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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 13th February, 2024*+ **O.M.P.(I) (COMM.) 29/2024 and I.A. 1597/2024, 3464/2024****INFIBEAM AVENUES LIMITED FORMERLY KNOWN AS
INFIBEAM INCORPORATION LIMITED** PetitionerThrough: Mr. Rajiv Nayar Sr. Advocate with
Mr. Ajay Bhargava, Mr. Akhil Sibal
Sr. Advocate with Mr. Aseem
Chaturvedi, Mr. Nirupam Lodha, Mr.
Gautam Wadhwa, Ms. Phalguni
Nigam, Advs. (M: 98731 22789)

versus

GOVERNMENT EMARKETPLACE & ANR. RespondentsThrough: Mr. CA Sundaram, Sr Adv with Mr.
Rajat Jariwal, Ms. Perna Singh, Ms.
Shatakshi Tripathi, Advs. (M:
9720367156)
Mr. Ananya Kumar, Adv. R-2. (M:
9871084219)
Mr. Anish Kapur and Ms. Nikhita K.
Suri, Advs. for Tata Consultancy
Services (M: 9910044138).**CORAM:****JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.

I.A. 3464/2024 (for modification)2. This is an application seeking correction/modification of the order dated 22nd January, 2024.3. The first correction sought is in paragraph 3 of the order dated 22nd January, 2024, instead of June 2023, should be read as December 2023.



4. In Paragraph 4 reference to Respondent no.2 is stated to be an error. It is respondent no.1 which maintains the GeM portal. The same is to be corrected as: *“it is stated that Respondent No. 1 maintains the GeM Portal which is used by the Government Authorities”*.

5. In paragraph 5 and 6 of the order dated 22nd January, 2024, instead of Respondent No. 2 it should be Respondent No. 1 and instead of June 2023, it should be read as December 2023.

6. Ordered accordingly.

7. The corrected order be uploaded as a corrigendum to the order dated 22nd January, 2024.

8. Application is disposed of.

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9. The present petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 by the Petitioner- Infibeam Avenues Limited Formerly Known as Infibeam Incorporation Limited, seeking urgent interim measures. The present dispute arises out of a Master Service Agreement dated 1st September, 2017, which was concluded in December 2023. The Petitioner's case is that it has an apprehension of unauthorised utilization of its software components provided by it for the GeM platform of Respondent no.1. According to the Petitioner, the same would be in contravention of the Master Service Agreement (hereinafter, 'said agreement') entered into between the Petitioner and Respondent No. 1 i.e., Government E-Market Place (hereinafter, 'GeM') through the Ministry of Commerce and Industry.

10. It is stated that Respondent No. 1 i.e., Government E-Market Place maintains the GeM Portal which is used by Government Authorities, PSUs



and a large number of corporations for the purposes of sourcing products and services.

11. In terms of the said agreement, the Petitioner had provided IT services to the Respondent No. 1 for creation of the GeM platform. Various Clauses in the agreement have been referred to by both sides showing the manner in which rights in the intellectual property vests in the portal.

12. The said agreement came to an end in December 2023 and the Respondent No. 1 engaged a third party service provider i.e., M/s Tata Consultancy Services (hereinafter, 'TCS') for running, maintenance and for enhancement etc. of the GeM portal.

13. The apprehension expressed by Mr. Nayar, Id. Sr. Counsel for the Petitioner is that the software which was developed and designed by the Petitioner in which the Petitioner owns copyright ought not to be misused by the current vendor of the Respondent No.1 for any unauthorised purposes. He submits that the Petitioner has no objection in the Respondent No.1 continuing to use the said software and platform and getting further work done from TCS on the said platform. The concern is that the same ought not to be used independent of the Respondent No.1's platform.

14. Mr. Sundaram, Id. Sr. Counsel on the other hand points to the Court that Respondent No.1 already has an agreement dated 13th July, 2023 with TCS wherein it has been made clear that the intellectual property which vests with the Respondent No.1 shall remain confidential and shall not be used for any unauthorised purpose.

15. On the last date, after hearing counsel for the parties, the court had directed issuance of notice to TCS. The relevant extract of the order is set out below:



“9. In the opinion of this Court, after having perused the Clauses of the said agreement as also the new agreement with TCS, prima facie it appears that only apprehension of the Petitioner is that TCS ought not to use the software and IT platform of GeM portal for any unauthorised purposes or for its own purpose except for the purposes of maintaining and running the Respondents’ platform.

10. Issue notice in these circumstances to M/s Tata Consultancy Services for appearance on the next date, so that the said service provider can also be heard before any order is passed.

11. Issue notice to TCS at Nirmal Building, 9th Floor Nariman Point, Mumbai, 400021 through Mr. Tej Paul Bhatia, who has signed the agreement with the Respondent.”

16. Mr. Anish Kapur, Id. Counsel from M/s. DMD Advocates appears on behalf of M/s Tata Consultancy Services (*hereinafter, 'TCS'*). It is his submission that TCS is currently providing services to Respondent No. 1 and does not intend to in any manner misuse the source code or any other information received from Respondent No.1, except for the purposes of providing services to Respondent No. 1 itself.

17. Considering the statement made by TCS, in the opinion of this Court, the apprehension of the Petitioner has been completely assuaged. TCS shall accordingly be bound by the statement that the source code or any other copyrighted information of the Petitioner shall not be used for any purposes except for the maintenance and running of the GeM Portal itself.

18. Insofar as Petitioner and Respondent No. 1 are concerned, they shall be bound by the terms and conditions of the agreement executed on 1st September, 2017 and concluded in December, 2023.



19. Considering the statement made today on behalf of TCS, which is binding on TCS and has been accepted by the Court, the Petitioner does not wish to proceed with arbitration. The above order shall operate as a final order between the parties, on this issue.

20. The petition is disposed of with all pending applications, if any. No further orders are called for.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 13, 2024
mr/dn