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Filed by-

GAURAV SHARMA

New Delhi.

ADVOCATE FOR THE PETITIONER

26 .04.2020

**IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)**

I.A. NO /2020

IN

WRIT PETITION (CIVIL) NO. 427 OF 2020

IN THE MATTER OF:

Good Governance Chambers (G2 Chambers) ...Petitioner

Versus

National Payments Corporation of India & Ors ...Respondents

APPLICATION FOR URGENT INTERIM RELIEF

To,

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS COMPANION JUSTICES OF

THE SUPREME COURT OF INDIA AT NEW DELHI

THE HUMBLE PETITION OF THE PETITIONER

ABOVE NAMED :

MOST RESPECTFULLY SHOWETH:

1. That the Petitioner has filed the above mentioned Writ Petition under Article 32 of the Constitution of India against serious,

blatant and willful violation by the Respondent No.3 of the Mandatory Guidelines and Regulatory norms of Unified Payment Interface (UPI) system of India. The Respondent No. 3 has consistently defaulted in complying with the directives issued by the Respondent No. 1 & 2 in regard to securing the financial data of the Users & Data Localisation Norms, and therefore continuation of operations by the Respondent No.3 is dangerous for the National Security and poses risks that may be irreparable if not stopped immediately. The Respondent No.3 instead of being punished for the said breaches and non-compliance has been preferentially treated by the Respondent No. 1 & 2 and has been repeatedly granted permission by the Respondent No.1 to carry out its activities in complete disregard and contravention to the public policy and welfare of citizen's of India.

- 2.** That recently the Respondent No.10 (through the Respondent No.3) has invested \$5.7 billion in Telecommunications and Digital Services platform, (i.e Reliance Jio) against 9.99% stake. The Respondent No.3 is a dominant market player in Internet based messaging Apps and Digital Payment Markets; the Respondent No.10 is a Social Media giant, while Reliance Jio is

a dominant market player in Telecom and Digital services in India. Reliance further operates in e-commerce industry through Jio Mart. Each entity alone accounts for approx. more than 400 million users each in India. The investment, as suggested by many news reports, also aims at tie-ups in Digital Payments and e-commerce segments. The aforesaid union will give access to the Respondent No. 3 & 10 of huge Indian markets and in turn even larger user Data. True Typed Copy of News Report “Facebook and Jio deal create huge lake of Indian Data” published in The Financial Times, dated 23.04.2020 is attached herewith as **Annexure P-1**. In furtherance of the aforesaid investment, Jio Mart has already tied up with Respondent No.3 (WhatsApp) for rolling out services for Jio Mart. True Typed Copy of News Report “*JioMart gets a WhatsApp number, goes live*” published in Live Mint, dated 25.04.2020 is attached herewith as **Annexure P-2**.

3. That the countrywide lockdown due to the outbreak of Covid-19 is witnessing an increased reliance of the citizens on virtual platforms alienating human interaction as much as possible. Resultantly, the Indian Citizens rely more, and are dependent on the Digital Payment Platforms and E-commerce websites for

their day-to-day household purchases, online purchases of essential goods and payment of utility bills. This leads to increased use of technology and thus generates big data. Thus, Data has become more important than ever in the present situation. Under this situation, the aforesaid deal between Respondent No.10 and Reliance Jio is also reported to accelerate its operations in Digital Payments and E-commerce sector.

4. That the Respondent No.3 (WhatsApp) is already operating in the UPI Digital Payment System without localizing Data and following mandatory critical guidelines, threatening data privacy and associated concerns in India. Moreover the WhatsApp platform is prone to security breaches and has been reported several times in the past to have compromised its user's data for its own financial gains as already elaborated in the Writ Petition. Moreover, at the time of present pandemic, the user data of more than 267 million users of Facebook (Respondent No.10) was reported to be sold on Dark Web (overlay online networks), which by itself is a very serious concern of national data security. That inspite of the above breaches and non-compliance, the Respondent No.3 has been permitted by the Respondent No. 1 & 2 to operate, expand and

gain control of Indian's banking/ financial data, when its misuse is certain, causing huge financial loss to the economy and invasion of privacy in India. True Typed Copy of News Report "*Hackers found selling private information of 267 million Facebook users on the Dark Web for just \$60*" published in The DailyMail UK dated 21.04.2020 is attached herewith as **Annexure P-3.**

5. It is submitted that in the wake of outbreak of Covid-19, granting wide unregulated access of banking information and payment data of users to the Respondent No. 3 (i.e. WhatsApp) poses a huge threat to the banking and financial sector of the country. If the millions of Indian bank accounts and passwords are compromised through this platform, many users will lose their long-term earnings and it will not be possible to recover this loss. Given the current situation, the regulators and banks will also not be able to offer immediate help as this data is processed and stored out of the country.
6. That on the basis of the above it is submitted that in order to ensure the security of user data as well as to ensure localization of Data as mandated by the RBI, it is extremely necessary to regulate the operations of the Respondent No.3

and 10 in Digital Payments Market. If the same is not ensured, it shall result into an irreparable loss, as data once lost cannot be brought back.

7. The Petitioner undertakes to file a duly notarized accompanying Affidavit as soon as this Hon'ble Court resumes the regular functioning.
8. The Petitioner requests for urgent hearing in this matter to be taken up through video conferencing by this Hon'ble Court.
9. This application is made bonafide and in the interest of Justice.

P R A Y E R

It is, therefore, most respectfully prayed that his Hon'ble Court may be pleased to-

- a) Direct the Respondent No.1 and 2 to not grant any permission to the Respondent No. 3 to expand its operations in the Indian Digital Payment Market through UPI or otherwise effective immediately; and
- b) pass such other order or orders as this Hon'ble Court deems fit and proper in the facts and circumstances of the case.

**AND FOR THIS ACT OF KINDNESS THE
PETITIONER/APPLICANT AS IN DUTY BOUND SHALL EVER
PRAY**

Filed by-

GAURAV SHARMA

New Delhi.

ADVOCATE FOR THE PETITIONER

26 .04.2020

ANNEXURE P-1**Facebook and Jio deal creates hugelake of Indian
Data**

(Each company has 400m customers and union will look for opportunities in payments and ecommerce.)

23rd April 2020

India's richest man Mukesh Ambani warned the country's prime minister Narendra Modi last year of the need to remain vigilant against a looming threat: data "colonisation" by foreign companies.

"Data is the new wealth," Mr Ambani, the chairman of the sprawling oil- to-retail conglomerate Reliance Industries, said at a business summit in Gujarat. "India's data must be controlled and owned by Indian people and not by corporates, especially global corporations."

But on Wednesday Mr Ambani struck a warmer tone as he welcomed one such global corporation, a "friend" of the Indian people, as his newest partner: Facebook.

The world's largest social media group will pay \$5.7bn for a 10 per cent stake in Reliance's fast-growing telecommunications and digital services business Jio, its second largest investment after the \$19bn purchase of the messaging service WhatsApp in 2014.

The deal unites two huge pools of Indian consumers, and their data. In the four years since it launched, Jio has attracted 388m people to sign up for its ultra-cheap mobile phone plans, which turbocharged internet use in the country.

Shut out of China, Facebook's attempt to break into India started on a sour note when the government blocked its "Free Basics" internet access app in 2016, but it has since amassed 400m users of WhatsApp, and plans to start offering them payment services.

"We have a lot of people across our platforms," Ajit Mohan, Facebook's India director, said. Facebook is "committed to this massive digital transformation that India is going through".

For Mr Ambani, the deal will not only help reduce Reliance's as of last year \$20bn debt pile and lend Jio credibility, but also brings on board a partner with unrivalled expertise in analysing and monetising the data of its customers.

[Investing in Jio] gives Facebook a little bit of muscle when it comes to policy issues. Working with the government is going to be much easier when they have Reliance as a partner Satish Meena, Forrester Research

Mr Ambani's son Akash, who was involved in the talks, highlighted Facebook's huge Indian user base and the growing might of its Instagram photo app, according to one person with knowledge of the situation.

So far neither side has made significant money from Indian

customers. Only about 17 per cent of Facebook's revenues come from the Asia Pacific region, of which India is the largest market, and Jio offers mobile subscriptions for what many consider unsustainably low prices.

But analysts said their shared reach among consumers and respective insights into spending or viewing habits provide valuable opportunities for advertising and designing future ventures. Mr Ambani mooted the possibility of opportunities in everything from online education to healthcare.

But the two companies will start with ecommerce, setting up an immediate challenge to global rivals Amazon and Walmart-owned Flipkart as the coronavirus lockdown forces many Indians to shop online for the first time.

Reliance this year launched ecommerce platform JioMart which allows consumers to source groceries and essentials from neighbourhood shops. It will now turn to WhatsApp to facilitate the transactions, opening up immediate access to a pool of potential customers that even its most seasoned competitors will struggle to beat.

“In the post-corona world, a bunch of our daily activities will be moving into the digital world,” said Jayanth Kolla, founder of consultancy Convergence Catalyst said. The two could develop a super app that has “a media angle to it, a commerce angle to it and a communication angle to it”.

Facebook may also be seeking “tighter relations with [mobile]

carriers around the world”, according to Brian Wieser, global president of business intelligence at GroupM. It is unclear, for example, whether WhatsApp could one day be preinstalled on Reliance devices as a default. Reliance said it had no immediate plans to do this.

The social media giant, which is under attack from regulators around the world, will also gain an important ally in Mr Ambani as it navigates India’s challenging legal and regulatory landscape. Others — such as Vodafone

— have also been squeezed by rapidly-changing regulations, to the point of nearly leaving the market altogether.

A pending data protection bill could force foreign tech businesses to overhaul parts of their business models, and WhatsApp’s efforts to launch a digital payments service has been held up by regulators for two years, during which time Google, Walmart and a range of others have snatched valuable market share.

Investing in Jio “gives Facebook a little bit of muscle when it comes to policy issues”, said Satish Meena, an analyst at Forrester Research. “Working with the government is going to be much easier when they have Reliance as a partner.”

The deal also marks a swing back to the US after Chinese companies and investors, such as ByteDance and Alibaba, became a driving force in India’s internet landscape.

India last week changed its foreign direct investment policy to

require government approval for any Chinese investments, which could hurt the fundraising efforts of companies such as Alibaba-backed payments platform Paytm, which had its own offerings in everything from ecommerce to gaming.

For Facebook's Mark Zuckerberg and Mr Ambani, who have positioned themselves in contrast to China as champions of free internet and democratic values, analysts said this made the deal particularly timely. "This has made Facebook a Good Samaritanas far as the government is concerned," one said.

(True Copy)

ANNEXURE P-2**Jio Mart gets a WhatsApp number, goes live**

Kalpana Pathak

Three days after Reliance Retail signed a commercial pact with Facebook's WhatsApp to further the reach of its online venture JioMart, the retailer went live in the suburban Mumbai areas of Navi Mumbai, Thane and Kalyan.

Reliance's tie up with WhatsApp means it gets direct access to WhatsApp's userbase of over 400 million.

To order from JioMart, customers need to add JioMart's WhatsApp number 88500 08000 on their phones. JioMart sends a link to the customer's Whatsapp chat window. The link is valid for 30 minutes. Clicking on the link directs the user to a new page wherein he has to fill his address and phone number, after which the catalogue of products is made available to order from. Products available include sundry brands along with Reliance Retail's own private labels.

Once the final order is placed, it is shared with the local kirana store on WhatsApp. The customer receives a notification with the order and the kirana/JioMart storedetails on his number. The customer will also receive an alert once the kirana bills the order.

Currently, the only payment option available is cash and the customer has to pickup his order from the store.

Reliance Retail Ltd, the retail arm of Reliance Industries Ltd, had last December soft launched its new commerce venture named JioMart. Calling itself “Desh Ki Nayi Dukaan”, JioMart is currently catering to online shoppers in the suburban Mumbai areas of Navi Mumbai, Thane and Kalyan.

Last July Mint had reported that Reliance Retail is hiring distributors to sell private-label brands through neighborhood stores.

Through these kirana stores, RIL will sell its own private labels under brand names such as Best Farms, Good Life, Masti Oye, Kaffe, Enzo, Mopz, Expelz and Home One.

Reliance Retail operates neighbourhood stores, supermarkets, hypermarkets, wholesale, specialty and online stores. It has consolidated merchants under the e-commerce platform. The merchants, in turn, will cater to the demand. This will help the company save costs and enter areas currently outside the traditional purview of e-commerce companies.

Through this RIL is offering local merchants offering an O2O (online-to- offline) marketplace, a business model pioneered by the Chinese e- commerce giant Alibaba Group Holding Ltd. Under the O2O model, a consumer searches for the product or services online but buys it through an offline channel.

(TRUE COPY)

ANNEXURE P-3**Hackers sell private information of 267million Facebook users on the Dark Web for just \$600**

Researchers say 267 million Facebook accounts have been sold on an online black market for just \$600.

According to a report from researchers at the security firm Cyble the millions of accounts sold on the Dark Web contain personal information including first and last name, email addresses, phone numbers, Facebook ID's and more.

Researchers purchased and verified the data themselves and have created a database for users to check and see if their email was included in the breach which can be viewed at AmIBreached.com.

The Facebook accounts for 267 million Facebook users were sold on the Dark Web for just \$600 according to researchers at the security firm Cyble (stock)

While the hack didn't include any hyper sensitive information like passwords, it did expose information that could be used to orchestrate phishing scams on people across the world.

'At this stage, we are not aware of how the data got leaked at the first instance, it might be due to a leakage in third-party API or scrapping,' reads a blog post from the researchers.

Given the data contain sensitive details on the users, it might be used by cybercriminals for phishing and spamming.

Phishing scams use information like email addresses and Facebook ID's to craft scams that fake Facebook login pages.

WHAT IS THE DARK WEB?

The Dark Web is a network sequestered from the rest of the internet and is only accessible via specific software and web configurations.

Unlike the regular internet, the Dark Web is not crawled by search engines and is encrypted so that activity there is anonymous.

The Dark Web is sometimes used by hackers to sell data stolen from websites and posted onto forums.

When a victim types their login info into the field, hackers are able to scrape their passwords and other sensitive information which could be used for other nefarious purposes outside of Facebook.

As a result of the breach of the breach researchers are recommending that users make sure their Facebook privacy and security settings are up to par.

Hackers often use private information like emails addresses and names to launch phishing scams that aim to steal even more sensitive information like passwords(stock) 'Cyble recommends

users to tighten their privacy settings on their Facebook profiles, and be cautious of unsolicited emails and text messages,' they write.

Last year a similar trove of Facebook emails was found circulating on the Dark Web containing 267 million Facebook accounts from mostly US users.

The dark web and its purpose explained by Jamie Bartlett

(TRUE COPY)