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

+ **CS(COMM) 265/2024 and I.A. 7205/2024, 7206/2024**

DIGI YATRA FOUNDATION

..... Plaintiff

Through: Mr Rajshekhar Rao, Sr. Adv. with
Ms. Monali Dutta, Ms Faranaaz
Karbhari, Mr Ashwin Rakesh, Mr
Saurobroto Dutta, Mr Madhav
Sharma, Ms Rhea Matta Adv. and Mr
Yashraj, Advocates (M:
9810489196).

versus

DATA EVOLVE SOLUTIONS PRIVATE LIMITED Defendant

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **28.03.2024**

1. This hearing has been done through hybrid mode.

I.A. 7206/2024 (for exemptions)

2. This is an application filed by the Plaintiff seeking exemption from filing originals/certified/cleared/typed or translated copies of documents, proper margins, electronic documents, etc. Original documents shall be produced/filed at the time of Admission/Denial, if sought, strictly as per the provisions of the Commercial Courts Act and the DHC (Original Side) Rules, 2018.

3. Exemption is allowed, subject to all just exceptions. Accordingly, the application is disposed of.



CS(COMM) 265/2024

4. Let the plaint be registered as a suit.
5. Issue summons to the Defendant through all modes upon the filing of Process Fee.
6. The summons to the Defendant shall indicate that the written statement to the plaint shall be positively filed within 30 days from the date of receipt of the summons. Along with the written statement, the Defendant shall also file an affidavit of admission/denial of the documents of the Plaintiff, without which the written statement shall not be taken on record.
7. Liberty is given to the Plaintiff to file the replication within 15 days of the receipt of the written statement. Along with the replication, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendant, be filed by the Plaintiff, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.
8. List before the Joint Registrar for marking of exhibits on 22nd May, 2024. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.
9. List before Court on 1st August, 2024.

I.A. 7205/2024 (u/O XXXIX Rules 1 & 2 CPC)

10. Issue notice. Reply to the application within two weeks, rejoinder within two weeks thereafter.
11. The Plaintiff-DIGI Yatra Foundation, is a company incorporated under Section 8 of the Companies Act, 2013. It claims to be a not-for-profit organization established for implementing a digital ecosystem to facilitate air travel. The Ministry of Civil Aviation announced the DIGI Yatra Policy,



2021 following which the Plaintiff company was set up. In a startup challenge initiated by the Plaintiff on 21st May 2021, the Plaintiff called for ideas on how to ease air travel for millions of passengers across the country. Following the said challenge, the Defendant- Dataevolve Solutions Pvt. Ltd., proposed an IT-integrated solution.

12. The Defendant after being shortlisted entered into a Minimal Viable Agreement dated 17th November, 2021 (*hereinafter, 'the MVA'*). After the minimum viable product was prepared, a letter of intent dated 21st April, 2023 was also issued in favour of the Defendant.

13. According to the plaint, the DIGI Yatra ecosystem comprises a platform for both domestic and international passengers that facilitates rapid movement and transit through airports via facial biometric validation, the creation of digital credentials, and the sharing of these credentials for identity verification, travel, etc. The service, described as pan-India, is available across several airports across the country. According to clause 13 of the MVA, the intellectual property in the said platform itself belongs to the Plaintiff. Furthermore, any pre-existing software that may belong to the Defendant remains their property. Clause 15 of the MVA, read with clause 9 of the Letter of Intent provides that any malpractices or allegations of corruption may lead to the termination of the MVA. It is submitted by Mr. Rao that the MVA may no longer be applicable but the LOI is applicable.

14. The plaint avers that around October-November 2023, the Plaintiff became aware of allegations against the Defendant's promoter, being involved in siphoning off and diversion of funds, with the instances of diversion amounting to approximately Rs.36.53 crores (collected as fine through e-challans for traffic rules violations). The Plaintiff sought repeated



explanations vide communication dated 27th November 2023; however, no satisfactory response was received. Consequently, the Plaintiff issued a disengagement letter dated 17th January, 2024, thereby calling upon the Defendant to undertake the following actions:-

4. In view thereof, DYF hereby through this letter is disengaging Data evolve from providing any kind of services to DYF. Dataevolve is hereby instructed to:

(a) Discontinue all works forthwith and start the handover of the Digi Yatra Central Ecosystem and the Digi Yatra App to Digi Yatra Foundation in a seamless manner so as to ensure continuity of service to the Digi Yatra Customers including sharing all credentials necessary for the operations and maintenance as well as further development of the Digi Yatra Central Ecosystem and the Digi Yatra Apps; and

(b) Provide assistance in transitioning and completing hand over, in accordance with instructions from DYF, within a period of 30 (thirty) days from the date of this letter.”

15. Subsequently, correspondence between the parties continued through February and March 2024. According to the Id. Senior Counsel for the Plaintiff, Mr. Rajshekhar Rao, as of last night, i.e., 27th March 2024, certain emails have been exchanged between the parties, which have now been handed over to the Court. He expresses a credible concern that the Defendant might misuse the data of millions of passengers and may also restrict access of the Plaintiff to the said platform.

16. Heard the Id. Sr. Counsel for the Plaintiff.

17. The DIGI Yatra ecosystem is a crucial/critical infrastructure platform, enabling and facilitating air travel for millions of passengers. Any disruption in the operation of the said platform, which appears to have been created by



the Defendant, would be against the interests of both domestic and international air travel passengers. Such potential disruptions could also lead to a loss of goodwill and reputation to the Plaintiff, as also other stakeholders involved in the system. The clauses in the MVA are clear to the effect that the Plaintiff shall retain the rights in the DIGI Yatra materials and any products developed. Clauses 13.1 and 13.3 of the MVA are set out below:-

“13.1 DYF's Intellectual Property

(a) DYF shall retain all rights, title and interest in the DYF Materials, and the Developed Work Product.

*(b) DYF grants to the Solution Provider a non-exclusive, non-transferable license to access, use, modify and make derivative works of DYF Materials solely to the extent necessary to carry out the Scope of Project. **The Solution Provider may sublicense to its agents, subcontractors, service providers duly authorized through DYF's prior written approval the said right to access, use, modify, display and make derivative works of DYF Materials solely to carry out the Scope of Project that such Solution Provider's agents, subcontractors, service providers are responsible for providing.** The licenses referred to in this Clause 13.1(b) are limited to the duration of the Term and with respect to any third-party software or documentation, are granted solely to the extent permissible under the applicable third-party agreement. For the purpose of clarity, "DYF Materials" shall mean the programs, specifications, technical data, software, computer systems and networks, and documentation owned, licensed or leased by DYF, Developed Work Product and the pre-existing Intellectual Property rights owned, licensed or leased by D YF.*

(c) DYF shall own and have all Intellectual Property rights in and to modifications, enhancements or



derivative works of DYF Materials. To the extent that the Solution Provider has any right, title or interest in and to such modifications, enhancements or derivative works, the Solution Provider hereby irrevocably assigns, transfers and conveys (and shall cause Solution Provider's agents, sub-contractors, service providers and the employees of Solution Provider's agents, sub-contractors, service providers to assign, transfer and convey) to DYF without further consideration all of its (and their) right, title and interest in and to such modifications, enhancements or derivative works.

(d) The Solution Provider hereby agrees and undertakes to execute (and shall cause Solution Provider's agents, sub-contractors, service providers and the employees of Solution Provider's agents, sub-contractors, service providers to execute) any documents or take any other actions as may be necessary, or as DYF may request, to effectuate DYF's ownership, right and title in any such modifications, enhancements or derivative works to/ from DYF Materials at no cost to DYF.

(e) The Solution Provider hereby agrees that to assist DYF in the protection of the DYF Materials, the Solution Provider shall permit DYF or its Representative to inspect in accordance with Clause 6.6 the premises and/ or systems at which the DYF Materials and any copies thereof are being used.

13.3 Developed Work Product

DYF shall own and have all right, title and interest in and to the Developed Work Product. The Solution Provider irrevocably assigns, transfers and conveys (and shall cause Solution Provider's agents, service providers, sub-contractors and their employees to assign, transfer and convey) to DYF without consideration all of its (and their) right, title and interest (including ownership of existing and future



copyright) in and to all Developed Work Product. The Solution Provider hereby acknowledges and undertakes (and shall cause Solution Provider's service providers, contractors, agents, and the employees of Solution Provider and Solution Provider's agents, service providers, sub-contractors to acknowledge and undertake) that DYF shall have the right to obtain and hold in its own name any Intellectual Property rights in and to the Developed Work Product. The Solution Provider hereby agrees to execute (and shall cause Solution Provider's service providers, sub-contractors, agents, and the employees of Solution Provider and Solution Provider's agents, service providers, sub-contractors to execute or take any actions as may be necessary) any documents or take any other actions as may be necessary, or as DYF may request, to effectuate the ownership, title and rights of DYF in the Developed Work Product. For the purposes of clarity, "Developed Work Product" shall mean any work product, software, programs, modules, or other item developed while carrying out the Scope of Project and shall include the DYCE MVP and its Enhancements.”

18. The plaint, sets out the following details and information required from the Defendant:-

“34. Further, in order to run the digital ecosystem independently, the Plaintiff is required to have direct access to the following information and details which are in the possession of the Defendant:

(a) Latest updated Graphical User Interface (GUI) source code.

(b) Entire ecosystem including Blockchain source code.

(c) Change all the Custom Domain Name (CDN) Certificates and references from Dataevolve domain to DYF domain, Surrender and transition CDN in back-end lambda functions.



- (d) Change the Application package name from Existing Dataevolve name to New DYF package name.
- (e) Surrender App Store and Play Store resource access provided to Dataevolve team.
- (f) Surrender SMS DLT gateway resource access provided to Dataevolve team.
- (g) Surrender AWS role based and user-based resource access provided to Dataevolve team.
- (h) Surrender AWS user secret (access) keys and inform DYF about where they are used and whether used internally/ externally.
- (i) Defendant to not use the ec2 keypairs or VPN for connecting to ec2 machines via ssh.
- (j) Surrender hard coded access keys and secret keys used for configuring in the application.
- (k) Defendant to not access the AWS Cognito user pool or backup or reuse/misuse or copy or share to anyone.”

19. Considering the nature of the matter and the services that are involved, the Plaintiff has made out a *prima facie* case of grant of ad-interim injunction. The balance of convenience is clearly in favour of the Plaintiff, and irreparable harm would be caused to the Plaintiff, if the injunction is not granted. The seamless running of the Digi Yatra platform, which is a crucial infrastructure platform for air travel has to be ensured. Thus, an *ad-interim ex-parte* injunction is granted in the following terms:-

- i) The Defendant shall stand restrained from using any data of passengers and other related data of the DIGI Yatra Ecosystem, for any of its own purposes and shall also stand restrained from transferring any of the data to third parties or from making unlawful copies of the said data;
- ii) The Defendant shall facilitate the complete transition and handover to the Plaintiff of the DIGI Yatra platform, including the IT



server access, access for running of the APP to the Plaintiff etc;

20. Upon an oral prayer made for appointment of Local Commissioners in this matter, and considering the crucial nature of the DIGI Yatra ecosystem, it is deemed appropriate to appoint the Local Commissioners to visit the premises of the Defendant located at '**H.No. 8-3-168/19, Plot No. 19, Sidhartha Nagar North, Ameerpet, Hyderabad, Telangana-500038**' to obtain all the information as sought in paragraph 34 of the plaint, extracted above.

21. Mr. Zameem Ahmad Khan, Joint Director (IT), Delhi High Court (**M: 9650006732**), and Mr. Sarsij Kumar, (**M:9650006723**) IT Head of the Delhi High Court are appointed as the Local Commissioners in this matter. The fee of the Local Commissioners is fixed at Rs.1,00,000/- each, including out of pocket expenses, if any. The fee of the Local Commissioners shall be borne by the Plaintiff.

22. The mandate of the Local Commissioners is as under:-

- i) The Local Commissioners appointed shall visit the premises of the Defendant as provided above, to seize all the devices/computers/servers which are being used to host the Digi Yatra IT infrastructure. The Local Commissioners shall obtain the information/data as set out in paragraph 34 of the plaint, including the connected applications or any other product materials/software. Para 34 of the plaint reads as under:-

“34. Further, in order to run the digital ecosystem independently, the Plaintiff is required to have direct access to the following information and details which are in the possession of the Defendant:



- (a) Latest updated Graphical User Interface (GUI) source code.*
- (b) Entire ecosystem including Blockchain source code.*
- (c) Change all the Custom Domain Name (CDN) Certificates and references from Dataevolve domain to DYF domain, Surrender and transition CDN in back-end lambda functions.*
- (d) Change the Application package name from Existing Dataevolve name to New DYF package name.*
- (e) Surrender App Store and Play Store resource access provided to Dataevolve team.*
- (f) Surrender SMS DLT gateway resource access provided to Dataevolve team.*
- (g) Surrender AWS role based and user-based resource access provided to Dataevolve team.*
- (h) Surrender AWS user secret (access) keys and inform DYF about where they are used and whether used internally/ externally.*
- (i) Defendant to not use the ec2 keypairs or VPN for connecting to ec2 machines via ssh.*
- (j) Surrender hard coded access keys and secret keys used for configuring in the application.*
- (k) Defendant to not access the AWS Cognito user pool or backup or reuse/misuse or copy or share to anyone.”*

The Local Commissioner shall prepare a complete inventory of the same;

- ii) In addition, the Local Commissioners shall also obtain the passwords or keys which may be required for the Plaintiff to run the DIGI Yatra platform seamlessly, so as to cause least inconvenience to the passengers.
- iii) The Defendant and the authorised representatives, including Plaintiff's representatives, are directed to cooperate with the



Local Commissioners. The Defendant shall also provide passwords, if required, to the servers and any other equipment where the data and information is stored by the Defendant.

- iv) At least two senior officials from the Plaintiff's technical team, who are fully conversant with the DIGI Yatra Ecosystem are permitted to accompany the Local Commissioners to ensure that all the required information may be collected. The said officials from the Plaintiff's technical team shall, under the supervision of the Local Commissioners inspect, access, and take print out of or make copies if possible of all the data/information, sources etc. with regard to the software applications stored in the computers, servers laptops, tablets, or any other electronic devices of the Defendant submit the same before Court, that can later be scrutinized by the Plaintiff with the data analysis to extract relevant information, and to trace the digital footprints. The Defendant is directed to provide unhindered access, passwords, user details etc. and to assist access to electronic devices to inspect data/ applications infringing Plaintiff's DIGI yatra software, and cooperate with the Local Commissioners during the inspection of the said premises, devices etc.
- v) If the access is not provided by the Defendant to the computers systems, servers etc., the systems shall be sealed and left in the Defendant's premises under *Superdari*;
- vii) The Local Commissioners shall obtain accounts including ledgers, stock registers, invoice books, receipt books, cash



books, purchase and sale records and any other books of record or commercial transactions kept at the premises of the Defendant, and take photocopy and/or record of all such transactions that pertain to impugned products/software, if any. The Defendant shall cooperate and give passwords to the computers and the files containing the accounts, if the same is stored on the computer or a specific software.

- vii) Upon being requested, the concerned S.H.O./D.S.P. of the location mentioned above shall extend complete assistance to the Local Commissioners in executing the commission, as per this order, at the Defendant's premises. If the Defendant's premises is locked, permission is granted for breaking open of the locks with the cooperation of the police authorities;
- viii) The Local Commissioners are permitted to take photographs and videograph of the proceedings of the commission, if it is deemed appropriate;
- ix) The Local Commissioners, while executing the commission, shall ensure that there is no disruption to the business of the Defendant, except for the purposes of the execution of the commission. The commission shall be executed in a peaceful manner;
- x) The order passed today shall be communicated by the Local Commissioners to the Defendants. Copy of the order and complete paper book shall be served by the Local Commissioner upon the Defendant at the time of execution of commission:



23. The Local Commission shall be executed by 31st March, 2024. The report of the Local Commissioner shall be filed within two weeks thereafter.
24. Compliance with Order XXXIX Rule 3 of CPC shall be done within one week after the execution of the local commission.
25. The present order shall not be uploaded for a period of four weeks to enable the execution of the local commission.
26. List before the Court on 1st August, 2024.
27. Order *dasti* under the signature of the Court Master.

PRATHIBA M. SINGH, J.

MARCH 28, 2024

mr/dn