringing forth Patent Applications filed for the same invention in USA, Korea, Japan and China. On 09.02.2023 Form 3 was filed reiterating the filing of the patent application in USA, Korea, Japan and China and bringing to light some more applications filed in some other jurisdictions. Refusal order was issued by the Respondent on 15.12.2023 on the ground that patent application with Claims 1 to 20 failed to meet the requirements, ignoring that the amended Claims 1 to 20 were valid and without dealing with the detailed written submissions filed in response to the hearing attended on 02.08.2023. It is this order which is challenged by the Appellant in the present appeal.

4. Learned counsel for the Appellant submits that the patent application addresses technical problems relating to obstacles of exponential broadening base logic in conventional multi-level tree systems. The need for overcoming the obstacles had long existed historically but there was no solution due to exponential effects in order to derive fair exponential distribution system that is capable of fair distribution. Present invention provides a new structured guided method for overcoming the obstacles of exponential broadening base logic inherent in multi-level tree systems. It is urged that the Title of Invention is a “*Multi-Level Marketing System*” and the invention provides a new structured guided method for overcoming obstacles of exponential broadening base logic inherent in multi-level tree systems and the new method was never obvious to any person skilled in the art of multi-level tree system engineering. The method uniquely advocates

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for the first time construction and use of a Level Strength Analysis Chart (LSAC) for size and measurement considerations during construction of dissected levels of multi-level trees in a typical relational multi-level system which is a grouping of at least one or more levels of child multi-level trees under its successive parent multi-level trees.

5. It is argued that traditionally, even by starting to assign one entity from the top of multi-level tree with a computer, without specifying a structured base limit, the downgrade assignment processes would eventually make a computer execution going slower at each level downwards due to in-exhaustive exponential effects inherent in multi-level tree systems and the slowdown would get exponentially slower and slower at each level downwards. The presently disclosed structural frameworks and computer aided method taught by the present invention when applied to a computer execution is capable of resulting in an execution more efficient than before by telling the computer what are the structured optimal sizes of multi-level trees it needs to create at what level of tabulation data structure. This obviates the computer having to lock into indefinite loop processes of clearing the next subsequent exponential challenges, whereby generically performing an unstructured task of node entities' assignment. *Albeit* present invention may use some common knowledge but what it does is to provide structured guided instructive steps in its method. In a nutshell, as per Mr. Narula, the inventive features of the present invention are that is an innovative method *inter alia*: (i) for overcoming obstacles of exponential broadening base physic in multi-level trees to effect fair leveraging treatment frequency; (ii) for dissecting large quantities of entities into Age Range Interval Tabulations (ARITs) for assigning entities' position into

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adjacent multilevel trees inside respective ARITs; (iii) for constructing and using a Level Strength Analysis Chart (LSAC) for size and measurement considerations to structurally prevent multi-level trees from getting overly large inside respective ARITs; and (iv) for the ‘Periodically progresses entities’ to position onto the next successive higher level of ARIT. It is further argued that when the FER was issued on 22.11.2019, objections included lack of inventive steps under Section 2(1)(ja) of the Patents Act and prior arts D1 and D2 were cited, however, subsequently in the hearing notice, prior arts D3 and D4 were cited changing the complete complexion of the objections. Be that as it may, Appellant brought out in its reply dated 17.08.2023 to the hearing notice, after the oral hearing scheduled on 02.08.2023, that D3 document PRMLM does not dissect overly large multi-levels tree into relational levels of Age Range Interval Tabulation (ARIT) Structure. This teaching of dissecting is a unique feature of the patent application. D3 rides on commonly well understood knowledge of parent and child relationship multi-level structure needed as platform for demonstrating diverse inventive elements. Graduating entities out of multi-level tree system progressions is a unique inventive element, which is non-obvious to any person skilled in the art including D3 document which only discloses a periodic re-structuring and re-positioning of entities in the multi-level marketing matrix hierarchy and is insufficient for comparison with the present invention, which discloses a unique element of graduating every entity out of the entire multi-level tree system progression and does not disclose any non-obvious knowledge for overcoming obstacles of exponential broadening base physic in multi-level tree system and nor does it disclose any non-obvious knowledge that dissects large quantities of

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entities into ARITs for assigning positions to entities into adjacent multi-level trees inside respective ARITs.

6. It is contended that plain age group classifications cited in D4 do not imply any similar knowledge as taught by the present invention. Age group classification taught by the present invention is not an easily understood technology knowledge or achievable modifications from MLM business models but is a planned instructional solutions for preventing multi-level trees from getting overly large and this has remained non-obvious to any person skilled in the art. D4 does not disclose: (a) method for overcoming exponential broadening base physic in multilevel trees to effect fair leveraging treatment frequency; (b) dissecting large quantities of entities into ARITs; and (c) feature of constructing and using LSAC for size and measurement considerations. The argument is that cited references D3 and D4, whether considered alone or in combination would not provide any disclosure, teaching or suggestion to a skilled person in the art to reach to the solution disclosed in the present amended independent claims and were, therefore, incorrectly cited by the Respondent as prior arts.

7. It is also argued that the amended method and system claims of the present application are not directed towards a mathematical or business method or a computer programme *per se* or algorithm, instead the claims recite technical subject matter and provide a technical solution to a technical problem and real technical effect(s). In this regard, reliance was placed on the judgement of this Court in ***Telefonktiebolaget LM Ericsson (Publ.) v. Lava International Ltd., 2016 SCC OnLine Del 3716***, in which in respect of the term “algorithm” and the bar of Section 3(k) as it applies to algorithm, it was held that: “*the bar of Section 3(k) does not apply when in a patent*

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involving modern day technology, algorithms are employed in order to perform certain calculations or selections which are thereafter utilized by various hardware components or elements to produce/improve a technology and create a practical effect or result in a physical realization”.

8. It is urged that the claimed invention provides a technical solution to a technical problem present in the prior arts that in turn results in a technical advancement. Mr Narula reiterates that present uniquely taught method is capable of resulting in a computer execution more efficiently then before by telling the computer what are the structured optimal sizes of multi-level trees it needs to create at what level of tabulation data structure, which obviates the computer having to lock into possessive loops of clearing the next subsequent exponential challenges, whereby generically performing an unstructured task of node entities assignment and thus move on to complete next execution task effectively giving the structured instruction inputs to the computer. Thus, the current invention not only discloses a unique structured instruction for overcoming obstacles of exponential broadening base effects in multi-level tree systems, but also enables a computer to improve its’ executions more efficiently than before, with the nature of the task given to the computer. The present invention in advocating the construction and the use of a level strength analysis chart for providing size and measurement considerations functions in it, is not a form of mathematical expression in similar nature and nor does it fully leave it to the computer execution to relate through an algorithm, but also requires human decision to determine the size and measurement consideration functions, in order to realize the desired result intended. This intended desired result of preventing multi-level trees from getting overly large (a technical solution to a mentioned

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technical problem in specifications as filed) for overcoming obstacles of exponential broadening base logic in multi-level tree system was never taught in any prior multi-level engineering arts. It is urged that the intended objective of providing a solution for overcoming obstacles of exponential broadening base logic in multi-level tree system is not in itself an act of directing towards using an algorithm for organizing information through mathematical expressions or to create a multi-level tree index and using that index to search and retrieve data or organizing an office administrative automation task or proposing a business model scheme for distributing wealth to any extent but the present invention is providing a new method based on addressing the exponential broadening base physic in multilevel tree system that could actually be structurally managed by the taught disclosed instructions.

9. In this backdrop, it is argued that Respondent ignored all these submissions made by the Appellant in response to the hearing notice, which is reflected from the impugned decision. The decision also overlooks the crucial fact that corresponding patent has been granted to the Appellant in US (US 10,325,208 B2) and therefore, the matter deserves to be remanded back to the Respondent for a fresh consideration.

10. Learned Central Government Standing Counsel appearing for the Respondent defends the impugned order and submits that there is no infirmity and patent registration has been rightly refused on the grounds mentioned therein. FER was issued on 22.11.2019 and after considering the reply filed by the Appellant on 22.04.2020, it was observed that patent application was not in order for grant. Keeping in view provisions of the Patents Act and to provide hearing to the Appellant, a hearing notice was

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given, scheduling a hearing on 02.08.2023. Hearing notice pointed out various objections, some procedural and the others being lack of inventive step under Section 2(1)(ja) of the Patents Act and non-patentability under Section 3. It was brought out that the amended features were not originally claimed and could not be taken on record, however, even if the features are considered, the claims were not inventive, in view of prior arts D3 and D4 and common general knowledge in the art as it is well known practice for the person skilled in the art to generate an MLM model for profit/fair/money distribution which is well known by means of Ponzi scheme. Further, D3 also discloses an MLM model and its periodic restructuring that is managed by a computer programme i.e. a software and database processing system provided for a Periodic Restructuring and Repositioning of Multi-Level Marketing Participants Matrix Hierarchy (PRMLM). D4 also discloses factors affecting the MLM model and one of them is age group and thus, Claims 1 to 20 are not inventive.

11. It is submitted that it was rightly brought out by the Respondent that Claims 1 to 20 relate to MLM model business scheme of money distribution over a chain where one contributing member in a business chain adds another n-contributor under him/her and child contributor adds sub-child contributor and so on, where the newly added child contribution is distributed to the parents. The technical solution claimed relates to a mere office or organizational automation of a standard procedure of managing or distributing wealth among a group of investors and contributors based on certain parameters and this model for marketing is non-patentable under Section 3(k). It is also non-patentable as the process of creating a business tree/chain of the contributors and their data handling is carried out by means

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of a computer programme *per se* that does not bring any technical effect.

12. It is urged that the impugned order shows a detailed analysis of the arguments and written submissions filed by the agent of the Appellant and nothing has been overlooked. D3 and D4 have publication dates prior to the priority of the instant application and belong to analogous field of art i.e. Multi-Level Marketing Systems. The cited documents are similar to the instant application and lead to the same alleged technical aspects intended to be achieved and the present alleged invention simply recites the process and the method in a different manner as per user requirement with no difference in the technical aspects.

13. Heard learned counsels for the parties.

14. Present appeal relates to a patent application filed on 11.03.2015 for invention titled '*Multi-Level Marketing System*' claiming priority since 24.09.2012 from PCT Application No. PCT/SG2012/000356. The main plank of the arguments of Mr. Narula, counsel for the Appellant is that in the FER issued on 22.11.2019, objection was raised under Section 2(1)(ja) by citing prior arts D1 and D2, however, the same was subsequently given up and in the hearing notice dated 13.07.2023, references were made to prior arts D3 and D4. Appellant had filed detailed written submissions dated 17.08.2023 not only bringing forth the elements of present invention and its unique features which were non-obvious to the person skilled in the art, but also bringing out how the novel features were not disclosed by the teachings D3 and D4. Appellant had also brought out in detail that the objections with respect to lack of inventive steps and on non-patentability were misconceived but none of these have been even considered by the Respondent. There is substance in this contention.

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15. Perusal of the impugned decision dated 11.03.2015 shows that the analysis part of the decision largely relates to the amendment of the claims by the Appellant. After rejecting the plea to accept the amended claims by virtue of Section 57 of the Patents Act, Respondent deals with the shifting stands in the amended claims and reliance is placed on the judgments of this Court. Very briefly thereafter, reference is made to the prior arts D3 and D4 and abruptly relying on a decision of the IPAB, it is concluded that the patent application fails to satisfy the requirement of Section 3(k) of the Patents Act as the alleged technical advance proposed in the invention is the method of doing business, even if it is technically smarter way of doing business. In the concluding para, it is only observed that the submissions of the agent during hearing and subsequently through the written submissions do not comply with the requirements of the Patents Act and the application is refused under provisions of Section 15 of the Act. There is no discussion on any of the points raised by the Appellant in the impugned order.

16. In ***Agriboard International LLC v. Deputy Controller of Patents and Designs, 2022 SCC OnLine Del 940***, this Court remanded the matter to the Controller for a consideration afresh, on the ground that the impugned order was an unreasoned one, placing reliance on the decisions of the Supreme Court in ***Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota v. Shukla and Brothers, (2010) 4 SCC 785*** and ***Manohar v. State of Maharashtra & Ors., AIR 2013 SC 681***. In ***Competition Commission of India v. Steel Authority of India Limited and Another, (2010) 10 SCC 744***, the Supreme Court held that recording of reasons is an essential feature of dispensation of justice as reasons are the

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soul of orders. Non-recording of reasons could lead to dual infirmities, firstly, it may cause prejudice to the affected party and secondly, hamper proper administration of justice. A judgment without reasons causes prejudice to the person against whom it is delivered as the litigant is unable to know the grounds which weighed with the Court in rejecting his claim as also caused impediments in his taking adequate and appropriate grounds before the higher Court in case of challenge to the judgment. In fact, the Supreme Court has equated the obligation of giving reasons for arriving at a conclusion with the requirement of following the principles of natural justice.

17. I may also note that the Respondent has not taken into account a crucial fact that the subject application has been acknowledged in corresponding application in US leading to grant of patent, which according to the Appellant affirms the patentability of the present invention and ought to be taken into account.

18. Accordingly, impugned order dated 15.12.2023 is set aside and matter is remanded back to the Respondent for fresh consideration taking into account all issues raised and highlighted by the Appellant in the written submissions filed in response to the hearing notice. It is made clear that the Respondent shall decide the case on merits in accordance with law, uninfluenced by any observation either in the present order or in the impugned order dated 15.12.2023. The decision shall be taken as expeditiously as possible and not later than four months from today.

19. Appeal stands disposed of in the above terms along with pending applications.

JYOTI SINGH, J

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