



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

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Judgment Reserved on: 9th September, 2025
Judgment pronounced on: 16th September, 2025

+ **O.M.P.(I) (COMM.) 351/2025**

DREAMFOLKS SERVICES LTD.

.....Petitioner

Through: Mr. Amit Sibal, Senior Advocate, Mr. Pavan Narang, Senior Advocate with Mr. Mayank Bhargava, Mr. Abhishek Batra, Vinamra Kopahira, Mr. Ankit Handa, Ms. Suditi Batra, Mr. Rajdeep Saraf and Mr. Himanshu Sethi, Advocates.

versus

ENCALM HOSPITALITY PVT. LTD.

.....Respondent

Through: Mr. Rajiv Nayar, Senior Advocate with Mr. Anirudh Bakhru, Mr. N.S. Ahluwalia, Mr. Deepak Chawla, Mr. Adhish Sharma and Mr. Nitin Pandey, Advocates.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

1. The present petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter 'Act') seeking the following reliefs:-

- i. Pass an ex-parte ad-interim order restraining respondent, its men, agents, assignees, nominees, legal representatives, legal heirs etc from entering into or executing any new agreement or arrangement with the Petitioner's Clients (as listed in Paragraph 9(b));*



- ii. *Pass an ex-parte ad-interim order directing respondent, its men, agents, assignees, nominees, legal representatives, legal heirs etc to cease and desist all operations with the ICICI Bank, Axis Bank, Yes Bank, and Amex Network Cards (American Express Ltd.), through the representative, as claimed in their letter email dated 16.06.2025 & 04.07.2025;*
 - iii. *Pass an ex-parte ad-interim order directing respondent, its men, agents, assignees, nominees, legal representatives, legal heirs etc to disclose on oath the true and correct accounts of the breach and producing all records of transactions with ICICI Bank, Axis Bank, Yes Bank, Amex Network Cards (American Express Ltd.), and any other petitioner's Clients in violation of the Agreement dated 26.07.2022;*
2. Briefly stated, the case of the petitioner is as follows:-
- i. The petitioner is engaged in the business of providing travel and lifestyle services to various organisations across the world and acts as a facilitating platform of various services using its proprietary technology. The petitioner's extensive range of services covers lounge access, meet and assist, airport transfers, food and beverages, spa, transit hotels/ nap rooms, golf, and more.
 - ii. The respondent is engaged in the business of acquiring licences from airport authorities for managing, operating and running the lounges. Currently, the respondent is running the following airport lounges:-



S No.	Country	City	Airport Name	Lounge Name	Terminals
4.	India	New Delhi	IGI Airport	Encalm Lounge	T1, T2, and T3 (Arrival)
5.	India	Goa	Manohar International Airport, Goa	Encalm Lounge	Domestic & International Terminals
6.	India	Hyderabad	GMR Hyderabad International Airport	Encalm Lounge	Domestic & International Terminals

- iii. The petitioner entered into an Agreement dated 26th July, 2022 (*hereinafter* 'Agreement') with the respondent in terms of which the respondent agreed to provide services to the petitioner and its customers by granting access to the customers to the services at the lounges operated by the respondent.
- iv. The *term* of the Agreement was for a period of five (5) years, though the parties had a right to terminate the Agreement earlier.
- v. The petitioner has agreements with various banks (Clients of the petitioner) who issued credit cards and other cards to their customers, providing them access to the lounges run by the respondent. The petitioner provides its Point of Sale (POS) machine to the respondent to swipe the cards issued to the customers of the petitioner's Clients to allow them access to the lounges.
- vi. For providing this access, the petitioner pays consideration to the respondent, and in turn, the petitioner recovers the amounts from its Clients. The differential amount between the payments received from the petitioner's Clients and the payment made to the respondent is the



margin of the petitioner.

- vii. The respondent issued a notice of termination dated 4th August, 2025, giving a 90 days' notice to the petitioner for termination of the Agreement. The said termination notice was duly replied by the petitioner on 5th August, 2025.
 - viii. It is the case of the petitioner that the respondent breached the provisions of the aforesaid Agreement by doing business directly with the petitioner's Clients. It is submitted that the said breach on the part of the respondent has resulted in a significant downfall of the petitioner's business volumes.
 - ix. The petitioner has given a list of its Clients at pages 18-19 of the petition (21 in total).
3. Accordingly, the present petition has been filed seeking a direction against the respondent restraining them from entertaining/ providing services to the Clients of the petitioner in breach of the terms of the aforesaid Agreement.
4. The petition came up before this Court on 28th August, 2025, wherein it was put to the counsel if the parties can be referred for arbitration and the present petition be converted into a petition under Section 17 of the Act.
5. Counsel for the respondent was agreeable to the aforesaid suggestion, however, counsel for the petitioner took time to take instructions.
6. In the meanwhile, the respondent was directed to maintain records as well as accounts in respect of all transactions entered by the respondent with the petitioner's Clients, whether directly or through a third party.
7. The aforesaid order was challenged by the petitioner by way of an



appeal in FAO(OS)(COMM) 135/2025. However, the said appeal was not pressed by the petitioner, in view of the statement made by the counsel for the respondent that reply shall be filed on behalf of the respondent to the present petition before the next date of hearing.

8. Pursuant to the aforesaid order, a reply along with documents has been filed on behalf of the respondent.

9. It has been argued on behalf of the petitioner that the respondent is bound to comply with the terms of the Agreement during the notice period of 90 days. Therefore, the respondent, during the notice period of 90 days, cannot deal with the petitioner's Clients either directly or indirectly.

10. The stand taken by the respondent in its reply is that the petitioner has a non-exclusive contract with its Clients and the said Clients have similar arrangements with various third-party entities. The petitioner has failed to disclose the full agreement entered into with its Clients, which would disclose that the arrangement with the petitioner was a non-exclusive one.

11. It is further stated that the respondent is not directly dealing with any of the petitioner's Clients as listed at pages 18-19 of the petition and that the respondent is dealing with them only through third-party service providers.

12. I have heard the counsel for the parties.

13. To appreciate the submissions made by counsel, it would be necessary to refer to the following clauses of the agreement:-

*"4.3 DreamFolks as on date has found the Services offered by LOUNGE OPERATOR to be suitable for the purpose of the Clients and covenants that DreamFolks shall participate in all further negotiations/represent the Clients through this Agreement for providing of Services to the Customers. **LOUNGE OPERATOR shall provide its Services to the Customers on non-exclusive basis***



and on terms as recorded between DreamFolks and LOUNGE OPERATOR in this Agreement & it's annexures.

4.4 LOUNGE OPERATOR agrees that it would not do direct business with the Clients of DreamFolks either directly or through representatives during the subsistence of this Agreement in relation to Services rendered by LOUNGE OPERATOR under the scope of this Agreement.

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CLAUSE 5 – TENURE

The Parties hereby agree that this Agreement shall remain effective from the Effective Date 01.02.2022 and remain valid for a period of five (5) years w.e.f. from the Effective Date unless terminate earlier in accordance with the provisions hereof (the “Term”) and shall be renewed on mutually agreed terms and conditions, in writing, one month before the date of expiry of this Agreement or thereafter. This Agreement may be renewed if mutually agreed by both Parties and a fresh agreement shall be executed upon every such renewal.

The rates offered as per the agreement would be valid till 31st March 2023 and till be subject to review between both parties thereafter. The rates would be reviewed at the end of every financial year till agreement remains in effect.

The rates offered are only for the lounge listed in the agreement any new lounge/service offered to Dreamfolks by Enncalm would need rates to be mutually both parties.

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CLAUSE 11 – TERMINATION

11.1 Either Party may terminate this Agreement by giving 90 (ninety) days' written notice to the other Party in this regard.



11.2 In case either of the Parties terminate this Agreement without giving proper 90 (ninety) days' notice, the Party terminating the Agreement would be liable to compensate three months average invoice amount as penalty to the other Party."

14. The aforesaid Agreement also contains an arbitration clause, *i.e.* Clause 12, which provides for New Delhi as the seat of arbitration.

15. On behalf of the petitioner, reliance is placed on Clause 4.4 of the Agreement, as set out above, to contend that the respondent cannot do business with the Clients of the petitioner either directly or through representatives during the subsistence of this Agreement. It is submitted that the "representatives" would include other third-party service providers. It is further submitted that the aforesaid obligation would continue during the notice period of 90 days, beginning from 4th August, 2025.

16. It is further submitted that the respondent has chosen to give a 90-day written notice to the petitioner in terms of Clause 11.1 of the Agreement. If the Agreement was terminated without giving the aforesaid notice, the respondent would have been liable to compensate the petitioner by paying three months' average invoice amount as a penalty in terms of Clause 11.2 of the Agreement. Therefore, it was incumbent upon the respondent to continue to honour the terms of the Agreement during the notice period.

17. Reliance is placed on the judgment of the Division Bench in ***Global Music Junction Pvt. Ltd. v. Shatrughan Kumar Aka Khesari Lal Yadav & Ors.***,¹ in support of the contention that negative covenants can be specifically enforced by the Court.

¹ 2023 SCC OnLine Del 5479



18. At the outset, I may note that the Agreement does not contain a list of the petitioner's Clients, nor does the Agreement stipulate that the Clients of the petitioner are its exclusive Clients. The petitioner has filed the first page of the agreements entered into between the petitioner and its Clients/ banks, namely ICICI Bank, Yes Bank, Axis Bank and American Express (as given in documents no.7-10 of the petition) to substantiate its case that the entities/banks (listed at pages no. 18-19 of the petition) are the Clients of the petitioner. However, nothing has been placed on record by the petitioner to show that the said entities/ banks are the exclusive Clients of the petitioner and that they have not entered into similar agreements with other service providers like the petitioner.

19. Attention of the Court has been drawn to a communication dated 1st July, 2025, sent by the petitioner to the Bombay Stock Exchange (BSE) and National Stock Exchange of India (NSE) (at page 68 of the reply) stating that certain programmes for Axis Bank and ICICI Bank (listed as the petitioner's Clients in the petition) have been closed w.e.f., 1st July, 2025. This letter, at least on a *prima facie* stage, suggests that the aforesaid entities, *i.e.* Axis Bank and ICICI Bank may be having agreements with other entities even though their contract with the petitioner is still valid.

20. It is the case of the respondent that the aforesaid entities, which are listed by the petitioner as its Clients, also have similar arrangements with other third parties and in fact, the respondent is providing services to the said entities through third-party service providers. It is submitted that the respondent's agreements with the third parties are on a principal-to-principal basis, and the said third parties are not the agents or the representatives of the respondent. Thus, the said third parties cannot, in any manner, be construed



as “representatives” of the respondent in terms of Clause 4.4 of the Agreement.

21. A perusal of the email dated 4th July, 2025, (at page 86 of the petition) would show that two of the petitioner’s Clients had already approached the respondent through a third-party service provider.

22. The petitioner has failed to place on record any material to show that there is an exclusivity between the petitioner and its Clients. It appears that the petitioner’s Clients are free to have similar agreements with other third-party service providers. Further, the Agreement between the petitioner and the respondent does not bar the respondent from entering into similar agreements with such third-party service providers. Such third-party service providers cannot be considered as “representatives” of the respondent in terms of Clause 4.4 of the Agreement. Therefore, on a *prima facie* view, there is no bar upon the respondent to provide services to the Clients of the petitioners through third-party service providers.

23. There is no cavil with the proposition that the Court can specifically enforce a negative covenant contained in the contract. However, in the present case, at least at a *prima facie* stage, the Court cannot come to the conclusion that the respondents have breached the negative covenant.

24. The judgment of the Division Bench of this Court in ***Global Music Junction. v. Shatrughan Kumar***.² is distinguishable, as the agreement between the petitioner and the respondent therein clearly contained a negative covenant in Clauses 3.5 and 3.6 of the agreement. The said clauses restricted the artist/respondent from undertaking any work with a third-party for

² *supra*



creating any new intellectual property or content of any kind during the tenure of the agreement and in case of breach, the other party had the right to restrict the artist from producing or publishing any content till the breach was cured in full or damages incurred were paid in full. However, in the present case, there is no such explicit clause in the Agreement between the parties restricting the respondent from entering into agreements with third-party service providers or a new vendor.

25. There is another point of distinction between the facts in ***Global Music Junction*** (supra) and the facts of the present case. In ***Global Music Junction*** (supra), the agreements in question were not determinable, whereas the Agreement in the present case contained a termination clause, and the respondent had taken steps to terminate the contract as provided in the Agreement. A perusal of the termination notice dated 4th August 2025 sent by the respondent to the petitioner shows that the intention of the respondent was to sever the subsisting relationship between the parties and to put an end to the existing Agreement.

26. A combined reading of Clauses 11.1 and 11.2 of the Agreement makes it obvious that even if termination by the respondent is held to be unlawful, the remedy for the petitioner would be monetary compensation.

27. Therefore, in my considered view, the interest of the petitioner is adequately addressed by the directions passed by this Court on 28th August, 2025, by directing the respondent to maintain complete records of accounts in respect of all transactions entered into by the respondent with the 21 banks/entities mentioned in the petition.

28. Accordingly, the petition is disposed of while reiterating the directions passed by this Court on 28th August, 2025.



29. Needless to state, any observations made herein are only for the purpose of adjudication of the aforesaid petition and would have no bearing on the final outcome of the arbitration proceedings.

**AMIT BANSAL
(JUDGE)**

**SEPTEMBER 16, 2025
ds**