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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 2nd May, 2024
+ **O.M.P.(I) (COMM.) 124/2024 & I.A. 9741/2024**
BUNCH MICROTECHNOLOGIES PVT LTD Petitioner
Through: Mr. Karun Mehta, Ms. Pratiksha
Mishra, Mr. Yugam Taneja and Ms.
Kaarunya Lakshmi, Advs.

versus

AMCP EDUTECH PVT LTD AND OTHERS Respondents
Through: Ms. Amita Katragadda, Ms. Shikha
Tandon, Mr. Prafful Goyal, Ms.
Kamakshi Puri, Mr. Adhiraj Singh
Chauhan, Ms. Sejal Sethi & Ms. Diya
Narag, Advs. for R-2. (M:
8527569385)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.

I.A. 9741/2024(for modification) & O.M.P.(I) (COMM.)-124/2024

2. The present petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 on behalf of the Petitioner- M/s Bunch Microtechnologies Pvt. Ltd. against Respondent No.1- AMCP Edutech Pvt. Ltd., of which Mr. Abhinay Sharma (Respondent No.2) and Mr. Abhishek Sharma (Respondent No. 3) are the directors. The Petitioner vide the present petition is *inter alia* seeking reliefs in terms of the Intellectual Property Rights ('IPR') owned by Respondent No.2 which are stated to have been transferred to Respondent No. 1 in terms of the Deed of Assignment (Prior IP Agreement) dated 29th October, 2022. The said agreement is the key



factor in the Petitioner's investment of approximately Rs. 4 crore in Respondent No. 1 company. However, the Petitioner alleges breaches by Respondent No. 2, including failure to transfer IP rights and mismanagement, resulting in substantial losses for Respondent No. 1 and endangering the Petitioner's investment.

3. The Petitioner is stated to be an Indian ed-tech start-up known as 'Classplus' and is stated to have entered into agreements with Respondent No.1 and Respondent No.2, who holds a majority stake in Respondent No.1. These agreements outlined the transfer of IP rights and the Petitioner's investment in Respondent No.1 company. Respondent No.2, and Respondent No.3 are siblings. The dispute in the present suit is stated to have escalated due to alleged breaches by Respondent No.2, leading to significant financial losses for Respondent No.1 and potential harm to the Petitioner's investment.

4. It is stated that the Petitioner along with its subsidiary 'Testbook Edu Solutions Pvt. Ltd.' executed a binding term sheet dated 3rd October, 2022 wherein it was agreed between the parties that the Respondent No.2 will take classes through a mobile application using technology offered by the Petitioner company. Further, as per the said term sheet, the Respondent No.2 was obligated to incorporate a new company i.e., Respondent No.1. The term sheet further states that the Respondent No.2 would transfer all his Intellectual Property rights with respect to his YouTube channel and other social media channels to the company-Respondent No.1. Clause 2 of the term sheet dated 3rd October, 2022 reads as under:

"2. ASSIGNMENT OF THE IDENTIFIED IPR



2.1 In lieu of consideration mentioned in Clause 3 of this Deed, the Assignor hereby irrevocably, absolutely, exclusively, and perpetually grants, conveys, transfers, assigns and delivers to the Assignee:

2.1.1 all its rights, titles, and interests in, to, over and upon the Identified IPR together with the goodwill of the business connected with and symbolized by the Identified IPR; and

2.1.2 the right to bring and defend proceedings and obtain and retain any relief recovered (including damages or an account of profits) in respect of any infringement or any other cause of action arising from ownership, of any of the Identified IPR whether occurring before, on, or after the date of this Assignment.

2.2 The assignment/transfer shall be perpetual and shall not be limited in any way to any territory or jurisdiction.

*2.3 Perpetual License to the videos, images and content. The Assignor also grants to the Assignee an irrevocable, perpetual, exclusive and worldwide right in the videos, images and content that is already uploaded on the social media platforms detailed in **Schedule A (“Social Media Channels”)** by the Assignee up to the Effective Date.*

2.4 On or prior to the Effective Date, the Assignor shall undertake the necessary steps to update the login credentials and passwords to the Social Media Channels to be of that Assignee and such that on and from the Effective Date, such Social Media Channels shall stand assigned and transferred to the Assignee.”

5. Further, on 22nd November, 2022 the Respondent No. 1 and 2 entered into a further agreement wherein the Respondent No. 2 was engaged as the



Chief Executive officer of Respondent No. 1 company for a remuneration of Rs. 5 lakhs per month. The said agreement also recorded that the Respondent No.2 has assigned his Intellectual Property rights in favour of the Respondent No.1 company. Thereafter, an Investment Agreement was executed on 29th November, 2022 wherein there were four parties i.e., the Petitioner, on the one hand, and Respondent Nos. 1, 2 and 3, on the other hand. As per this, the Respondent No.2 and 3 were the Directors in the newly incorporated company-AMCP Edutech Pvt. Ltd. The Petitioner is stated to have invested a sum of Rs. 4 crores in the said company and owned 40% of the shareholding.

6. However, owing to multiple breaches by the Respondent No. 2, such as cancellation of classes, Testbook terminated the Faculty Agreement on 2nd December, 2023. Pursuant thereto, Testbook initiated arbitration proceedings against Respondent No. 2 under the Faculty Agreement, which is stated to be currently pending before Id. Sole Arbitrator Justice Rajiv Sahai Endlaw (Retd).

7. Today, this application on behalf of Respondent No. 2 has been filed seeking modification of order dated 26th April, 2024. The submission of Id. Counsel for the Respondents is that the initial agreement i.e., the investment agreement and all the related agreements have been superseded by the Consultant Faculty Agreement dated 16th November, 2023. It is her submission that all the AMCP IP also forms part of the said agreement under Clause 1.12 i.e., the consultant faculty content. She submits that this agreement acknowledges the ownership of the Respondents in the entire IP but only recognises that the Petitioner is to be given a perpetual, irrevocable, sub-licensable world-wide license to use, distribute royalty fee, sub-license,



modify the recorded videos included in AMCP IP under clause 11.5 and also under clause 21.2. The relevant clauses are extracted as under:

“11.5 The Consultant Faculty shall and cause his Relative(s) to grant to the Companies, a perpetual, irrevocable, sub-licensable, worldwide license to use, distribute, royalty free, sub-license, modify, reproduce the recorded videos included in the AMCP IP.

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21.2 The Consultant Faculty hereby covenants and agrees that during the Term and for a period of 6 months following the expiry or termination of this Agreement, he shall not, for whatever reason, either individually or in partnership or jointly or in conjunction with any person as principal, agent, employee, shareholder, investor, partner or in any other manner whatsoever, carry on or be engaged in or be concerned with or interested in providing services for any Competing Business”

8. A perusal of the consultant faculty agreement would show that the nature of rights given by Mr. Abhinay Sharma in favour of Testbook/Petitioner are extremely wide i.e., they are irrevocable, sub-licensable, perpetual, world-wide license to any consultant faculty content. Under copyright laws, such rights could constitute partial ownership rights. This in effect means that the Petitioner as also AMCP which is a joint venture can continue to use the intellectual property of AMCP including Abhinay Maths and all the You Tube content, etc. The Respondent No.1- AMCP Edutech Pvt. Ltd is itself a joint venture company wherein the Respondent No.2-Abhinay Sharma has 60% stake and the Petitioner has 40% stake.



9. The Petitioner has admittedly, made an investment of Rs.4 crores and the IP as captured in schedule A had to vest with the Respondent No.1. It is in order to safeguard the investment of the Petitioner as also the IP belonging to the joint venture that the interim order dated 26th April, 2024 was passed.

10. Today, a modification of the said order is being sought and pleadings filed before the Id. Arbitrator who is appointed pursuant to the Consultant Faculty Agreement are being relied upon. It is the submission of Respondent No.1 that AMCP Edutech Pvt. Ltd does not have any IP in any manner.

11. In the opinion of this Court, the IP belonging to the Joint Venture company cannot be permitted to be diluted during the time when the disputes are pending adjudication.

12. Parties are acceptable for all the disputes between the parties including under the investment agreement and all connected agreements to be referred to the same Id. Arbitrator. Accordingly, the petition is disposed of with the following directions:

- i. All disputes arising out of the term sheet dated 3rd October, 2022, the investment agreement dated 29th November, 2022, prior deed of assignment dated 29th October, 2022, further agreements like branding agreement dated 7th October, 2022, consultancy agreement dated 15th November, 2022, copyright licensing agreement dated 15th November, 2022 and any other connected agreements between the parties shall stand referred for adjudication to the Id. Sole Arbitrator Justice Rajiv Sahai Endlaw who is already seized of the disputes between the



parties under the Consultant Faculty Agreement dated 16th November, 2023.

- ii. The interim order dated 26th April, 2024 shall continue till the first date of hearing before the Id. Arbitrator.
- iii. The present Section 9 petition under the Act shall be treated as Section 17 application before the Id. Arbitrator and the pleadings and the documents filed by the Respondents shall also be considered as a reply to the said Section 17.
- iv. Id. Arbitrator may, after hearing Id. Counsel for the parties pass appropriate/interim orders in the matter.
- v. The fee of the Arbitrator under this Reference shall be governed by the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

13. Parties are free to seek any further reliefs before the Id. Arbitrator. Id. Arbitrator shall not be bound by any of the observations made by this Court in the present petition.

14. List before the Arbitrator on 13th May, 2024.

15. The petition is disposed of. All pending applications are disposed of.

16. The next date of hearing is cancelled.

PRATHIBA M. SINGH
JUDGE

MAY 2, 2024
dj/bh