

\$~24

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

Date of Decision: 10th August, 2018

+ **CS (COMM) 1048/2018, I.As. 10006/2018 & 10008/2018**

SKYMAP TECHNOLOGIES PRIVATE LIMITED Plaintiff

Through: Mr. Rajshekhar Rao, Ms. Abhay J. V., Ms. Apoorva Murali and Ms. Kreetika Vijay, Advocates.
(M:9871792740)

versus

XAD INC. AND ORS. Defendants

Through: Mr. Sandeep Sethi, Senior Advocate with Mr. Ananya Kumar, Mr. Manish Jha and Ms. Megha Kapoor, Advs. for D-1 to 5. (M:9910627489)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present suit for infringement of copyrights, damages, rendition of accounts etc. has been filed by the Plaintiff seeking an injunction and damages against the Defendants.
2. The Plaintiff entered into a service agreement dated 16th September, 2015 with Defendant No.6, which is a subsidiary of Defendant No.1. According to the Plaintiff, as per the terms of the said agreement, it was to be given access to the Defendants' platform called "Blueprints", to which the Plaintiff was to carry out improvements, enhancements, and modifications by providing outlines or geographic boundaries, points of interest and events. The platform was then made available to various clients and customers of the Defendants. The Plaintiff thus avers that they were permitted to work on the Defendants' platform and make their own

contributions and improvements of their work on the said platform.

3. According to the Plaintiff, the service agreement between the parties dated 16th September, 2015 had a one year term that expired on 15th September, 2016. It is submitted by Mr. Rao, learned counsel for Plaintiff that subsequent to the term having come to an end, the Defendants' rights pursuant to the agreement do not survive, and the copyright in improvements and derivatives of work created on the platform belong to the Plaintiff. The Defendants are now not allowed to use the same and are indulging in infringement of the copyright.

4. This Court on 31st July, 2018, had directed as under:

“4. Mr. Pravin Anand, has appeared for the Defendants and a copy of the entire pleadings and documents have been supplied to him. Considering the nature of the dispute, the learned counsel for the Defendants is directed to seek instructions on the following issues:-

(i) Whether the services agreement was renewed beyond 16th September, 2016?

(ii) Whether there are any outstanding amounts payable for the month of April and May 2018?

(iii) As to whether the Plaintiff and its consultants can be given access in order to enable them to retrieve their work products?

5. The parties shall also address the Court as to the ownership of the copyright in the work products post the term of the agreement i.e., 16th September, 2016.”

5. Mr. Sandeep Sethi, learned Senior Advocate appearing for the Defendants has heavily relied upon the agreement dated 16th September, 2015 to argue that there is an arbitration clause in the said agreement and hence the present suit is not maintainable.

6. Detailed submissions on behalf of the parties were heard on the last

date. The submission of Mr. Rao was that the arbitration clause does not apply as the agreement was not renewed and the scope of the arbitration clause is limited and that since his client does not claim any rights in the work done during the term of the agreement, the arbitration clause does not apply. However, Mr. Sandeep Sethi submits that even the invoice raised in May, 2018 by the Plaintiff is under the agreement, which itself is evidence that the arbitration clause still survives.

7. After some submissions, Ld. Counsels for the parties, having obtained instructions, have agreed that the disputes may be referred to the Delhi International Arbitration Centre ('*DIAC*'). Accordingly, with the agreement of the parties, Justice Indermeet Kochar (Retd), is appointed as the Sole Arbitrator to decide the disputes between the parties. The parties shall be permitted to move the Sole Arbitrator for any interim orders/directions that they may wish to seek under Section 17 of the Arbitration & Conciliation Act, 1996.

8. The Defendants have also agreed to make the payment of the outstanding of invoices for the months of April and May, 2018 as contained at pages 62 & 63 of the documents file, within a period of 10 days from date. The said payment shall be remitted directly to the Plaintiff. The payments so made of the invoices of April and May, 2018 shall be subject to the final award of the learned Arbitrator and will be without prejudice to the rights and contentions of the Defendants.

9. In the meanwhile, if the parties wish to explore the possibility of amicable resolution, they are given liberty to do so within one month. Upon the payment being made and upon the expiry of one month, the matter will proceed as per the rules of the DIAC.

10. The suit is, accordingly, disposed of with these observations. All pending I.As. are disposed of.

11. None of the observations made hereinabove shall bind the learned Arbitrator in the final hearing of the matter.

12. 50% of the court fee be refunded to the Plaintiff as per the Court Fees Act, 1870.

PRATHIBA M. SINGH
JUDGE

AUGUST 10, 2018/dk

