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

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\+ **CS (OS) 783/2015**

INTERGLOBE TECHNOLOGY QUOTIENT PVT. LTD. ..... Plaintiff

Through: Mr. Shashwata Pandey, Advocate.

versus

EPITOME TRAVEL SOLUTIONS (I) PVT. LTD. .....Defendant

Through: Ex parte.

CORAM: JUSTICE S. MURALIDHAR

ORDER

% **12.08.2016**

1. This is a suit for recovery of sum of Rs. 4,26,81,638 filed by the Plaintiff Inter Globe Technology Quotient Pvt. Ltd. along with pendente lite and future interest @ 18% per annum.

2. The Plaintiff states that it is engaged in the business of distributing the Global Distribution System (GDS), owned and operated by Travel Port Global Distribution System BV in India. The Defendant is a travel agent engaged in the business of travel business and travel related solutions and has its registered office in Okhla Industrial Area Phase-1, New Delhi.

3. It is stated that the Plaintiff and Defendant entered into a subscriber's

agreement ('SA') on 15th July 2012 in terms of which it was mutually agreed that the Defendant would be governed by the terms and conditions governing the usage of the Galileo System. The agreement was for an initial period of three years. The Defendant agreed to use the Galileo System as its exclusive Global Distribution System (GDS) for and all its operations in India in the manner provided under Clause 2.2(a) of the SA. Clause 2.2 of the SA reads as under:

> "a. Epitome Travel Solutions (I) Pvt. Ltd. shall use the Galileo system, as the only GDS for any and all its operations in India and the only exception to this would be in the event that a corporate client serviced by Epitome Travel Solutions (I) Pvt. Ltd. has an existing global/local contract with any other GDS provider and the same is set out as a prerequisite for their servicing in India then Epitome Travel Solutions (I) Pvt. Ltd. shall be entitled to use such other GDS provider for that particular corporate client."

4. Plaintiff states that it has provided to the Defendant the following hardware equipment and software at the Defendant's registered office to enable it to begin the using of Galileo System for bookings and generating segments in accordance with the SA:

(i) Twenty Nine (29) Laptops

(ii) Three Galileo Desktops (i.e., 3 CPUs and 3 TFTs)

(iii) Galileo Software.

5. Plaintiff further states that at the request of the Defendant it made a payment of Rs.1 crore as upfront advance in terms of Clause 3(e) of the SA. This upfront advance amount was to be set off against the productivity incentive payments to be made by the Plaintiff till such time the entire upfront advance was adjusted. Only thereafter was the Defendant eligible to receive the productivity incentive payments from the Plaintiff.

6. The Plaintiff states that Clause 3(a) of the SA provided for payment/adjustment of the productivity incentives. It is stated that after receiving the upfront advance, the Defendant failed to generate sufficient segments using the Galileo System. The month-wise details of the segments generated by the Defendant using the Galileo System have been set out in para 11 of the plaint. The aggregate segments generated was 548 as against a projected productivity of approximately 2,17,500 segments for the said period. According to the Plaintiff, the Defendant failed to generate a single segment after by using Galileo System after August 2013. This showed that

the Defendant had ceased doing business in the Galileo System.

7. Invoking Clause 6(d) of the SA which enable either party to terminate the said SA by a written notice, the Plaintiff sent a legal notice dated 27th November 2014 to the Defendant. It was returned with the remark 'left' endorsed by the postal authority. By the said notice, the Plaintiff had asked the Defendant to refund the upfront advance of Rs.1 crore and further to pay Rs. 3,26,81,638 towards loss and damage suffered by the Plaintiff on account of the failure by the Defendant to perform its contractual obligations under the SA. Another legal notice dated 23rd December 2014 was sent through registered post, speed post and courier. It is stated that the legal notice sent through registered post was delivered on 23rd December 2014. It is in the above circumstances, the present suit was filed. Summons were directed to issue on 23rd March 2015. The order passed by the Joint Registrar on 25th May 2015 noted that the Defendant had been served on 20th April 2015. None appeared for the Defendant and it was, therefore, set ex parte.

8. On 26th August 2015, the Court passed a further order proceeding ex parte against the Defendant and directing the Plaintiff to file its evidence by way

of ex parte evidence within four weeks together with the original documents.

9. Pursuant thereto the Plaintiff has filed the affidavits of evidence of Mr. Rajan Lamba (PW-1) the Authorised Representative ('AR') of the Plaintiff and Mr. Neeraj Jain, Manager (Finance). By these affidavits, the following documents have been exhibited:

(i) the board resolution dated 1st May 2013 authorising the filing of the suit (Ex. PW-1/1).

(ii) the copy of the SA (Ex. PW-1/2)

(iii) the confirmation of Kotak Mahindra Bank regarding transfer by way of RTGS the sum of Rs.1 crore after deduction of TDS in the account of the Defendant (Ex. PW-1/3).

(iv) the legal notice dated 27th December 2014 (Ex. PW-1/4) and the postal receipts proving dispatch thereof (Ex.PW-1/5).

(v) the returned envelope consisting the above legal notice dated (Ex.PW-1/6) with the endorsement 'Left'.

(vi) copy of the legal notice dated 25th December 2014 (Ex. PW-1/7), the postal receipts proving dispatch thereof (Ex.PW-1/8), the courier receipt (Ex. PW-1/9) and the tracking report (Ex.PW-1/10).

10. The Court is satisfied that the Plaintiff has been able to prove that:

(i) the parties entered into the SA.

(ii) that pursuant thereto the Petitioner performed its obligations of supplying the hardware and software for installation of the Galileo System which was to be used by the Defendant for generating segments.

(iii) the Plaintiff paid an upfront advance of Rs.1 crore after deduction of TDS to the Defendant.

(iv) the Defendant failed to generate sufficient segments between the period 1st July 2012 and August 2013 using the Galileo System. The Defendant generated no segment at all using the Galileo System thereafter.

(v) the evidence by way of affidavit of the Plaintiff marking the relevant documents as exhibits and asserting that a loss of Rs. Rs.3,26,81,638 has been caused to the Plaintiff has remained unrebutted.

11. The Court is satisfied that the Defendant has been in breach of its contractual obligations under the SA and that the Plaintiff is entitled to be refunded the upfront money of Rs. 1 crore paid by it together and the amount claimed towards loss and damage suffered by the Plaintiff on account of such breach, together with interest as prayed for.

12. Accordingly, a decree for a sum of Rs. 4,26,81,638 is passed in favour of the Plaintiff and against the Defendant together with interest @ 18% per annum thereon from the date of filing of the suit till the actual date of realisation together with costs of Rs.20,000. Decree sheet be drawn up accordingly.

S. MURALIDHAR, J

AUGUST 12, 2016
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