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

Date of decision: 8th February, 2023

+ **W.P.(C) 537/2023 and CM APPL. 2161/2023**

ALPHA INFOLAB PVT LTD

..... Petitioner

Through: Mr. Deepak Biswas and Mr. Ankur
Garg, Advocates. (M- 9811025391)

versus

NATIONAL INTERNET EXCHANGE
OF INDIA AND ANR

..... Respondents

Through: Mr. Manish Mohan, CGSC With Ms.
Akansha Singh, Advocate. (M-
8397056571, 9999910115), Ajay
Gupta, Advocates (M- 9811370966)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. In the present petition, the Petitioner challenges the termination of his distributorship by the National Internet Exchange of India (*hereinafter* 'NIXI') vide letter dated 28th December, 2022.
3. The Petitioner had entered into an Agreement with NIXI in April 2021 whereby it was appointed as an Affiliate Resource Partner. As per the agreement, NIXI is a Company set up for peering of ISPs among themselves for the purpose of routing the domestic traffic within the country. It is claimed that the purpose of such routing, instead of taking it all the way to US/abroad is to make internet services more efficient, thereby resulting in better quality of service (reduced latency) and reduced bandwidth charges for ISPs by saving on International Bandwidth. NIXI claims to be managed

and operated on a neutral basis, in line with the best practices for such initiatives globally.

4. The Agreement further stipulates the role of the Petitioner as a Resource Partner as under:

*“7. i. **Appointment:** Subject to the terms and conditions of this Resource Partner Agreement, First Party Company hereby appoints and grants the Second Party Affiliate Resource Partner, the right to render services as a Resource partner for the first party company. The Second Party Company will be issued a referral Code by the first party company to identify affiliate referrals made by the Second Party. NIXI has the right to appoint affiliates without help/intervention of the resource partner.*

...

*7.v.**Products.**The Second Party Resource Partner shall act as an extended arm of the First Party Company in order to introduce and guide prospective Affiliates in becoming an Affiliate of the First Party Company through online applications. Such online Applications shall mention the referral code issued by the First Party Company to the Second Party Resource Partner in order to identify the referred affiliate for the purposes of revenue sharing”*

5. The agreement was suddenly terminated by NIXI vide termination notice dated 28th December, 2022 which reads as under:

*“NIXI/IRINN has come to know that your services of IRINN distributorship are being used in a manner which **are of concern to national security** and hence, unlawful in nature under Clause 11(iii)(c) of the Affiliate Resource Partner Agreement. Also, NIXI/IRINN wishes to remove your services as resource partner under Clause 11(iii)(c) of the Affiliate Resource Partner Agreement.*

You are hereby, served with this 15 calendar days notice towards termination of the Affiliate Resource Partnership Agreement as per Clauses 11(iii)(c) and 11(iii)(e)."

The grounds given are simply `national security' without any further details.

6. The submission of Id. Counsel for the Petitioner is that no notice was issued to the Petitioner nor any reply was sought from the Petitioner. Even the details of the allegations were not put to the Petitioner. The clause invoked by NIXI for terminating the agreement is as under:-

"11. iii. Termination. Either Party may terminate this Agreement prior to its expiration upon the occurrence of either of the following:

a-b

c. The other party commits any unlawful activity as per the law of land with respect to the business of NIXI handled by the Resource Partner.

d. The other party ceases to do any business for a continuous period of 1 year with respect to the business of NIXI handled by the Resource Partner.

e. NIXI may add or remove resource partners at any time as per it's business needs and emergent situations."

7. Vide order dated 17th January, 2023, NIXI was directed to file an affidavit, the relevant portion of which reads as follows-

"5. Learned Counsel for the NIXI seeks time to take instructions in the matter.

6. Let a short affidavit be filed within ten days. If there is any record with NIXI which supports the termination, the said records shall also be kept ready for perusal of the Court on the next date of hearing"

8. In compliance with the Order dated 17th January 2023, an affidavit has been presented today on behalf of NIXI dated 4th February, 2023. The same

has been deposed by Mr. Punit Dhawan, Legal Officer at NIXI. As per the said affidavit, the notice dated 28th December, 2022 was to be treated as a show cause notice and not as a termination letter. Various reasons have been given in the counter affidavit as to why such a notice was issued to the Petitioner. The copy of the affidavit has been served upon the Petitioner.

9. None of the grounds raised in the affidavit have been communicated to the Petitioner prior to the filing of the same. The reasons for the termination are also not specified in the termination notice except stating that since the services are of concern to national security and hence unlawful as per the contract.

10. In view of the same, it is directed that the grounds contained in the affidavit shall be treated as the reasons in support of the show cause notice dated 28th December, 2022. The Petitioner is given four weeks' time to respond to this notice with a detailed reply. Upon the reply being furnished, NIXI may take a decision in the matter within a period of two months from the date of filing of the reply.

11. The remedies of the Petitioner, if any, in respect of the final decision that may be taken, which would be a reasoned decision, are left open.

12. The petition is disposed of in these terms. All pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 8, 2023

Rahul/RP

(corrected and released on 14th February, 2023)