

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA No. 4625 of 2024

**Hoichoi Technologies Private Limited and Another
Vs.
Reserve Bank of India and others**

For the petitioners	:	Mr. Sabyasachi Chowdhury, Mr. Rudraman Bhattacharya, Mr. Shuvasish Sengupta, Ms. Shyantee Datta, Mr. Vivek Pandey
For the respondent no.1	:	Ms. Suchismita Ghosh
For the respondent nos. 2 & 3	:	Mr. S.N. Mookherjee, Sr. Adv., Mr. V.P. Singh, Ms. Sayobani Basu, Mr. Asif Ahmed, Ms. Mini Agarwal
For the respondent nos. 4 & 5	:	Mr. Ratnanko Banerji, Ms. Shubhangi Jain, Ms. Pubali Sinha Chowdhury Mr. Naman Chowdhury Mr. Dhruv Chawla
For the respondent no. 2	:	Mr. Sayyan Poovayya, Mr. Chetan Chawla
Hearing concluded on	:	22.03.2024
Judgment on	:	05.04.2024

Sabyasachi Bhattacharyya, J:-

1. The petitioner no. 1, Hoichoi Technologies Private Limited, with its Director, petitioner no. 2, have preferred the instant writ petition. The petitioner no. 1-Company hosts Bengali Movies, Web Series, TV shows

and films through its mobile application and is a subscription-based model which monetizes its contents. Respondent nos. 2 to 6 are loosely referred to as the “Google Group of Companies”. Respondent no. 6, namely Google India Digital services Private Limited (Google India) is an online Payment Aggregator (PA) incorporated under Indian Laws.

- 2.** The petitioners argue that the entire Group of Companies comprised of respondent nos. 2 to 6 provide inter-related services and act as PAs as contemplated in the Guidelines on Regulation of Payment Aggregators and Payment Gateways issued by the Reserve Bank of India (RBI) on March 17, 2020 (updated as on November 17, 2020). PAs have been defined under Clause 1.1.1 of the Guideline as entities that facilitate e-commerce sites and merchants to accept various payment instruments from the customers for completion of their obligations without the need for merchants to create a separate payment integration system of their own. PAs facilitate merchants to connect with acquirers. In the process, they receive payments from customers, pool and transfer them on to the merchants after a time period.
- 3.** Learned counsel for the petitioners argues that by virtue of providing Google Play Services, the respondent nos. 2 to 6, which are entities belonging to the Google Group of Companies, employ the Google Play Billing System (GPBS) for facilitation of payment transactions on the Google Play Store. Thus, it is contended that even without being incorporated within the laws of India as contemplated in the Payment

and Settlement Systems Act, 2007 (hereinafter referred to as, “the PSS Act”), the respondent nos. 2 to 6 combine forces to act as PAs, thereby flouting the provisions of the PSS Act.

4. The petitioners, it is contended, have already given a comprehensive representation in that regard with the complaint indicated above to the RBI, which is the regulatory and adjudicatory authority under the PSS Act but the same has not yet been decided by the RBI. It is prayed that the RBI be directed to resolve the issues expeditiously and in the meantime the petitioners are not subjugated and forced to accept the payment system of GPBS-UCB employed by the respondent nos. 2 to 6 and that the petitioner no. 1 be not delisted from the Google Play Store for its delay in adopting the allegedly illegal payment model of Google.
5. Learned counsel for the petitioners elaborately argues on the definition of PA under the RBI Guidelines and seeks to impress upon the Court that the 2020 Guidelines are being flouted by the Google Group of Entities.
6. Respondent nos. 4 to 5, despite not being authorized under Section 4(1) of the PSS Act, are being used as a payment system to be integrated in the petitioners’ App (Application) forcibly.
7. As per Clause 8 (Settlement and Escrow Account Management) of the 2020 Guidelines, the PA shall settle the funds debited from the customer account to the merchant account of Hoichoi within 1-2 days of such debit. Clause 12.3 of the GPTS Agreement signed between the petitioner no. 1 and the respondent no. 4 contemplates that the

payments are released after a gap of 15 to 46 days from the date of the transaction.

- 8.** Clause 8.9.1.2(d) of the Guidelines provides that the PAs shall be permitted for payment of commission to the intermediaries at a pre-determined rate, which is also being flouted by the respondents.
- 9.** In terms of Clause 8.12, settlement of funds with merchants shall not be co-mingled with other business, if any, handled by the PAs, which is also being flouted.
- 10.** Learned senior counsel appearing for the respondent nos. 2 to 6 controverts such submissions and argues that in terms of the Developers Distribution Agreement (DDA) between the petitioner no. 1 and the respondent no. 3, the said respondent merely charges a service fee for services as enumerated in Clause 2.1 of the DDA, read together with web pages on service fee linked in the DDA, read with Clause 3.4 of the DDA.
- 11.** The invoices raised by respondent no. 3 also pertain to service fee. It is argued that under the DDA, the respondent no. 3 does not impose a charge as contemplated in Section 10A of the PSS Act and as such, there is no violation of the statute at all. None of the private respondents other than respondent no. 6 act as PAs. It is argued that the respondent no. 3 charges service fees for hosting the sites of 'Apps' (as software applications are commonly referred to) providing ancillary services such as development, etc. Such fees are charged only if the Apps concerned, engaged in developing such Apps, earn from third

parties. However, if the platform is used merely as a developmental base, no service charges are exacted.

- 12.** Learned counsel for the RBI submits that the writ petition should be dismissed as the complaint by way of a written representation was filed by the petitioners only on February 19, 2024, whereas the writ petition has been filed on the very next day.
- 13.** In fact, the RBI has already served notice on Google on or about February 22, 2024 and has held two sittings on March 6 and March 21, 2024. Whether there is any breach on the part of the respondent nos. 5 and 6, directly or indirectly, through their Group of Companies is already being looked into by the RBI.
- 14.** The RBI being the regulatory and supervisory body has been designated to regulate and supervise payment systems under Section 3(1) of the PSS Act. Wherever a dispute arises between any system participant and a system provider or between system provider or where any of the system participants are not satisfied with the decision of the panel referred to in Section 24(1) of the PSS Act, the dispute is to be referred to the RBI for adjudication under sub-section (3) of Section 24.
- 15.** In terms of the power conferred under Section 18 of read with Section 10 of the PSS Act, the RBI has formulated guidelines on Regulation of Payment Aggregators and Payment Gateways on March 17, 2020, as updated on November 17, 2020.
- 16.** Thus, it is argued that the RBI having already initiated adjudication on the issues involved and having held meetings with Google Group of

Companies to evaluate the veracity of the complaint received from the petitioners, at least 12 weeks' time is required by the RBI for conclusion of the process. Thus, there is no scope of issuing any writ of mandamus directing the RBI to initiate enquiry or adjudication.

17. Upon hearing learned counsel, the first aspect of the matter which catches the eye is the way in which the reliefs in the writ petition have been framed. In reliefs (a) and (b), the petitioners seek a mandamus for the respondent no. 1 that is the RBI to initiate appropriate adjudicative proceedings against the respondent nos. 2 to 6 on the complaint of the petitioners. However, the real relief sought is embedded in prayers (f) and (g) which respectively seek a protection for the petitioners from accepting the payment system of GPBS-UCB and pending adjudication of the issues before the respondent no. 1, a restraint order on the respondent from delisting the petitioner no. 1 from the Play Store.
18. Thus, the crux of the reliefs lies in prayers (f) and (g), which have been sought to be camouflaged by the primary reliefs. Again, reliefs (f) and (g) are somehow contradictory to prayers (a) and (b), as pending adjudication before the RBI, this court cannot usurp the jurisdiction of the RBI to decide the core issues involved in such adjudication between the parties. As rightly pointed out by the respondents, an overlapping challenge is pending before the Competition Commission of India (CCI) under the Competition Act, 2002, where similar reliefs have been sought by the petitioners, although couched in a somewhat different language. The intended end-relief which has been refused by

the CCI is equivalent to reliefs (f) and (g) sought in the present writ petition.

- 19.** An important reason to hold that primary reliefs, hidden in the other reliefs, are prayers (f) and (g) is that prayers (a) and (b) are sham. The RBI is the regulatory and adjudicating authority under the PSS Act. The petitioners gave a representation containing their complaints against the respondent nos. 2 to 6 only on February 19, 2024. Surprisingly (or not so surprisingly) the writ petition claiming inaction of the RBI on the said complaint was filed on the very next date that is on February 20, 2024. The petitioners, by no stretch of imagination, could have expected the RBI to decide the issues raised by the petitioners and complete the adjudicatory process within 24 hours. Thus, the RBI rightly protests that it requires at least 12 weeks' time to decide the issues involved, since those are required to be enquired into, the concerned parties given an opportunity of hearing and an adjudication on merits to be made upon ascertaining of the surrounding circumstances and the extant legal provisions. No direction, in fact, is required from the writ court to urge the RBI on such count, since there is no reason for any apprehension at this stage that the RBI shall sit over the matter indefinitely. Hence, no cause of action for the primary reliefs sought in the writ petition has, in fact, been disclosed in the writ petition.
- 20.** However, the limited scope of assessment in the writ petition is whether the petitioners are, irrespective of the above factors, entitled to the reliefs sought, seeking restraint on payment by the petitioners

and on consequential delistment /coercive steps by respondents for non-payment of the amounts charged by the respondents.

- 21.** For the services offered on the Google Play Store platform to the petitioner no. 1, the petitioners are making payments for which receipts are being issued by respondent no.3 that is Google Asia Pacific Pte Ltd.
- 22.** A question has been raised as to whether, since the Google Payments are operated by the Google Pay Billing System (GPBS), the entire Group of Google Companies are acting as PAs, being links in the chain of each other. It is an admitted position that respondent 6, namely Google India Digital Services Private Limited, is incorporated under the laws of India and is authorized and registered to operate as a PA. The term 'Payment Aggregator' has been defined in the Guidelines on Regulation and Payment Aggregators and Payment Gateway dated March 17, 2020 (updated as on November 17, 2020) issued by the RBI.
- 23.** Clause 1.1.1 of the 2020 Guidelines defines PAs as entities that facilitate e-commerce sites and merchants to accept various payment instruments from the customers for completion of their obligations without the need for merchants to create a separate payment integration system of their own. PAs facilitate merchants to connect with acquirers. In the process, they receive payments from customers, pool and transfer them on to the merchants after a time period.
- 24.** Thus, in order to qualify as a PA, the entity has to facilitate e-commerce sites and merchants not only to accept various payment

instruments from the customer for completion of their payment obligations but the same has to be without the need for the merchants to create a separate payment integration system of their own. PAs not only provide the facility for payments through different modes but also facilitate merchants to connect with acquirers and in the process receive payments from customers, pool and transfer them on to the merchants after a time-period; in other words, the PAs take care of the entire payment chain from end to end, accepting the money from the customers and after due processing, passing the same on to the merchants after a period of time.

- 25.** A perusal of the Google Play Developer Distribution Agreement between the petitioner no. 1 and Google shows that in Clause 2.1 it clearly sets forth that the contract is in relation to the use by the petitioner no. 1 of Google Play to distribute its products. Google will, solely at the discretion of the petitioners and acting pursuant to the relationship defined in Clause 3.1, display and make the products available for viewing, download and purchasing by user. In Clause 3.7, it has been specified that the products of the petitioner no.1 may be available for free at the option of the petitioners, in which case the petitioners will not be charged a service fee at all. The service charges would only be applicable in the event the petitioners use the platform of Google Play to extract commercial benefit by charging for their own products carried by the platform.
- 26.** Hence, in clear terms, the development agreements specifies that the service charge levied is merely for the service provided by Google for

permitting the petitioners to display their products, for making them viewable, downloadable and for purchase of the products by users. The service charges levied are therefore only for carrying products on the Google Play platform and is exacted only when the petitioners extract the platform and exploit it for commercial purposes of their own. The nature of the charge, however, remains as a service charge and leaves no role for Google to Act as a PA.

- 27.** The agreement dated June 2, 2022 between the Google Payment Corporation (respondent no.4) and the petitioners defines “service” in Clause 1.16 as the service described in the agreement that facilitates the processing of payment transactions on behalf of seller to complete a payment for a purchase between seller and buyer. The petitioners have laid much stress on the same. However, the extracts of the relevant web-pages furnished by the petitioners themselves go on to show that the Google Play platform merely offers different payment methods but does not itself Act as a PA. One of the payment methods is GPay, which is operated by respondent no. 6. There are other popular payment modes, even including credit/debit cards, which are offered on the platform. The same web page also shows Google Play as a payment mode. The same is captioned as Play Billing.
- 28.** However, it is to be noted that under the development agreement with the petitioners, the petitioners are not charged for such services by Google Play.
- 29.** Thus, the Google Play services have made out a reasonably satisfactory prima facie case of charging only “service charges for

hosting the Applications like Hoichoi (petitioner no.1)” when the said Apps earn money by using the platform provided by Google. It only provides user of the online platform across devices for the purpose of hosting developers and App operators. There is nothing palpable or *ex facie* evident to clinch beyond reasonable doubt that Google acts as PA by handling end-to-end payment mechanisms from merchants to customers. Displaying various payments Apps on its platform including respondent no.6, which is an accredited body incorporated in India as a PA, does not make Google itself or its group of companies other than respondent no.6 a PA *per se*.

- 30.** The above discussion is only for the purpose of ascertaining whether the petitioners have made out such palpable and *ex-facie* case which is evident at the first glance that the Google group of companies are operating as PAs without being accredited/registered to do so on Indian soil. However, the above discussion shows that the issues raised are at best arguable and are to be decided by the RBI, which is the designated regulatory and adjudicatory authority under the PSS Act which has its own ecosystem for dealing with contraventions of the said Act. Even the Competition Act provides fora which have already been approached and the petitioners have submitted to the jurisdiction of the CCI. Hence, it would be absolutely premature for the writ court to enter into the merits of the self-same issues and pass interim orders as per prayers (f) and (g) of the writ petition.
- 31.** In so far as prayers (a) and (b) are concerned, I have already discussed above that the same is premature and there is no cause of

action disclosed to support the apprehension that RBI will sit indefinitely over the matter. The 12 weeks' time sought by the RBI is sufficiently reasonable in the opinion of this Court, considering the intricate issues involved and the enquiries to be made as well as the hearing to be afforded to the concerned parties, even leaving alone the required detailed examination of the agreements between the parties and the modalities of operation of the concerned group of companies. Thus, there is no scope of interference in any manner, at least at the present juncture.

- 32.** Accordingly, WPA No. 4625 of 2024 is dismissed on contest without any order as to costs, expressing the hope and trust that the RBI (respondent no. 1) shall decide the issues raised by the petitioners before it as expeditiously as possible, preferably within 12 weeks from date.
- 33.** It is further made clear that the merits of the contentions raised herein have not been entered into by the Court and it will be open for all the jurisdictional fora, including the RBI and the CCI, to adjudicate the issues involved on their own merits. It is deemed that none of the allegations made in the writ petition are admitted by any of the respondents.
- 34.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)