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

+ **CS (COMM) 1110/2018**

TABOOLA INDIA PRIVATE LIMITED Plaintiff
Through: Mr. Sandeep Grover, Mr. Mohit
Chadha and Ms. Sukriti Mago,
Advocates.

versus

ETERNO INFOTECH PVT. LIMITED Defendant
Through: Ms. Suveni Bhagat, Advocate.
(M:9650446095)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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12.09.2018

I.A. 12256/2018 (exemption)

1. Exemption is allowed, subject to the Plaintiff's undertaking that the original documents/certified copies shall be filed at the time of admission/denial of the documents.

2. I.A. is disposed of

I.A. 12255/2018 (u/O XXXIX Rules 1 & 2 CPC) & CS (COMM) 1110/2018

3. Let the plaint be registered as a suit.

4. Ld. Counsel for the Defendant accepts summons in the suit and notices in the application.

5. The case of the Plaintiff is that under the Taboola Publisher Agreement dated 10th March, 2016, the Defendant had agreed to grant exclusivity for the Plaintiff's widgets on its website "www.dailyhunt.in". The term of the agreement as per clause 5, is as under: -



“5. Term/Termination:

The term of the Agreement (as defined below) will commence upon the Effective Date and will, unless terminated as set forth herein, continue for a period of eighteen (18) months from the implementation of the Widget on all of the [Desktop/Mobile Optimized/Tablet/App] article pages of the Websites (“Initial Term”). During the Initial Term, the Publisher shall have the right to terminate this Agreement effective at the end or the 18th month following the Effective Date by delivering written notice of termination to Taboola no later than the end of the 17th month following the Effective Date, as the case may be. At the end of the Initial Term, the term of this Agreement will automatically renew for additional, successive twelve (12) months periods (each, a “Renewal Term” and the Initial Term and all Renewal Terms, collectively the (“Term”), unless one party notifies the other in writing of its intention not to renew at least thirty (30) days prior to the end of the then-current Term. Publisher or Taboola may terminate this Agreement [(a) for convenience on three (3) days’ written notice at any time during the fourteen (14) day period that commences on the day that the Widget is first rendered visible to Visitors on a Website, or (b)] immediately in the event that the other party fails to cure a material breach of this Agreement that is capable of being cured within five (5) days of its receipt of written notice thereof (email shall be sufficient). In addition, in the event of an unauthorized launch of the Widget in violation of Paragraph I of the Terms and Conditions, Taboola will have the option of terminating this Agreement immediately upon written notice.”

6. According to the learned counsel for the Plaintiff, the agreement has not been terminated and it can only be terminated with at least 30 days’ notice. Learned counsel further submits that as per clause 7, the Plaintiff was



given exclusivity and no other competing widgets could be placed on the Defendant's website.

7. She has placed emails and letters on record to show that the Defendant has started placing competing widgets on its website and that a legal notice was also issued.

8. Ms. Suveni Bhagat, learned counsel for the Defendant has put in appearance and, seeks time to take instructions. Let a complete set of the paper book be supplied to her.

9. List on 17th September, 2018 for hearing in the injunction application.

PRATHIBA M. SINGH, J.

SEPTEMBER 12, 2018

Rekha