$~35

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

\+ O.M.P.(I) (COMM.) 152/2026, I.A. 9813/2026, I.A. 9814/2026 & I.A. 9815/2026

HIGHFIVE GLOBAL NETWORKS PVT. LTD. .....Petitioner

Through: Mr. Raghav Sabharwal, Mr. Harsh Vardhan Singh, Mr. Sudhir Kumar Dash, Mr. Sisir Kumar Dash, Ms. Surabhi Bhaskar, Mr., Divyaraj Singh, Mr. Diwakar Sharma, Advocates (M:8808898964)

versus

EMMA SLEEP INDIA PVT LTD. AND ORS. .....Respondents

Through: Mr. Amit Sibal, Sr. Adv. with Ms. Binsy Susan, Mr. Akshay Sharma, Ms. Pavitra Singh, Ms. Palak Kaushal, Ms. Ananya Dewan, Advocates (M:9717332255)

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

O R D E R

% **10.04.2026**

1. The present petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act") seeking to restrain the respondent no. 1 from breaching the terms of agreement entered between the petitioner and the respondent no. 1 company, and to stop damaging the business of the petitioner, with a further prayer to restore the Business Process Outsourcing ("BPO") services provided by the petitioner company as per the Agreement dated 01st August, 2024, as amended *vide* agreement dated 24th November, 2025.

2. Learned counsel for the petitioner submits that pursuant to the initial

Agreement dated 01st August, 2024, the petitioner started giving BPO/Call Centre services to the respondent no. 1, as respondent no. 1 intended to shift their BPO services from Philippines to India. Thus, it is submitted that in terms of the Agreement dated 01st August, 2024, the petitioner started providing BPO services to the respondent no. 1.

3. It is submitted that initially 25 seats were offered by the petitioner for the purposes of granting BPO services, with further covenant that the same shall be increased subsequently.

4. It is submitted that the respondent no. 1 is in the business of manufacturing and supply of mattress and a full floor has been dedicated for providing services to the respondent no. 1. Further, the petitioner has been operating as the face of the respondent no. 1, and taking various calls from the customers of respondent no. 1, whenever there is any complaint with regard to any product or any other complaint against the respondent no. 1, from its customers.

5. Learned counsel for the petitioners submits that an E-mail dated 23rd September, 2025 was received from one customer of respondent no. 1, however, allegations were made by the respondent no. 1 that the employees of the petitioner had revealed confidential information of respondent no. 1, to the outsiders.

6. He submits that despite the said issue having been raised, the contract of the petitioner was renewed on 24th November, 2025, with the understanding that approximately 200 executives will be required for the purposes of giving services of BPO for respondent no. 1.

7. Subsequently, the petitioner received a notice for breach of confidential information from the respondent no. 1, wherein, they proposed to levy a penalty of Rs. 3 Lacs.

8. Learned counsel for the petitioner submits that the petitioner sought to investigate at his own level and that they came to know that it is rather the employees of respondent no. 1, who were involved in backhand business.

9. It is further submitted that livelihood of more than 100 employees are dependent on the contract. Thus, it is submitted that the termination notice dated 27th March, 2026, by which the respondent no. 1 has given one month notice to the petitioner for termination of services, be stayed.

10. In the alternative, the petitioner is also claiming charges for retrenchment as there would be mass layoff in case the contract will be terminated.

11. *Per contra*, learned Senior Counsel for the respondent no. 1 submits that respondent no. 1 company has its own confidential scheme, wherein, certain refunds are made to the customers in case of any complaint. Therefore, it is submitted that the said policy of the respondent no. 1 is highly confidential. However, a complaint was received from one of the customers, i.e., Ms. Aanchal Karr, who used exactly the same language as the confidential policy of respondent no. 1 with regard to refund.

12. Learned Senior Counsel for respondent no. 1 submits that there were many instances in the past also, wherein, respondent no. 1 on account of its policy, was obliged to grant refund to the customers and respondent no. 1 suffered losses to the tune of various lacs, on account of the same.

13. It is submitted that upon investigation carried out by respondent no. 1, it transpired that the complainant, Ms. Aanchal Karr was relative of one of the BPO agent of the petitioner. Thus, it is submitted that when said fact was brought to the notice of the petitioner, the petitioner terminated its two employees, i.e., Mr. Debjyoti Mandal and Mr. Shubham Mandal.

14. Learned Senior Counsel for respondent no. 1 further submits that the

petitioner has admitted to the fact that the complaint of Ms. Aanchal Karr was assigned to her relative, i.e., Mr. Debjyoti Mandal by Mr. Shubham Mandal, who was a senior team leader in the petitioner company.

15. Learned Senior Counsel for the respondent no. 1 has handed over to this Court a Letter dated 01st April, 2026 written by the petitioner to respondent no. 1, which reads as under:

"

From: Sharma, Akshay
Sent: 01 April 2026 23:22
To: 'Adv. Diwakar Sharma'
Cc: 'cmd@highfive.co.in'; 'ppglegal@ppglegal.com'; 'Jonas Nowotka'; Svenja Freisfeld; 'Legal & Compliance'; Susan, Binsy; Kaushal, Palak; Dewan, Ananya; sudhir@pamsassociates.com; legalcompliance@emma-sleep.com; thise.chua@emma-sleep.com; dennis.schmoltzi@emma-sleep.com; mukul.aggarwal@emma-sleep.com; dev.rao@emma-sleep.com; himanshu.sherawat@emma-sleep.com; manuel.mueller@emma-sleep.com
Subject: RE: Reply to Legal Notice and Termination Notice on behalf of Emma Sleep

Dear Sir:

We write to you on behalf of our client, Emma Sleep India Private Limited (**"Emma Sleep"**/ **"Client"**), in response to your email dated 29 March 2026.

At the outset, we reject the contents of your email, including the allegations, contentions, and insinuations made therein, all of which are baseless, misconceived and devoid of any factual or legal foundation. Your attempt to attribute improper motives to our Client is completely baseless and denied.

Instead of addressing the contractual breaches and serious concerns raised by our Client, including those relating to confidentiality, data security and operational lapses, your email merely reiterates vague and unsubstantiated allegations. Particularly, the use of intemperate language and threats of escalation does not advance your client's position and is wholly unwarranted.

For the avoidance of any doubt:

(i) By way of the Reply-cum-Termination Notice dated 27 March 2026, Emma Sleep has exercised its contractual right to terminate the Service Agreement without assigning any reason, strictly in accordance with Clause 2.3.3 thereof. Accordingly, the termination notice is valid and binding;

(ii) The operational measures taken by Emma Sleep (*i.e.*, restriction of access and discontinuation of work allocation) are necessitated by legitimate business considerations, including protection of confidential information, data security and system integrity. Such measures are entirely justified in the circumstances and cannot be characterised as wrongful;

(iii) Your client's allegations of fraud, forgery, anti-trust violations, abuse of dominance or criminal liability against Emma Sleep are entirely misconceived and have no factual or legal basis whatsoever. These allegations appear to be a desperate attempt by HighFive to create a counter-narrative in order to deflect from its own contractual breaches under the Service Agreement; and,

(iv) Your client's purported claims for damages are denied as being baseless, inflated and a mere pressure tactic. Your client is put to strict proof of each and every allegation, including the basis and quantification of any alleged losses. In fact, as stated in the Reply-cum-Termination Notice, it is our Client that has suffered losses, including losses arising out of breach of confidentiality and other contractual breaches by HighFive, legal, consultant and management costs incurred in addressing the breach of confidentiality incident, and significant reputational harm.

We reiterate that our Client has always acted in good faith and in accordance with its contractual and legal rights. Your client's continued attempt to escalate the matter through threats of regulatory, governmental or media action is inappropriate and will be dealt with accordingly, if pursued.

As you are aware, the 30-day notice period for termination under Clause 2.3.3 of the Service Agreement expires on 26 April 2026. Under Clause 2.3.5 of the Service Agreement, payments are to be made to the Service Provider for all the work performed up to the date of termination, after making the necessary deductions and reconciliation with the Service Provider.

1

Based on the 'FTE on actual deployment basis' for the last three months, your client issued the following invoices in relation to work done under the Service Agreement:

(i) Invoice dated 22 January 2026 for an amount of INR 24,17,194 (excluding taxes);
(ii) Invoice dated 24 February 2026 for an amount of INR 24,87,179 (excluding taxes); and,
(iii) Invoice dated 24 March 2026 for an amount of INR 24,06,988 (excluding taxes).

In view thereof, we estimate that an amount of approximately INR 25,00,000 (excluding taxes) would have become payable for the 30-day notice period between 27 March 2026 to 26 April 2026, along with the payment at actuals for work done from 21 March 2026 till 26 March 2026 before the termination of the Service Agreement, for which we would request your Client to raise an invoice.

Our Client is amenable to paying this amount at the end of the 30-day notice period (i.e., by 26 April 2026) in terms of Clause 2.3.5 of the Service Agreement. In our view, this amount is fair and reasonable compensation to your client for the 30-day notice period and the work done between 21 March 2026 and 26 March 2026. In the event your Client disputes the above amount, our Client is agreeable to hold a meeting to discuss the legitimate amount payable to your Client, on a 'without prejudice' basis, at a time and place convenient to both parties.

No contents of this communication must be construed to be abandonment and/ or waiver of any legal rights, privilege, or entitlement of our Client under contract, and/or other remedies available to our Client in law, each of which are expressly reserved.

Regards,
Akshay Sharma

A DECADE YOUNG, A CENTURY STRONG

Akshay Sharma
Partner

Shardul Amarchand Mangaldas & Co
Advocates & Solicitors

Amarchand Towers, 216 Okhla Industrial Estate, Phase III, New Delhi - 110 020, India
D Ext. 4149, M +917042398854
T +91 11 41590700, 40606060 F: +91 11 2692 4900
E akshay.sharma@AMSShardul.com

Chambers and Partners — India National Law Firm of the Year, 2025
Legal500 — Innovative Law Firm of the Year, 2024
LEXOLOGY — Country Firm of the Year, India, 2024
India Business Law Journal — Best Overall Law Firms, 2025
IFLR1000 — Jurisdictional Firm of the Year, 2024

From: Adv. Diwakar Sharma <associate@ppglegal.com>
Sent: Sunday, March 29, 2026 11:31 PM
To: Sharma, Akshay <akshay.sharma@AMSShardul.com>
Cc: 'cmd@highfive.co.in' <cmd@highfive.co.in>; 'ppglegal@ppglegal.com' <ppglegal@ppglegal.com>; 'Jonas Nowotka' <jonas.nowotka@emma-sleep.com>; Svenja Freisfeld <svenja.freisfeld@emma-sleep.com>; 'Legal & Compliance' <legalcompliance@emma-sleep.com>; Susan, Binsy <binsy.susan@AMSShardul.com>; Kaushal, Palak <palak.kaushal@AMSShardul.com>; Dewan, Ananya <ananya.dewan@AMSShardul.com>; sudhir@pamsassociates.com; legalcompliance@emma-sleep.com; thise.chua@emma-sleep.com; dennis.schmoltzi@emma-sleep.com;

2

"

16. By referring to the aforesaid letter, learned Senior Counsel for

respondent no. 1 submits that in the light of various allegations of fraud, forgery, anti-trust violations, abuse of dominance or criminal liability, etc., it is not possible for respondent no. 1 to have the petitioner as their face for the customers of respondent no. 1.

17. It is further submitted that various allegations made by the petitioner are totally baseless and learned Senior Counsel for respondent no. 1 vehemently disputes the said allegations.

18. Thus, it is submitted that the Agreements between the parties have been terminated, in terms of Clause 2.3.3, which stipulates that the Agreement can be terminated by the respondent no. 1, without assigning any reason. The aforesaid clause reads as under:

> 2.3.3 This Agreement may be terminated by the client, without assigning any reason, by giving 30 (Thirty) days prior notice in writing to the service provider.

19. Learned Senior Counsel for respondent no. 1 further submits that respondent no. 1 is ready to pay the amount towards 30 days notice period, which as per the calculation of respondent no. 1, on the basis of the earlier amounts being paid to the petitioner, is approximately Rs. 25 Lacs.

20. Learned Senior Counsel for the respondent no. 1 further submits that since the Agreements between the parties are determinable in nature, in view of Section 14(1)(d) and Section 41(e) of the Specific Relief Act, 1963, no mandatory injunction can be prayed for by the petitioner. He further relies upon the judgment in the case of ***Indian Oil Corporation Ltd. Versus Amritsar Gas Service and Others, (1991) 1 SCC 533***.

21. Having heard learned counsel for the parties, this Court notes that there is an Arbitration Clause governing the relationship between the parties, which is reproduced as under:

"

2.9.10 Arbitration: If any dispute arises between the Parties hereto during the subsistence of this agreement or thereafter, in connection with or arising out of this agreement, the dispute shall be referred to a Sole Arbitrator to be jointly appointed by the Parties under the Arbitration and Conciliation Act, 1996. Arbitration shall be held at New Delhi, India.| The proceedings of arbitration shall be in the English language. The arbitrator's award shall be final and binding on the Parties.

2.9.11 Jurisdiction: The jurisdiction shall be vested exclusively in the courts of New Delhi.

"

22. Perusal of the aforesaid Arbitration Clause clearly shows that the Arbitration is to be held at New Delhi, and that the jurisdiction has been vested exclusively in the Courts of New Delhi.

23. Learned counsels for both the parties do not dispute the arbitration clause.

24. On a pointed query by this Court, learned counsel for the petitioner submits that they have an approximate claim of Rs. 19 Crore, which is disputed by learned Senior Counsel for respondent no. 1.

25. Considering the submissions made before this Court, this Court is of the view that the matter can be referred to an Arbitrator.

26. Learned counsel for the petitioner as well as learned Senior Counsel for respondent no. 1, on instructions, submit that in view of the valid arbitration clause governing the relation between the parties and in view of the disputes that have arisen, they have no objection if the matter is referred to arbitration.

27. Accordingly, with the consent of the parties, the following directions are issued:

   i. Dr. Justice (Retd.) S. Muralidhar, Former Chief Justice, High Court of Orissa, (Mob: +91-9872727986) is appointed as the Sole

Arbitrator to adjudicate the disputes between the parties.

ii) The remuneration of the Arbitrator shall be in terms of Schedule IV of the Arbitration Act.

iii) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Arbitration Act prior to entering into the reference. In the event of any impediment to the Arbitrator's appointment on that count, the parties are given liberty to file an appropriate application before this Court.

iv) It shall be open to the respondent no. 1 to raise counter-claims, if any, in arbitration proceedings.

v) It is made clear that all the rights and contentions of the parties, including, as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned Arbitrator.

vi) The present petition under Section 9 of the Arbitration Act, filed by the petitioner, shall be treated as an application under Section 17 of the Arbitration Act, by the learned Arbitrator.

vii) The petitioner is granted liberty to file the petition under Section 9 of the Arbitration Act, before the learned Arbitrator, for the purposes of treating the same by the learned Arbitrator, as an application under Section 17 of the Arbitration Act.

viii) The parties shall approach the Arbitrator within two (2) weeks, from today.

28. It is made clear that this Court has not made any opinion on the merits of the case.

29. The present petition, along with pending applications, is disposed of

in the aforesaid terms.

30. The Registry is directed to send a copy of this order to the Learned Arbitrator, for information and compliance.

MINI PUSHKARNA, J

APRIL 10, 2026/au