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

*Date of decision: 9<sup>th</sup> May, 2024*

+ **O.M.P.(I) (COMM.) 144/2024**

**WINZO GAMES PRIVATE LIMITED**

..... Petitioner

Through: Mr. Abhishek Malhotra, Ms.  
Nishtha Chaturvedi, Ms.  
Subhalaxmi Sen and Ms. Anukriti  
Trivedi, Advocates (M:  
9060008332).

versus

**HIKE GLOBAL PTE. LTD. AND ORS.**

..... Respondents

Through: Mr. Vivek Chib, Sr. Adv. with Mr.  
Himanshu Bagai, Mr. Kushal Gupta,  
Ms. Malvika Aggarwal, Ms Unnati  
Jhunhunwala, Ms. G. Bijaharini,  
Ms. Mansi Gupta and Mr. Ritwik,  
Advocates for R-1 and 2 (M:  
9205970611).

**CORAM:  
JUSTICE PRATHIBA M. SINGH**

### **JUDGMENT**

**Prathiba M. Singh, J.**

1. This hearing has been done through hybrid mode.
2. The present petition under Section 9 of the Arbitration and Conciliation Act, 1996 (*hereinafter*, '1996 Act') has been filed by the Petitioner-WinZO Games Pvt. Ltd. (*hereinafter*, 'WinZO') seeking certain interim reliefs against the Respondents.



3. WinZO is a company engaged in developing and providing various skill-based online and electronic games through its gaming platform. Incorporated in 2016, WinZO owns and manages the digital gaming platform titled 'WinZO', available through its website and mobile app. As per the petition, it is a leading gaming platform in India, known for offering a variety of skill-based games and being the first in the country to feature casual games in real-time under a unified platform model. WinZO claims to enjoy significant popularity and recognition in the digital gaming sector. It also claims to hold all IP rights associated with its platform, including content, graphical interfaces, and advertising materials. It is stated that WinZO invested significantly in developing and promoting WinZO platform through various media, making it a well-recognised brand. It claims to boast over 175 million registered users and an average daily engagement of 60 minutes per user.

4. WinZO had entered into a Shareholders' Agreement dated 9th May, 2019 with the Respondent no. 1-Hike Global Pte. Ltd., and also executed two further agreements dated 18th August, 2020 and 15th April, 2021. Details of the three agreements are as follows (*collectively, 'the Agreements'*):

- (i) First Agreement-Shareholders' Agreement dated 9<sup>th</sup> May, 2019 (*hereinafter, 'First SHA'*),
- (ii) Second Agreement-Shareholders' Agreement dated 18<sup>th</sup> August, 2020 (*hereinafter, 'Second SHA'*)
- (iii) Third Agreement-Term Sheet dated 15<sup>th</sup> April, 2021 (*hereinafter, 'Term Sheet'*)



5. As per the First SHA, Respondent No. 1-Hike Global Pte. Ltd. (*hereinafter, 'Hike Singapore'*), which has its registered office in Singapore, had made certain investments in WinZO - then known as Tictok Skill Games Pvt. Ltd. Certain relevant clauses of the First Agreement for the present purposes are the Non-Compete Clause (Clause 10.3), Confidentiality Clause (Clause 10.5) and Non-Solicitation Clause (Clause 10.4).

6. The First SHA consists of a '*Governing law and Jurisdiction Clause*' and a '*Dispute Resolution Clause*'. The said Clauses read as under:-

*"12.6 Governing Law, Jurisdiction*

*12.6.1 This Agreement shall be governed by and construed in accordance with the laws of India.*

*12.6.2 Subject to Clause 12.7 below, the courts at New Delhi shall have exclusive jurisdiction on the matters arising from or in connection with this Agreement, without regard to the principles of conflicts of laws.*

*"12. 7 Dispute Resolution.*

*12.7.1 Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, which cannot be settled and resolved through negotiation within 60 (sixty) days from the commencement of the dispute, shall be referred to and finally resolved by arbitration in accordance with the arbitration rules of the Singapore International*

*Arbitration Centre ("SIAC Rules ") for the time being in force which rules are deemed to be incorporated by reference into the provisions of this Clause.*

*12.7.2 The seat of arbitration shall be at Singapore and the venue of arbitration shall be New Delhi. The language of the arbitration proceedings shall be English.*

*12. 7. 3 The arbitral tribunal shall consist of 3 (three) arbitrators, whereby each disputing Party shall have*



*the right to appoint 1 (one) arbitrator and the 2 (two) arbitrators so appointed shall appoint the third arbitrator ( "Arbitral Tribunal").*

*12.7.4 All claims and counterclaims (including non-monetary and declaratory claims) shall, to the extent such claims or counterclaims are known at the time any arbitration is commenced, be consolidated and determined in the same arbitration proceeding. The Arbitral Tribunal shall, inter alia, have the authority to award declaratory relief and consider and award specific enforcement of this Agreement, subject to Applicable Law.*

*12.7.5 The award rendered by the Arbitral Tribunal shall, in addition to dealing with the merits of the case, fix the costs of the arbitration and decide which of the parties thereto shall bear such costs.*

*12.7.6 The award rendered by the Arbitral Tribunal shall be final and conclusive on all Parties to this Agreement, whether or not, despite notice, such Parties have taken part in the arbitration, and shall be subject to forced execution in any court of competent jurisdiction, subject to Applicable Law.*

*12.7.7 Each Party shall cooperate in good faith to expedite the conduct of any arbitral proceedings commenced under this Agreement."*

7. In terms of the First SHA, Hike Singapore became a 25% shareholder of WinZO. Subsequently, the Second SHA was executed between the parties, and additional shares were issued in favour of other Investors.

8. Hence, there were certain changes in the shareholding pattern. In addition, in the Second SHA, the Non-Compete Clause was dropped and Hike Singapore, was no longer bound to the Non-Compete Clause as per the First SHA.



9. Finally, a Term Sheet Agreement i.e. the Third Agreement was executed by which Hike Singapore exited from WinZO, and the relationship between the parties stood terminated.

10. The present dispute has arisen due to allegations by WinZO that Hike Singapore, through its Indian subsidiary Respondent No.2- Hike Private Limited, has launched an app called '*Rush*' sometime in November 2020, which competes directly with the Petitioner's gaming platform 'WinZO'.

11. According to Mr. Malhotra, Id. Counsel for WinZO, various key features of the Petitioner's WinZo app have been imitated or copied by the Respondents. Additionally, Respondent No. 3-Mr. Mayank Mittal, and Respondent No. 4-Ms. Pooja Balhara, both former employees of the Petitioner, have allegedly been poached by the Respondents.

12. The Petitioner further contends that similar features offered on the '*Rush*' app constitute a violation of its IP rights, including misuse of confidential information. Furthermore, it is alleged that Hike Singapore has filed a patent application for a specific algorithm titled '*A Method And System For Determining Compatible Contenders For A Contest*' dated 21<sup>st</sup> December, 2020, that, according to the Petitioner, clearly imitates and utilizes the Petitioner's proprietary match-making algorithm.

13. Thus, the relief sought is that the Respondents ought to be restrained from using any confidential information or any IP which belongs to WinZO.

14. It is also argued that the Petitioner was coerced into including a clause in the Second SHA that waived the non-compete restriction for Hike Singapore.



15. Mr. Vivek Chib, Id. Sr. Counsel, appearing on behalf of Respondent Nos. 1 and 2, raises, *inter alia*, the following issues in relation to the maintainability of the present Section 9 petition: -

- i) that Respondent Nos. 2, 3 and 4 are not parties to the arbitration agreement in the Agreements, and thus, they cannot be impleaded in the present Section 9 petition.
- ii) The individuals, namely Respondent Nos. 3 and 4, are not crucial and do not play a positive role in the Respondents' app '*Rush*', which was launched way back in 2020. According to the Respondents, with over 170 employees, the recruitment of one game developer from WinZO to the Respondent No. 2's company cannot be key to any allegations of violating confidentiality.
- iii) Insofar as the '*Rush*' app is concerned, it was launched way back in 2020. Till date, no allegations have been made against the app. If there were any allegations of violation of proprietary information, the same would have been made much earlier, as '*Rush*' has had over 40 iterations on the IOS platform, and more than 100 iterations on the Android platform. Further, it is very easy for any company to download the said '*Rush*' app and even access the source code, which is publicly available.
- iv) The aspect of coercion is disputed, as the said Non-Compete Clause was deleted following detailed negotiations between the parties.

16. It is further argued regarding the algorithm, that paragraph 56 of the petition states that WinZO has reserved its rights to take appropriate action



and avail its remedies in accordance with the law concerning Respondent No.2's patent application(s). Therefore, he submits that the issue of the patent applications filed, and the opposition to it, if any, cannot be made part of the arbitral proceedings.

17. The Court has heard the Id. Counsels for the parties. The First SHA contained an arbitration clause prescribing Singapore International Arbitration Centre Arbitration Rules ('SIAC Rules') as the applicable rules. The relevant Clause 12.7 of the said First Agreement specified that any dispute arising from or related to the First Agreement would be settled by arbitration following the SIAC Rules, where the seat of arbitration would be Singapore and the venue of the arbitral proceedings would be New Delhi. However, in the Third Agreement i.e. the Term Sheet, the clause titled 'Governing Law and Dispute Resolution' reads as follows: -

*"16 Governing law and dispute resolution*

*• This Term Sheet shall be governed by and construed in accordance with applicable laws of India.*

*• Any dispute, controversy, or claim arising out of or in connection with this Term Sheet, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration conducted under Arbitration and Conciliation Act 1996, by a sole arbitrator, appointed under the Arbitration and Conciliation Act 1996.*

*• **The venue and seat of arbitration shall be New Delhi, India.***

*• The language of the arbitration shall be English.*

*• Subject to arbitration process above, the courts in New Delhi, India shall have exclusive jurisdiction in respect any further disputes"*



18. Considering that the Term Sheet is the last and final agreement between the parties, this Court is of the opinion that the entire dispute ought to be referred to the Id. Sole Arbitrator under the Arbitration and Conciliation Act with the seat and venue at Delhi. Moreover, the parties also consent that the disputes arising out of the present Section 9 petition be referred to arbitration in Delhi itself.

19. Accordingly, this Court appoints ***Justice Gautam S. Patel (Retd.)*** as the Id. Sole Arbitrator in the present matter. The contact details of the Id. Sole arbitrator are set out below –

***Justice G.S.Patel (Retd)***  
***II Maker Chambers VI***  
***220 Jamnalal Bajaj Marg***  
***Nariman Point, Mumbai 400021***  
**[gautam@gautampatel.com](mailto:gautam@gautampatel.com)**  
***9821088711***

20. The Id. Sole Arbitrator is requested to enter reference on or before 30<sup>th</sup> May 2024. The arbitration shall take place under the aegis of the Delhi International Arbitration Centre ('DIAC'). The fee of the Arbitrator shall be paid in terms of the 4th Schedule as amended by DIAC Rules, 2023.

21. Considering the nature of the disputes between the parties, this Court directs that, the arbitration proceedings would be limited to WinZO and Respondents Nos. 1 and 2. As far as Respondents Nos. 3 and 4 are concerned—who are individuals not party to either of the Agreements, there would be no reference. Regarding the objection of Respondent No. 2- Hike Private Limited, also not being party to the arbitration agreement, the question of whether it can be impleaded in the arbitral proceedings as per the 'Group of Companies' doctrine, as per the decision of the Supreme Court in





*Cox and Kings Ltd. v. SAP India Pvt. Ltd. & Anr. (2023 INSC 1051)*, would be considered and adjudicated by the Id. Sole Arbitrator, before whom the objections would be raised by the Respondent No. 2. As for the disputes related to confidentiality and misuse of WinZO's proprietary information, the Id. Sole Arbitrator would have the discretion to decide and adjudicate these issues.

22. Regarding the patent applications filed by Respondent Nos. 1 and 2, WinZO is free to pursue its remedies in accordance with the Patents Act, 1970 or any other law. However, the grant or opposition of these patent applications shall not be subject matter of these arbitral proceedings. Regardless, if there is conduct that needs to be demonstrated based on allegations made by WinZO, which are disputed by the Respondents, the same may be raised before the Id. Sole Arbitrator.

23. As an interim direction, WinZO and the Respondent Nos. 1 and 2 shall place on record, in a sealed cover with the worthy Registrar General of this Court, the source code relating to the apps- WinZO and Rush respectively, so that the same would be available for comparison, if any need arises in future as per the directions of the Id. Sole Arbitrator. The Id. Sole Arbitrator may call for the source codes of these two apps for the purposes of the arbitral proceedings, and the Id. Sole Arbitrator shall be provided with all necessary assistance in securing the same.

24. In addition, WinZO's algorithm, which is allegedly copied by Respondent Nos. 1&2, shall also be placed on record by WinZO and the Respondents in a sealed cover with the worthy Registrar General.

25. For access to the source code or algorithm, the parties may move the Id. Sole Arbitrator for constitution of a confidentiality club.



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26. The documents filed by WinZO as a part of this petition shall be retained in a sealed cover with the Registry.

27. Let a copy of the present order be communicated to Mr. Reetesh Singh, Coordinator, DIAC (*M: 9650152229*) and emailed on [delhiarbitrationcentre@gmail.com](mailto:delhiarbitrationcentre@gmail.com).

28. The present petition is disposed of in the above terms. All pending applications are also disposed of.

**PRATHIBA M. SINGH**  
**JUDGE**

**MAY 9, 2024**

*mr/dn*

*(Corrected & released on 13<sup>th</sup> May, 2024)*