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

% ***Date of Decision*: 12.08.2026**

\# **CNR No. DLHC010924232025**

\+ **<u>CS(COMM) 1249/2025</u>**

NATIONAL BOARD OF
EXAMINATIONS IN MEDICAL SCIENCES .....Plaintiff

Through: Mr. Sunil J. Mathews and Ms. Yashika Singh, Advocates.

versus

INDIAIDEAS.COM LTD. .....Defendant

Through: Mr. Angad Kochhar and Mr. Aditya Sarin, Advocates.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

<u>SACHIN DATTA, J. (ORAL)</u>

1. This is a suit for recovery of a sum of Rs. 4,79,74,785/-, along with *pendente lite* and future interest. The plaintiff is an autonomous body under the Ministry of Health and Family Welfare, Government of India. The plaintiff *inter-alia* conducts examinations in the various disciplines and sub-specialities of modern medicine, grants accreditation for Diploma of National Board courses to hospitals in various broad and super specialities, and conducts continuing professional development workshops for postgraduate trainees, faculty and consultants. In connection with these activities, it collects examination and other fees from candidates and from hospitals. Desirous of receiving such payments online, the plaintiff requested Indian Bank to provide facilities for the fees collection through credit and debit cards and through net banking. Since the bank could process only its own net banking and debit card payments, and not the cards or the

net banking of other banks, it in turn sought the services of the defendant, a payment services company which provides a payment gateway for facilitating electronic payments and collections, offering a single platform, unifying multiple banks and payment channels. The arrangement was embodied in a Tripartite Agreement dated 21.04.2014 ("the First Agreement"), and thereafter in a Tripartite Agreement dated 05.03.2019 ("the Second Agreement"), each executed between the plaintiff, the defendant and Indian Bank.

2. The plaintiff's case is that under these agreements, the defendant was to receive, through its payment processing mechanism, the monies tendered by the candidates, and the amounts so collected were to be given to the plaintiff. The rates at which transaction charges were payable in respect of each such payment were prescribed by Schedule 5 to the First Agreement, and thereafter by the Annexure to the Second Agreement. The plaintiff avers that those transaction charges were to be included in, and collected as part of, the amount tendered by the candidate, and were not to be borne by the plaintiff; that the defendant, in breach of that obligation, abstained from recovering them from the candidates and instead deducted them from out of the amounts collected and payable to the plaintiff; and that it is the transaction charges so deducted, during the period October 2014 to May 2019, that are sought to be recovered from the defendant by the plaintiff.

3. Two preliminary objections have been raised on behalf of the defendant. The first is that this Court does not have territorial jurisdiction; and the second is that the suit is barred by limitation.

4. For the first objection, reliance is placed by the defendant upon Clause 19 of the Second Agreement, which reads:

> *19.1 "The validity, construction and enforceability of this Agreement shall be governed in all respects by the Laws of India. The Parties hereto agree that in respect of any dispute arising upon, over or in respect of any of the terms of this Agreement, only the Courts in Chennai shall have jurisdiction to try and adjudicate such dispute to the exclusion of all other Courts."*

5. It is urged that the jurisdiction of Chennai bears an inseparable and intrinsic nexus with the underlying transaction and with the *lis*, and that a material, essential and integral part of the cause of action has arisen there. It is submitted that various obligations and activities contemplated by the Second Agreement were performed by the parties at Chennai; that the defendant maintains a branch office at Chennai from where certain of the services contemplated by that agreement were rendered; and that the notice under Clause 18.2 dated 18.12.2020 was issued to Indian Bank at Chennai, which has its corporate office in Chennai.

6. Upon that premise it is submitted that, in terms of Clause 19.1, the courts at Chennai alone are competent, and that the plaint ought accordingly to be returned. It is further pointed out that Clauses 15.1 and 16.1 of the First Agreement provide for arbitration and confer exclusive jurisdiction upon the courts at Mumbai, from which a conjoint intention to exclude the courts at Delhi is sought to be made out.

7. *Per contra*, it is contended on behalf of the plaintiff that the question is not one of choosing between two competent fora. The plea is that the courts at Chennai never had jurisdiction at all. Where several courts are competent, parties may by agreement confine themselves to one of them; but where the chosen court does not otherwise answer the requirements of Section 20 CPC, jurisdiction cannot be conferred upon it by consent, and a

clause which purports to do so is void. Clause 19.1, it is submitted, falls in the latter category.

8. It is pointed out that neither party to the present proceedings has its registered office at Chennai, that the agreements were made and signed at Delhi; that the defendant carries on business at Delhi; that the collections were credited to the plaintiff's account at New Delhi; and that the deductions came to light on reconciliation at Delhi.

9. It is well settled that where an objection to territorial jurisdiction is taken by way of demurrer, and not at the trial, it falls to be adjudged upon the averments in the plaint, which must for that purpose be assumed to be true. In *Exphar SA v. Eupharma Laboratories Ltd.*, (2004) 3 SCC 688, it was held:

> "9. …*Besides when an objection to jurisdiction is raised by way of demurrer and not at the trial, the objection must proceed on the basis that the facts as pleaded by the initiator of the impugned proceedings are true. The submission in order to succeed must show that granted those facts the court does not have jurisdiction as a matter of law*…"

10. Tested on that touchstone, it is pleaded that both agreements were made and executed at Delhi; that the defendant has an office at D-3/3, Okhla Industrial Area, Phase-II, Delhi and carries on business at Delhi; that the amounts collected from the candidates were to be, and were, credited to the plaintiff's account with Indian Bank at New Delhi, and that it is out of those very collections that the transaction charges are said to have been wrongfully deducted. The plaintiff is headquartered at Delhi; and that the deductions came to light upon reconciliation of the plaintiff's accounts at its office at Delhi. It may also be noticed that the Second Agreement is, *ex facie*, expressed to have been made at Delhi. If these averments are taken to

be correct, as at this stage they must be, it cannot be said as a matter of law that no part of the cause of action has arisen within the jurisdiction of this Court, so as to warrant return of the plaint at the threshold.

11. Each of the objections raised by the defendant with regard to territorial jurisdiction travel outside the plaint, and each is disputed. The assertion that the defendant maintains a branch office at Chennai is sought to be made shown by material described as “information available in the public domain”, and to evidence the same a listing extracted from a mapping service, and from certain other websites has been provided; whether that establishes that the defendant carries on business at Chennai, and whether any part of the obligation sued upon was performed there, are matters that need to be proved. The assertions that collections were routed to Indian Bank at Chennai and disbursed only thereafter and that payments were released against invoices raised by Indian Bank, Chennai, are likewise assertions of fact requiring evidence, and are contested.

12. Clause 19.1 cannot be used to conclusively decide the dispute of jurisdiction. An ouster clause operates only upon the footing that the chosen forum is otherwise competent. In *Hakam Singh v. Gammon (India) Ltd.*, (1971) 1 SCC 286, it was observed:

> *“4. ....It is not open to the parties by agreement to confer by their agreement jurisdiction on a Court which it does not possess under the Code. But where two courts or more have under the Code of Civil Procedure jurisdiction to try a suit or proceeding an agreement between the parties that the dispute between them shall be tried in one of such Courts is not contrary to public policy. Such an agreement does not contravene Section 28 of the Contract Act.”*

13. In *A.B.C. Laminart (P) Ltd. v. A.P. Agencies*, (1989) 2 SCC 163, it was observed:

"16. .....If under the law several courts would have jurisdiction and the parties have agreed to submit to one of these jurisdictions and not to other or others of them it cannot be said that there is total ouster of jurisdiction. In other words, where the parties to a contract agreed to submit the disputes arising from it to a particular jurisdiction which would otherwise also be a proper jurisdiction under the law their agreement to the extent they agreed not to submit to other jurisdictions cannot be said to be void as against public policy. If on the other hand the jurisdiction they agreed to submit to would not otherwise be proper jurisdiction to decide disputes arising out of the contract it must be declared void being against public policy."

14. Reference in this regard may also be had to *Rakesh Kumar Verma v. HDFC Bank Ltd.*, 2025 SCC OnLine SC 752:

"30. Secondly, the Court must already have jurisdiction to entertain such a legal claim. This limb pertains to the fact that a contract cannot confer jurisdiction on a court that did not have such a jurisdiction in the first place. The explanation to Section 20 of the CPC is essential to decide this issue…"

15. Clause 19.1 can therefore operate only if the courts at Chennai are otherwise competent under Section 20 CPC. Whether the courts in Chennai are in fact competent and whether any cause of action arises there as well cannot be resolved without evidence.

16. The objection as to territorial jurisdiction is, in these circumstances, is a mixed question of law and fact. Such a question is not amenable to determination at the threshold. In *Nusli Neville Wadia v. Ivory Properties*, (2020) 6 SCC 557, while construing Order XIV Rule 2 CPC, the Supreme Court held:

"63. A three-Judge Bench of this Court in S.S. Khanna v. F.J. Dillon, has held that jurisdiction to try issues of law apart from the issues of fact may be exercised by the court if the whole suit may be disposed of on the issue of law

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alone, but the Code confers no jurisdiction upon the court to try a suit on the mixed issue of law and facts as preliminary issues"

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"88. Given the discussion above, we are of the considered opinion that the jurisdiction to entertain has different connotation from the jurisdictional error committed in exercise thereof. There is a difference between the existence of jurisdiction and the exercise of jurisdiction. The expression "jurisdiction" has been used in CPC at several places in different contexts and takes colour from the context in which it has been used. The existence of jurisdiction is reflected by the fact of amenability of the judgment to attack in the collateral proceedings. If the court has an inherent lack of jurisdiction, its decision is open to attack as a nullity. While deciding the issues of the bar created by the law of limitation, res judicata, the court must have jurisdiction to decide these issues. <u>Under the provisions of Section 9-A and Order 14 Rule 2, it is open to decide preliminary issues if it is purely a question of law not a mixed question of law and fact by recording evidence.</u> The decision in Foreshore Coop. Housing Society Ltd. cannot be said to be laying down the law correctly. We have considered the decisions referred to therein, they are in different contexts. The decision of the Full Bench of the High Court of Bombay in Meher Singh holding that under Section 9-A the issue to try a suit/jurisdiction can be decided by recording evidence if required and by proper adjudication, is overruled. We hold that the decision in Kamalakar Eknath Salunkhe has been correctly decided and cannot be said to be per incuriam, as held in Foreshore Coop. Housing Society Ltd."

17. Being a mixed question of law and fact, and in the peculiar circumstances of the present case, the objection of lack of jurisdiction must await trial, and the plaint cannot be returned upon it at this stage. The prayer for return of the plaint is accordingly declined, and the objection is kept open. An appropriate issue shall be framed in regard to jurisdiction at the stage of framing of issues and shall be decided upon the evidence led by the parties.

18. The second preliminary objection is that the suit is barred by limitation. It is contended by the defendant that the claim is governed by Article 24 of the Schedule to the Limitation Act, 1963, under which the period of three years is to be computed from the date upon which the money

is received, and that the suit has been instituted well beyond that period.

19. The tabulation provided by the defendant accounts for the exclusion of the period from 15.03.2020 to 28.02.2022 in terms of *Cognizance for Extension of Limitation, In re*, (2022) 3 SCC 117, and for the period during which the parties remained occupied with the pre-institution mediation under Section 12A(4) of the Commercial Courts Act, 2015, the latter as per the defendant being from 06.03.2024. Upon that footing it arrives at a figure of 1475 days.

20. The stance of the plaintiff is that the cause of action first arose in June 2019, when the failure to collect transaction charges from the candidates and the allegedly unlawful deductions made by the defendants from the total amount payable to the plaintiffs came to light upon reconciliation of accounts and internal audits; that the deductions were made continuously between October 2014 and May 2019. It is averred that CS(COMM) 520/2022 was instituted on 22.06.2022 and withdrawn on 25.07.2023 in view of the pendency of proceedings under Section 12A of the Commercial Courts Act, 2015. It is submitted by the plaintiff that the application for pre-institution mediation was made on 03.03.2023 and those proceedings were declared a non-starter only on 22.08.2024; and that the present suit was instituted on 13.11.2025.

21. The rival positions thus diverge not merely as to the legal consequence of the material dates, but as to the dates themselves. The point of time from which limitation needs to be calculated is itself in controversy. The case of the defendant is that, under Article 24 of the Schedule to the Limitation Act, 1963, time ran from the date upon which each sum was received, that is to say from successive points between October 2014 and

May 2019, with the consequence that a substantial part of the claim is stale and beyond limitation. It is also their case that the plaintiff is beyond limitation even if 01.06.2019 is taken as the starting point to calculate limitation. The case of the plaintiff, as pleaded, is that the cause of action first arose only in June 2019, when the discrepancies came to light upon reconciliation of accounts about the deductions having been made, without notifying either the designated collecting bank, i.e., Indian Bank, or the Plaintiff. The correct stance cannot be determined without ascertaining whether the deductions were in truth withheld from the knowledge of the plaintiff, and whether the plaintiff could, acting with reasonable diligence, have discovered them earlier, regard being had to Clause 4.4 of the First Agreement, under which the defendant was to furnish settlement information enabling the plaintiff to reconcile the sums due against the sums paid.

22. The plaint asserts that the cause of action "remains subsisting and continuous". Whether the deductions constituted a single continuing wrong, or a series of separate wrongs each complete when made, bears directly upon the point from which time limitation began to run in respect of each of them. That, in turn, depends upon the true construction of the agreements, whose terms upon this aspect do not all point in one direction, and upon the manner in which the parties in fact worked the arrangement over four and a half years.

23. The date upon which the pre-institution mediation was set in motion is not established; the plaint avers that the application was made on 03.03.2023. The note filed on behalf of the defendant proceeds upon 07.03.2024, being the same as the Non-Starter Report for the pre-institution

mediation furnished by the Delhi High Court Legal Services Committee bearing the number 581/Pre Inst./DHCLSC/2023. However, the same report lists 17.03.2023 and 11.04.2023 amongst the dates fixed for the appearance of the opposite party, alongside dates falling in 2024. Further, the order dated 25.07.2023 in CS (COMM) 520/2022, whereby the earlier suit was permitted to be withdrawn, proceeds upon the footing that mediation stood already initiated and was pending as on 25.07.2023. These discrepancies are required to be reconciled.

24. In *Nusli Neville Wadia v. Ivory Properties*, (2020) 6 SCC 557, the Supreme Court, observed:

> *"56. Within the ken of provisions of Section 9-A CPC, jurisdiction of the court to entertain the suit has to be decided without recording of evidence. Recording of evidence is not contemplated even at the stage of framing issue under Order 14 Rule 2 much less it can be allowed at the stage of grant of injunction, it would be the grossest misuse of the provisions of the law to permit the parties to adduce the evidence, to prove facts with respect to a preliminary issue of jurisdiction to entertain a suit. In case it is purely a question of law, it can be decided within the purview of Section 9-A CPC as applicable in Maharashtra. The scope of Section 9-A is not broader than Order 14 Rule 2(2) CPC. The scope is a somewhat limited one. <u>Two full-fledged trials by leading evidence are not contemplated in CPC, one of the preliminary issue and another on other issues. Until and unless the question is purely of law, it cannot be decided as a preliminary issue. In our opinion, a mixed question of law and fact cannot be decided as a preliminary issue, either under Section 9-A or under Order 14 Rule 2 CPC. Before or after its amendment of CPC concerning both provisions, the position is the same."</u>*
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> *xxx*
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> *"70. The question concerning Order 7 Rule 11 came up for consideration in Ramesh B. Desai v. Bipin Vadilal Mehta, as to the determination of the question of limitation as a preliminary issue. The Court observed that the starting point of limitation has to be ascertained on facts in every case. A plea of limitation cannot be decided as an abstract principle of law divorced from the facts for rejection of the plaint under Order 7 Rule 11(d). <u>In the case of a disputed question of fact, the question of limitation cannot be decided as a preliminary issue without a decision on facts based on the evidence that has to be adduced by the parties. The Court</u>*

<u>has no jurisdiction under Order 14 Rule 2 to decide a mixed question of law and facts as a preliminary issue.</u> The following observations have been made : (SCC p. 650, para 13)

> *"13. Sub-rule (2) of Order 14 Rule 2 CPC lays down that where issues both of law and fact arise in the same suit, and the court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to (a) the jurisdiction of the court, or (b) a bar to the suit created by any law for the time being in force. The provisions of this Rule came up for consideration before this Court in S.S. Khanna v. F.J. Dillon and it was held as under (AIR pp. 502-03, para 18 : SCR p. 421)*
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> > *'18. … Under Order 14 Rule 2, Code of Civil Procedure where issues both of law and of fact arise in the same suit, and the court is of the opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as preliminary issues. Normally all the issues in a suit should be tried by the court; not to do so, especially when the decision on issues even of law depend upon the decision of issues of fact, would result in a lopsided trial of the suit.'*
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> *Though there has been a slight amendment in the language of Order 14 Rule 2 CPC by the amending Act, 1976 but the principle enunciated in the above-quoted decision still holds good and there can be no departure from the principle that the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as a preliminary issue and where the decision on issue of law depends upon decision of fact, it cannot be tried as a preliminary issue."*

25. Tested upon these principles, the objection founded upon limitation is, in the circumstances of this case, a mixed question of law and fact. The point from which time which falls under limitation began to run, the character of the breach and whether the same was a continuing cause of action, and the length of the statutory exclusions must each be ascertained upon evidence. The facts necessary to establish limitation, having been pleaded, have to therefore be proved upon issues raised and decided by way

of evidence.

26. The objection is accordingly kept open. An appropriate issue as to limitation shall be framed at the stage of framing of issues and shall be decided along with the other issues arising in the suit upon the evidence led by the parties, and not as a preliminary issue.

27. It is clarified that nothing stated hereinabove shall be construed as an expression of opinion upon the merits of either objection, or upon the merits of the suit, all contentions in that behalf be left open; and that the participation of the defendant in these proceedings shall not be construed as a waiver or abandonment of either objection.

28. Pleadings be completed within the time prescribed.

29. List before the concerned Joint Registrar (Judicial) for further proceedings on 22.09.2026.

SACHIN DATTA, J

AUGUST 12, 2026/*at/nb*