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

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Decided on: 30.01.2023

+ **FAO(OS) (COMM) 274/2022, CM APPL. 41079/2022, CM APPL. 41080/2022 (Delay) & CM APPL. 41081/2022**

NATIONAL INTERNET EXCHANGE OF INDIA Appellant
Through: Mr. Aldanish Rein, Advocate

versus

SANJEEV RAMNIWAS GOYAL Respondent
Through: Mr. Shashank Garg, Ms. Nishtha Jain
and Ms. Muskaan Gopal, Advocates.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI
HON'BLE MR. JUSTICE VIKAS MAHAJAN

NAJMI WAZIRI, J. (ORAL)

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. CM APPL. 41080/2022 seeks condonation of delay of 66 days in re-filing the appeal. The impugned order is dated 08.12.2021, was corrected and released on 12.01.2022. As per the order dated 10.01.2022, in *suo motu* Writ Petition (C) No.3/2020, the Supreme Court has directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of calculating the period of limitation. Therefore, the period of limitation would start from 01.03.2022.
2. In terms of Section 13(1)(A) of the Commercial Courts Act, 2015, the

appeal would have to be preferred within 60 days from the date of judgment or order. The said provision of law reads as under:-

“13. Appeals from decrees of Commercial Courts and Commercial Divisions.—(1) [Any person aggrieved by the judgment or order of a Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court within a period of sixty days from the date of judgment or order.

(1A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order:

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).]”

3. Though 60 days expired on 29.04.2022, the appeal was filed on 28.05.2022. However, the filed appeal was not in order. It was subsequently re-filed on 15.09.2022. This period of delay is unexplained in the application. Accordingly, the application is dismissed. As a consequence of this, the appeal too would be dismissed as not maintainable. Nevertheless, the learned counsel for the appellant argues that the matter be heard on merits.
4. This appeal under section 37 of the Arbitration and Conciliation Act, 1996, impugns the arbitral award dated 14.08.2020 awarding an amount of Rs.66,68,593/-, along with interest thereon. The claimant

was appointed as Accredited Registrar for .IN and .BHARAT/IDN domain names beginning from 24.02.2014 and 09.09.2014 respectively. The appellant claims that the complaints have been received *apropos* misconduct and misrepresentation in violation and contrary to the agreements. The award was impugned under section 34 of the Act in OMP (COMM) No.562/2020. The challenge was dismissed by the impugned order dated 08.12.2021.

5. The learned counsel for the appellant submits that both the arbitral award and the impugned order are erroneous, insofar as they have disregarded the government's policy *apropos* zero tolerance against malpractices. There can be no dispute that the said objective could be achieved only through a process which is fair and sound in law. Admittedly, the appellant had proceeded on the basis of some complaint received from anonymous or fictitious e-mail addresses. They were not able to contact the sender of the e-mails or the complainants. Instead they issued a show cause notice to the respondent in terms of the complaint. The substratum and basis of the complaint was never verified or established. All issues raised before the arbitral tribunal went against the appellant. The impugned order has reasoned in detail the issues raised and held as under:-

12. Further, it is noted that during the course of arbitration, NIXI completely failed to sustain the allegations on the basis of which the termination was affected. The three complaints which formed the basis of the Show Cause Notice were not substantiated. The cross-examination of the witness clearly evidences this fact, relevant portion thereof is as under: -

“Q99 With respect to the complaint of Mr. Sanjeev

Kr. -what steps were taken?

A The complaint of Mr. Sanjeev Kr. was received from various government officials Since many copies of the complaint was received by Respondent, Respondent sought legal opinion of their legal consultant regarding the action to be taken on the complaint.

Q100 Were any other steps were taken regarding the complaint of Sanjeev Kr. ?

A No

Q 101 Is it correct to suggest that on receipt of said complaint by you, no communication were sent either to the complainant or the Claimant to verify the veracity of the said complaint?

A It is correct

Q 102 Who had sought the legal opinion in this regard?

A Myself

Q103 What was the query on which legal opinion was sought?

A I do not remember.

Q 104 From whom did you seek the legal opinion? (objected to by the counsel of the Respondent on the ground that any exchange of information between the client and the advocate is privileged and confidential)

A It is confidential

Q105 Have you anywhere from the record produced the legal opinion given or the contents of it?

A No

Q 106 Were there any steps taken after the receipt of the legal opinion?

A Steps were taken but not immediately

Q 107 What did you do to verify the veracity of the said complaint?

A I did not verify. ”

13. Therefore, the complaints which forms the genesis of the action of termination remained unverified. Further, it is pertinent to note that under Clause 6.1 - action could have

been initiated on a complaint made by a customer. Here, the complaints were from some anonymous e-mail accounts and not customers. NIXI made no efforts to verify the authenticity and genuineness of the complaints before passing the Termination Order. Thus, irrespective of whether the Show Cause Notice was necessary or not, the undisputed and blatant fact remains that allegations for sustaining the action of termination remained unsubstantiated before the Tribunal. The Tribunal has analysed the statements of the witnesses, who admitted that no complaint(s) were received from any complainants, with regard to SRG, prior to the issuance of the Show Cause Notice or before the Termination Order. NIXI's stand is that it sought legal opinion from the legal department after the receipt of the complaints. However, this contention is not found to be genuine as they did not produce any such opinion(s) or document(s) on record to support then stand. Thus, there has been lack of due diligence on the part of NIXI and therefore, Termination Order has rightly been held to be bad in law.

There is no ground to interfere with the findings rendered on this aspect. Besides these findings are based on appreciation of oral and documentary evidence that was presented before the Arbitral Tribunal.

14. The next question before this Court is whether the Tribunal was justified in awarding consolidated compensation/ amount of Rs. 20,62,500/- towards loss of profit. The challenge to this finding is essentially on the ground that the loss of profit claimed by SRG is not supported by any cogent documentary evidence. Once, the Tribunal found the action of NIXI to be unwarranted, the Tribunal on the basis of the material placed before it, proceeded to determine the compensation on the "best it can" basis. On this issue, the Tribunal has taken cognisance of the statement made by the Claimant giving details of the profits for the Financial Year 2016-17 and 2017-18. The Tribunal was conscious of the fact that the documentary proof by SRG was insufficient and not reliable. However, on

*broad evaluation basis, the Tribunal held that Rs. 7.5 Lacs p.a. could be taken as loss of profit suffered by SRG. This approach for assessment of damages for loss sustained has been accepted by several decisions of the Apex Court including those referred to by the Tribunal being - **Union of India and Ors. v. Sugali Sugar Works and Maharashtra State Electricity Board v. Datar Switchgears**. The Court does not find reason to interfere with the approach taken by the Tribunal as it was reasonable and justified in the given facts of the case.*

6. From the preceding discussion, it is evident that the contentions of the appellant were without any basis and the arguments made by them are untenable in law. This court finds no reasons to interfere with the observations of the learned Single Judge. The appeal is without merit and is accordingly dismissed.

NAJMI WAZIRI, J

VIKAS MAHAJAN, J

JANUARY 30, 2023

j/sd