

MONDAY | 29 JULY 2024

## Case Update



### ARBITRAL TRIBUNAL HOLDS TERMINATION OF SHARE PURCHASE AGREEMENT AS ILLEGAL, AND HAS GRANTED THE CLAIMS UPTO RS. 41 CRORES IN FAVOUR OF CLAIMANTS WITH RESPECT TO BREACH OF CONTRACTUAL OBLIGATIONS ON THE PART OF COGOPORT PVT. LTD.



Mituj Marketing Pvt. Ltd (Mituj) and its promoters entered into a Share Purchase Agreement (SPA) and a Share Holder's Agreement (SHA) with Cogoport Pvt. Ltd. (Cogoport) As per the SPA, and SHA Cogoport had to acquire 100 % shareholding in Mituj, as per the timelines mutually agreed between the parties in the SPA /SHA.

Subsequently after the execution of the SPA/SHA, Cogoport transferred all the invoicing and receivables of Mituj to itself and exercised complete control over the business affairs of Mituj. Using this control over Mituj, Cogoport shifted 95% of Mituj's customers and ran the Mituj's business to the ground.

Notably, the SHA and the SPA also envisaged the release of two mortgaged residential properties of the Claimants by Cogoport within 6 months of the SPA, which Cogoport failed to do so.

However, despite repeated communications from the Bank, Cogoport never secured the release of the encumbrances created on the residential properties of the Claimants and on 07.02.2023 – Cogoport issued notice to Mituj and the Claimants to terminate the SPA citing various breaches of SPA / SHA on the part of Claimants and Mituj.

Cogoport further claimed that they shall not have any obligations regarding completing the acquisition of Mituj and without fulfilling any of their contractual obligations which were set out in the SPA/SHA terminated the SPA.

After the illegal termination of SPA by Cogoport, Claimants invoked the arbitration proceedings against Cogoport regarding their failure to fulfil their contractual obligations set out in the SPA/SHA.

An Arbitral Tribunal comprising of Justice (Retd.) R S Endlaw, Justice (Retd.) GS Sistani and Presiding Arbitrator Justice (Retd.) Pradeep Nandrajog was constituted in terms of the arbitration agreement in the SHA and the SPA.

The Hon'ble Arbitral Tribunal on 21.07.2024, pronounced the award and has held that the termination of the SPA by Cogoport is illegal, and has directed Cogoport to clear the outstanding amounts in the account of Mituj held in HDFC Bank, in order to release the encumbrances created on the immovable properties of the Claimants. The Tribunal was also pleased to award the cumulative claims of approximately Rs. 24 Crores – for the claims which includes the consideration for the Second Closing, Third Closing, outstanding dues of the Workmen of Mituj and the unsecured loans advanced by the promoters of Mituj – along with costs of the Arbitration.

*The Claimants were represented by SKV Law Offices' team lead by Mr. Shri Venkatesh (Managing Partner), Mr. Aditya Vardhan Sharma and Mr. Vedant Choudhary (Associate).*