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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 27th March, 2024

+ **O.M.P.(I) (COMM.) 96/2024 & I.A. 6942/2024**

STARTUPWALA PRIVATE LIMITED Petitioner

Through: Mr. Devashish Marwah Ms. Biyanka
Bhatia Ms. Aneesha Rastogi & Mr.
Shohit, Advs. (M:7042492843)

versus

GOOGLE INDIA PRIVATE LIMITED Respondent

Through: Mr. Neel Mason, Mr. Vihan Dang, Ms.
Ekta Sharma, Ms. Pragya Jain, Mr.
Ujjawal Bhargava & Mr. Aditya
Mathur, Advs. (M:9461588999)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

I.A. 6942/2024 (for exemption)

2. This is an application seeking exemption from filing originals/certified/cleared/typed or translated copies of documents, left side 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.

4. Accordingly, the application is disposed of.



O.M.P.(I)(COMM.) 96/2024

5. The present petition has been filed on behalf of the Petitioner-Startupwala Pvt. Ltd. under Section 9 of the Arbitration and Conciliation Act, 1996 (*hereinafter, '1996 Act'*) seeking interim reliefs. The Petitioner vide this petition *inter alia* seeks a direction to the Respondent-Google India Pvt. Ltd. to maintain *status quo ante* by reinstating all the digital ads of the Petitioner which were disapproved/marked as '*LIMITED*' on 10th December, 2023, 29th December, 2023 and 30th January, 2024. Further, the Petitioner also seeks directions to restrain the Respondent from disapproving any remaining ads of the Petitioner which have been marked as '*Limited by Policy*'.

6. The case of the Petitioner it is engaged in the business of corporate and management consultancy services. It provides assistance of secretarial and corporate compliances including business setups, IPR, accounting, book-keeping services, etc. The Petitioner is one of the companies which utilizes advertising services provided by Google India Pvt. Ltd. under its advertising program terms.

7. According to the Petitioner, since 2020, it started utilising the digital advertisement services offered by Google India Pvt. Ltd. by accepting the 'Google India Pvt. Ltd. Advertising Program Terms' (*hereinafter, 'Advertising Terms'*). The Advertising Terms were made subject to the applicable Google policies available at www.google.co/ads/policies. However, since August, 2023 some of the advertisements which have been released by the Petitioner are being disapproved by the Google advertisement program upon giving reference to a policy called '*Government Documents and Official Services*'.



8. Ld. Counsel for the Petitioner-Mr. Devashish Marwah submits that the advertisements of the Petitioner are the mainstay for earning revenues and the blocking of ads by Google, which is one of the main platforms, is resulting in enormous financial loss to the Petitioner.

9. Ld. Counsel for the Petitioner further submits that it has been in continuous correspondence with Google via emails from August, 2023 to February, 2024. The chronology of events as per Ld. Counsel for the Petitioner would show that those advertisements which were approved even once are again disapproved, and the responses being received are through an automated platform. Thus, the Petitioner is unable to even interact with any official and seek reasons as to why the advertisements are disapproved.

10. Ld. Counsel for the Petitioner submits that Clause 13 of the Advertisement Terms provides for an arbitration clause which states that the disputes between parties would be resolved by arbitration which will be conducted in Santa Clara County, California, USA. He submits that this is a standard arbitration clause in the Advertisement Terms and the said clause precludes the Petitioner from exercising its legal remedies effectively.

11. Ld. Counsel for the Petitioner also points out that an email dated 12th February, 2024 by Google informed the Petitioner that the query of the Petitioner with regard to the disapproval of its advertisements was reviewed and the disapproved advertisements have now been approved. However, on 14th February, 2024 the same very advertisements which were approved on 12th February, 2024 were disapproved. According to the Petitioner, the advertisements which are labelled as 'Not eligible' have been wrongly labelled as there is no non-compliance by the Petitioner of the 'Government Document and Official Services' policy.



12. Mr. Mason, Id. Counsel raises an issue of territorial jurisdiction and maintainability. Ld. counsel submits that he wishes to seek instructions in the matter and file a short reply.

13. The Petitioner, in terms of the arbitration clause 13 of the Advertisement Terms issued a legal notice on 19th February, 2024 vide which it sought reinstatement of advertisements disapproved by the Respondent. However, no reply was received. The relevant portion of the said notice reads as under:

“32. Despite multiple communications from Our Client, the Noticee No.1 has failed to reinstate the ads or provide a legitimate reasoning for the disapprovals, leading to severe and continuous business and monetary losses. Therefore, we are serving this Legal Notice to you, the Noticee No.1 to:-

- (i) reinstate all the digital ads of Our Client related to Google Ads account: 104-104-2770, which were unfairly and arbitrarily disapproved/limited by policy in December, 2023, January, & February 2024.*
- (ii) allot an Account manager for Our Clients Ads account: 104-104-2770 to address this issue amicably within 3 days of receipt of this Legal Notice.”*

14. Further, Id. Counsel for the Petitioner places reference on the dashboard appearing on the Google platform which shows that some advertisements are labelled as ‘not eligible’ and some advertisements are labelled as ‘eligible limited’. He prays that those advertisements which are currently running ought not to be taken off.

15. The Court has considered the matter. Issue notice. Mr. Neel Mason accepts notice.

16. The arbitration clause 13 of the Advertisement Terms would show that



the arbitration contemplated is by the International Centre for Disputes Resolution of the American Arbitration Association and the venue is Santa Clara County, California, USA. The relevant portion of the said clause reads as under:

*“(a) These Terms are governed by California law, excluding California's choice of law rules. (b) Nothing in these Terms will limit a party's ability to seek equitable relief. The parties will try in good faith to settle any dispute relating to these Terms ("Dispute") within 30 days after such Dispute arises. If the Dispute is not resolved within 30 days, it must be resolved by arbitration by the **International Centre for Dispute Resolution of the American Arbitration Association** and conducted in accordance with its Expedited Commercial Rules in force as of the date of these Terms. There will be one arbitrator selected by mutual agreement of the parties. **The arbitration will be conducted in English in Santa Clara County, California, USA.** Any decision rendered by the arbitrator will be final and binding on the parties, and judgment thereon may be entered by any court of competent jurisdiction.”*

This is a standard clause as per the Google program terms. These advertising programs may be availed of by millions of customers of Google India Pvt Limited within the country and, thus, the Court would like to consider as to whether such a clause would in fact prevent people like the Petitioner from availing their legal remedies in accordance with law in India or should arbitration in such cases be held in India.

17. Moreover, in any case, the present petition is under Section 9 of the 1996 Act where the Petitioner has approached the Court for interim reliefs. The Petitioner vide this petition is *inter alia* seeking a restraining order against



its advertisements being blocked from the Google platform.

18. The Court has considered the dashboard, screenshots of which are set out below:

Ad	Ad group	Status ↓
Register a Company @ Rs.99 Pvt Ltd+MOA+AOA+DIN+ DSC 100+ Team 4.7 Sta... www.startupwala.com/incorporation Setup your Company in 15 days. Lowest Fees. Also Get Free Benefits for 2 Founders. + Free... View assets details	company incorporation	<u>Not eligible</u> <u>Disapproved</u> <u>(Government Documents and Official Services)</u>
Register a Company @ Rs.99 Pvt Ltd+MOA+AOA+DIN+ DSC 100+ Team 4.7 Sta... www.startupwala.com/incorporation Setup your Company in 15 days. Lowest Fees. Also Get Free Benefits for 2 Founders. + Free... View assets details	how to /steps	<u>Not eligible</u> <u>Disapproved</u> <u>(Government Documents and Official Services)</u>
Register a Company @ Rs.99 Pvt Ltd+MOA+AOA+DIN+ DSC 100+ Team 4.7 Sta... startupwala.com/incorporation/services Setup your Company in 15 days. Lowest Fees. Also Get Free Benefits for 2 Founders. + Free... View assets details	pricing	<u>Not eligible</u> <u>Disapproved</u> <u>(Government Documents and Official Services)</u>
Form a Company @ Rs.99 Pvt Ltd+MOA+AOA+DIN+ DSC 100+ Team 4.7 Sta... startupwala.com/startup/formation Setup your Company in 15 days. Lowest Fees. Also Get Free Benefits for 2 Founders. + Free... View assets details	company formation	<u>Not eligible</u> <u>Disapproved</u> <u>(Government Documents and Official Services)</u>
Incorporate a Company @ Rs.99 Pvt Ltd+MOA+AOA+DIN+ DSC 100+ Team 4.7 Sta... www.startupwala.com/incorporation Setup your Company in 15 days. Lowest Fees. Also Get Free Benefits for 2 Founders. + Free... View assets details	registering company	<u>Not eligible</u> <u>Disapproved</u> <u>(Government Documents and Official Services)</u>
Register a Company @ Rs.99 Pvt Ltd+MOA+AOA+DIN+ DSC 100+ Team 4.7 Sta... startupwala.com/incorporation/services Setup your Company in 15 days. Lowest Fees. Also Get Free Benefits for 2 Founders. + Free... View assets details	city	<u>Eligible (Limited)</u> <u>Policy (Government Documents and Official Services)</u>



Ad	Ad group	Status ↓
Register a Company @ Rs.99 Pvt Ltd+MOA+AOA+DIN+ DSC 100+ Team 4.7... www.startupwala.com/incorporation Get Company Registration in 15 days. Lowest Fees. Also Get Free Benefits for 2 Founders. ... View assets details	company registration	Not eligible Disapproved (Government Documents and Official Services)
LLP Registration @ Rs.99 LLP+DIN+DSC+LLP Agreement+ PAN 100+... startupwala.com/llp/incorporation Get Company Registered in 15 days. Lowest Fees. Also Get Free Benefits for 2 Founders. ... View assets details	llp registration	Not eligible Disapproved (Government Documents and Official Services)
Register a Company @ Rs.99 OPC+MOA+AOA+DIN+ DSC 100+ Team 4.7... www.startupwala.com/incorporation Get Company Registration in 15 days. Lowest Fees. Also Get Free Benefits for 2 Founders. ... View assets details	one person company registration	Eligible (Limited) Policy (Government Documents and Official Services)
Register a Company @ Rs.99 Pvt Ltd+MOA+AOA+DIN+ DSC 100+ Team 4.7... www.startupwala.com/incorporation Get Company Registration in 15 days. Lowest Fees. Also Get Free Benefits for 2 Founders. ... View assets details	pvt ltd company registration	Eligible (Limited) Policy (Government Documents and Official Services)
Register a Company @ Rs.99 Pvt Ltd+MOA+AOA+DIN+ DSC 100+ Team 4.7... www.startupwala.com/incorporation Get Company Registration in 15 days. Lowest Fees. Also Get Free Benefits for 2 Founders. ... View assets details	register new company online	Eligible (Limited) Policy (Government Documents and Official Services)
Register a Company @ Rs.99 Pvt Ltd+MOA+AOA+DIN+ DSC 100+ Team 4.7... www.startupwala.com/incorporation Get Company Registration in 15 days. Lowest Fees. Also Get Free Benefits for 2 Founders. ... View assets details	how to register a company	Eligible (Limited) Policy (Government Documents and Official Services)
Register a Company @ Rs.99 Pvt Ltd+MOA+AOA+DIN+ DSC 100+ Team 4.7... www.startupwala.com/incorporation Get Company Registration in 15 days. Lowest Fees. Also Get Free Benefits for 2 Founders. ... View assets details	company registration fees	Eligible (Limited) Policy (Government Documents and Official Services)

19. As per the above dashboard screenshots, some of the advertisements are shown as 'Not-eligible' in terms of the 'Government Document and Official Services' policy and are hence disapproved. The other advertisements are shown as 'Eligible' but in a 'Limited' manner. The issues deserve consideration.



20. Since the Respondent is yet to file a reply and there are no reasons on record as to why any of these advertisements are disapproved or marked as eligible (limited), the Court has considered the irreparable loss which can be caused to the Petitioner and its business. Hence, it is directed that those advertisements which have currently not been blocked and are labelled as 'Eligible (limited)' in the above screenshots shall not be blocked or taken down till the next date of hearing. Mr. Mason submits that the said advertisements which are under the Petitioner's control ought not to be modified. Accordingly, the above order shall be subject to the condition that the advertisements would be run as they are running and the content thereof shall not be modified till the next date of hearing.

21. Let the reply be filed within two weeks. Rejoinder, thereto, before the next date of hearing.

22. List on 22nd April, 2024.

PRATHIBA M. SINGH, J

MARCH 27, 2024

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