



School of Law, CHRIST
presents



CHRIST
(DEEMED TO BE UNIVERSITY)
BANGALORE • INDIA

1ST NATIONAL ONLINE MED-ARB COMPETITION

Dates: 30 October 2020 - 1 November 2020



Knowledge Partners



“NO ONE
ANTICIPATED
IT!”



NO ONE ANTICIPATED IT!



- DipKart is an Indivan e-commerce company based in Simbalur in the state of Karenartaka which falls under the Union of Indiva. The company was founded by Robert Kazamakis and Michael Carrell in 2007. It initially focused on book sales before expanding its business into other product categories such as consumer electronics, fashion, home essentials, groceries and lifestyle products.
- The company primarily competes with Vamazon Indiva, an Indivan subsidiary of Vamazon, and PansDeal, a domestic start-up. As of March 2017, DipKart held a market share of 39.5% in the Indivan e-commerce industry. Dipkart had significant dominance in the sale of apparel (a position which was bolstered by its acquisition of Atrym, an online clothing and lifestyle chain), and was also described as being "nip and tuck" with Vamazon Indiva in the sale of electronics. DipKart also owns OnePhone which is a mobile payments service mechanism based on the mechanism of Unified Payments Interface (UPI).
- Robert Kazamakis, an Indivan billionaire, is a technology entrepreneur. He co-founded DipKart and currently serves as its CEO and Chairman. DipKart's valuation is a staggering \$20.8 billion, as of 2020. In 2018, Robert held a 5.5% stake in DipKart.
- Michael Carrell, another Indivan billionaire, is an Internet entrepreneur. Carrell is a graduate from the Indivan Institute of Technology, Dulhi, with a degree in Computer Science and Engineering. In 2007, he co-founded the e-commerce platform DipKart along with Robert Kazamakis and served as its Chief Operating Officer (COO) until 11 January, 2016, and was then promoted to the post of the Chief Executive Officer (CEO). In January 2017, he was promoted to Group CEO but resigned in November, 2018, due to allegations of personal misconduct. He is currently an anchor investor in the venture firm "123 Invest", which focuses on investing in the fields of biotechnology, agritech, and the internet.
- Manoj Eduardo holds a Bachelor's Degree in Supply Management. After completing his studies in college, he joined Dipkart in the year 2011. He was later promoted as a Warehouse Manager in the warehouse located in Hannor, Karenartaka. He has been working with DipKart for over 9 years and has never missed an opportunity to showcase that he is an asset to the company. Mr. Manoj Eduardo is well known for his workaholic tendencies and for having a knack for technology. He was next in line to be promoted as a Warehouse Supervisor. As a Manager, he was tasked with maintaining security of the warehouse, loading dock, and surrounding area to prevent theft, manage the intake of items to be stored in the warehouse, place stored items in safe, appropriate locations, taking into account temperature, light exposure, size, weight, and available space, prepare loads to be shipped out and assist in loading trucks with outgoing item, create a schedule to manage warehouse workers and their time, adhere to safety codes for both workers and equipment, hire and fire necessary personnel and speak with upstream and downstream partners to predict when items will arrive and leave. He also monitors company's customer data. He also has a duty to address all employee grievances made by the employees in the warehouse and bring it to the notice of the higher authorities. According to the annual performance reports, Mr Manoj Eduardo was performing really well during the Fiscal Year of 2019-20 and was next in line for a promotion.

- Manoj Eduardo had a keen interest in technology and had developed various computer programs during his college days. While working as a warehouse manager, he came up with an idea to develop a technology which made the shipping process much more efficient and cost effective. When he suggested the idea to his seniors at Dipkart, they were really impressed and entered into a Letter of Agreement with Manoj (Annexure 6).
- At the timing of entering the employment with the company, Manoj Eduardo had also executed an Inventorship Agreement with the company as per which all rights over the inventions created by the employee during the course of employment vested *de facto* with the company.
- Manoj Eduardo , being an avid reader and tech enthusiast, prepared the shipping technology after he analysed customer behaviour during different seasons. He concluded that majority of consumers during the peak seasons order almost everything they have added to the cart on or within a day after the sale season began. He came up with the technology of “Anticipatory Shipping”. Using this technology, the product that a customer had added to the cart would be shipped from its primary spot to a close-by warehouse much before the buyer places the order so that the product will reach the buyer within 2 to 3 hours after the placement of the order. Dipkart’s new “Anticipatory Shipping” plan was well received by the e-commerce community (Annexure 2).
- Owing to the current pandemic, a Notice was sent to everyone in the company with respect to Work-Place Conditions and the measures taken by Dipkart to assure that all its members will be treated fairly and humanely (Annexure1). The Notice further stated that at the time of employment, all employees were asked to sign the Terms and Conditions slip which had a provision claiming that during peak sales seasons, the daily hours of work may change if needed and that all employees must comply with it.
- Concerns started to arise soon after the Notice was issued and attracted a lot of attention. Mr. Manoj Eduardo was invited by Channel 65 for a virtual interview on 6th September, 2020, for a discussion on the topic “Impact of Covid-19 on the E-commerce Industry”. Mr. Manoj Eduardo, in the interview, stated that COVID-19 has had an immense effect on the day-to-day activities of all the warehouses. He stated that due to the pandemic, the company has seen a rise in the number of customers which has given Dipkart an opportunity to show their commitment towards their customers. He reiterated that for Dipkart the customer is always the king. Manoj also went ahead to comment on how due to the on-going pandemic, the number of customers has increased significantly due to which the employees had no fixed working hours. He stated that the customer-employee ratio was horrifying and this claim was substantiated by his research based on the confidential data provided to him by Dipkart. He stated how there were numerous cases where employees had fallen unconscious due to exhaustion, extreme workload, etc. He reiterated that there was no fixed pay scale, bonuses were minimal and their salaries were never kept in par with inflation. The interview was published all over the internet (Annexure 3) and caused damage to the reputation of the company.

- Immediately after this, Mr. Manoj Eduardo was fired from DipKart, after 9 years of service on 16th September, 2020, for portraying the company in a negative light to the public and for breach of the. “Confidentiality Clause” mentioned in his Employment Contract. Dipkart Ltd. subsequently barred Mr. Manoj Eduardo from joining any competing companies as he possessed knowledge of sensitive/confidential information of the company. Mr Manoj Eduardo was also bound by a "Non-Disparagement Clause", acknowledged and signed, by him in the Employment Contract which reads as follows:

“Clause 14 – Non-Disparagement Clause –

An employee shall not at any time hereafter disparage, defame or portray in a negative light the company leading which his employment shall be terminated.”

- Manoj Eduardo clarified that he had not said anything against the company and that whatever he stated was true. Manoj believed that he did not breach the Non-Disparagement Clause mentioned in his Employment Contract. Mr. Manoj claimed that the information he had given to Channel 65 was with his independent research and had therefore not breached the confidentiality clause. Even after transferring all the rights of the invention to the company, Manoj was still deprived of the remuneration promised to him under the Agreement (Annexure 5).
- The company claims that he had caused serious loss to the company by lowering its reputation and has misused confidential information. Manoj was aggrieved but did not want to get into a legal battle. Dipkart had also been on the news and therefore did not want another News headline. Therefore, both the parties decided to go ahead with a Med-Arb session. Both parties have signed a Mediation-Arbitration Agreement on 1st October, 2020 (Annexure 7).
- Mr. Kumar Jacob, an ex-independent director of Dipkart was appointed as the Presiding Arbitrator by the Arbitrators appointed by each party, as he fulfilled the criteria for requisite expertise and experience. Mr. Jacob was appointed as its Arbitrator five times in the past three years. Mr. Jacob had disclosed this information to the co-Arbitrators, but not to the counsels representing Mr. Manoj Eduardo.

- **ISSUE 1**

WHETHER THE APPOINTMENT OF MR. KUMAR JACOB AS THE PRESIDING ARBITRATOR VALID?

- **ISSUE2**

WHETHER DIPKART WAS JUSTIFIED IN TERMINATING THE EMPLOYMENT OF MR. MANOJ EDUARDO?

- **ISSUE 3**

WHETHER MANOJ IS ENTITLED TO RECEIVE REMUNERATION FOR HIS INVENTION FROM DIPKART?

Note: For the competition, Mr. Manoj Eduardo is the Requesting Party/Claimant and Dipkart is the Responding Party/Respondent.

ANNEXURE 1

NOTICE WITH RESPECT TO WORKPLACE MISCONDUCT AND BENEFITS AND PERKS GUARANTEED.

Notice:

DipKart Pvt Ltd

18 May 2020

Workplace environment

All employees are hereby notified that the Management of DipKart has always strived to ensure a safe, supportive and collaborative work environment and culture. However, owing to certain recent developments, the Management would like to reiterate certain protocols that have been in place and bring to the attention of all employees that there are strict measures in place in order to ensure that all employees are treated fairly and humanely. The management would also like to bring light to the fact that all employees were, at the time of employment, asked to sign a Terms and Conditions slip which stated that during peak sales seasons, the daily hours of work may change if needed and all employees must comply to this.

SD/-


Robert Kazamakis

Chief Executive Officer

DipKart Pvt Ltd

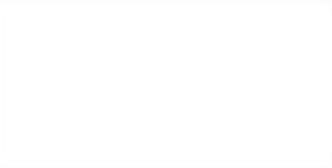
ANNEXURE 2


ANTICIPATORY SHIPPING ARTICLE (15th May 2020)





GREAT TECH TIME


J.P. MORGAN CHASE & CO.












































ANNEXURE 3

PICTURE OF ARTICLE ON WHAT MR. MANOJ EDUARDO SAID IN HIS INTERVIEW (14th September 2020)

← → ↺


personneltoday.com/hr/can-amazon-teach-us-workplace-relations/

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What can DipKart teach us about workplace relations?

By Schooliadeep, 20th May, 2020 Dispute resolution, Employee relations, Mediation




Ben Cawthra/REX Shutterstock

DipKart be one of the world's most successful online retailers, but the company nit the headlines recently due to the allegations of its “bruising” approach to workplace relations. What long-term impact does a culture like this have on employees?

A recent Bangalore Time (BT) article stated that the founder, Mr. Robert K believes that “harmony is often overvalued in the workplace – that it can stifle honest critique and encourage praise for flawed ideas.”

CUSTOMER SALES SEASONS	Customers (in thousands) (avg. per state)	Employees (in thousands) (avg. per state)
1. Normal Season	89	10
2. Festive Seasons	120	12
3. After COVID 19	90	6

Customer Employee Ratio of DipKart Ltd.



Season	Customers (thousands)	Employees (thousands)
Normal Season	89	10
Festive Season	120	12
After COVID 19	90	6

ANNEXURE 4

EMPLOYEE COMPLAINT EMAIL SENT ON 18TH JULY 2020

From: Kevin Beesly
To: Ruthie
Azuri (HR Manager)

Subject: Forced to work overtime on numerous days.

Dear Ruthi,

I am Kevin, a warehouse employee in Dipkart Warehouse at Hanoor. I have been an employee for 6 years. For the past few months, Mr. Manoj has forced all of us to stay for over 12 hours in the warehouse in order to complete the work. This has caused immense strain to most of the employees and I have personally witnessed many of my colleagues breaking down due to the stress. We barely get any rest or food. My colleagues have asked me to approach you as I was told that you are at an influential position. Additionally, we have not received any benefits from Mr. Manoj for all this additional work. We had approached Mr. Manoj and requested him to assist us in some way. Mr. Manoj gave us the standard reply of him being the middleman and that he could not do anything for the benefit of employees. On the question of whether benefits were received, Mr. Manoj said that the company had not forwarded any monetary perks to him and he cannot afford to pay us from his own pocket. This is highly unfair as we have been pushed to do additional work for so long without any perks. Mr. Manoj has however tried to handle the pressure. After the other warehouse had shut down, he had tried to enforce some techniques to make sure that the customers receive their orders on time and that Dipkart's efficiency does not reduce. He claims that he cannot do anything because people from the corporate office have forced him to push us to this extent. Looking forward to a reply.

Best regards,
Kevin

ANNEXURE 5

EMAIL BETWEEN MANOJ AND DIPKART REGARDING REMUNERATION

From: Mr. Manoj Eduardo
To: Ruthie Azuri (HR Manager)

Date:
20th September 2020

Subject: Remuneration Guaranteed Under Letter Agreement

Respected Ruthie,

This email is with respect to the Letter Agreement made between the company and myself on 16th March 2020. According to this agreement, I was supposed to receive Rs. 5,00,000/- for transferring the rights over the invention to the company making Dipkart Ltd. the new owner of the invention. After numerous requests, I still haven't received my remuneration. Please do the needful.

Best Regards,
Manoj Eduardo

Re-From: Ruthie Azuri
To: Mr. Manoj Eduardo
Date:
20th September 2020

Re-Subject: Remuneration Guaranteed Under Letter Agreement

Respected Manoj,

According to the Inventorship Agreement entered into between you and the company, any invention that you develop during the course of your employment using the company's resources including but not limited to any data, belongs to the company alone. Thus, the company believes the salary that the company is providing to you is sufficient remuneration for the same and nothing more shall be provided.

Thank you
Ruthie Azuri

ANNEXURE 6
LETTER AGREEMENT

16th March, 2020

Mr. Manoj Eduardo
RX Nagar, SG Road
Simbaluru – 560856
Indiva.

Subject: Transfer of Rights over Invention

Respected Sir,

This letter written on behalf of Dipkart Ltd. is with respect to transfer of rights over the invention named “Anticipatory Shipping.”

Invention

Mr. Manoj shall invent a technology using company’s resources including the confidential information for the welfare of the company. The technology invented, shall be owned by Dipkart. The Invention shall be named as Anticipatory Shipping.

Assignment of Inventions

Mr. Manoj hereby transfers to Dipkart all rights, titles, and interests over the Invention which he shall develop or create, individually or jointly, in connection with his employment relationship with Dipkart.

Dipkart in consideration shall provide Mr. Manoj a sum of Rs. 5 Lakhs for getting the complete rights over the invention.

Confidential Information

Confidential Information shall mean information, other than Trade Secrets, which relates to Employer, Employer’s activities, Employer’s business or Employer’s suppliers or customers that is not generally known by persons not employed by Employer, and which is or has been disclosed to Employee or of which Employee became aware as a consequence of or through his or her relationship to Employer. This includes but is not limited to Dipkart’s know-how; accounts; pricing and cost information; marketing techniques and plans; computer programs and software; coding systems and processes; computer networking concepts and processes; source code; contract terms and prospective contract terms with existing and prospective customers, accounts and other persons or entities with whom Dipkart has or contemplates a business relationship; actual or potential customers and purchasers; confidential information of any customer; products; product designs; design documentation; formulas; concepts; inventions; research; methods; processes; operations; product uses; product quality analysis; and other information related to the Business that is not generally publicly known.

“Confidential Information” shall not include information that has become generally available to the public by the act of one who has the right to disclose such information without violating any legal right or privilege of Employer.”

Date of Effect

As a result, the agreement will be effectuated from the date of signature.

Sincerely,
Ruthie Azuri
HR Manager
DipKart Ltd.
Simbaluru

ANNEXURE 7– Mediation-Arbitration Agreement
MEDIATION– ARBITRATION AGREEMENT

1. This MEDIATION-ARBITRATION AGREEMENT (MED-ARB) made on 1st October 2020 between Mr. Manoj representing his personal interest and Dipkart Ltd., hereinafter referred to as Dipkart collectively called as “Parties”.
2. An agreement that the disputes that have arisen between the parties shall be first subjected for resolution through mediation by mediators appointed as per DipKart’s Dispute Resolution Board and the SLCU NOMAC Rules of 2020 by mutual consent of the parties.
3. Any dispute difference or controversy arising out of or in connection with the matters in hand shall first be referred to Mediation followed by Arbitration in accordance with current SLCU NOMAC Rules of 2020 and as per the Arbitration & Conciliation Act, 1996. Each party shall appoint one arbitrator, after which both the arbitrators shall appoint the presiding arbitrator. The appointment of the arbitrator is in accordance with the Arbitration and Conciliation Act, 1996 of India.
4. The seat of the mediation-arbitration shall be School of Law, Christ (Deemed to be University), Bangalore.
5. It is anticipated that during sessions, the parties may be required by the mediator/arbitrator any information necessary in order for him/her to perform the services. It shall be necessary for the parties to timely provide such copies of documents and briefs dealing with the issues and such other items as specifically identified from time to time.
6. All communications, negotiations or settlement discussions by and between the parties in the course of a mediation/arbitration or a consultation shall remain confidential.
7. The Parties further agree that they will faithfully observe this agreement and the rules, that they will abide by and perform any award rendered by the arbitrator(s), and that a judgment of any court having jurisdiction may be entered on the award.

IN WITNESS WHEREOF, Mr. Manoj Eduardo and Dipkart Ltd. have executed this Agreement at DipKart
Headquarters, Indiva.

Counsel

Client

Counsel for Mr. Manoj

By: _____

By: _____

Counsel for Dipkart Ltd.

By: _____

By: _____

Witness 1

Witness 2