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

Date of decision: 9th November, 2022

+ **CS (COMM) 567/2022 and I.A. 13067/2022**

STAR INDIA PRIVATE LIMITED & ANR. Plaintiffs

Through: Mr. Sidharth Chopra, Mr. Yatinder Garg, Ms. Kriti Jindal, Mr. Akshay Maloo and Mr. Rimjhim Tiwari, Advocates.

versus

MHDTV.WORLD & ORS. Defendants

Through: Mr. Anjani Kumar Rai, Mr. Sparsh Karnwal, Mr. Manmohan Kumar Jha and Ms. Anadi Mishra, Advocates.

Mr. Parva Khare, Advocate for D-12.

Mr. Apoorv Kurup, CGSC with Ms. Nidhi Mittal and Ms. Aparna Arun, Advocates for D-28 & 29.

**CORAM:
JUSTICE PRATHIBA M. SINGH**

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. Vide previous order dated 22nd August, 2022, an *ex-parte* ad interim injunction was granted in this matter restraining infringement of the Plaintiffs' exclusive rights in the Asia Cricket Cup matches and associated content. Disclosure orders were also passed against the Domain Name Registrars (*hereinafter* "DNRs") to disclose the details of the impugned domain names. MeitY and DoT were also directed to block the impugned

domain names. The relevant extract of the said order dated 22nd August, 2022 reads as under:

“18. *Under such circumstances, the Court is convinced that the Plaintiff has made out a prima facie case for grant of an ex-parte ad interim injunction, which is also a dynamic injunction. The balance of convenience lies in favour of the Plaintiffs and irreparable injury would be caused if the interim injunction is not granted. Disclosure orders are also liable to be passed against the Domain Name Registrars, and further, the MEITY and DoT ought to also issue blocking orders to all the ISPs, to block the said rogue websites.*

19. *Considering the investment which the Plaintiffs have made in acquiring the rights of these events, any illegal broadcasting would severely affect the monetary interest of the Plaintiffs, and also diminish the value of the rights of such sporting events. Accordingly, till the next date of hearing, the Defendant Nos. 1 to 11 and all others acting for or on their behalf, shall stand restrained from hosting, streaming, broadcasting, rebroadcasting, retransmitting or in any other manner communicating to the public, or disseminating to the public, any cricketing events, extracts, excerpts, highlights in relation to cricket matches relating to the Asia Cup 2022 commencing from 27th August, 2022 to 11th September, 2022.*

20. **The Domain Name Registrars shall also immediately block the said domain names and maintain status quo thereof. The said Domain Name Registrars shall also disclose to the Plaintiffs the following:**

a. Complete details (such as Name, Address, Email Address, Phone Number, IP Address etc.) of the Defendant Nos. 1 to 11 (and such other websites which are discovered during the course of the

proceedings and notified on Affidavit by the Plaintiffs to have been infringing the Plaintiffs' exclusive rights, copyrights and broadcast reproduction rights).

b. Mode of Payment along with payment details used for registration of domain name by the Registrant i.e., Defendant Nos. 1 to 11 (and such other websites which are discovered during the course of the proceedings and notified on Affidavit by the Plaintiffs to have been infringing the Plaintiffs' exclusive rights, copyrights and broadcast reproduction rights).

c. Details of other websites registered by the Defendant Nos. 1 to 11 (and such other websites which are discovered during the course of the proceedings and notified on Affidavit by the Plaintiffs to have been infringing the Plaintiffs' exclusive rights, copyrights and broadcast reproduction rights) using similar details, same credit card, payment gateway etc. (disclosed as per Clause b above) with the Defendant No. 12 to 18.

d. Details of Complaints received by the Defendant Nos. 12 to 18 in past against the Defendant Nos. 1 to 11 (and such other websites which are discovered during the course of the proceedings and notified on Affidavit by the Plaintiffs to have been infringing the Plaintiffs' exclusive rights, copyrights and broadcast reproduction rights).

21. *The DoT and MEITY, as also the ISPs, shall block the Defendant Nos. 1 to 11 websites. The said blocking orders shall be issued by the DoT within 24 hours after service of this order. Pursuant to the said blocking order/s, all the ISP's, i.e. Defendant nos. 19 – 27, shall block access*

to the URL's, as also the mobile applications within 24 hours and shall not permit the download of these applications or the streaming of the rogue websites. The said websites are listed hereinbelow:

S.NO.	LIST OF WEBSITES
1.	http://sportrush.xyz/
2.	http://besthdplayer.click/
3.	http://papahad1.xyz/
4.	http://www.cricket9x.com/
5.	http://larsenik.com/
6.	http://www.popofthestream.com/
7.	http://daddylove.futbol/
8.	http://deliriousholistic.net/
9.	http://ip1hd2.cf/
10.	http://mhdtv.world/
11.	http://www.tutele.nl/

22. During the currency of these events covered by the Plaintiffs' agreements, if the Plaintiffs discover other mirror websites or rogue websites which are broadcasting and telecasting the sporting events which are covered by the present suit, they may:

- i) File an affidavit in this regard before the Court along with evidence thereof. The said websites shall stand blocked with immediate effect, upon notice being issued by the Plaintiffs to the DoT and ISPs that such an affidavit has already been filed before this Court.

ii) Upon DoT receiving the notices and communications from the Plaintiffs that the affidavits have been filed before the Court, the orders for blocking such further rogue websites shall be passed, immediately and in any case, within 24 hours, so that the websites do not continue to stream infringing content in any manner whatsoever.”

3. Today, Mr. Sidharth Chopra, Id. Counsel appearing for the Plaintiffs, submits that five of the DNRs have not complied with the orders of this Court. The said DNRs are:

- i. NameCheap Inc./Defendant No.13;
- ii. Dynadot, LLC/Defendant No.14;
- iii. Tucows Inc./Defendant No.16;
- iv. Gransy s.r.o./Defendant No.17; and
- v. Sarek Oy/Defendant No.18.

4. In this regard, Id. Counsel for the Plaintiffs has placed on record NameCheap Inc.’s reply to the Plaintiffs’ email seeking compliance of the order dated 22nd August, 2022. The said email reads as under:

“Hello,

Thank you for your email.

In such situations, it is advised to appeal to a court of competent jurisdiction. In order for us, as a U.S.- based company, to take the actions you are requesting, we require a U.S. state or federal court order or subpoena. If a U.S. court order is received, we will abide by any decision stated therein.

If you already have a U.S. court order, please forward it, along with your request and contact information, to our Senior Legal department directly via legal@namecheap.com.

You can find more information about the corresponding policy at

<https://www.namecheap.com/legal/general/court-order-and-subpoena-policy.aspx>, or you may wish to obtain local legal advice about any available mutual legal assistance treaties.

Let us know if there are any further questions.

*Regards,
Legal & Abuse Department
Namecheap Inc.”*

5. Mr. Chopra, Id. Counsel, thus submits that the DNRs are not complying with various injunction orders passed by this Court, thereby rendering the injunction orders ineffective.

6. This Court has perused the said correspondence with the DNRs. In terms of the orders passed by this Court in a batch of matters with the lead matter being **CS (COMM) 135/2022** titled ***Dabur India Ltd. v. Ashok Kumar & Ors.***, on 3rd August, 2022 and 13th/14th September, 2022, this Court reiterates its *prima facie* view that all DNRs have to abide by and give effect to orders passed by competent courts, government authorities, etc. Moreover, all these DNRs mentioned above and in respect of which directions have been passed by the Court, are offering their services and products in India and are bound by the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (*hereinafter* “2021 Rules”). Under the said Rules, they are also obligated to appoint Grievance Officers to ensure compliance of the orders passed by this Court, which they clearly appear not to have complied with.

7. This Court has previously taken note of Internet Corporation for Assigned Names and Numbers’ (*hereinafter* “ICANN”) agreement

governing the relationship between registry operators, DNRs, and the domain name registry. These agreements also impose obligations upon DNRs to comply with all applicable laws, Court orders, etc. The relevant extract of the order dated 3rd August, 2022 in *CS(COMM) 135/2022*, reads as under:

“29. At this stage, on behalf of ICANN, Mr. Rao, ld. Senior Counsel, has appeared to assist the Court. He submits that his mandate in CS(COMM)228/2021 was to seek deletion of ICANN from the memo of parties and he appears without prejudice to the stand of ICANN that it does not admit the jurisdiction of this Court. Mr. Rao, purely for the purposes of assistance, has taken the Court through the agreements which ICANN enters into with the registry operators, as also the agreements entered into between the registry operators and the respective registrars. The Court has perused the said agreements and as per the said agreements, the following key obligations with respect to information of registrants have been highlighted:

(i) Domain name registrations ought to be done through an “identifiable natural person”. Clause 1.6 of the Registry-Registrar Agreement (hereinafter “RRA”), reads as under:

“1.6. "Personal Data" refers to data about any identified or identifiable natural person.”

(ii) Clause 2.6 of the RRA provides that the Registry Operator shall notify the Registrar of the “purpose for which Personal Data submitted to Registry Operator by Registrar is collected” and the mechanism to access and correct such data.

Clause 3.1 of the RRA The said agreements also makes it abundantly clear that DNRs have to respond adequately to governmental or semi-governmental authorities operating in any country and also abide by the applicable laws and regulations.

(iv) *Clause 3.5 read with 3.10 of the RRA provides that the DNR shall provide complete data as required by the Registry and shall abide by ICANN standards, policies and practices for which the Registry Operator has responsibility in accordance with the Registry Agreement (hereinafter “RA”).*

(v) *At the Registry level, Clause 2.6 read with Specification 5 of the RA provides a schedule of reserved names which cannot be registered within TLDs, without express permission of ICANN. It provides that DNRs also have an obligation to curb illegal activity and not act in any manner which could result in damage to third parties including brand names and trademark owners.*

(vi) **Clause 2.8 read with Specification 7 of the RA provides that legal rights of third parties shall be protected and the Registry Operator shall take reasonable steps to investigate and respond to any reports from law enforcement and governmental agencies for illegal conduct. Relevantly, the said clause provides as under:**

“2.8 Protection of Legal Rights of Third Parties. Registry Operator must specify, and comply with, the processes and procedures for launch of the TLD and initial registration-related and ongoing protection of the legal rights of third parties as set forth Specification 7 attached hereto (“Specification 7”). Registry Operator may, at its election, implement additional protections of the legal rights of third parties. Any changes or modifications to the process and procedures required by Specification 7 following the Effective Date must be approved in advance by ICANN in writing. Registry Operator must comply with all remedies imposed by ICANN pursuant to Section 2 of Specification 7, subject to Registry Operator’s right to challenge such remedies as

*set forth in the applicable procedure described therein. **Registry Operator shall take reasonable steps to investigate and respond to any reports from law enforcement and governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD.** In responding to such reports, Registry Operator will not be required to take any action in contravention of applicable law.”*

30. ***The ICANN agreements do not seem to obligate DNRs to extend privacy protect features, even in cases of blatant infringement and fraudulent activities. Moreover, all Registries and DNRs, as per the Agreements, prima facie, have to abide by and give effect to orders passed by competent courts, governmental authorities etc.** However, Mr. Rao, ld. Sr. Counsel for ICANN, and the ld. Counsels for the DNRs, have been asked to seek further instructions to make more comprehensive submissions in this regard on the next date. ”*

8. Thereafter, on the issue of appointment of grievance officers, the relevant extract of the order dated 13th September, 2022 in **CS(COMM) 135/2022**, reads as under:

“10. It is also brought to the notice of this Court, that one of the common complaints of Plaintiffs’ who have filed domain name related suits before this Court, is that there is significant difficulty in:

- (1) Serving those DNRs, who do not have offices in India;*
- (2) Seeking implementation of the orders passed including injunction orders against DNRs;*
- (3) Obtaining data relating to the registrants of the domain names including email addresses, postal addresses, telephone numbers, credit cards used for making payments etc.*

11. In this regard, Mr. Chopra, Id. Counsel for one of the Petitioners, highlights that under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (hereinafter referred to as “IT Rules, 2021”), Rule 3 requires appointment of Grievance Officers for the purposes of ensuring that complaints of individuals are duly acknowledged, and orders passed by a Court of competent jurisdiction and authorities, are duly implemented. The said Rule 3(2) reads as under:

“(2) Grievance redressal mechanism of intermediary: (a) The intermediary shall prominently publish on its website, mobile based application or both, & the case may be, the name of the Grievance Officer and his contact details as well as mechanism by which a user or a victim may make complaint against violation of the provisions of this rule or any other matters pertaining to the computer resources made available by it, and the Grievance Officer shall -
(i) acknowledge the complaint within twenty four hours and dispose off such complaint within a period of fifteen days from the date of its receipt;
(ii) receive and acknowledge any order, notice or direction issued by the Appropriate Government, any competent authority or a court of competent jurisdiction.”

12. The DNRs do not dispute that they are ‘intermediaries’ under the IT Act, 2000. This Court has also noticed that in a large number of domain name matters, even when advance service is done at the email addresses of the DNRs available online, the DNRs are not always represented on the first date of hearing before the Court. In such matters, there is always a need for urgent implementation of orders, in as much as domain names have been registered fraudulently, and large sums of money have been collected by the fraudulent registrants from vulnerable citizens and there is a need for urgent freezing of

bank accounts and obtaining details of the persons operating these illegal bank accounts.

13. In view of this situation, a query has been posed to all the DNRs represented before the Court today, as to whether they have appointed Grievance Officers in terms of the aforementioned IT Rules 2021, and if so, whether such details of the officers are published on their websites. In response, *ld. Senior Counsels* on behalf of various DNRs, submit that they wish to seek instructions in this regard, and revert by tomorrow.

14. Accordingly, the DNRs who are represented before the Court today, shall revert by tomorrow on the following aspects:

(1) Whether they have appointed Grievance Officers in terms of IT Rules 2021?

(2) If they have done so, details of the said Grievance Officers including the name, designation, postal address, e-mail address and telephone numbers.”

9. Vide further order dated 14th September, 2022, after recording the details of grievance officers of the DNRs present in Court, in respect of absent DNRs, including Namecheap Inc., Dynadot LLC, and Tucows Inc., this Court directed as under:

“31. This Court has been hearing these DNR matters from time to time and several orders have been passed directing such DNRs to suspend/block infringing domain names and also provide registrant details. Further orders seeking inputs by DNRs as to their Grievance Officer and a mechanism to promptly ensure compliance with such orders have been passed.

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35. **No other DNRs have made any submissions before this Court today. MeitY is directed to look into the issue of appointment of Grievance Officers by the other DNRs who are parties in these suits.** The said list of DNRs is as under:

Sl. No.	Domain Name Registrar (DNR)	Email ID
1.	NameCheap Inc	legalandabuse@namecheap.com, support@namecheap.com
2.	Dynadot LLC	info@dynadot.com
3.	Hostinger International Ltd. / Hostinger UAB	abuse@hostinger.com
4.	Epik Inc.	support@epik.com
5.	Tucows Inc.	domains@tucows.com, info@tucows.com
6.	Wild West Domains LLC	abuse@wildwestdomains.com
7.	NameSilo LLC	support@namesilo.com
8.	HioxSoftwaresPvt. Ltd.	support@rrpproxy.net , sales@hioxindia.com

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36. If the said DNRs have not appointed Grievance Officers, one week's time shall be given to them for making the appointments in accordance with the IT Rules, 2021. If the said compliance is not made by DNRs, MeitY is free to proceed in accordance with law against such DNRs who are offering their domain name registration, hosting and related services in India, without complying with the local laws. A status report be put up by MeitY by the next date, on this aspect including the steps taken by MeitY pursuant to the directions contained above."

10. Mr. Kurup, Id. CGSC appearing for MeitY and DoT, submits that as and when the Plaintiffs have notified the departments about various infringing websites, which are involved in illegal streaming of the Plaintiffs' contents, proper blocking orders have been issued. If the Court has passed suspension and disclosure orders, the DNRs ought to have taken action in accordance with law. He however submits that through VPN networks, these DNRs may still be accessible, thus allowing streaming/hosting/etc. of infringing content to continue.

11. In the backdrop of the above discussion, insofar as the above listed DNRs, which are not giving effect to the orders of this Court, i.e., NameCheap Inc./Defendant No.13, Dynadot, LLC/Defendant No.14,

Tucows Inc./Defendant No.16, Gransy s.r.o./Defendant No.17, and Sarek Oy/Defendant No.18, since DoT and MeitY are present before this Court, they are directed to immediately take action within one week against these DNRs for non-compliance of the orders passed by this Court. The authorities shall also look into the question as to whether these DNRs ought to be permitted to continue to offer their goods and services in India, if they are not giving effect to orders of Indian Courts and not complying with the applicable laws under the Information Technology Act, 2000, and the 2021 Rules.

12. Mr. Kurup, ld. CGSC, to file a status report as to action taken in this regard by DoT and MeitY, in respect of these DNRs, by the next date of hearing.

13. List on 11th January, 2023.

14. Copy of the order be given *dasti* to both the parties.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 9, 2022/dk/ms