eta Sawant

IIN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION NO. 6550 OF 2026

IN

COMMERCIAL SUIT (L) NO. 31434 OF 2026

Meta Platforms Inc. .... ***Applicant***

In the matter between:

Blink Digital (India) Private Limited ... ***Plaintiff***

: Versus :

1. Facebook Indian Online Services Private Limited ... ***Defendant No.1***

2. Meta Platforms Inc. ...***Defendant No.2***

Mr. Janak Dwarkadas, Senior Advocate with Mr. Ameya Gokhale, Mr. Ritish Desai, Ms. Amee Rana, Ms. Radhika Roy, Mr. Harit Lakhani, Ms. Tanvi Raina & Mr. Abhishek Mookherjee i/b Shardul Amarchand Mangaldas, for Defendant No. 2 & for Applicant in IA-6550/2026.

Mr. Kunal Dwarkadas with Mr. Siddharth Joshi, Mr. Aniket Kharote, Mr. Naval Sharma, Mr. Nabeel Malik, Ms. Nikita Sharma, Mr. Sarthak Sharma & Ms. Akhila D.V. i/b Tuli & Co., for the Plaintiff & for Respondent in IA-6550/2026.

Mr. Rishabh Jaisani i/b Shardul Amarchand Mangaldas, for Defendant No. 1.

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

CORAM: SANDEEP V. MARNE, J.

Reserved On: 16 OCTOBER 2026.

Pronounced On: 27 OCTOBER 2026.

ORDER:

1) Meta Platforms Inc. **(Meta)** has questioned the territorial jurisdiction of this Court to try and entertain the present suit filed by the Plaintiff for restoration of its business manager accounts on Meta's platforms such as Facebook, Instagram, Messenger, etc. According to Meta, the parties have contractually agreed for resolution of commercial disputes amongst them in the Courts at California, USA and in accordance with the Californian laws. Defendant No. 2-Meta Platforms Inc. has accordingly filed this application seeking return of the Plaint under Order 7 Rule 10 of the Code of Civil Procedure, 1908 **(Code)** on the ground that this Court lacks territorial jurisdiction to try and entertain the Suit.

2) In its Suit, Plaintiff has challenged the action of the Defendants in disabling its four business manager accounts on 4 August 2026 together with approximately 9,000 advertising accounts and other business assets comprised within them. Accordingly, the Plaintiff has filed the present Suit seeking restoration of its Business Manager accounts, Ad Accounts, Facebook pages, Instagram accounts, etc. Defendant No. 1 is an Indian incorporated entity which has not questioned the territorial jurisdiction of this Court. Defendant No.2, which is based in USA and which is the parent company of Defendant

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

No.1, believes that the parties have contractually agreed for dispute resolution in Californian Courts by applying the foreign law and has accordingly sought return of the Plaint under Order 7 Rule 10 of the Code.

FACTS

3) Plaintiff is engaged in the business of providing digital advertising, media planning and buying, creative and marketing communication services to corporate clients across India and abroad. It plans and manages digital advertising campaigns on behalf of its clients across various digital platforms including the platforms operated by the Defendants. Defendant No.2-Meta is a Company incorporated under the laws of State of Delaware, USA which provides Facebook services i.e. website www.facebook.com and corresponding applications for mobile devices and tablets, as well as Instagram services i.e. website www.instagram.com and corresponding applications for mobile devices and tablets. Defendant No.1-Facebook India Online Services Pvt. Ltd. **(Facebook India)** is a Company incorporated under the Companies Act, 1956. According to the Plaintiff, Defendant No.1 is the entity through which the Defendants collectively transact the business with the Indian advertisers.

4) Plaintiff uses the platform of the Defendant for advertising services to its clients. According to the Plaintiff, Defendants' advertising infrastructure is organized in a strict hierarchy comprising of Meta Terms of Services, Meta Commercial Terms, Self-Serve Ad Terms, Meta

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

Account Integrity Policy, Meta Advertising Restrictions, Meta Advertising Standards, etc. Plaintiff used to have four Business Manager Accounts with the Defendants together with 9000 advertising Accounts and other business assets comprised within them

5) On 4 August 2026, Defendants disabled all the Business Manager Accounts of the Plaintiff. Aggrieved by the action of disablement of its Business Manager Accounts on 4 August 2026, Plaintiff has filed the present Suit seeking various declaratory, injunctive, as well as monetary reliefs. Plaintiff has sought a declaration that the actions of the Defendants in disabling the Business Manager Accounts are arbitrary and in breach of provisions of law, as well as Defendant's own published terms and policies. Plaintiff has sought a declaration that the Defendants must continue to recognize Plaintiff as their Managed Agency Partner. Plaintiff has sought injunction against the Defendants from disabling, removing, restricting, suspending or otherwise interfering with Plaintiffs Business Manager Accounts, Facebook Page, Instagram account or any other business asset. Plaintiff has also sought an injunction against the Defendants from deleting, destroying or rendering irrecoverable any data or contents in its Business Manager Accounts, Advertising Accounts, Facebook pages or Instagram Accounts. Plaintiff has also sought recovery of Rs.1000 crores being damages suffered by it on account of the impugned actions of the Defendants.

6) Plaintiff has also taken out Interim Application (L) No. 31469 of 2026 seeking temporary injunction. Defendant No.2 has

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

appeared in the Suit and has filed Affidavit-in-reply opposing the application for temporary injunction. Defendant No.2 has taken out the present Interim Application for return of plaint under Order 7 Rule 10 of the Code on the ground that this Court does not have territorial jurisdiction to try and entertain the suit. Plaintiff has filed Affidavit-in-reply opposing the Interim Application.

SUBMISSIONS

7) Mr. Janak Dwarkadas, the learned Senior Advocate has appeared on behalf of the Defendant No. 2-Meta in support of the Application for return of the Plaint under Order 7 Rule 10 of the Code. Mr. Kunal Dwarakadas, the learned counsel has appeared on behalf of the Plaintiff opposing the Application and in support of plea of this Court having jurisdiction to try and entertain the Suit. The gist of submissions canvassed by the learned counsels is recorded in the paragraphs to follow.

Submissions on behalf of Applicant/Defendant No.2:

8) Mr. Janak Dwarkadas, the learned senior advocate appearing for Applicant/Defendant No.2-Meta submits that this Court lacks territorial jurisdiction to try and entertain the suit. That Plaintiff's claims are commercial claims, which must be resolved exclusively in the Californian Courts. That parties have expressly agreed for jurisdiction of foreign courts and that Plaintiffs cannot maintain the present suit in India.

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

9) To make out his case of contractual conferment of jurisdiction in Courts at California, Ld. Senior Advocate takes me through the contractual relationship between the Plaintiff and Defendants. He submits that the contractual relationship between the Plaintiff and of Defendant No. 1 and Defendant No. 2 arises from distinct hierarchy of contracts. That though each contract may provide for different set of rights and may be between different parties, they are inextricably interlinked with one another. That the plaint erroneously proceeds on an erroneous premise that the obligations of Defendant No. 1 and Defendant No. 2 towards the Plaintiff are joint and/or several. However unless and until the Plaintiff succeeds in obtaining in personam reliefs/injunction against Defendant No. 2, the relief sought against Defendant No. 1 alone would not be sufficient. He submits that there is a hierarchy of contracts beginning from Terms of Service, Commercial Terms, Self-Serve Ad Terms and Country Specific Ads terms. He takes me through each of the four contracts.

10) It is submitted that the principal contract i.e. Terms of Service governs Plaintiff's access to use of Defendant's products and services including Facebook, Messenger and other products, websites, features, Apps, etc offered by Meta **(Meta products)**. That under the Terms of Service, Meta has authority to suspend or disable the account of the Plaintiff for conduct that violates the provisions as well as, to delete the account. That under Section 4.4 of the Terms of Service, consumers seeking to resolve their claims may bring them before a competent court in their own country. In all other cases, including claims brought by Meta

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

against the consumer, the contracting party has agreed to submit exclusively to the jurisdiction of the U.S. District Courts for the State of the Northern District of California. That Plaintiff's claim is covered by category of 'all other cases' used in Section 4.4 of the Terms of Service. That under Section 4.4 of Terms of Service, Plaintiff has agreed to submit to personal jurisdiction to the Courts in California, as well as to the governing laws of California. That under Clause 4.5 of the Terms of Service, supplementary terms are applicable for use of some of the products which also become part of Terms of Service and mandate Plaintiff's agreement to the Commercial Terms. That Section 5 of the Terms of Service refer to Commercial Terms.

11) Ld. Senior Advocate further submits that the averments in the plaint obfuscate the role of each of the Defendants. By referring to them collectively as 'defendants'. That Plaintiff has misrepresented and misstated the terms of arrangement which imply that the Terms of Service are the bargain struck between the Plaintiff and Defendant No.2 exclusively and that Defendant No.1 is not a party thereto.

12) Ld. Senior Advocate then takes me through the Commercial Terms and submits that the same are executed between Plaintiff and Defendant No.2. That the Commercial Terms apply whenever Defendants' products are accessed or used for a business or commercial purposes. That under clause 5(d)(i) of the Commercial Terms, parties have agreed to resolve commercial claims with Meta in the US District Court for the Northern District of California or a state court located in San Mateo County and that Plaintiff has agreed to submit to the personal

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

jurisdiction of either of these Courts and also agreed for application of governing laws of State of California. That therefore the commercial claims between the Plaintiff and Defendant No.2 must be resolved exclusively in Californian Courts.

13) The Ld. Senior Advocate thereafter takes me through the 'Self Serve Ad-Terms' executed between Plaintiff and Meta Platforms Ireland Ltd. **(MPIL)** and he contends that Plaintiff has not impleaded MPIL as a party. Mr. Dwarkadas submits that that Self-Serve Ad-Terms are special terms governing the creation, delivery of advertisement and other sponsored or commercial content through the Defendants' self-serving advertisement interfaces and Apps. Clause 16 of the Self-Serve Ad Terms provides that disputes shall be resolved in accordance with the Commercial Terms. That this position is expressly admitted by the Plaintiff in paragraph 24 (c) of the plaint.

14) The Ld. Senior Advocate then takes me through the 'Country Specific Ads Terms' executed between Plaintiff and Defendant No.1-Facebook India and submits that Self-Serve Ad-Terms are supplemented in case advertisers operating from India by the Defendant's Country-Specific Ads Terms. That Country Specific Ads Terms also provide that the Terms of Service shall remain a contract between Indian advertisers (Plaintiff) and Facebook Inc. (Defendant No.2). That even Country Specific Ad-Terms provide that any claim, cause of action or dispute shall be in accordance with the dispute resolution clause in the Commercial Terms. He therefore submits that Country Specific Ads Terms are simply supplementary to the Self Serve

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

Ad-Terms, Commercial Terms and Terms of Service. That ultimately, the principal contract remains the Terms of Service which is executed between the Plaintiff and Defendant No.2.

15) The Ld. Senior Advocate therefore submits that the exclusive jurisdiction clause in the Terms of Service and in Commercial Terms is applicable even to Self-Serve Ad-terms and Country-Specific Ads Terms. That therefore this Court does not have jurisdiction to try and entertain the present suit. He submits that Plaintiff has suppressed this fact from this Court.

16) The Ld. Senior Advocate further submits that Plaintiff has admitted at several places in the plaint that its true remedy lies against Defendant No.2-Meta. That Plaintiff is fully aware that its reliefs not only lie against Defendant No.2 but also that it is bound by the exclusive jurisdiction clause to bring the present action in the Courts at California. He takes me through the averments of the plaint to show that Plaintiff is fully aware of the fact that Defendant No.1 performs only a transactional role while Defendant No.2 owns and operates the systems on which the Plaintiff conducts his business. That several documents annexed to the plaint also make it clear that Defendant No.2 has corresponded with the Plaintiff and has disabled its business accounts.

17) The Ld. Senior Advocate further submits that while deciding the application under Order 7 Rule 10 of the Code, documents filed alongwith the plaint also need to be seen as held in ***M/s. RSPL Ltd. V/s,***

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

Mukesh Sharma and another[1] and ***Kubota Corporation Versus. Godabari Agro Machinery and Services India Private Limited and others***[2]**.** That what needs to be examined is the plaint as it stood when it was filed and not the subsequently amended plaint as held in ***Akshay Quenim Versus. Royce Savio Pereira***[3]. That it is also well settled position that any explanation sought to be put forth subsequently, which does not find place in the plaint cannot be taken into consideration for deciding the issue of jurisdiction under Order 7 Rule 10 of the Code as held in ***Ambalal Sarabhai Enterprises Ltd. Versus. K.S. Infraspace LLP and another***[4]**.** That therefore the defences raised in answer to the Application, which are not found in the plaint cannot be looked at.

18) The Ld. Senior Advocate further submits that Indian Courts have repeatedly enforced foreign jurisdiction clauses as also the choice of law. That in ***British India Steam Navigation Co. Ltd. Versus. Shanmughavilas Cashew Industries and others***[5], the Apex Court has held that parties to contracts involving industry, trade, or commerce are at liberty to agree on the forum for resolution of disputes, as well as the governing law. That in the present case, parties have voluntarily chosen Californian law as the proper law for the contract. He relies on judgment of the Apex Court in ***Modi Entertainment Network and another Versus. WSG PTE. Ltd.***[6] in support of his contention that the principle of parties not conferring jurisdiction on courts by contract does not apply in the case where parties have agreed to submit to exclusive jurisdiction of

1 2016 SCC Online Del 4285
2 2025 SCC Online Del 5417
3 2025 SCC Online Bom 3600
4 2020 (15) SCC 585
5 1993 (3) SCC 481
6 (2003) 4 SCC 341

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

Foreign Courts. He relies on judgment of the Delhi High Court in ***Bharat Heavy Electricals Ltd. Versus. Electricity Generation Incorporation and others***[7] in support of his contention that if one of the parties is not subject to the laws of India, then the parties may agree to confer jurisdiction on Courts outside India. Relying on judgment of the Apex Court in ***Piramal Healthcare Limited Versus. Diasorin S.P.A.***[8], he contends that the agreement between the parties for exclusive jurisdiction for Foreign Court or for application of foreign law is not considered violative of the provisions of Sections 23 or 28 of the Indian Contract Act, 1872 **(Contract Act)**. He relies on judgment of the Apex Court in ***Rakesh Kumar Verma Versus. HDFC Bank Ltd.***[9] in support of his contention that the Apex Court has rejected the argument for discarding exclusive forum clause on account of unequal bargaining power between the contracting parties.

19) The Ld. Senior Advocate further submits that none of the exceptions recognised by the Apex Court in ***Modi Entertainment Network*** (supra) apply in the facts and circumstances of the present case. That in any case there are no underlying pleadings to make out a case for existence of any exceptions as recognized by the Apex Court in its judgment in ***Modi Entertainment Network.*** That the feeble attempt to demonstrate unequal bargaining position is again unsupported by the pleadings in the plaint. That even if some pleadings are found relating to the terms of the contract, the same do not relate to jurisdictional clause. That Plaintiff has not even identified any clause of various

7 2017 SCC Online Del 10514
8 2010 SCC Online Del 2897
9 2025 SCC Online SC 751

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

contracts dealing with exclusive jurisdiction of foreign courts in the plaint for the purpose of challenging them and on the other hand has suppressed the exclusive jurisdiction clauses. That Plaintiff is seeking restoration of his accounts and performance of contract and therefore cannot selectively seek to question a clause in the contract, of which it seeks performance. That Plaintiff's case of alleged breaches of provisions of the Information Technology Act, 2000 **(IT Act)** or Rules made therein has nothing to do with the exclusive jurisdiction clause. That in any case, Plaintiff has not identified any particular provisions of Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 which renders the terms and conditions of the contract between the parties invalid.

20) The Ld. Senior Advocate further submits that the Petition under Clause 12 of the Letters Patent was not even served upon the Defendants and in any case, the pleadings of leave application cannot be taken into consideration while deciding the issue of jurisdiction for which only averments in the plaint are relevant. That Plaint is filed by suppressing the exclusive jurisdiction clause so it can be presumed that Clause 12 Petition also does refer to the same. Mr. Dwarkadas relies on judgment of this Court in ***Traxpo Enterprises Pvt. Ltd. Versus. Kolmar Group AG***[10] in support of his contention that application for rejection/return of the plaint can be decided even after grant of Clause 12 leave. That this Court has clearly made the foreign jurisdiction clause enforceable in the said judgment. He also relies on judgment in

10 2016 SCC Online Bom 3967

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

Samiulla Saheb and another Versus. Mohammed Sameer[11] in support of his contention that when the question of jurisdiction cuts at the root of the matter and if the Court has no jurisdiction to entertain the plaint, it is irrelevant as to who files the application for rejection of plaint under Order 7 Rule 10 of the Code.

21) On above broad submissions, Mr. Janak Dwarkadas prays for return of the Plaint under Order 7 Rule 10 of the Code.

Submissions on behalf of Respondent/Plaintiff:

22) Mr. Kunal Dwarkadas, the learned counsel appearing for the Plaintiff opposes the application submitting that the application is misconceived and ought to be dismissed at the threshold on account of impermissibility to return the plaint in part. In support, he relies on judgment in ***Nilesh Girkar Versus. Zee Entertainment Enterprises Limited and others***[12] and ***Madhav Prasad Aggarwal and another Versus. Axis Bank Limited and another***[13]. He submits that Defendant No.1 has not challenged territorial jurisdiction of this Court and has waived the same. That it is permissible for a party to waive the objection of jurisdiction. He further submits that Plaintiff has specifically pleaded cause of action against Facebook India-Defendant No.1 in the plaint. That holistic reading of the plaint as a whole indicates that Plaintiff's case proceeds jointly against both the Defendants holding them collectively liable for the impugned enforcement action since both of

11 2024 SCC Online Kar 9660
12 2025 SCC Online Del 6040
13 2019 SCC online SC 812

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

them have spoken and acted in one voice. He relies on judgment of Delhi High Court in ***Facebook India Online Services Private Limited Versus. Competition Commission of India***[14] in support of his contention that Facebook India provides sales and marketing services related to advertisements in India on Meta platforms. That it is Facebook India who has executed Self-Serve Ad-Terms and Country Specific Ads Terms with Plaintiff. That the Country Specific Ads Terms stipulate that in India, the Self-Serve Ad-Terms are contract between Plaintiff and Defendant No.1. That Facebook India has power to take and has indeed taken enforcement action against the Plaintiff and therefore Facebook India is an entity responsible for compliance with obligations contained in the 2021 Intermediary Rules in support of the services rendered in India. That Facebook India has raised invoices on the Plaintiff for the services rendered by the it in India.

23) He relies on order of this Court dated 10 September 2026 in support of his contention that it is already held that the cause of action has arisen within the jurisdiction of this Court even in respect of Defendant No.2 and this Court has accordingly granted leave under Clause-12 of the Letters Patent to sue Meta in this Court. That since part of cause of action to file the present suit against Meta has arisen within the jurisdiction of this Court and since at least one of the Defendant is not contesting this Court' jurisdiction, the plaint cannot be returned piecemeal warranting dismissal of present application.

14 WP (C) No. 14059 of 2022 decided on 28 September 2022

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

24) It is further submitted on behalf of the Plaintiff that Plaintiff has also sought restoration its own Facebook and Instagram pages which are not used for commercial purposes making Plaintiff a consumer. That under clause 4.4 of Meta's Terms of Service, a dispute between Plaintiff as a consumer and Defendant No. 2 can be instituted in Indian Courts. That therefore this part of cause of action clearly maintains the present suit within the territorial jurisdiction of this Court.

25) The learned counsel further submits that Meta's Commercial Terms are not freely negotiable and the forum selection clause does not reflect meaningful/realistic choice for the Plaintiff and that therefore the same is unconscionable. That Meta's Commercial Terms are standard form contract, which are published by Meta and applies to every person who uses Defendant's products for business or commercial purposes. That forum selection clause in clause 5(d) of Meta's Commercial Terms is one of those commercial terms which was non-negotiable. That no choice was exercised by the Plaintiff in respect of that clause. That a user who does not agree to the Commercial Terms unilaterally fixed by Meta was told to stop access to the Defendant's products. That the forum selection clause was itself offered to the Plaintiff on a 'take it or leave it basis' and refusing those terms was not a real option for the Plaintiff. That there was no equality or bargaining power between the parties and that therefore clause 5(d) of Meta's Commercial Terms, which was not freely negotiable, is unconscionable in Indian law. He places reliance on judgments of the Apex Court in ***Central Inland Water Transport Corporation Limited and another Versus.***

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

Brojo Nath Ganguly and another[15] and ***ABC Laminart Pvt. Ltd. Versus. A.P. Agencies Saleem***[16]**.**

26) The learned counsel further submits that the forum selection clause in Meta's Commercial Terms is otherwise unenforceable and contrary to public policy of India. That at the center of the present dispute is the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 **(Intermediary Rules)** notified under the Information Technology Act, 2000 which regulates digital intermediaries, social medial platforms, etc offering services in India. He takes me through the provisions of the Intermediary Rules in support of his contention that the same are mandatory and statutory in character which cannot be deviated by contract and are not subject to Defendant's discretion. He relies on Press Release dated 25 February 2021 in support of his contention that the Intermediary Rules are formulated to ensure that the social media platforms are accountable to the situation and the laws of India. That Facebook India is an entity responsible for compliance with the Information Technology Act and the Intermediary Rules. That Defendants themselves invoked Indian law and justified the impugned action and in this regard, he refers to Defendant's letter dated 18 August 2026 and other related correspondence. That therefore Defendants cannot now turn around and say that only Courts in California can decide the dispute involved in the suit. That Meta has also taken benefit of Indian law and he refers to the provisions of Section 79 of the Information Technology Act granting exemption from liability for third party information hosted by it. He relies on Section 75 of the IT Act

15 1986 SCC Online SC 119
16 1989 (2) SCC 163

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

in support of his contention that the same applies even to a person committing contravention outside India. That in any case Clause 5(d)(i) of Meta's Commercial Terms excludes conflict of law provisions and since the impugned action contravenes the provisions of IT Act and Rules, Clause 5(d) has no application in the present case. He relies on provisions of Sections 23 and 28 of the Contract Act in support of his contention that Meta's terms are otherwise opposed to public policy of India. In support, he relies on judgment of the Single Judge of Madras High Court in ***Google India Private Limited Versus. Matrimony.com Limited and others***[17] and of Division Bench in ***Info Edge (India) Ltd Versus. Google India Private Limited***[18]**.**

27) The learned counsel further submits that strong reasons exist to disregard the forum selection clause. He relies on exceptions discussed by the Apex Court in ***Modi Entertainment Network.*** He submits that considering the factors of location and availability of evidence, closeness of parties to India, applicable law and policy concerns, multiplicity of proceedings, lack of bonafides and unfairness and unconscionability, the forum selection clause deserves to be discarded in the facts and circumstances of the present case.

28) The learned counsel counters the argument of suppression raised by Meta submitting that the same is factually untrue as Plaintiff has disclosed the forum selection clause by annexing the contracts to the plaint. That it is otherwise not necessary for the Plaintiff to plead ouster of jurisdiction clauses. In support he relies on judgment of the Apex

17 2023 SCC Online Mad 6174
18 2024 SCC Online Mad 150

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

Court in ***Mayar (H.K.) Ltd. and others Versus. Owners and Parties, Vessel M.V. Fortune Express and others*** [19] and of this Court ***Islamic Republic of Iran Versus. K.T. Steel Industries LLP and another***[20]. That absence of reference to the exclusive jurisdiction clause in the plaint is not suppression. That Plaintiff has already secured leave in Clause-12 of Letters Patent to sue Meta in this Court and that the leave has been granted after recording a satisfaction that material part of cause of action to sue Meta has arisen within the territorial jurisdiction of this Court. That exclusive jurisdiction clause is not material while granting Clause-12 of Letters Patent. In support he relies on judgment of Division Bench of this Court in ***Jupiter Dyechem Pvt. Ltd. and another Versus. Songa Shipping PTE Ltd. and another***[21]. The learned counsel further submits that various correspondence between the parties clearly indicate that the same are sent from offices of Meta in India. That even the impugned disablement email is sent by Mr. Sameer Lnu of Meta who operates from Mumbai. That Meta has its Grievance Office in India under the mandate of the provisions of the Intermediary Rules. He therefore submits that the cause of action cannot be segregated between Defendant Nos.1 and 2 for the purpose of return of part of the plaint under Order 7 Rule 10 of the Code.

29) The learned counsel relies on judgment of Supreme Court of Canada in ***Deborah Louise Douez Versus. Facebook Inc.***[22] in support of his contention of exclusive foreign jurisdiction clause being opposed to

19 (2006) 3 SCC 100
20 2023 SCC Online Bom 584
21 2018 SCC Online Bom 2928
22 2017 SCC 33

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

public policy. He relies on judgment of US District Court in ***Christopher Babeu Versus. Apple Inc.***[23] in support of his contention that Indian law cannot be applied by Californian Courts. He relies on judgment of the Apex Court in ***Central Bank of India Versus. Prabha Jain and others*** [24] in support of his contention that partial rejection of a plaint when some relief in the suit is grantable is impermissible.

30) On above broad submissions, Mr. Kunal Dwarkadas prays for rejection of the Interim Application filed by Defendant No.2-Meta

Rejoinder on behalf of Applicant/Defendant No.2

31) In Rejoinder, Mr. Janak Dwarkadas submits that the argument of exclusive jurisdiction clause being opposed to public policy and unconscionable is contrary to the relief sought in the plaint. That Plaintiff cannot seek specific performance of the contracts and at the same time contend that clauses therein are unconscionable. That there is no challenge to the exclusive jurisdiction clauses in the contracts. That the presumption under the doctrine of private international law is that, although foreign law is a question of fact, it is presumed to be the same as the law of the forum in which the foreign law is sought to be enforced. That if a party wishes to urge to the contrary, the burden is on him to plead and establish the same. He submits that Plaintiff has misread the email correspondence, which clearly indicates that the decision to disable the accounts is not taken by Facebook India. He submits that

23 Civil Action No. 21-CV-11967-AK decided on 22/08/2022
24 2025 SCC Online SC 121

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

there is marked difference between the concept of return of plaint and rejection of plaint. Relying on judgment of the Calcutta High Court in ***Allahabad Bank Versus. Shank (Steel Fab Pvt. Ltd. and Ors.)***[25], he submits that partial return of the plaint under Order 7 Rule 10 of the Code is permissible. He submits that there is no challenge to the exclusive jurisdiction clauses in the contract and in fact Plaintiff seeks enforcement of the said contracts. That in absence of any specific challenge to the jurisdiction clause as was the case before the Madras High Court in Google's case, it is impermissible for the Plaintiff to raise the issue of the causes being unconscionable or opposed to public policy.

CONSIDERATION OF SUBMISSIONS, REASONS AND ANALYSIS

32) Defendant No.2-Meta has sought return of the Plaint under the provisions of Order 7 Rule 10 of the Code on the ground that this Court lacks territorial jurisdiction to try and entertain the suit against Defendant No.2-Meta. The application for return of the plaint is filed only by Defendant No.2-Meta and Defendant No. 1-Facebook India has not questioned territorial jurisdiction of this Court possibly on account of the fact that its office is located within the limits of territorial jurisdiction of this Court. Thus, only one of the Defendants has sought return of the Plaint under Order 7 Rule 10 of the Code.

33) Plaintiff is an Indian entity, engaged in the business of providing digital advertising, media planning and buying, creative and marketing communication services to corporate clients across India and

25 2008 SCC Online Cal 113

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

abroad. During the course of its business, Plaintiff plans and manages the digital advertisement campaigns on behalf of its clients across various digital platforms. Defendant No.2-Meta is a Company incorporated under the laws of State of Delaware, USA and having its principal place of business in the USA. It owns, operates and controls online platforms and services known as Facebook, Instagram, Messenger, etc.

34) A legal relationship between the Plaintiff on one side and Defendant Nos.1 and 2 on the other arises from a hierarchy of contracts between them. Each contract provides for a different set of rights and obligations. According to Meta, there are two principal contracts viz. 'Terms of Service' and 'Commercial Terms' and that both the principal contracts are executed between the Plaintiff and Meta. There are two more contracts viz 'Self-Serve Ad-Terms' which Meta believes is executed between the Plaintiff and Meta Platforms Ireland Ltd. and 'Country Specific Ad-Terms' which is executed between the Plaintiff and Facebook India-Defendant No.1 and which Meta believes are supplemental to the principal contracts.

35) A person or entity proposing to use Meta platforms, products and services for commercial purposes such as advertising, must accept all four the contracts or else the access to the platforms and products is automatically denied. For the purpose of deciding the limited issue of jurisdiction, it would be necessary to take into consideration the nature of each of the four contracts.

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

36) **Contract-1** is the 'Terms of Service', which is undoubtedly executed between Plaintiff and Defendant No.2-Meta. Contract No.1 governs a party's access to use Meta products and services such as Facebook, Messenger and other products, websites, features, apps, services and software offered by Meta. The Terms of Service thus constitute a master framework between Meta and any user of Meta Products including a consumer, as well as a business manager. Clause 4.4 of Terms of Service provides for dispute resolution and the clause reads thus:

> **4.4 Disputes**
>
> We try to provide clear rules so that we can limit or hopefully avoid disputes between you and us. If a dispute does arise, however, it's useful to know upfront where it can be resolved and what laws will apply.
>
> **If you are a consumer**, or where required by applicable law, the laws of the country in which you reside will apply to any claim, cause of action or dispute that you have against us that arises out of or relates to these Terms or the Meta Products, and you may resolve your claim in any competent court in that country that has jurisdiction over the claim. **In all other cases**, and for any claim, cause of action or dispute that Meta files against you, you and Meta agree that any such claim, cause of action or dispute must be resolved exclusively in the US District Court for the Northern District of California or a state court located in San Mateo County.
> You also agree that you submit to the personal jurisdiction of either of these courts for the purpose of litigating any such claim, and that the laws of the State of California will govern these Terms and any claim, cause of action or dispute without regard to conflict of law provisions. Without prejudice to the foregoing, you agree that, at its sole discretion, Meta may bring any claim, cause of action or dispute we have against you in any competent court in the country in which you reside that has jurisdiction over the claim.
>
> *(emphasis and underlining added)*

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

37) Thus, Clause 4.4 of the Terms of Service provides for jurisdictional arrangement differently for a consumer and for those who are not consumers. In the case of Meta consumers, the disputes with Meta can be resolved before a competent court having jurisdiction over the claim. Thus, a Meta consumer in India can bring in an action against Meta in Indian Courts. In all other cases, (*including a claim, the cause of action or dispute that Meta may file*), the agreement provides for resolution of dispute exclusively in the US District Court for the Northern District of California or a State Court located in San Mateo County.

38) According to Meta, since Plaintiff is not a mere consumer, and since it uses Meta's products for its business, Plaintiffs falls in the category of 'all other cases' under which the exclusive jurisdiction of a US District Court for Northern District of California or a State Court located in San Mateo County is contractually agreed. Also, under Clause 4.4 of the Terms of Service, there is an agreement concerning the personal jurisdiction of the courts in California and the applicability of the laws of the State of California.

39) Meta has also relied on Clause 4.5 of the Terms of Service under which if any products are used which are governed by supplemental terms, the same also become part of the Terms of Service, as well as of the Commercial Terms.

40) Meta therefore contends that the Terms of Service constitutes an agreement between the Plaintiff and Meta, and that the

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

entire infrastructure made available to the Plaintiff for operating its four Business Manager Accounts and Ad Accounts is governed by the overarching Terms of Service, providing for exclusive foreign jurisdiction and foreign laws clauses.

41) **Contract No.2** is the 'Commercial Terms', which is produced at page 203 of the plaint. According to Meta, the Commercial Terms are applicable to the parties using Meta products for commercial purposes. It is contended that since Plaintiff uses Meta products for commercial purposes, in addition to the overarching stipulations of the Terms of Service, the relationship between the parties is also governed by the Commercial Terms.

42) For jurisdictional purposes, Meta relies on Clause 5(d) of the Commercial Terms, which reads thus:

> Commercial Claims outside the United States: If you reside outside the United States or your business is located outside the United States, you agree that.
>
> i. Any Commercial Claim between you and Meta Platforms, Inc. must be resolved exclusively in the US District Court for the Northern District of California or a state court located in San Mateo County, that you submit to the personal jurisdiction of either of these court for the purpose of litigating any such claim and that the laws of the State of California will govern these Commercial, Terms and any such claim, without regard to conflict of old provisions jurisdiction of the Republic of Ireland for the purpose of litigating any such claim, and the laws of the Republic of Ireland will govern these Commercial Terms and any such claim, without regard to conflict of law provisions.
>
> Notwithstanding (i) and (ii) above, any Commercial Claim between you and both Meta Platforms, Inc. and Meta Platforms Ireland Limited must be resolved exclusively in the US District Court for the Northern District of California or a state court located in San Mateo County, that you

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

> submit to the personal jurisdiction of either of these courts for the purpose of litigating any such claim and that the laws of the State of California will govern these Commercial Terms and any such claim, without regard to conflict of law provisions.
>
> iv. Without prejudice to the foregoing, you agree that, in our sole discretion, we may also bring any claim we have against you related to efforts to abuse, interfere or engage with our Products in unauthorised ways in the country in which you reside that has jurisdiction over the claim.

43) Meta also relies on clause 7 of the Commercial Terms dealing with 'conflicts and supplemental terms' which reads thus:

> Conflicts and supplemental terms; If there is a conflict between these Commercial Terms and the -Terms, these Commercial Terms will govern with respect to your access and use of the Meta Products for business or commercial purposes to the extent of the conflict. Supplemental terms and policies may also apply to your use of certain Meta Products. To the extent that those supplemental terms conflict with the Commercial Terms, the supplemental terms will govern with respect to your use of those Meta Products to the extent of the conflict.

44) Relying on Clause 5(d)(i) of the Commercial Terms, Meta contends that every commercial claim between the Plaintiff and Meta can be resolved exclusively in US District Courts for Northern District of California or a State Court located in San Mateo County. It is further contended that Plaintiff has agreed to submit itself to the personal jurisdiction of either of these Courts and that laws of the State of California govern the Commercial Terms between Plaintiff and Meta. It is therefore contended by META that Plaintiff has agreed for exclusive jurisdiction of Californian Courts and therefore cannot maintain a suit against Meta before this Court.

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

45) **Contract No.3** is the 'Self-Serve Ad Terms' contract which Meta claims is executed between Plaintiff and Meta Platforms Ireland Ltd. Plaintiff disputes this position and submits that Self-Serve Ad Terms is a contract executed between the Plaintiff and Defendant No.1-Facebook India. The purpose for execution of Self-Serve Ad Terms is to agree to the specialist terms governing the creation, submission and delivery of advertisements and sponsored or commercial contents through Defendants' self-service interfaces and APIs. Under the Self-Serve Ad Terms, Plaintiff could target its desired audience by buying ads to be delivered on Facebook, Messenger, Instagram, publisher network or in place with service ads.

46) According to Meta, the Self-Serve Ad Terms are subject to Meta's Commercial terms and govern the relationship between Plaintiff and Meta Platforms Ireland Ltd. in relation to advertisements posted on Meta Platforms.

47) Plaintiff denies that Self-Serve Ad Terms is a contract between Plaintiff and Meta Platforms Ireland Ltd. and contends that it is actually a contract between the Plaintiff and Defendant No.1-Facebook India. Plaintiff relies on following clauses of the Self-Serve Ad Terms:

> 1. When you place an Order, you will tell **us** the type of advertising you want to buy, the amount you want to spend, and your bid strategy. If **we** accept your Order, **we** will deliver your ads as inventory becomes available. Subject to Section 5, when serving your ad, **we** use best efforts to deliver the ads to the audience you specify or to achieve the outcome you select, though **we** cannot guarantee in every instance that your will reach its intended target or achieve the outcome you select.

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

2. Some of **our** products include features that allow Meta to assist you with the setup of your ad campaigns, including through the automated selection of audience, placements, objectives, and other campaign criteria. These features are optional, and you may choose to "opt in" or "opt out" of them, as applicable.

3. **We** may reject or remove any ad for any reason. Your ads must comply with all applicable laws, regulations, and guidelines, as well as **our** Advertising Standards. You are solely responsible for the Order, ad content, targeting decisions, and ad placements. Failure to comply may result in a variety of consequences, including the cancellation of ads you have placed, suspension or termination of your account, and forfeiture of unused Advertiser Balance, to the extent permitted by applicable law.

4. b. You will pay all amounts specified in each Order you place, along with any applicable taxes and fees. The amount you are billed by Meta for each Order will be calculated based on **our** tracking mechanisms The amount you are billed by a third party will be calculated based on the third party's terms/policies.

4. j. You will fall under one of two categories depending on your payment method. invoiced or non-invoiced client. Invoiced clients are those for whom Meta sets a maximum spending limit and issues invoices on a periodic basis for payment in accordance with the applicable invoicing terms. Non-invoiced clients are those who must make payments at the time of purchase itself. In its sole discretion, Meta may classify clients as invoiced clients based on factors such as ad spend and creditworthiness.

(emphasis added)

48) The words ‘we’, ‘us’ and ‘our’, which are highlighted in the above quoted stipulations, have been defined in the Contract No. 4. Therefore, to better understand the contention of the Plaintiff that Self-Serve Ad Terms is a contract between it and Facebook India, it is necessary to make a reference to Contract No.4 (Country-Specific Ad Terms).

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

49) **Contract No. 4** is the 'Country-Specific Ads Terms' which constitutes supplemental terms for use of Self-Serve Ad-Interface and Facebook as set out in Self-Serve Ad Terms. This is clear from the following:

> Welcome to Facebook!
> These Special Provisions constitute "supplemental terms" for your use of the Self-serve Ad Interface and Facebook, as set out in the Self-serve Ads Terms. Unless otherwise indicated, the definitions in the Self-serve Ads Terms apply here.

50) Clause 9 of Country-Specific Ads Terms apply to advertisers in India and stipulates thus:

> Special provisions applicable to certain advertisers in India
>
> This section is applicable solely to Orders placed by Advertisers that are legal entities with their principal place of business in India acting on their own behalf (including, for clarity, an agency acting on its own behalf) or such advertisers acting as an agency on behalf of a third-party advertiser that has their principal co place of business in India (in either case, ("India Advertiser")).
>
> **Notwithstanding anything to the contrary in the Facebook Terms of Service, the Self-Serve Ad Terms (as defined in the Terms of Service) are between India Advertiser and Facebook India Online Services Private Limited ("Facebook India")**, with its registered office at 14th Floor, Skyview 10, The Skyview, Survey No. 83/1 of Raidurg (Panmaqtha) Village, Serilingampally Mandal, Ranga Reddy District, Telangana 500081. **All references in the Self-serve Ad Terms to "us", "we" and "our" are hereby deemed to be references to Facebook India for Indian Advertisers for the purpose of the Orders to which this section applies.**
>
> Notwithstanding anything to the contrary in the Facebook Payment Terms, the Payment Terms are between the Indian Advertiser and Facebook India, and all references in the Payment Terms to "Facebook", "us", "we" and "our" are hereby deemed to be references to Facebook India for Indian Advertisers for the purpose of the Orders to which this section applies.

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

> The Terms of Service shall remain a contract between Indian Advertisers and Facebook înc., as shall the Payment Terms for all other purposes beyond the Orders to which this section applies Each Indian Advertiser hereby consents to receiving invoices electronically.
>
> **Any claim, cause of action or dispute that arises from or relates to this section is subject to the disputes resolution clause in the Commercial Terms**
>
> You covenant and represent to Facebook that you are placing the Orders for commercial purposes.
>
> You undertake to indemnify and hold us harmless if your ads breach any applicable laws or self-regulatory codes.
>
> Except as specifically set forth herein, all other terms of the Terms of Service. Self-serve Ad Terms and Payment Terms shall remain unmodified and in full force and effect. Further information on Facebook advertising can be found at https://www.facebook.com/help/
>
> Effective date: 1 July 2018
>
> *(emphasis added)*

51) Thus, Clause 9 of the Country Specific Ads Terms clearly indicates that Self-Serve Ad Terms is a contract between Indian Advertiser and Facebook India. It has specifically agreed in Country-Specific Ads Terms that any reference to the words '*us*', 'we' and 'our' in the Self-Serve Ad Terms is deemed to be a reference to Facebook India. Of course, Clause 9 of the Country-Specific Ads Terms provides that any claim, cause of action, or dispute that arises under Clause 9 is subject to dispute resolution clause in the Commercial Terms.

52) *Prima-facie* therefore it appears that even Contract No.3 (Self-Serve Ad Terms) is a contract between Plaintiff and Defendant No.1-Facebook India and not only with Meta Platforms Ireland Ltd. as

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

sought to be suggested by Meta. Thus, *prima-facie*, it appears that Contract Nos.1 and 2 are between Plaintiff and Defendant No.2-Meta whereas Facebook India-Defendant No.1 appears to be the contracting party with the Plaintiff in respect of Contract Nos.3 and 4.

53) Having understood the complex contractual structure between the parties, I now proceed to decide Meta's objection as to territorial jurisdiction.

54) It is well settled position that the application for return of Plaint under Order 7 Rule 10 of the Code needs to be decided by taking into consideration both the averments in the plaint, as well as documents filed alongwith it. The Court cannot consider the documents relied upon by Defendant. In ***M/s. RSPL Ltd.*** (supra) the Division Bench of Delhi High Court has held that at the stage of deciding an application under Order 7 Rule 10 of the Code for the return of a plaint, the Court must take the statements and positive assertions made in the plaint as correct and demurrer-proof. It is further held that where plaintiff explicitly pleads that a defendant is conducting, soliciting, or rendering impugned services under an infringing trade name within the court's jurisdiction, coupled with the plaintiff carrying on business or having its corporate/registered office and distribution network there, the court cannot prematurely dismiss or return the plaint by declaring the averments as vague. The principles are reiterated in judgment of Delhi High Court in ***Kubota Corporation*** (supra).

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

55) In ***Ambalal Sarabhai Enterprises Ltd.,*** the Apex Court has held that any explanation that is sought to be put forth subsequently, which is not to be found in the averments raised in the plaint, needs to be ignored while deciding application under Order 7 Rule 10 of the Code. The Apex Court has also held that the burden to plead and establish why the suit falls within the Court's jurisdiction is on the Plaintiff alone and that while responding to the objection of maintainability of a commercial suit, Plaintiff cannot put any explanation subsequently or place reliance on extraneous material not found in the plaint. The Apex Court has held in paragraph 9 of the judgment as under:

> **9.** Further on referring to the cause of action in para 21, the plaintiff has thereafter referred in para 22 to the jurisdiction of the Court to hear and decide the matter. It would be appropriate to extract the same which reads as hereunder:
>
> "22. Jurisdiction: The Plaintiff states that the Defendants having their office at Vadodara land which is the subject matter of the instant suit is situated within the territorial jurisdiction of this Hon'ble Court and hence this Hon'ble Court has the jurisdiction to hear and decide the matter."
>
> Even though in the paragraph describing jurisdiction the plaintiff has stated with regard to the territorial jurisdiction since the office and land being at Vadodara, there is no reference indicating the reason for which the plaintiff pleads that the Court which is the Commercial Court exclusively constituted to try the commercial disputes has jurisdiction to try the instant suit. In that background, a perusal of the prayer made in the plaint would essentially indicate that the suit is one seeking for specific performance of the terms of MoU whereunder it is agreed that the Mortgage Deed be executed. Even if the immovable property under the Mortgage Deed was the subject matter it was necessary to plead and indicate that the same was being used in trade or commerce due to which the jurisdiction of Commercial Court is invoked. Without such basic pleadings in the plaint, any explanations sought to be put forth subsequently would only lead to a situation that if an objection is raised, in every suit a consideration would be required based on extraneous material even to ascertain as to whether the intended

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

transaction between the parties was of such nature that it is to be construed as a commercial dispute.

56) In ***Akshay Quenim*** (supra), the coordinate Bench of this Court has held that the correct approach for the Court is to examine the plaint as it stood when filed and consider on a holistic reading thereof as to whether the Court totally or inherently lacks jurisdiction to entertain the Suit. It is not appropriate for the Court to allow amendment application for bringing the suit within its jurisdiction. It is held in paragraph 9 of the judgment as under:

> **9.** In my opinion, it is not in every case that the Court would consider the amendment application first, and then consider the application under Order 7 Rule 11 for rejection of plaint or under Order 7 Rule 10 CPC for return of plaint. The correct approach that the Court would have to follow would be to examine the plaint as it stood when filed, and consider whether on a holistic reading of the plaint, the Court totally lacked or inherently lacked jurisdiction to entertain the suit. If it did, it may not be appropriate for the Court, if it inherently lacks jurisdiction, either because the statute bars its jurisdiction or where the statute confers jurisdiction to try particular types of suits before a different forum, to allow an amendment application and bring a suit within its jurisdiction.

57) Accordingly, I proceed to examine the plea of lack of territorial jurisdiction by confining the consideration only to the averments in the plaint and documents attached therewith. The averments in the plaint in support of jurisdiction of this Court are to be found in paragraphs 218, 219, 220 and 221 of the Plaint, in which Plaintiff has pleaded thus:

> 218. This Hon'ble Court has jurisdiction to try and entertain the present Suit. Defendant No. I carries on business within the jurisdiction of this Hon'ble Court from its office at Bandra-Kurla Complex, Bandra (West).

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

Mumbai, being the commercial office from which the Defendants Indian advertising operations are conducted, and from which certain personnel of the Defendants dealing with the Plaintiff at all material times operated, including Mr. Nitin Nair, who is based out of the Defendant No. 1's Mumbai office and who was, together with Mr. Sameer Lnu, among the persons who communicated the Impugned Action to the Plaintiff. The Plaintiff also carries on business within the jurisdiction of this Hon'ble Court. The Business Managers which are the subject matter of this Suit were created from Mumbai, and are registered in the Plaintiff's name and address in Mumbai. The Business Managers, while they were active, were primarily operated and managed by the Plaintiff from its place of business in Mumbai. Defendant No. I's place of business being situated within the jurisdiction of this Hon'ble Court is, in itself and independently of the matters set out below, sufficient to vest this Hon'ble Court with jurisdiction over Defendant No. 1. Furthermore, several business meetings between the Plaintiff and the Defendants were held at Defendant No. 1's office at Mumbai.

219. Defendant No. 2 is located outside the territorial jurisdiction of this Hon'ble Court and the Plaintiff seeks leave of this Hon'ble Court to file an appropriate petition under Clause XII of the Letters Patent seeking leave to sue Defendant No. 2 in this Suit. As set out in this Suit, Defendant No. 1 carries on business within the territorial jurisdiction of this Hon'ble Court, and no leave under Clause XII of the Letters Patent is accordingly required to sue Defendant No. 1 in this Suit.

220. A substantial and material part of the cause of action has arisen within the jurisdiction of this Hon'ble Court, in that:

i. The contractual relationship between the parties was performed by the Plaintiff from Mumbai and all advertising campaigns have been planned and administered from the Plaintiff's office in Mumbai;

ii. Certain personnel of the Defendants' representatives dealing with the Plaintiff's account engaged with the Plaintiff at Mumbai;

iii. The entirety of the correspondence set out in the Factual Background above was addressed by the Plaintiff from Mumbai and was received by the Plaintiff at Mumbai;

iv. The notice dated 4 August 2026 constituting the Impugned Action was received by the Plaintiff at Mumbai;

v. The disabling of the Plaintiff's four Business Managers, its advertising accounts and its corporate pages was effected against assets administered and controlled by the Plaintiff from Mumbai;

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

vi. The Plaintiffs grievance dated 11 August 2026 addressed to the Grievance Officer of Defendant No. 1 was despatched from Mumbai;

vii. The correspondence exchanged between the Advocates for the parties was addressed and received at Mumbai;

viii. The verification of the Plaintiff's four Business Manager accounts by the Defendants was itself carried out by reference to the Plaintiff's business address in Mumbai. The Business Managers were registered with the Plaintiffs address in Mumbai.

ix. The Credit Line was extended to by the Defendants to the Plaintiff at Mumbai.

x. The entirety of the loss and damage complained of has been suffered by the Plaintiff at Mumbai.

221. This Hon'ble Court has the substantive jurisdiction to entertain, try, decide, and dispose of the present Suit:

i. Any action against Defendant No. 1 in particular can and must lie before Indian courts since Defendant No. I is the contracting party for advertisers having their principal place of business in India, is carrying on business within the territorial jurisdiction of this Hon'ble Court, and is the entity in India empowered to take enforcement action in respect of the Defendants' policies.

ii. The present Suit is founded in material part upon breaches of the Information Technology Act, 2000 and the Rules framed thereunder, which are obligations imposed by Indian law upon an intermediary operating in India, in respect of services rendered to Indian users, and enforceable only by the courts of India. No court outside India possesses the competence to adjudicate upon compliance with an Indian statute or the machinery to enforce such compliance.

58) So far as Defendant No.1- Facebook India is concerned, there appears to be no difficulty since it has an office at Bandra-Kurla Complex, Mumbai. Since Defendant No.2-Meta is located outside the territorial jurisdiction of this Court, Plaintiff applied for leave under Clause-12 of the Letters Patent to sue Meta in the present suit. By order dated 10 September 2026, this Court has granted leave under Clause 12

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

of the Letters Patent to sue Meta in the present suit. Order dated 10 September 2026 reads thus:

> 1. This Leave Petition seeks leave under Clause XII of the Letters Patent.
>
> 2. When the matter is called out, Mr. Dwarkadas, learned Counsel appears for the Petitioner and submits that in the Suit seeking a declaration that the disabling of the Plaintiff's four business Managers' accounts is illegal and also for damages, although the material part of cause of action has arisen within the jurisdiction of this Court, however, since the Defendant No. 2 is located outside the jurisdiction of this Court and although the notices have been received within the jurisdiction of this Court, the notices have been issued by the Defendant No. 2 from outside the jurisdiction and therefore, part of cause of action has arisen outside the jurisdiction of this Court and with leave granted by this Court under Clause XII of the Letters Patent, this Court would have jurisdiction to entertain, try and dispose of the Suit against the Defendant No.2 as well.
>
> 3. Mr. Dwarkadas draws this Court's attention to paragraphs 14 to 18 of the Leave Petition and paragraphs 219 and 220 of the Plaint in the proposed Suit in support of his contentions.
>
> 4. Having heard the learned Counsel and having considered his submissions and also having perused paragraphs 14 to 18 of the Leave Petition and paragraphs 219 to 220 of the Plaint, this Court is of the view that, for reasons as contained in the said paragraphs and as submitted by the learned Counsel, leave under Clause XII of the Letters Patent be granted and is hereby granted in terms of prayer Clause (a) of the Petition, which reads thus:
>
> "(a) Grant the Plaintiff "leave to sue" Defendant No.2, Meta Platforms, Inc., having its principal place of business outside the territorial jurisdiction of this Hon'ble Court, under Clause XII of the Letters Patent, and entertain the accompanying Commercial Suit."
>
> 5. The Petition accordingly stands allowed and disposed as above.

59) However, mere grant of leave under Clause 12 of the Letters Patent would obviously not prevent Defendant No.2-Meta from questioning territorial jurisdiction of this Court. This is particularly in

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

view of the fact that Clause 12 leave application was apparently not served on Meta before passing of the order dated 10 September 2026. In ***Traxpo Enterprises Pvt. Ltd.*** the coordinate Bench of this Court has entertained and allowed application for rejection of plaint under Order 7 Rule 11 of the Code on the ground of absence of territorial jurisdiction even after grant of Clause 12 leave. Therefore, mere grant of Clause 12 leave is not a ground for holding that the issue of territorial jurisdiction stands concluded. Mr. Kunal Dwarkadas has also fairly not contended so on behalf of the Plaintiff and has instead justified territorial jurisdiction of this Court during the course of his submissions.

60) Meta has contended that the contractual clauses in the Terms of Service and the Commercial Terms clearly provide for exclusive jurisdiction of dispute resolution in the US District Court for the Northern District of California or a State Court located in San Mateo County and that therefore no commercial dispute between the Plaintiff and Meta can be tried or entertained by this Court in the present suit. It is Meta's contention that Indian Courts have consistently enforced foreign jurisdiction clauses and clauses providing for choice of governing law. Plaintiff has relied on judgments of the Apex Court in ***British India Steam Navigation Co. Ltd.***, ***Modi Entertainment Network***, as well as, of Delhi High Court in ***Bharat Heavy Electricals Ltd.*** and ***Piramal Healthcare Ltd***. On the other hand, it is the contention of the Plaintiff that Meta's Commercial Terms are not freely negotiated and in absence of bargaining power between the parties, the forum selection clause which does not reflect meaningful/realistic choice for the Plaintiff is unconscionable under Indian Law. Plaintiff has relied on judgments of

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

the Apex Court in ***Central Inland Water Transport Corporation Limited*** and ***ABC Laminart Pvt. Ltd.*** (supra). I proceed to consider the issue as to whether the parties have agreed for exclusive jurisdiction clause as well as application on foreign law and whether the same would entail return of the plaint for want of territorial jurisdiction of this Court.

61) Before dealing with the core issue of territorial jurisdiction, It would be necessary to deal with the objection raised by Defendant No.2-Meta about alleged suppression of exclusive jurisdiction clauses in the plaint. The objection, I must say, is without any substance. Plaintiff has placed on record copies of all the four contracts containing jurisdiction clauses and therefore, it cannot be contended that there is any suppression on the part of the Plaintiff. Once the contract is produced, it is not necessary for the Plaintiff to reproduce the clauses of the contract in the plaint. The Court can read even the documents attached to the plaint while deciding the application for return of plaint. The law of pleadings under Order VI Rule 2 of the Code requires that the pleadings must contain and contain only, the concise statement of material facts on which the party relies on in support of its claim. Parties must state the factual situation and not the evidence or provisions of law as it is the duty and domain of the Court to apply the relevant legal provisions to those facts. Here it is the defence of the Defendant No. 2 that this Court lacks territorial jurisdiction and it is incomprehensible as to why the Plaintiff would foresee such defence and establish by way of pleadings as to how the exclusive foreign jurisdiction clauses on which the Defendant may rely on, do not take away territorial jurisdiction of this Court. The objection of suppression is thus meritless.

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

62) It is otherwise a well settled position that it is not necessary for the Plaintiff to plead about the jurisdiction ouster clauses in the plaint and that it is for the Defendant to raise the said issue. In ***Mayar (H.K.) Ltd.*** (supra), the Apex Court has held in paragraphs 18, 19 and 20 as under:

> **18. As per law of pleadings under Order VI Rule 2 of the Code, every pleading should contain, and contain only, a statement in a concise form of the material facts on which the party relies for his claim or defence, as the case may be.** Thus, the facts on which the plaintiff relies to prove his case have to be pleaded by him. Similarly, it is for the defendant to plead the material facts on which his defence stands. The expression `material facts' has not been defined anywhere, but from the wording of Order VI Rule 2 the material facts would be, upon which a party relies for his claim or defence. The material facts are facts upon which the plaintiff's cause of action or defendant's defence depends and the facts which must be proved in order to establish the plaintiff's right to the relief claimed in the plaint or the defendant's defence in the written statement. Which particular fact is a material fact and is required to be pleaded by a party, would depend on the facts and circumstances of each case. In ***A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies, Salem*** MANU/SC/0001/1989 : [1989]2SCR1a , this Court has considered the ambit of the exclusion clause whereby the jurisdiction of one court is excluded and conferred upon another court by agreement of the parties and said that in a suit for damages for breach of contract, the cause of action consists of making of the contract, and of its breach, so that the suit may be filed either at the place where the contract was made or at the pace where it should have been performed and the breach occurred. When the court has to decide the question of jurisdiction pursuant to an ouster clause, it is necessary to construe the ousting expression or clause properly to see whether there is ouster of jurisdiction of other courts. When the clause is clear, unambiguous and specific accepted notions of contract would bind the parties and unless the absence of ad idem can be shown, the other courts should avoid exercising jurisdiction. As regards construction of the ouster clause when words like `alone', `only', `exclusive' and the like have been used, there may be no difficulty. Even without such words in appropriate cases, the maxim `expressio unius est exclusio alterius' - expression of one is the exclusion of another - may be applied. What is an appropriate case shall depend on the facts of the case. In such a case, mention of one thing may imply exclusion of another. When certain jurisdiction is specified in a contract, an intention to exclude all others from its

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

operation may in such cases be inferred. It has, therefore, to be properly construed.

19. ..... As the logs were not delivered at the port at Calcutta, the port of destination, the part of cause of action arose within the jurisdiction of the Calcutta Court and, thus, the suit filed by the plaintiffs at Calcutta was maintainable although it may be pleaded by the defendants in their written statement that the Calcutta High Court has no jurisdiction on account of Clause 3 of BOL. **For the purpose of the cause of action, it was not necessary for the plaintiffs to plead the ouster of the jurisdiction of the Calcutta Court. In fact, it was for the defendants to plead and prove the ouster of the jurisdiction of the Calcutta Court and conferment of the jurisdiction in the Singapore Court alone.** On a bare reading of Clause 3 of BOL, it is clear that any dispute arising under the BOL shall be decided in the country where the carrier has its principal place of business and the law of such country shall apply except as provided elsewhere in the BOL. Therefore, the exclusion clause refers to the jurisdiction of a court where the carrier has its principal place of business. Unless and until it is established that the defendant-carrier has its principal place of business at Singapore, the exclusion clause has no application. Simply because in the cause title of the plaint, the plaintiffs have described defendant No. 2-Trustrade Enterprises PTE Ltd. to be carrying on business at Singapore, would not ipso facto establish the fact that the principal place of business of defendant No. 2 (respondent herein) is/was at Singapore to exclude the jurisdiction of the Calcutta Court which admittedly has the jurisdiction to try the suit. **Therefore, absence of reference of Clause 3 of BOL in the pleadings cannot be said to be suppression of the material fact as the question of jurisdiction would be required to be adjudicated and decided on the basis of the material placed on record at the trial.**

20. In ***S.J.S. Business Enterprises (P) Ltd. v. State of Bihar and Ors.*** MANU/SC/0236/2004 : AIR2004SC2421 , this Court has accepted the principle that

> the suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. The rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. **But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case.** It must be a matter which was material for the consideration of the court, whatever view the court may have taken.

(emphasis and underlining added)

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

63) Thus, failure to plead jurisdiction ouster clause does not amount to suppression of material facts. In ***Islamic Republic of Iran*** (supra), the Division Bench of this Court has followed the ratio of the judgment in ***Mayar (H.K.)*** and has held in paragraph 27 of the judgment as under:

> 27. **On the issue of non disclosure of the exclusive jurisdiction clause raised by Mr. Kamat, in our view, every pleading should contain and contain only the statement in concise form of the material facts on which the party relies for his claim of defence, as the case may be as per the law of pleadings under Order VI Rule 2 of C.P.C.** Thus the facts on which a plaintiff relies to prove his case have to be pleaded by him. Similarly, it is for Defendant to plead the material facts on which his defence stands. As held by the Apex Court in ***Mayar (H.K.) Ltd. And Others vs. Owners and Parties, Vessel M.V. Fortune Express and others***, relied upon by Mr. Jagtiani, the expression material fact has not been defined anywhere, but from the wordings of Order VI Rule 2 of CPC the material facts would be upon which the party relies for his claim for defence. The material facts are facts upon which a Plaintiff's cause of action or Defendant's defence depends and the facts which must be proved in order to establish Plaintiff's right to the relief claimed in the plaint or Defendant's defence in the written statement. Which particular fact is a material fact and is required to be pleaded by a party would depend on the facts and circumstances of each case. For the purpose of cause of action it was not necessary for Respondent No.1 to plead ouster of jurisdiction of this Court. Respondent No.1 had obtained leave under clause 12 of the Letters Patent and on leave being granted has instituted this Suit. The Court was satisfied and as noted earlier also granted leave to serve the Iranian Consulate in Mumbai and the Embassy in New Delhi. The Court also granted an ex-parte decree. In our view, Applicant should have come forth and informed the Court that there was an exclusion clause. **The absence of reference to the exclusive jurisdiction clause in the pleadings, in the facts and circumstances of this case, cannot be said to be suppression of material facts.**
>
> *(emphasis added)*

64) Though not fully relevant to the issue of requirement to plead jurisdiction exclusion clause in the Plaint, the Division Bench of

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

this Court in ***Jupiter Dyechem Pvt. Ltd.*** (supra) has held that it is not necessary to plead jurisdiction exclusion clause while seeking leave under Clause 12 of Letters Patent.

65) Thus, it was not at all necessary for the Plaintiff to plead the exclusive jurisdiction clauses of the contracts in the plaint and that there is no suppression of material facts by the Plaintiff. I accordingly return to the core issue of territorial jurisdiction of this Court to try and entertain the suit.

66) Holistic reading of the plaint and the documents produced therewith would indicate that the Plaintiff is aggrieved by the action of both the Defendants in disabling its Business Manager Accounts, as well as various Ad Accounts. The suit is filed to seek continuation of recognition of the Plaintiff as the Managing Agency Partner of the Defendants. Plaintiff has sought to restrain the Defendants from disabling its Business Manager Accounts, Ad Accounts, etc and from deleting the data in those accounts. The substantive prayers sought in the Plaint read thus:

> 232. In light of the above, the Plaintiff prays that this Hon'ble Court be pleased to:
>
> a. Declare that the actions of the Defendants, in disabling, removing and/or restricting the Plaintiff's four Business Manager accounts, together with the ad accounts, and other business assets comprised therein, and in disabling and/or removing the Plaintiff's Facebook page and Instagram account are arbitrary, unreasoned, disproportionate, in breach of the provisions of law and of the Defendants' own published terms and policies, and accordingly illegal, void and of no effect.

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

b. Declare that the Defendants continue to recognise the Plaintiff as a Managed Agency Partner of the Defendants.

c. Grant a permanent order and injunction restraining the Defendants, their servants, agents, officers and all persons claiming through or under them, from disabling, removing, restricting, suspending or otherwise interfering with the Plaintiff's Business Manager accounts, ad accounts, Facebook page, Instagram account or any other business asset of the Plaintiff, otherwise than in accordance with law and in accordance with the Defendants' own published policies.

d. Grant a permanent order and injunction restraining the Defendants, their servants, agents, officers and all persons claiming through or under them, from deleting, destroying or otherwise rendering irrecoverable any data, records, content, logs or information appertaining to or comprised in the Plaintiff's said Business Manager accounts, ad accounts, Facebook pages and Instagram account.

e. Direct the Defendants to pay to the Plaintiff a sum of Rs. 1,000,00,00,000/- (Rupees One Thousand Crores only), being the damages suffered by the Plaintiff by reason of the Impugned Actions, particulars whereof are set out at Exhibit CCCCC hereto.

67) Plaintiff believes that both the Defendants, Facebook India Ltd and Meta are responsible for disablement of its business manager accounts, Ad Accounts, Facebook pages, Instagram Accounts, etc. The plaint is replete with averments that both the Defendants are responsible for disablement of its accounts. On the other hand, it is the contention of Meta that all the platforms where disablement has occurred belong to META and that what is challenged in the Suit is essentially Meta's action in disabling Plaintiff's accounts. Plaintiff does not believe so and has averred throughout the body of the plaint that both the Defendants are responsible for disablement of its Accounts. At this stage, this Court cannot examine the defence raised by Defendant No. 2–Meta to determine whether the Plaintiff's belief that the decision to disable the accounts was taken by both Defendants is correct or not.

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

Therefore, at this juncture this Court will have to presume correctness of the averments in the plaint for deciding the objection of territorial jurisdiction.

68) One of the vital grounds on which the action of disablement of accounts is challenged by the Plaintiff is violation of provisions of the IT Act and the Intermediary Rules. Plaintiff holds both the Defendants responsible for violating the IT Act and the Intermediary Rules. The averments in the Plaint in this regard are as under:

> H. Breach of the Information Technology Act, 2000 and the Rules Tramed thereunder:
>
> 183. The Defendants are 'intermediaries' within the meaning of Section 2(1)(w) of the Information Technology Act, 2000, and are significant social media intermediaries for the purposes of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. Their obligations under the Act and the Rules are statutory in character. They are not derived from contract, are not subject to the Defendants' discretion, and cannot be excluded by the terms which the Defendants unilaterally impose upon their users.
>
> 184. Breach of Rule 4(8). Rule 4(8) provides that where a significant social media intermediary, on its own accord, removes or disables access to any information, it shall (a) prior to such action, provide the user with a notification explaining the action being taken and the grounds and reasons for it; (b) provide the user with an adequate and reasonable opportunity to dispute the action and to request reinstatement; and (c) ensure that its Resident Grievance Officer maintains appropriate oversight over that dispute resolution mechanism. The Defendants breached every limb. No prior notification was given, the disabling having preceded the notice by many hours. No grounds or reasons were furnished, then or since. No opportunity to dispute or to seek reinstatement was afforded. On the contrary, the notice of 4 August 2026 declared the decision final and recorded that appeals could not be processed. No oversight by the Resident Grievance Officer is disclosed. The Impugned Action is therefore void for breach of a mandatory statutory obligation. There is also a breach of Rule 4(6) insofar as no ticket number was assigned for the Plaintiff's complaint.

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

185. Breach of Rule 3(2) Rule 3(2) requires the Defendants to publish the name and contact details of a Grievance Officer, to acknowledge every complaint within twenty-four hours and to dispose of it within seven days. By its email of 11 August 2026 the Plaintiff addressed a detailed grievance to the Defendants and expressly marked the Grievance Officer of Defendant No. 1, Ms. Amrita Kaushik. That grievance was neither acknowledged nor disposed of in accordance with Rule 3(2). It was answered, a week later and only through Advocates, by a communication which refused the disclosure sought and declared the matter closed. The statutory grievance machinery the last remaining channel, all others having been disabled by the Defendants, was thus rendered as ineffective as the rest.

186. The Defendants reliance upon Rule 3(1)(c) is misconceived. The Defendants contend that Rule 3(1)(c) recognises an intermediary's right to terminate a user's access in cases of non-compliance with its rules, regulations, privacy policy or user agreement. Rule 3(1)(c) confers no such untrammelled power. It operates subject to, and not in derogation of, the balance of the Rules, and in particular subject to the mandatory procedural safeguards prescribed by Rules 3(2) and 4(8) for significant social media intermediaries. A construction under which Rule 3(1)(c) permitted summary termination without notice, without reasons and without any opportunity to be heard would render Rule 4(8) wholly nugatory, and is impermissible. The Defendants cannot invoke the Rules as the source of their power while disregarding the conditions those same Rules impose upon its exercise.

187. The Defendants reliance upon Rules 3(1)(b)(v) and 3(1)(b)(vi) is equally unavailing. Those provisions require an intermediary to inform users not to host, display, upload or publish information falling within specified descriptions. The Defendants have recited the categories and asserted the conclusion, without at any stage identifying the information said to fall within them.

188. Due diligence under Section 79. The protection conferred by Section 79(1) of the Act is available to an intermediary only where it observes due diligence while discharging its duties and complies with the guidelines prescribed under Section 79(2)(c). The Defendants cannot simultaneously claim the statutory character of an intermediary and disclaim the statutory obligations which attend it. Their non-compliance with Rules 3(2) and 4(8) is a failure of the very due diligence upon which their position under the Act depends.

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

69) Plaintiff has thus pleaded that both the Defendants are 'intermediaries' within the meaning of Section 2(1)(w) of the IT Act, as well as 'significant social media intermediaries' for the purpose of application of provisions of the Intermediary Rules.

70) It is Plaintiff's case that the suit is filed for violation of statutory provisions. It is Plaintiff's plea that even Meta is under obligation to act in terms of the IT Act and the Intermediary Rules. According to the Plaintiff, Meta is statutorily required to maintain Grievance Redressal Mechanism in India by nominating a Grievance Officer. Plaintiff believes that under Rule 4(8) of the Intermediary Rules, before disabling access to the platforms, apart from providing an opportunity of being heard, it is the duty of Meta that its Resident Grievance Officer maintains appropriate oversight over the dispute resolution mechanism. Plaintiff alleges violation of Rule 4(6) of the Intermediary Rules in not complying with the mandatory statutory obligation of maintaining a grievance redressal mechanism. Violation of Rule 3(2) of Intermediary Rules is also alleged by the Plaintiff.

71) It is also Plaintiff's case that under Rule 4(8) of the Intermediary Rules, certain procedure is required to be followed for removal or disablement of access to any information or data or communication link. Rule 4(8) provides thus:

> 8. Where a significant social media intermediary removes or disables access to any information, data or communication link, under clause (b) of sub-rule (1) of rule 3 3 on o its own accord, such intermediary shall,-
>
> (a) ensure that prior to the time at which such intermediary removes or disables access, it has provided the user who has created, uploaded,

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

> shared, disseminated, or modified information, data or communication link using its services with a notification explaining the action being taken and the grounds or reasons for such action;
>
> (b)ensure that the user who has created, uploaded, shared, disseminated, or modified information using its services is provided with an adequate and reasonable opportunity to dispute the action being taken by such intermediary and request for the reinstatement of access to such information, data or communication link, which may be decided within a reasonable time,
>
> (c) ensure that the Resident Grievance Officer of such intermediary maintains appropriate oversight over the mechanism for resolution of any disputes raised by the user under clause (b).

According to Plaintiff, provisions of Rule 4(8) of the Intermediary Rules have been breached with impunity while removing/disabling Plaintiff's business manager accounts and ad accounts.

72) It appears that Defendant No.2-Meta itself has relied on the provisions of the Intermediary Rules in the pre-suit correspondence, which is a part of the documents produced along with the Plaint. Meta had alleged that Plaintiff's activities are prohibited under Rules 3(1)(b)(v) and (vi) of the Intermediary Rules. It had relied on Rule 3(1) (c) of the Intermediary Rules to contend that it is Meta's obligation under the Rules to terminate the users' access and usage rights in cases involving non-compliance with its rules. regulations, privacy policies and user agreement. Thus, it is Meta who had attempted to establish a connect between the contracts and the Intermediary Rules contending that if its Rules, Regulations or user agreements are breached, it is Meta's obligation under the Intermediary Rules to terminate the access. On 18

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

August 2026, Advocate of Defendant No.2-Meta addressed an email to the Plaintiff stating as under:

> **Blink's activities are not only prohibited under Rules 3(1)(b)(v) and (vi) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ("IT Rules") but also Meta's policies.** Meta's Terms and policies expressly recognise that enforcement may extend beyond an individual advertisement and may include restrictions on a Business Account and its associated assets, including ad accounts, Pages and user accounts, where such assets are found to have violated Meta's policies. These policies make clear that Meta "may restrict or disable accounts, other entities (Pages, groups, events) or business assets (Business Managers, nd accounts)" that "[v]iolate our Advertising Standards involving deceptive or dangerous business harms" or "[p]lersistently violate our Community Stradards by posting violating content and/or manoging violating entities ur business assets." The policy also applies to assets that "[d]emonstrate close linkage with a network of accounts or other entities that violate or evade our policies" or involve "[c]oordination within a network of accounts or other entities that persistently or egregiously violate our policies." Meta's public guidance also makes clear that Meta "may disable your account without suspending it first, such as in cases of severe or time-sensitive violations". Meta's Terms of User and Advertising Standards and related policies are publicly available at https://transparency.meta.com/; https://www.facebook.com/. https://transparency, ineta.com/policies/community-
>
> Blink's conduct was both severe and repeated. In particular, its public promotion of the ability to circumvent Meta's enforcement safeguards alongside its engagement in policy-violating conduct persistently and in the face of express warnings only confirms the necessity and proportionality of Meta's decision. **This approach is also consistent with Meta's obligations as an intermediary under the IT Rules Rule 3(1)(c) of the IT Rules further recognises an intermediary's right to terminate a user's access or usage rights in cases of non-compliances with its rules and regulations, privacy policy, or user agreement.**
>
> *(emphasis added)*

73) Thus, Meta justifies its action of disablement of accounts of Plaintiff by relying on provisions of Rule 3(1)(b), (v) and (vi) of the Intermediary Rules. Meta did not dispute its obligations under the

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

Intermediary Rules in the pre-suit correspondence. It took a specific stand that under Rule 3(1)(c), Meta has a right to terminate users access or users' rights in cases of non-compliance with its rules and obligations, privacy policy or user agreement. Thus, one of the main issues involved in the Suit is whether there is violation of the provisions of Intermediary Rules by Plaintiff or by Meta. This Plaintiff believes that the heart of controversy between the parties is Defendant's non-compliance with the provisions of the IT Act and the Intermediary Rules. Even Meta has alleged violation of Intermediary Rules by the Plaintiff.

74) The Intermediary Rules, framed under Section 87 of the IT Act, are aimed at ensuring that the social media intermediaries comply with the provisions of the Constitution and the laws of India. They establish a due diligence framework *inter alia* for social media intermediaries. Platforms with over 50 lakh (5 million) registered users in India are classified as significant social media intermediaries and must follow extra safety and compliance requirements. Both the Defendants are significant social media intermediaries since they have enormous number of users in India. Whether action of Meta in disabling Plaintiff's Business Manager Accounts, Ad accounts, Facebook pages, Instagram accounts, etc is in accordance with the provisions of the IT Act and Intermediary Rules or not can *prima-facie* be examined by Indian Courts notwithstanding exclusive jurisdiction clause conferring jurisdiction on Californian Courts.

75) Thus, this is not a simple contractual dispute between the parties, and the Plaint clearly adds flavour of statutory violation of

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

provisions of IT Act and Intermediary Rules to the dispute. The dispute thus travels beyond the contractual arrangement between the parties and also partly touches upon the allegations of violation of Indian laws. Therefore, the dispute between the parties may not capable of being resolved only in accordance with the governing laws of California, which, according to Meta, is the contractual agreement between the parties under the Terms of Service and the Commercial Terms.

76) The Plaintiff's claim is, therefore, not restricted to a claim for contractual breach and the Plaintiff also alleges statutory violations. Meta also links its action of disablement of accounts of Plaintiffs to the obligations it owes under the Intermediary Rules. A private contract entered into between the parties regarding the exclusive jurisdiction of Courts and the applicability of a foreign law cannot override statutory provisions of laws in India. Statutory laws always override private contracts in India and the parties cannot contract out of non-derogable statutes, public policy, or mandatory local laws. Defendants, being significant social media intermediaries, are bound by the provisions of the IT Act and the Intermediary Rules. *Prima facie* therefore the provisions of the IT Act and the Intermediary Rules would continue to apply to the transactions between the Plaintiff and the Defendants. For violation of provisions of the IT Act and the Intermediary Rules, Defendants are liable to be proceeded against in Courts in India. If that is the case, I find it difficult to accept the proposition that exclusive jurisdiction clauses under the Terms of Service or the Commercial Terms would either apply in relation to the allegation of violation of provisions

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

of the IT Act and the Intermediary Rules or would oust the jurisdiction of this Court.

77) Mr. Janak Dwarkadas has sought to suggest that even if it is held that the provisions of the IT Act and the Intermediary Rules govern the contractual arrangement between Plaintiff and Meta, the contention of violation of statutory provisions can always be decided by the Californian Courts, which has the exclusive jurisdiction as agreed between the parties. There are at least two reasons why this Court is unable to accept this contention. Firstly, the Terms of Service and the Commercial Terms contain twin agreements for Court's jurisdiction and applicable law. The latter agreement (relating to the applicable laws) cannot the bind parties in the present case as both Plaintiff and Meta have taken positions that there is violation of Indian law (Intermediary Rules) by each other. Secondly, Clause 4.4 of the Terms of Service clearly excludes 'conflict of law provision' while agreeing for application of Californian laws, meaning thereby that any dispute relating to conflict with Indian law cannot be resolved by California Courts. Clause 4.4 of the Terms of Service stipulates thus:

> *You also agree that you submit to the personal jurisdiction of either of these courts for the purpose of litigating any such claim, and that the laws of the State of California will govern these Terms and any claim, cause of action or dispute without regard to conflict of law provisions.*
>
> *(underlining added)*

78) Similarly, clause 5(d) of the Commercial Terms stipulates as under:

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

> *that you submit to the personal jurisdiction of either of these courts for the purpose of litigating any such claim and that the laws of the State of California will govern these Commercial Terms and any such claim, without regard to conflict of law provisions.*
>
> *(underlining added)*

79) Thus, both under the Terms of Service as well as the Commercial Terms, the Californian Courts can only decide the dispute by applying the contractual stipulations and Californian laws by ignoring the conflict of law provisions. Thus, the Californian Courts cannot decide any dispute between the parties in relation to the allegation of violation of the provisions of Intermediary Rules. Therefore, neither Plaintiff nor Meta would be able to raise the issue of violation of provisions of Intermidiary Rules in the event the present suit is presented before the Californian Courts.

80) Secondly, in my *prima facie* view, a contractual clause providing for total exclusion of applicability of provisions of the IT Act and the Intermediary Rules would cause violence to provisions of Sections 23 and 28 of the Indian Contract Act, 1872. Defendant No. 2– Meta may be a global player with a presence in countries across the world, however, Indian law imposes certain obligations upon it in its capacity as a social media intermediary and also as a significant social media intermediary. The provisions of the IT Act and the Intermediary Rules are intended to prevent a situation in which a significant social media intermediary profits from its operations in India while seeking to evade its obligations under the Indian laws. As observed above, whether

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

Defendant No.2-Meta is obligated to perform obligations under Intermediary Rules and whether there is violation of any provisions of Intermediary Rules is an issue which needs to be decided at the time of trial of the suit. For the purpose of determining the objection of jurisdiction, it cannot be held that the averments in the Plaint demonstrate complete lack of territorial jurisdiction.

81) In my view therefore, allegations of violation of provisions of the Intermediary Rules raised by Plaintiff and Meta clearly clothes this Court with the territorial jurisdiction to try and entertain the suit, notwithstanding the exclusive jurisdiction clauses in the Terms of Service and the Commercial Terms.

82) Another facet of territorial jurisdiction of this Court is Plaintiff's case of both Facebook India and Meta being involved in performance and termination of the contracts. Plaintiff has also sought to establish interconnection between Defendant Nos. 1 and 2 in relation to decision of disablement of its accounts by relying on various correspondences. Plaintiff is aggrieved by email dated 4 August 2026 by which decision for disablement of its accounts was communicated to it. The email reads thus:

> **From. Sameer Lnu sameer88@meta.com>**
>
> Ente: Tue, 4 Aug 2026 at 15:56
>
> Subject: Notice
>
> To: Rikki Agarwal <rikku@blinkdigital in>, <sadhvi@blinkdigital.in>
>
> **Cc: Nitin Nair <nairnitin@meta.com>**

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

Dear Rikki, Sadhvi

We are writing to inform you that Meta has made the decision to disable the business managers listed below, and all associated ad accounts, pages and other assets owned by your business due to violations of our Advertising Standards and other policies and terms.

After detailed conversations and correspondence regarding your compliance, we have determined that the actions we are taking are necessary to protect our users and platform. Meta will consider all available enforcement and legal options in response to additional violations of our Advertising Standards and other policies and terms.

Next Steps

1. Asset enforcement: We will disable the ad accounts operated by Blink Digital today, including the business managers (and all associated accounts and other assets) listed below.

2. Sales Support: The enforcement action being taken is final and our Sales teams do not have authorisation to process appeals or provide further detailed information on specific accounts.

Business Managers

Hustle Neo-279781700242266

Hustle Digital-1012736345593474

Hustle Al-954591614571400

Hustle New-2488386261378574

83) The email dated 4 August 2026 was sent by Mr. Sameer Lnu from his email-id i.e. *sameer88@meta.com*, with a copy to Mr. Nitin Nair at *nairnitin@meta.com*. The email dated 4 August 2026 states that Meta had made a decision to disable the Business Manager Accounts, Ad accounts, pages and other accounts of the Plaintiff due to violations of advertising standards and other policies and terms. Plaintiff believes that

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

both Mr. Sameer Lnu and Mr. Nitin Nair operate from their offices in Mumbai, India. This is clear from following averment in paragraph 134 of the plaint "*On 6 August 2026, precisely 2 days after the impugned action, Ms. Sadhvi Dhawan, an employee of the Plaintiff met with Sameer Lnu, the Defendants own account manager for the Plaintiff at Mumbai*". Plaintiff thus believes that the decision for disablement of accounts has originated from Mumbai. As observed above, for deciding the application under Order 7 Rule 10 of the Code, this Court will have to proceed by assuming that the averments in the plaint are true and correct.

84) According to Meta, Defendant No.1 is a mere Point of Contact **(POC)** or a support team in India. Defendant No.2 describes Defendant No. 1 as Meta's POC. Reliance is placed by Meta on email dated 7 March 2026 in support of the contention that the Plaintiff was informed that Defendant No.1 was just Meta's POC. Reliance is also placed on email dated 14 May 2026 by which representative of Facebook India informed the Plaintiff that '*unfortunately there is no other way to override the support team* '. However, on a closer scrutiny of the email correspondence between the parties, the interconnection between the employees of Defendant No.1 and Defendant No.2 while dealing with Plaintiff is clearly established. According to Meta, email dated 14 May 2026 (page 354 of suit/plaint) was sent by representative of Defendant No.1. However, the sender (Ms. Yashvika Mittal) has her email '*yashivkam@meta.com*'. If Ms. Yashvika is representative of Defendant No.1, why she uses Meta email-id is difficult to comprehend. According to Meta, email dated 7 March 2026 is also sent by Defendant No.1. Here

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

again, the email ID of Mr. Nitin Nair is '*nairnitin@meta.com*'. As observed above, the impugned email communicating the disablement dated 4 August 2026 is sent by Mr. Sameer Lnu who also has Meta email ID (*sameer88@meta.com*). The email dated 4 August 2026 is marked to Mr. Nitin Nair who also uses Meta's email ID. As observed above, both Mr. Sameer Lnu and Mr. Nair Nitin apparently work from offices in Mumbai. It is therefore difficult to record a conclusive finding at this stage that Defendant No.2-Meta alone has taken decision to disable Plaintiff's accounts and that Defendant No.1 has no role to play in the decision-making process.

85) To establish connect between Defendant Nos. 1 and 2 in relation to operations of Plaintiff, reliance is also placed by the Plaintiff on various invoices which are raised by Defendant No.1. Perusal of the invoices would *prima facie* indicate that the invoices have been raised by Defendant No.1-Facebook India on Plaintiff for using platforms of Meta. The amounts were billed in INR and payment was sought in the account of Defendant No.1 in Citi Bank, Secunderabad. Thus, it *prima facie* appears that though the Plaintiff was operating its accounts on platforms of Meta, it was making payments to Facebook India for operation of those accounts on Meta's platforms. This is yet another factor why it is difficult to hold at this juncture that the entire dispute is only between Plaintiff and Defendant No.2-Meta or that Defendant No.1-Facebook India has no connection with the same.

86) For establishing a connect between Defendant Nos. 1 and 2 while performing operations in India, the observations made by the

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

Delhi High Court in ***Facebook India Online Services Private Limited Versus. Competition Commission of India*** are instructive. The Delhi High Court had an occasion to consider Facebook India's connection with the parent company Facebook Inc. (now Meta). The Delhi High Court held in paragraphs 17 and 20 of the judgment as under:

> **17.** Having noticed the essential facts and the principles of law which would govern, the Court at the outset notes that the petitioner is undisputedly a subsidiary or sister concern of Facebook Inc. **While the petitioner has explained its connect with Facebook Inc. to be limited to providing sales and marketing services relating to advertising in India and other support services to it, the Court finds itself unable to shut its eyes to the evident and apparent bond and association between the two.** Regard must also be had to the fact that the principal order of the Commission dated 24 March 2021 had while outlining the issues which merited further investigation made repeated reference to the provisions of the Privacy Policy of WhatsApp and the disclosure and sharing of user data by it with Facebook, its subsidiaries, sister concerns and other Facebook companies. The Commission ultimately came to conclude that the sharing of data by WhatsApp with other Facebook companies raised tangible questions which warranted investigation under the Act. The scope of the investigation is thus apparently not merely limited to the operations and conduct of business by WhatsApp and Facebook Inc. alone but also extending and stretching to the subsidiaries and other companies incorporated by the latter. **The petitioner cannot possibly dispute the fact that it is a sister concern of Facebook Inc. present in India.** In view of the above, the impugned order of the Commission clubbing the information received in respect of its activities with the Suo Motu Case was not only justified but also imperative for the purposes of the investigation.
>
> **20.** The Court notes that the order of the Commission 24 March 2021 has spelt out in some detail the issues which merit investigation. Those cover the entire gamut of questions which emanate from the sharing of user data between WhatsApp, Facebook and its other companies which would necessarily and obviously include the petitioner here. The various issues which arise out of the terms of the updated Privacy Policy of WhatsApp were duly explored and examined by the Commission in that order. The investigation of those issues would necessarily entail an examination of the nature of the data that may be shared by WhatsApp with all Facebook companies including the

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

> petitioner. **The petitioner has averred that it provides sales and marketing services to Facebook Inc relating to advertising in India and other support services.** The extent of the user data that may be shared and utilised by the petitioner for the aforesaid purposes would clearly be an aspect which may be required to be examined by the Director General.
>
> *(emphasis added)*

87) Another aspect of the jurisdictional facet is that Plaintiff also complains about deletion of its individual Facebook and Instagram pages. As observed above, under Clause 4.4 of the Terms of Service, a consumer is entitled to maintain action in court of his/her own country. Plaintiff would stand in capacity as consumer in relation to its own Facebook and Instagram pages. Therefore, this prayer of Plaintiff for restoration of its Facebook and Instagram pages would lie before this Court even as per Clause 4.4. of the Terms of Service. Thus this part of the suit would lie before this Court even against Meta.

88) Defendant No.2 has contended that the exclusive jurisdiction clauses under the Terms of Service and Commercial Terms are enforceable and that therefore the plaint must be rejected for being presented before the Californian Courts. Reliance is placed by the Plaintiff on judgment of the Apex Court in ***British India Steam Navigation Co. Ltd.*** (supra) in which it is held that parties to a contract in international trade or commerce may agree in advance on the forum which is to have jurisdiction to determine disputes which may arise between them. Defendant No.2-Meta has relied on judgments of the Delhi High Court in ***Bharat Heavy Electricals Ltd.*** and ***Piramal Healthcare Limited*** (supra), in support of the contention that the foreign jurisdiction clauses have been enforced. Ordinarily there can be no

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

difficulty in enforcement of exclusive foreign courts' jurisdiction clauses where the dispute is purely contractual and can be resolved by terms of contract and as per the agreed foreign law. However, in the present case, the claims of the rival parties about violation of the IT Act and the Intermediary Rules cannot be resolved by the Californian Courts, even going by the exclusive jurisdiction clauses. Additionally, whether there has been compliance with the provisions of the Indian Statute by a significant social media intermediary can be examined by Indian Court. There are several other reasons why the suit cannot be held to be outside the territorial jurisdiction of this Court. Therefore the ratio of judgments cited by the Defendant No.2 would have no application to the facts of the present case.

89) Reliance is also placed by Defendant No. 2-Meta on judgment of the Apex Court in ***Modi Entertainment Network*** in which it is held in paragraph 11 as under:

> **11.** In regard to jurisdiction of courts under the Code of Civil Procedure (CPC) over a subject-matter one or more courts may have jurisdiction to deal with it having regard to the location of immovable property, place of residence or work of a defendant or place where cause of action has arisen. Where only one Court has jurisdiction it is said to have exclusive jurisdiction; where more courts than one have jurisdiction over a subject-matter, they are called courts of available or natural jurisdiction. The growing global commercial activities gave rise to the practice of the parties to a contract agreeing beforehand to approach for resolution of their disputes thereunder, to either any of the available courts of natural jurisdiction and thereby create an exclusive or non-exclusive jurisdiction in one of the available forums or to have the disputes resolved by a foreign court of their choice as a neutral forum according to the law applicable to that court. It is a well-settled principle that by agreement the parties cannot confer jurisdiction, where non exists, on a court to which CPC applies, but this principle does not apply when the parties agree to submit to the exclusive or non-exclusive jurisdiction of a foreign court; indeed in such cases the

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

English Courts do permit invoking their jurisdiction. Thus, it is clear that the parties to a contract may agree to have their disputes resolved by a Foreign Court termed as a 'neutral court' or 'court of choice' creating exclusive or non-exclusive jurisdiction in it.

90) However, the judgment in ***Modi Entertainment Network*** recognizes certain exceptions to the general rule governing the enforcement of foreign jurisdiction clauses. In paragraph 24 of the judgment, the Apex Court has discussed the principles as under:

24. From the above discussion the following principles emerge:

(1) In exercising discretion to grant an anti-suit injunction the court must be satisfied of the following aspects:-

(a) the defendant, against whom injunction is sought, is amenable to the personal jurisdiction of the court;

(b) if the injunction is declined the ends of justice will be defeated and injustice will be perpetuated; and

(c) the principle of comity -- respect for the court in which the commencement or continuance of action/proceeding is sought to be restrained -- must be borne in mind;

(2) in a case where more forums than one are available, the Court in exercise of its discretion to grant anti-suit injunction will examine as to which is the appropriate forum (Forum conveniens) having regard to the convenience of the parties and may grant anti-suit injunction in regard to proceedings which are oppressive or vexations or in a forum non-conveniens;

(3) Where jurisdiction of a court is invoked on the basis of jurisdiction clause in a contract, the recitals therein in regard to exclusive or non-exclusive jurisdiction of the court of choice of the parties are not determinative but are relevant factors and when a question arises as to the nature of jurisdiction agreed to between the parties the court has to decide the same on a true interpretation of the contract on the facts and in the circumstances of each case;

(4) a court of natural jurisdiction will not normally grant anti-suit injunction against a defendant before it where parties have greed to submit to the exclusive jurisdiction of a court including a foreign court,

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

a forum of their choice in regard to the commencement or continuance of proceedings in the court of choice, save in an exceptional case for good and sufficient reasons, with a view to prevent injustice in circumstances such as which permit a contracting party to be relieved of the burden of the contract; or since the date of the contract the circumstances or subsequent events have made it impossible for the party seeking injunction to prosecute the case in the court of choice because the essence of the jurisdiction of the court does not exist or because of a vis major or force majeure and the like;

(5) where parties have agreed, under a non- exclusive jurisdiction clause, to approach a neutral foreign forum and be governed by the law applicable to it for the resolution of their disputes arising under the contract, ordinarily no anti- suit injunction will be granted in regard to proceedings in such a forum conveniens and favoured forum as it shall be presumed that the parties have thought over their convenience and all other relevant factors before submitting to non-exclusive jurisdiction of the court of their choice which cannot be treated just an alternative forum;

(6) a party to the contract containing jurisdiction clause cannot normally be prevented from approaching the court of choice of the parties as it would amount to aiding breach of the contract; yet when one of the parties to the jurisdiction clause approaches the court of choice in which exclusive or non-exclusive jurisdiction is created, the proceedings in that court cannot per se be treated as vexatious or oppressive nor can the court be said to be forum non-conveniens; and

(7) the burden of establishing that the forum of the choice is a forum non- conveniens or the proceedings therein are oppressive or vexatious would be on the party so contending to aver and prove the same.

91) Thus, few narrow exceptions are recognized by the Apex Court in ***Modi Entertainment Network*** to the rule of enforcement of foreign jurisdiction clause where the clause is found contrary to public policy or where foreign Court would be a Court of non-conveniens. According to Meta, Plaintiff has failed to plead and prove that the clauses are contrary to public policy and that foreign Court is not approached because it is a forum non-conveniens. On the other hand, Plaintiff has contended that there at least 6 factors which make out a case of

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

exception and that therefore the forum selection clauses deserve to be disregarded. The factors enumerated by Plaintiff are as under:

No.	Factor	Reasons
1.	Location and availability of Evidence	i. The evidence is overwhelmingly electronic and is not confined to any one office. ii. On Meta's own case, the reports said to underlie the Impugned Action were made by users in India [**Para 30(b) of the IA Reply].** iii. The Defendants' personnel who dealt with the Plaintiff, including Mr. Nitin Nair, Mr. Sameer Lnu and Mr. Gauravjeet, are in India. iv. The Impugned Action was communicated to the Plaintiff by, among others, Mr. Nitin Nair, who is based at Defendant No. 1's office in Mumbai, and Mr. Sameer Lnu **[Para 218 of the Plaint]**. v. Defendant No. 2 has not identified a single witness or document located in California.
2.	Closeness of the Parties to India	i. The Plaintiff is an Indian MSME, whose witnesses, records and business are in Mumbai. ii. Its Business Managers were created, registered and administered from Mumbai **[Paras 218 and 220 of the Plaint].** iii. The Plaintiff has no office or establishment in the United States. Blink Digital North America LLC is a separate legal entity, which uses the "Blink Digital" name under a licence, and in which the Plaintiff holds no ownership interest. It is not a party to the Suit, and none of the Business Managers, advertising accounts or invoices in issue relates to it. The reference to "both coasts" in a LinkedIn post concerns product launch events in the United States, and says nothing about the Plaintiff's place of business. iv. Facebook India carries on business in Mumbai. v. Meta is registered in India as a foreign company under the Companies Act, 2013, with its registered office in India at Gurgaon, Haryana [Para 3 of the Plaint], has employees in India (including employees like Mr. Sameer Lnu who have directly participating in the Impugned Action), and has time and again subjected itself to the jurisdiction of this Hon'ble Court and of

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

		other courts in India. Proceedings before this Hon'ble Court are neither oppressive nor onerous to it.
3.	Applicable law and public policy concerns	i. The Plaintiff's claims under the IT Act and 2021 Intermediary Rules are governed by Indian law, whatever be the contractual choice of law. ii. A Californian court, bound to apply the laws of California "without regard to conflict of law provisions" would have no occasion to apply the IT Act and 2021 Intermediary Rules, on which both the Plaintiff and the Defendants rely. iii. Section 75 of the Information Technology Act, 2000 establishes extraterritorial jurisdiction, meaning the law applies to offenses or contraventions committed outside India by any person regardless of their nationality. iv. Having enjoyed the benefits of the safe-harbour protections offered by Section 79(2) of the IT Act and Rule 7 of the 2021 Intermediary Rules, it would be opposed to the public policy of India to permit the Defendants to now disregard Indian law by applying only California law.
4.	Multiplicity of proceedings	i. This Commercial Suit against Facebook India must proceed before this Hon'ble Court inter alia because it has not contested jurisdiction. ii. This Commercial Suit against Facebook India and Meta must proceed before this Hon'ble Court at least with respect to restoration of the Plaintiff's corporate Facebook and Instagram pages, since their use is not governed by Meta's Commercial Terms. iii. Giving effect to the forum-selection clause would split a single cause of action, arising from a single Impugned Action, between two jurisdictions, with the attendant duplication of evidence and risk of conflicting decisions. iv. The Plaintiff's appeal before the Grievance Appellate Committee, being Appeal No. 158064/2026, is also pending in India [Exhibit TTTT, Pg. 441 of the Plaint], and the 30 days' time for the Appeal to be decided as under the 2021 Intermediary Rule expired on 7 October 2026.
5.	Lack of bona fides	i. Meta reserves to itself the right to sue a user in the user's own country **[Clause 5(d)(iv); Exhibit G, Pg. 206 of the Plaint].** ii. Its insistence that the Plaintiff's claims be pursued in

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

		California appears at seeking unfair advantages, rather than at any genuine need for trial in California.
6.	Unfairness and unconscionability	i. Meta's Commercial Terms is a standard form, "take it or leave it" contract. ii. In reality, the Plaintiff had no input in the forum-selection clause and could not exercise a meaningful choice. iii. As such, the forum-selection clause is unenforceable, or at least, this Hon'ble Court is best positioned to decide this issue on merits.

92) Whether all of the above factors deserve acceptance or not can be considered after a detailed evidentiary inquiry. Suffice it to hold at this juncture that the case does depict some of the exceptional factors on account of which the plaint cannot be returned by relying on exclusive jurisdiction clauses.

93) It is also the contention of the Plaintiff that the forum selection clause is unconscionable on account of absence of any bargaining power with the Plaintiff. The Plaintiff contends that it had no option but to accept the pre-drafted terms and conditions, failing which access to Meta's products gets automatically denied. Plaintiff has accordingly contended that the Commercial Terms being a standard form of contract and jurisdiction clause therein not being negotiated between the parties, the same is unenforceable. Reliance is placed by the Plaintiff on the judgments of the Apex Court in ***Central Inland Water Transport Corporation Limited*** and ***ABC Laminart Pvt. Ltd.*** (supra). On the other hand, Defendant No. 2–Meta has strongly objected to the Plaintiff's attempt to establish that the exclusive jurisdiction clause is unconscionable, contending that the plaint does not seek any

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

declaration to that effect. It is contended that the suit is for specific performance of various contracts as Plaintiff seeks restoration of its accounts. It is contended that the prayer of the Plaintiff in the suit is to get bound by the four contracts, particularly the Terms of Service and the Commercial Terms. While seeking a direction for restoration of its accounts, Plaintiff cannot be permitted to question validity of some of the clauses of contract of which it seeks to get itself bound by.

94) On the other hand, Plaintiff has relied on judgment of single Judge of Madras High Court in ***Google India Private Limited*** in support of its contention that a similar clause in the contract providing for exclusive jurisdiction of California Courts is rejected as being violative of provisions of Section 28 of the Contract Act. In ***Google India Private Limited*** (supra), suit was filed by the Plaintiff therein seeking a declaration that payment policy of Google and other Defendants relating to implementation of Google Play billing system was illegal and unenforceable. Plaintiff had also sought a declaration that definition of the term '*authorised provider*' as well as Clause 15.3 of Developer Distribution Agreement was unconscionable, illegal and unenforceable. The nature of prayers sought in the said Suit is clear from observations made in paragraphs 2, 3 and 4 of the judgment, which read thus:

> 2. The 1st respondent herein filed a suit seeking a declaration that payment policy of the applicants and other defendants relating to implementation of Google Play billing system (GPBS) and user choice billing system vis-à-vis the mobile applications owned and operated by the 1st respondent in "Google Play Store" as illegal and unenforceable.
>
> 3. The 1st respondent also sought for a declaration the definition of the authorised provider and Clause 15.3 of the developer distribution agreement as unconscionable, illegal and unenforceable. The 1st

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

respondent also sought for a declaration that any charges levied by the applicants and other defendants under Google Play billing system (GPBS) and alternate billing system/user choice billing system as illegal, void and unenforceable vis-à-vis the mobile applications owned and operated by the 1st respondent in "Google Play Store".

4. The 1st respondent also sought for a permanent injunction restraining the applicants and other respondents/defendants from removing, delisting the mobile applications owned and operated by 1st respondent in "Google Play Store" for its refusal or failure to accept or subscribe to Google Payments terms of service seller (IN) posted on 2-6-2022 relating to implementation of the Google Play billing system and user choice billing system.

95) Google India Pvt. Ltd. filed application seeking rejection of plaint *inter alia* on the grounds of lack of territorial jurisdiction of the Court by referring to Clause 16.8 of the agreement which provided for application of laws of the State of California. The Madras High Court referred to the judgment of the Delhi High Court in ***Rajendra Sethia vs. Punjab National Bank***[26] and held in paragraphs 16, 18, 19, 20 and 21 as under :

16. In the case law referred above in Rajendra Sethia v. Punjab National Bank, the Delhi High Court had taken the view excluding Jurisdiction of Indian courts and applicability of Indian laws would be opposed to public policy. The Delhi High Court also had taken the view such clause in the contract not only hit by Section 23 of the Contract Act, 1872 but also hit by Section 28 of the Contract Act, 1872.

xxx

18. We are not concerned with the three exceptions provided to Section 28 in this case. The expression "usual legal proceedings in the ordinary tribunals used in Section 28(a) of the Contract Act, 1872 obviously refers to the courts in India which applies Indian laws. The settled legal proposition that when two or more courts are having Jurisdiction, parties can confine the jurisdiction to any one of such courts is applicable only when such confinement is made in favour of a court in

26 1991 SCC OnLine Del 55

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

India. However, in the case on hand, Clause 16.8 of DDA by its sweep excludes all the courts in India, therefore, it would amount to total restraint of legal proceedings in India. Such a restrictive clause totally excluding all the courts in India is certainly hit by Section 28 of the Contract Act, 1872 and hence, unenforceable

19. Further Clause 16.8 of DDA can also held to be opposed to public policy of India and thereby, hit by Section 23 of the Contract Act, 1972 for the simple reason it not only excludes Indian courts but it also excludes Indian laws. The Clause 16 B of DDA reads as follows:

All claims arising out of or relating to this agreement or your relationship with Google under this agreement will be governed by the laws of the State of California, excluding Californias conflict of laws provisions

20. Therefore, it is clear that Indian laws also excluded. If the courts in India by relying the exclusion clause refused to entertain any lis arising under this contract, then it is clear that the Competition Act enacted by Indian legislature with the sole aim of preventing practices having adverse effect on competition will be of no use. The preamble to Competition Act reads that it is an Act to ensure freedom of trade carried on by participants in Indian market. Freedom of trade is a fundamental right available to Indian Citizens under Article 19 of the Constitution of India. The Competition Act, 2002 was passed with the main object ensuring the freedom of trade by promoting and sustaining competition. Clause 16.8 of DDA extracted above by its sweep excludes such an important piece of legislation while adjudicating the dispute relating to the contract which involves Indian market players. In this connection, I also get support from decision of the Federal Court of Australia in Epic Games Inc. v. Google LLC22, wherein Australian Court emphasised the necessity for application of Australian Competition Law and its significant impact on Australian economy.

21. Admittedly, the applicants are not party to the contract which entered into between the Ist respondent and Respondents 4 and 5. In view of the discussions made earlier, I hold Clause 16.8 of DDA which completely excludes the jurisdiction of Indian courts and applicability of Indian Laws is opposed to public policy of India and thereby, hit by Section 23 of the Contract Act, 1872. I further hold such a total restraint on Indian courts from entertaining any legal proceedings in respect of a dispute relating to contract is also hit by Section 28 of the Contract Act, 1872 as this case is not falling within any one of the exceptions to Section 28 of the Contract Act, 1872.

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

96) The judgment of the Single Judge in ***Google India Private Limited*** was carried in appeal in ***Info Edge (India) Ltd.*** (supra). Confirming the view expressed by the Single Judge on the issue of exclusive jurisdiction clause, the Division Bench held in paragraphs 12 and 13 of the judgment as under:

> **12.** When a party is doing business in India, it would be too far-fetched to suggest that the laws in India would not apply. If the law in India is applied, then there is nothing on record to suggest that the said law would be applicable in the court at California. The said agreement would be an agreement in the restraint of legal proceedings as contemplated under Section 28 of the ICA, 1872
>
> **13.** The learned Single Judge has rightly relied upon the judgment of the Delhi High Court in the case of Rajendra Sethia (supra). The learned Single Judge has appreciated the said aspect and held that the Clause 16.8 of the DDA would not have the effect of excluding the Jurisdiction of the Indien courts. Restricting the jurisdiction of the Indian courts, in its entirety, would be against the principles laid down under Section 28 of the ICA, 1872, inter alia, the same is unenforceable.

97) Mr. Janak Dwarkadas seeks to distinguish the judgments in ***Google India Private Limited*** and ***Info Edge (India) Ltd.*** contending that the Plaintiff therein had challenged the exclusive foreign jurisdiction clause, which is not the case here, where Plaintiff seeks performance of the very contracts, containing exclusive jurisdiction clauses. However, it appears that in ***Google India Private Limited***, there was no express challenge to Clause 16.8 of the Developer Distribution Agreement though certain other clauses of the contract were challenged. This is further clear from paragraph 2 of Division Bench judgment of ***Info Edge (India) Ltd.*** which reads thus:

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

> 2. The plaintiffs instituted suits seeking a declaration that the Google Payments Terms of Service-Seller (IN) posted on 02.06.2022, Payment Policies, Policies relating to Service Fees, Terms and Conditione, posted by the defendants' on its websites/portals/webpages on various dates, including the Blog-post dated 17.05.2023, all relating to the Implementation of Google Play Billing System (GPBS/User Choice Billing (UCB)/Consumption-Based Model vis-a-vis the Motile Application as illegal and unenforceable, The plaintiffs further sought a declaration that the definition of Authorized Provider and Clauses 15.3 of the Developer Distribution Agreement (DDA), effective as of 03.10.2022, as unconscionable, illegal and unenforceable and for a consequential relief for permanent injunction.

98) Thus though the exclusive jurisdiction clause was not expressly challenged, the Madras High Court has rejected the plea of absence of jurisdiction by holding that a clause imposing total restraint on Indian Courts from entertaining any legal proceedings in respect of a dispute relating to contract is hit by Section 28 of the Contract Act. Thus non-enforceability of exclusive jurisdiction clause appears to have been permitted to be raised as a defence in absence of challenge to the clause.

99) Thus, the Madras High Court has also held that where a party carries on business in India, it cannot contend that Indian laws are inapplicable. The Division Bench further rejected the contention that, merely because Indian law is held to be applicable, it cannot be suggested that the same can be applied by the Court in California.

100) In my view therefore, mere absence of challenge to the exclusive jurisdiction clause of foreign Courts while seeking restoration of its account would not be fatal for the purpose of deciding the application for return of plaint under Order 7 Rule 10 of the Code. Without challenging the exclusive foreign courts' jurisdiction clause,

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

Plaintiff can set up a defence that the same is either not enforceable in the facts of the present case. In my view therefore the ratio of the judgment of the Single Judge in ***Google India Private Limited*** and of the Division Bench in ***Info Edge (India) Ltd.*** are squarely applicable to the facts of the present case.

101) It is also seen that only Defendant No.2 is seeking return of Plaint under Order 7 Rule 10 of the Code and that Defendant No.1 has so far not raised any objection to the territorial jurisdiction of this Court. This is possibly on account of the fact that Defendant No.1 has an office within the territorial limits of jurisdiction of this Court. As observed above, Plaintiff also has cause of action against Defendant No.1. The cause of action that Plaintiff has against Defendant No.2 cannot be segregated in the facts of the present case which appears to be inextricably intertwined with the cause of action against Defendant No.1. There is also some material to hold at this stage that Defendant Nos.1 and 2 have acted in tandem while making available Meta platforms to the Plaintiff for its advertising business and also in disabling its accounts. The suit is for enforcement of statutory obligations against both the Defendants. Therefore, there can be little doubt that part of cause of action has arisen within the territorial limits of jurisdiction of this Court even qua Defendant No.2-Meta. In respect of Defendant No.1, the whole of cause of action has arisen within the jurisdiction of this Court. In such circumstances, it would not be appropriate to return part of the plaint for being presented before another Court. It is well established position that it is impermissible to reject the plaint in part under Order 7 Rule 11 of the Code [SEE: ***Central Bannk of India Versus.***

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

Prabha Jain, ***Central Bank Of India vs Vikas Kashinath Gaikwad*** [27], ***Madhav Prasad Aggarwal*** (supra)]. The same analogy would apply to return on plaint under Order 7 Rule 10 of the Code.

102) Defendant No.2 has also sought to counter the objection of impermissibility to partially return the plaint under Order 7 Rule 10 of the Code on the ground that even Defendant No.1-Facebook India is also subject to the same exclusive jurisdiction clause in Meta's Commercial Terms and that therefore the suit is not maintainable in the territorial jurisdiction of this Court even *qua* Defendant No.1. This contention raised on behalf of Defendant No.2-Meta deserves outright rejection for variety of reasons. Firstly, Defendant No.1 has not taken a plea that there is no territorial jurisdiction for this Court to try and entertain the suit. Despite being an Indian subsidiary of Meta, Defendant No.1 has consciously chosen not to file application seeking return of the plaint. No attempt was made to participate in the hearing of the application by the learned counsel appearing for Defendant No.1 and it is only after this Court was about to close the proceedings for passing order, a Note was sought to be tendered on behalf of Defendant No.1, which this Court has refused to take on record. As of now, there is not a word in writing anywhere in the Suit on behalf of Defendant No. 1 on the basis of which it can be inferred that Defendant No.1 has any objection about maintainability of the suit in the territorial jurisdiction of this Court. Defendant No.2 cannot plead on behalf of Defendant No.1, who has not raised a plea that relationship between it and the Plaintiff is also governed by the Commercial Terms containing exclusive jurisdiction

27 CRA, 580 of 2024 decided on 4/02/2026

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

clause of foreign courts. It is well settled position that objection of territorial jurisdiction can be waived. Although it may be premature at this stage to presume that Defendant No.1 has waived its objection to territorial jurisdiction. However at least for the purpose of deciding Defendant No. 2's application for return of the plaint, this Court is unable to record a finding that it lacks territorial jurisdiction even *qua* Defendant No. 1. Secondly, Defendant No.1 has its office in the territorial jurisdiction of this Court and therefore, by way of a contract, parties cannot exclude inherent jurisdiction of this Court by agreeing that Courts in California alone would have territorial jurisdiction to decide disputes between Plaintiff and Defendant No.1. Thirdly, Defendant No.1 is a significant social media intermediary located within India and bound by the provisions of the IT Act and the Intermediary Rules. The suit against Defendant No.1 is also for violation of provisions of the IT Act and the Intermediary Rules. Therefore, suit against Defendant No.1 would definitely lie in territorial jurisdiction of this Court.

103) Thus, the situation that stands is such that the present suit is maintainable in territorial jurisdiction of this Court against Defendant No.1. Even going by Meta's Terms of Service, the suit would lie in territorial jurisdiction of this Court *qua* disablement of Plaintiff's individual Facebook page and Instagram account. Therefore, even if it is assumed *arguendo* that this Court would have no territorial jurisdiction *qua* other claims of Plaintiff against Meta, it would be impermissible to return the plaint in part. The law with regard to partial return of plaint under Order 7 Rule 10 of the Code is enunciated by Division Bench judgment of the Delhi High Court in ***Nilesh Girkar*** (supra), in which the

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

issue before the Division Bench was whether the Commercial Court could have returned the plaint *qua* Defendant Nos.2 to 5 therein under Order 7 Rule 10 of the Code. The issue is answered by holding in paragraphs 5 and 5.2 of the judgment as under:

> **5.** Could the learned Commercial Court have returned the plaint qua Defendants 2 to 5 under Order VII Rule 10 and rejected the plaint qua Defendant 1 under Order VII Rule 11(a)?
>
> xxx
>
> **5.2.** A plaint is returned, under Order VII Rule 10, where it has been presented in a court other than that in which it should have been instituted. The Court which returns the plaint is, therefore, coram non judice, to adjudicate the lis. A Court either has, or does not have, jurisdiction. Even if part of the cause of action is within the jurisdiction of the Court, it is maintainable, by virtue of Section 20(c)5 of the CPC. If the Court holds that it does not have the jurisdiction to entertain the suit, the decision has to be with respect to the suit as a whole, and not in part. The implication of such a decision would be that no part of the cause of action has arisen within the territorial jurisdiction of the Court. The Court would, thereby, become coram non judice. It has to abandon all efforts at dealing with the suit, in respect of any aspect. It cannot, therefore, return the plaint in part and adjudicate it in part.

104) Thus, as held by the Division Bench of Delhi High Court in ***Nilesh Girkar*** (supra), that even if part of the cause of action is within the jurisdiction of the Court, the Court would have jurisdiction under Section 20(c) of the Code to entertain the suit and the plaint cannot be returned under Order 7 Rule 10 of the Code. The Court cannot return the plaint in part and adjudicate the same in respect of the balance part. In the present case, if Meta's objection to territorial jurisdiction is accepted, this Court would have to entertain the suit against Defendant No. 1 in its entirety and against Defendant No. 2 in part, while returning the plaint, to the extent that it pertains to the claim

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

for breach of contractual obligations, for presentation before the competent court in California. Such a course of action cannot be countenanced in law.

105) It is sought to be contended on behalf of the Defendant No.2 that there is marked difference between provisions of Order 7 Rule 10 and Order 7 Rule 11 of the Code and it is always permissible to return part of the plaint for being presented before the Court having jurisdiction. Reliance is placed on judgment of Calcutta High Court in ***Allahabad Bank*** (supra). However, the judgment of the Calcutta High Court in ***Allahabad Bank*** does not hold that part of the Plaint can be returned under Order 7 Rule 10 of the Code. In the present case, where the causes of action against Defendant Nos. 1 and 2 are not segregable and are inextricably intertwined, it would be difficult to hold that the plaint, insofar as it relates to Defendant No. 2, can be returned for presentation before the courts in California. This is yet another reason why the application preferred by Defendant No.2-Meta deserves to be rejected.

106) Reliance by Defendant No.2-Meta on judgment of the Apex Court in ***Rakesh Kumar Verma*** does not assist its case. The judgment is in the context of service-related contract and about enforceability of exclusive jurisdiction clause. The Apex Court has upheld the validity and enforceability of exclusive jurisdiction clauses in private employment contracts, holding that such clauses bind employees to the designated forum as long as specific legal conditions are met. The Apex Court has however laid down three conditions for upholding the validity and

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

enforceability of exclusive jurisdiction clause in relation to private employment viz. (i) the clause does not amount to an absolute restraint of legal proceedings under Section 28 of the Contract Act; (ii) the court or forum designated by the contract has original jurisdiction under statutory rules, (such as Section 20 of the Code); and (iii) the parties clearly and unambiguously agreed to restrict litigation to the specified forum. The judgment rendered in the facts of that case has no application to the unique facts and circumstances of the present case.

107) Defendant No.2 has also relied on judgment of this Court in ***Traxpo Enterprises Pvt. Ltd.*** (supra) in which again the facts are clearly distinguishable. The Defendant in that case had filed a suit in Court at England in which Plaintiff had entered appearance and filed statement of defense. The Suit was however later decreed *ex parte* as the Plaintiff did not participate in the trial. After the English Court delivered its judgment, Plaintiff filed a suit in this Court even though Clause 14 of the contract provided for exclusive jurisdiction to the High Court of London. In the facts of that case, this Court held that it had no jurisdiction to entertain Plaintiff's suit. The judgment rendered in unique facts of that case has no application to the present case.

108) Defendant No.2 has also relied on judgment of Single Judge of Karnataka High Court in ***Samiulla Saheb*** (supra) in support of the contention that who files application under Order 7 Rule 10 of the Code is immaterial. The judgment is an authority on the principle that an application seeking the custody or guardianship of a minor child can only be filed before the District Court having jurisdiction over the place

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

where the minor child ordinarily resides, not where the relatives, father, or mother reside. While laying down that principle, the Karnataka High Court has held that when the question of jurisdiction cuts at the root of the matter, and if the Court has no territorial jurisdiction, who brings the issue to the Court is immaterial. The judgment has little relevance to the facts of the present case where locus of Defendant No.2 to file application under Order 7 Rule 10 of the Code is not being questioned by the Plaintiff.

CONCLUSIONS

109) Considering the overall conspectus of the case, I am of the view that Defendant No.2-Meta has failed to demonstrate that this Court totally lacks territorial jurisdiction to try and entertain the present suit. Defendant No. 1 has not raised the objection of jurisdiction. So far as the allegations of violation of provisions of the IT Act and the Intermediary Rules are concerned, the Courts in California cannot decide the said issues, even assuming that the contractual arrangement of jurisdiction of foreign courts and applicability of foreign law is enforceable. The judgments of Madras High Court *prima facie* indicate that the jurisdiction of this Court would not be ousted. There can therefore be no doubt to the position that the suit is fully maintainable before this Court qua one of the Defendants and it is also partly maintainable (*even going by exclusive jurisdiction clauses*) against both the Defendant. It is also not permissible to return part of the plaint under Order 7 Rule 10 of the Code and partly decide the same by this Court. The application filed by Defendant No.2 therefore cannot be allowed and the same deserves dismissal. It however

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13

needs to be clarified that the findings recorded on the issue of territorial jurisdiction are in the context of application for return of plaint under Order 7 Rule 10 of the Code and the issue of jurisdiction can be decided independently during the course of trial of the suit.

ORDER

110) Interim Application is accordingly **dismissed**. Costs of the Application shall be costs in the suit. List the Interim Application (L.) No. 31469 of 2026 for temporary injunction on 2 November 2026 at 4.00 p.m.

[SANDEEP V. MARNE , J.]

NEETA SHAILESH SAWANT
Digitally signed by NEETA SHAILESH SAWANT
Date: 2026.10.27 21:35:26 +0530

Uploaded on - 27/10/2026 Downloaded on - 27/10/2026 22:19:13