



**MEMORANDUM**

<b>From</b>	Luthra and Luthra Law Offices India
<b>To</b>	Techbelievers Technologies Pvt Ltd.
<b>Date</b>	February 21, 2024
<b>Subject</b>	Memorandum related to online real money games

**1. FACTUAL BACKGROUND**

- 1.1. We understand that Techbelievers Technologies Pvt Ltd. (“**Company**”) is a company incorporated and registered under the laws of India having registered office at Plot No. 176, Block B, Vikas Nagar Uttam Nagar, Near Commando Chowk New Delhi - 110059 and Corporate Office at IIIrd Floor, A31, Sector-3, Noida – 201301.
- 1.2. The Company is engaged in the business of operating and maintaining an online-based games portal - KHILADI ADDA (“**Platform**”). The Company through its Platform offers its users games primarily in four segments i.e., casual games, card games, fantasy games and e-sports.

**2. QUERIES**

- 2.1. Whether casual games (i.e., ludo, quizzes, word search, droid-o), card games (i.e., rummy and court piece pro) fantasy games (FanBattle (only for cricket) and clash X (for cricket, football and kabaddi) and e-sports (“**Online Games**”) are construed as ‘game of skill’ or ‘game of chance’ in terms of the present Indian laws and judicial decisions that regulate online gaming.

**3. LEGAL AND REGULATORY FRAMEWORK**

**Overview of gambling legislations in India**

- 3.1. Pursuant to India’s federal structure of governance, the Constitution of India (“**Indian Constitution**”) divides the legislative powers between centre and state. Before coming into force of Indian Constitution, ‘gambling’ in India was governed through Public Gambling Act, 1867 (“**Public Gambling Act**”) which was enacted by erstwhile British rulers, and which was applicable to certain specified provinces as existed prior to Indian independence. With adoption of the Indian Constitution in the year 1949, the respective states have been given the power to legislate on “betting and gambling” pursuant to Entry 34 of List II of Schedule VII of the Indian Constitution.
- 3.2. Thus, with states being conferred with powers to legislate on ‘betting and gambling’, as indicated above, the Public Gambling Act ceased to be a central legislation. However, most of the states such as Madhya Pradesh, Punjab, Uttar Pradesh etc. have passed enactments adopting





- the Public Gambling Act, either as-it-is or with certain amendments. Whereas certain other states such as Assam, Goa, Orissa etc. have enacted their own 'gambling' legislation.
- 3.3. Section 12 of the Public Gambling Act provides an exemption to 'games of mere skill' from the application of penal provisions of the law. Most state legislations also distinguish games of mere skill from games of chance and carve out an exception for games of skill from the application of the penal provisions of the law. Further, nearly all state legislations prohibit and penalise 'gambling'. While there is no common definition/explanation to the term 'gambling' under the state legislations, it has generally been explained to include all forms of 'wagering' or 'betting'. In the context of games that involves 'wagering' or 'betting' (herein after referred as "**Betting Game(s)**"), in most of the states, Betting Games when identified as 'game of chance' are treated as 'gambling' and accordingly penalized.
- 3.4. As per our analysis of the state legislations, **in terms of exemption to games of skill, the states can be classified into 3 categories – (i) games of skill permitted without license; (ii) games of skill prohibited; and (iii) games of skill permitted with license.**
- I **Games of skill permitted without license**
- Andaman & Nicobar Islands, Bihar, Chandigarh, Chhattisgarh, Dadar & Nagar Haveli, Daman & Diu, Delhi, Goa, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Jharkhand, Karnataka, Kerala, Ladakh, Lakshadweep, Madhya Pradesh, Maharashtra, Manipur, Mizoram, Puducherry, Punjab, Tripura, Uttarakhand, Uttar Pradesh, Tamil Nadu, Rajasthan.
- II **Games of skill prohibited**
- Andhra Pradesh, Arunachal Pradesh, Assam, Orissa and Telangana
- III **Games of skill permitted with license**
- Meghalaya, Nagaland, Sikkim, West Bengal
- 3.5. The Supreme Court in *Dr. K.R. Lakshmanan v. State Of Tamil Nadu* [1968 SCR (2) 387] ("**Lakshmanan Case**") outlined the scope of gambling and defined it to mean, 'the payment of price for a chance to win a prize'. **Hence, for an activity to be construed as gambling, it would have to necessarily satisfy 3 essential elements as laid down in Lakshmanan Case, which are - (a) staking of an amount i.e., consideration; (b) an element of uncertainty i.e., chance; and (c) a reward which is usually higher than the amount staked.**
- 3.6. In order to play a game, every user is required to deposit certain amount in the wallet which is stored in the form of electronic coins (and not real cash) which is used to play games on the Platform. Further, upon winning a game, the amount gets credited into user's 'winning wallet'. **Therefore, Online Games would involve consideration in the form of coins and also envisage**





**a reward in monetary terms for players. As encapsulated under paragraph 3.5 above, the two elements i.e., consideration and reward shall be satisfied in the case of Online Games.**

- 3.7. Accordingly, the determination of whether or not such Online Games may be construed as 'gambling' and thereby subject to prohibition and penalty as stipulated in several state legislations, **shall depend on whether the element of skill predominates the element of chance or vice versa. In this regard, it is important to analyse the jurisprudence differentiating 'games of skill' from 'games of chance', and such analysis has accordingly been undertaken in subsequent para(s) of this memorandum.**

#### Games of skill v Games of chance

- 3.8. The contours of what constitutes 'game of mere skill' and/or what differentiates 'game of skill' and 'game of chance' has over the years come up for deliberations at various courts of law in India and thereby the guidance on these terms is obtained largely from various judicial pronouncements.

- 3.9. In order to distinguish a game of skill from game of chance, the courts have largely relied on the 'dominant factor test' or 'test of preponderance' i.e., whether the outcome of the game is substantially dependent upon the skill of the player rather than mere chance. Applying the principle of the dominant factor test or test of preponderance, the Supreme Court of India ("SC") while settling the position on the game(s) of rummy in the case of *State Of Andhra Pradesh v. K. Satyanarayana & Ors.* [1996 SCC (2) 226] ("**Satyanarayana Case**") specifically held that the game of rummy is not a game of entire chance; it is mainly and preponderantly a game of skill. The SC went on to hold that:

"Rummy... requires certain amount of skill because the fall of the cards has to be memorized and the building up of Rummy requires considerable skill in holding and discarding cards. We cannot, therefore, say that the game of Rummy is game of entire chance. It is mainly and preponderantly a game of skill. The chance in Rummy is of the same character as the chance in a deal at a game of bridge. In fact, in all games in which cards are shuffled and dealt out, there is an element of chance, because the distribution of the cards is not according to any set pattern but is dependent upon how the cards find their place in the shuffled pack. From this alone it cannot be said that Rummy is a game of chance and there is no skill involved in it."

- 3.10. The test of preponderance was reinforced and applied in the Lakshmanan Case where the SC while interpreting the term 'mere skill' re-iterated that the game of rummy is considered to be a game of skill. Further, 'mere skill' was interpreted to mean 'substantial degree or preponderance of skill'. Further, the SC also distinguished between the game of skill and game of chance to describe 'game of skill as one in which success depends principally upon the superior knowledge, training, attention, experience and adroitness of the player and game of chance, on the other hand, is one in which the element of chance predominates over the element of skill.'





- 3.11. Therefore, the parameters as stipulated by the SC in Satyanarayana case and Lakshmanan Case in paragraph 3.9 & 3.10 to distinguish a game of skill and chance are as follows:
- (i) Outcome of the game is substantially dependent upon the skill of the player rather than mere chance (**'dominant factor test'** or **'test of preponderance'**)
  - (ii) Mere skill to be interpreted as **'substantial degree or preponderance of skill'**.
  - (iii) **'Game of skill'** can be construed as one in which success depends principally upon the **superior knowledge, training, attention, experience and adroitness of the player.**

#### Overview of the regulations governing e-sports in India

- 3.12. The Central Government vide gazette notification dated December 23, 2022, amended the second schedule of Government of India (Allocation of Business) Rules, 1961 and added a new entry i.e., "2A. e-Sports as part of multi-sports events" under the sub-heading "B. DEPARTMENT OF SPORTS (KHEL VIBHAG) of heading "MINISTRY OF YOUTH AFFAIRS AND SPORTS (YUVAK KARYAKRAM AUR KHEL MANTRALAYA)". Therefore, in the year 2022, e-sports were officially recognized as part of multi-sports event by the Central Government.
- 3.13. Although, apart from the legislations discussed above in paragraphs 3.1 to 3.12, there is no central legislation specifically governing e-sports in India, however certain states such as Sikkim, Nagaland and Meghalaya contain provisions which covers certain aspects of e-sports. The Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2015 ("**Nagaland Gaming Act**") and Meghalaya Regulation of Gaming Act, 2021 ("**Meghalaya Gaming Act**") provide for a list of skill-based games which specifically mentions 'virtual racing games including virtual horse racing, virtual car racing etc. *et al*'; 'virtual sports including virtual soccer, virtual cricket, virtual Archery, virtual snooker/bridge/pool *et al*'; 'virtual adventure games'; 'virtual combat games'; 'virtual mystery and detective games' etc. as games of skill. Additionally, certain states such as Uttar Pradesh has signed a memorandum of understanding with the Singapore-based game developer Garena with the objective to develop the e-sports across the state.

#### 4. ANALYSIS

##### Casual Games: Analysis

##### Statutory Position

- 4.1. In terms of legal landscape of casual games, most state legislations as well as the Public Gambling Act do not contemplate any specific legal position with respect to casual games. However, it may be relevant to note that Nagaland and Meghalaya have specifically dealt with casual games under their respective legislations. The Nagaland Gaming Act and Meghalaya Gaming Act provide for a list of skill-based games which specifically mentions 'virtual racing





games including virtual horse racing, virtual car racing etc. *et al'*; 'virtual sports including virtual soccer, virtual cricket, virtual Archery, virtual snooker/bridge/pool *et al'*'; 'virtual adventure games'; 'virtual combat games'; 'virtual mystery and detective games' etc. as game of skill.

#### Judicial Position

- 4.2. Unlike game of rummy, wherein various other Indian Courts have on different occasions held it to be a game of skill, the law is silent in case of online casual games when played for stakes or money. Further, there has also not been any authoritative adjudication by the SC regarding online casual games and its nature as a game of skill or a game of chance.
- 4.3. The Madras HC in *Junglee Games Case*, while adjudicating upon the validity of the amendment made to the Tamil Nadu Gaming Act, 1960 created a distinction between games or sporting activities played physically or virtually and card games or board games such as scrabble or chess, 'the games and sporting activities in the physical form cannot be equated with games conducted on the virtual mode or in cyberspace. However, when it comes to card games or board games such as chess or scrabble, there is no distinction between the skill involved in the physical form of the activity or in the virtual form'. However, it didn't conclusively decide on the validity of such online casual games when played for stakes in cyberspace.
- 4.4. In respect to the game of Ludo, a petition has been pending in the High Court of Bombay against Cashgrail Private Limited, which owns the mobile application "Ludo Supreme App", on the ground that it promotes gambling. Essentially, the petition seeks to challenge the order passed by Learned ACMM, 4th Court, Girgaon, Mumbai in Application No.03/SW/2021 holding that Ludo is not a game of chance but a game of skill, and that it requires skill to win the said game.

#### **Ludo**

- 4.5. We note that in the game of ludo, players roll a dice and move their tokens around the board based on the number rolled. Further, the Company provides three versions of the Ludo games i.e., (a) classic ludo; (b) series mode; and (c) timer mode.
- a) In **classic ludo**, players aim to move their tokens from the starting point to the home triangle based on dice rolls.
  - b) In **series mode**, players aim to move their tokens from the starting point to the home triangle based on dice rolls with the additional feature of allowing players to see their upcoming six dice rolls.
  - c) In **timer mode**, the winner is determined based on the distance covered by the player within a specified time limit.
- 4.6. We note that in the game of ludo, players roll a dice and move their tokens around the board based on the number roll. Notably, the two versions of the game of ludo i.e., series mode and





timer mode as offered by the Platform differs from the traditional board game, as the gameplay provides additional features such as allowing the user to see their upcoming six dice rolls and determination of the winner basis the distance covered by the player within a specified time limit. The introduction of such additional features to a greater extent reduces the element of chance from the game as it requires the players to think strategically and plan the moves basis upcoming 6 dice rolls, analyse the board and strategize basis the time limit and point tabulation.

- 4.7. However, in the absence of authoritative ruling of SC or HC the determination of whether the game of ludo is predominantly a game of skill or that of chance, to an extent remains open ended. **Therefore, so long as it can be factually established through the rules of the game of ludo that it involves a predominant element of skill, and therefore qualifies as a 'game of skill', such game of ludo would fall outside the ambit of 'gambling' under state legislations and consequently, the Platform would be permitted to offer such version of ludo game, unless specifically prohibited by state legislations, as per paragraph 3.4.**

#### Quizzes

- 4.8. We understand that in a quiz game, players answer a series of questions across various topics, aiming to score the highest by correctly responding to as many questions as possible within a set time or number of rounds.
- 4.9. In order to play and achieve a successful outcome in the game of quiz, a user is required to have various skill sets such as knowledge and understanding of the specific category, cognitive skills, accuracy, time management, familiarity with the point systems and rules of the game. Additionally, a player can improve his/her chance of winning the quiz by practicing and gaining knowledge.
- 4.10. Therefore, in light of the parameters laid down by the SC in Satyanarayana Case & Lakshmanan Case as discussed in paragraph 3.11, **the game of quizzes can be regarded as game of skill, unless specifically prohibited by state legislations, as success in the game is principally dependent upon the superior knowledge, training, attention, experience and adroitness of the player which is reflected in users action to achieve the winning outcome such as knowledge and understanding of the specific category, cognitive skills, accuracy, time management, practice and familiarity with the point systems and rules of the game.**

#### Word Search

- 4.11. We note that word search is a time-based game where players locate words in a puzzle. The game of word search principally relies on the player's ability to spot words arranged in various orientations.
- 4.12. In order to play and achieve a successful outcome in the game of word search, a user is required to have various skill sets such as vocabulary skills, pattern recognition, cognitive skills, time management, practice, accuracy.





- 4.13. Therefore, in light of the parameters laid down by the SC in Satyanarayana Case & Lakshmanan Case as discussed in paragraph 3.11, **the game of word search can be regarded as game of skill, unless specifically prohibited by state legislations, as success in the game is principally dependent upon the superior knowledge, training, attention, experience and adroitness of the player which is reflected in users action to achieve the winning outcome such as vocabulary skills, pattern recognition, cognitive skills, time management, practice, accuracy.**

#### Droid-O

- 4.14. We note that the game requires the player to take on the role of a protagonist and dodge the extraterrestrial bodies in an inter-galactic setting. This game, like other video and personal computer games, requires a very high degree of hand-eye coordination on the part of the player and requires that he familiarize himself with the rules of the game to excel. Also, a player would tend to improve with practice.
- 4.15. In order to play and achieve a successful outcome in the game of droid-o, a user is required to have various skill sets such as attention, precision, quick decision making, eye-hand co-ordination, using tactics to dodge the extraterrestrial bodies.
- 4.16. Therefore, in light of the parameters laid down by the SC in Satyanarayana Case & Lakshmanan Case as discussed in paragraph 3.11, **the game of droid-o can be regarded as game of skill, unless specifically prohibited by state legislations, as success in the game is principally dependent upon the superior knowledge, training, attention, experience and adroitness of the player which is reflected in users action to achieve the winning outcome such as attention, precision, quick decision making, eye-hand co-ordination, using tactics to dodge the extraterrestrial bodies.**
- 4.17. We understand that the software used by the Company in offering casual games generates true random outcome and it is designed in a manner which is free from the manipulation and control of both the gaming developers and gaming providers. Basis this assumption and the SC decision in Lakshmanan case, **these casual games which are offered on the Platform can be considered to be games of skill unless specifically prohibited by state legislations.**

#### Card Games: Analysis

##### Statutory Position

- 4.18. Most State Enactments as well as the Public Gambling Act, 1867 does not contemplate any specific legal position, however, it may be relevant to note that the States of West Bengal, Nagaland and Meghalaya have specifically dealt with rummy under their respective legislations.





- 4.19. The West Bengal Gambling and Prize Competitions Act, 1957 in its definition of gaming includes wagering and betting but provides for a specific exemption for rummy. Similarly, Nagaland Gaming Act and Meghalaya Gaming Act lists 'rummy' as game of skill.
- 4.20. Notably, the states of **Kerala, Telangana, Andhra Pradesh and Karnataka** by amending their respective legislations have either imposed a prohibition on Betting Games or expanded the scope of games of chance, which has resulted in the blanket ban on all Betting Games including those where skill outweighs chance. Further, the state of Kerala vide amendment made to Kerala Gaming Act, 1960 in the year 2021 banned 'online rummy when played for stakes'.

Judicial Position

- 4.21. However, applying the principles laid down by the SC in Satyanarayana Case & Lakshmanan Case, the High Court of Kerala ("**Kerala HC**") in *Head Digital Works Private Limited v State of Kerala [(2021) 6 KLT 166]* quashed the aforesaid amendment made to the Kerala Gaming Act, 1960 and held it to be arbitrary, illegal and violative of fundamental rights enumerated under Article 19(1)(g) and 14 of the Indian Constitution. The Kerala HC went on to hold that, 'the game of online rummy will also be a 'game of skill' and online rummy played either with stakes or without stakes remains to be a 'game of skill'.' Presently, the State Government of Kerala has appealed this judgment before the division bench of the Kerala HC and is currently pending.
- 4.22. Further, the High Court of Karnataka ("**Karnataka HC**") in *All India Gaming Federation v State of Karnataka [2022 (2) AKR 422]*, while striking off the amendment to the Karnataka Police Act, 1963 which banned and prohibited online gaming with stakes in the state of Karnataka held that, 'the games of chance do not enjoy any constitutional protection since they constitute as criminal acts. However, games of skill by their very nature stand on a different footing.' On similar lines, The High Court of Madras ("**Madras HC**") in *Jungle Games India Private Limited v State of Tamil Nadu [AIR 2021 Mad 252]* ("**Jungle Games Case**") struck down the amendment to the Tamil Nadu Gaming Act, 1960 and held that, '...rummy.... is game of skill as they involve considerable memory, working out of percentages, the ability to follow the cards on the table and constantly adjust to the changing possibilities of the unseen cards.' At present, both the state of Tamil Nadu and Karnataka have appealed their respective High Court's judgement before SC, which have been clubbed together and are pending in the SC. However, during pendency of such appeal, the state of Tamil Nadu enacted Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act, 2022 ("**Tamil Nadu Gaming Act**") prohibiting online gambling and online games of chance including rummy and poker, played for money or other stakes which was challenged by the online skill gaming companies in Madras HC. Later, on November 09, 2023, while refusing to strike down the Tamil Nadu Gaming Act in its entirety, Madras HC in *All India Gaming Federation v. the State of Tamil Nadu, 2023 [SCC OnLine Mad 6973]* held that the prohibition would apply only to games of chance and not to games of skill such as rummy and poker.







4.23. The amendments done by Government of Telangana to the Telangana Gaming Act, 1974 and Andhra Pradesh to Andhra Pradesh Gaming Act, 1974 are pending before their respective High Courts.

**a) Rummy**

4.24. We note that rummy is a card game played by two to four players, where the objective is to meld cards into valid sets or runs. To win the game, the user needs to build melds which can be either sets or runs (such as colour sequence), and it requires the user to memorize the fall of cards and exercise his skill in holding and discarding of the Cards which dominates the influence of chance.

4.25. Notably, there is an element of chance in the game of rummy as the cards which are dealt to each player are not according to any set pattern. However, in order to play and achieve a successful outcome in the game of rummy, a user is required to have various skill sets, which includes:

- (i) Analysis of the cards in hand and keeping a close watch on opponents to understand the strategy and take decisions accordingly.
- (ii) Calculating the value of their cards to calculate the percentage they obtain a specific card.
- (iii) Memorizing the fall of cards and employing skill in discarding and holding cards.
- (iv) Predicting the possibilities of unseen cards and strategizing the game play accordingly.

Therefore, the game of rummy requires various skill sets such as analysing cards, memory, working out percentages, ability to follow cards, predicting and strategizing the moves, decision-making etc. which is dependent on the superior knowledge, training, attention, experience and adroitness of the player.

4.26. Therefore, in our considered opinion, basis the present factual background, although there exists an element of chance as the distribution of cards is not according to any set pattern, however, in light of the parameters laid down by the SC in Satyanarayana Case & Lakshmanan Case as discussed in paragraph 3.11, **the game of rummy can be regarded as game of skill, unless specifically prohibited by state legislations, as success in the game is principally dependent upon the superior knowledge, training, attention, experience and adroitness of the player which is reflected in users action to achieve the winning outcome such as analysing cards, memory, working out percentages, ability to follow cards, predicting and strategizing the moves, decision-making.**

**b) Court Piece Pro**





- 4.27. We note that court piece pro is a four-player card game played over four rounds, where players select trumps and place bids based on their assessment of their chances of having the winning hand. The player with the highest score after four rounds wins. Typically, the main objective of the court piece card game is to be the first player or team to win a certain number of rounds, typically seven. Tricks are usually won by having the highest-ranking card in the leading suit.
- 4.28. Notably, there is an element of chance in the game of court piece pro as the cards which are dealt to each player are not according to any set pattern. However, in order to play and achieve a successful outcome in the game of court piece pro, a user is required to have various skill sets, which includes:
- (i) Analysing and assessing the cards in hand and strategically deciding the number of hands that the user can make, in the beginning of the gameplay.
  - (ii) Predicting the possibilities of unseen cards and strategizing the game play accordingly.
  - (iii) Memorizing the fall of cards and employing skill in making hands while discarding and holding cards.
- 4.29. Akin to the skills as discussed in the game of rummy, the game of court piece pro includes various skill sets such as analysing the cards, memory, ability to follow cards, predicting and strategizing the moves, strategic decision-making, assessing all probabilities etc. which is dependent on the superior knowledge, training, attention, experience and adroitness of the player. Therefore, legal principles as laid down in paragraph 3.11 for the game of rummy can be applied to the game of court piece pro.
- 4.30. Therefore, in our considered opinion, basis the present factual background, although there exists an element of chance as the distribution of cards is not according to any set pattern, however, in light of the parameters laid down by the SC in Satyanarayana Case & Lakshmanan Case as discussed in paragraph 3.11, **the game of court piece pro can be regarded as game of skill, unless specifically prohibited by state legislations, as success in the game is principally dependent upon the superior knowledge, training, attention, experience and adroitness of the player which is reflected in users action to achieve the winning outcome such as analysing the cards, memory, ability to follow cards, predicting and strategizing the moves, strategic decision-making, assessing all probabilities.**

#### Fantasy Sports: Analysis

##### Statutory Position

- 4.31. In terms of legal landscape of fantasy sports, most state legislations as well as the erstwhile Public Gambling Act does not contemplate any specific position. However, it may be relevant to note that Nagaland and Meghalaya have specifically dealt with fantasy sports under their respective legislations. However, the Nagaland Gaming Act and the Meghalaya Gaming Act





seeks to prohibit gambling and simultaneously provides for a license-based regime for offering games of skill. In addition to defining games of skill, the Nagaland Gaming Act and Meghalaya Gaming Act provides for list of skill-based games which specifically mentions 'virtual team selection games' and 'virtual sport fantasy league games' as game of skill.

Judicial Position

4.32. Applying the principles laid down by the SC in Satyanarayana Case and Lakshmanan Case, the High Court of Punjab & Haryana ("P&H High Court") in the case of *Varun Gumber v. Union Territory of Chandigarh and Ors.* [CWP No. 7559 OF 2017] ("**Varun Gumber Case**") held that the fantasy sports offered by the Dream 11 is a game of skill. The P&H High Court made the following observations: -

- (i) Drafting a virtual team and playing fantasy sports involves material and considerable skill which is a determinative factor in the results of the game.
- (ii) The element of skill required is predominant which requires the user to exercise superior knowledge, judgement, attention and adroitness.
- (iii) Assessment & evaluation of the relative worth of all the players available for selection is required.
- (iv) Evaluation of the gaming rules required while evaluating a player's statistics as well as the strengths and weaknesses of such players.

4.33. Further, the SC has upheld this position and has dismissed the Special Leave Petition (SLP) against the judgement passed by the High Court of Rajasthan in *Chandresh Sankhla v. the State of Rajasthan* [CWP No. 6653/ 2019], wherein it has been held that online fantasy sports are games of skill and not betting or gambling. Therefore, **in light of the judicial pronouncements as mentioned above, fantasy sports are treated as 'games of skill' and hence are out of the purview of gambling.**

4.34. The Platform offers the following fantasy games: (i) Clash X (for Cricket, Football and Kabaddi) and (ii) FanBattle (only for Cricket)

4.35. We note that Clash X is a fantasy cricket or sports model where users can create their fantasy teams by selecting players in different categories like batsmen, bowlers, wicketkeepers, and all-rounders, and challenge another player to accept his challenge and compete. The users then go against each other based on the performance of their selected players in a real-life cricket match. Each selects a total of 4 players for their fantasy team from four categories: batsman, bowler, wicketkeeper, and all-rounder. Further, users can change their selected players before the start of the match which allows them to adapt to team changes, injuries, or other factors. The combo with the highest points wins the battle.





- 4.36. Further, FanBattle is a fantasy cricket model where users engage in battles featuring predetermined combinations of five players in a cricket match. Users invest in a combo that they believe will perform well, and points are awarded to each player based on their actual performance in the match. Unlike traditional fantasy cricket, there are no designated captains or vice-captains in the combos; instead, each player contributes points independently, if any player in a combo is not playing, that player is replaced by a player from the playing 11, in this case, users can change their combos if they want. The combo with the highest cumulative points at the end of the match emerges as the winner.
- 4.37. As per the factual background mentioned in paragraph 4.34 to 4.36, the fantasy sports offered by the Platform involves the drafting of the virtual team i.e., selection of 4 players which requires the user to acquaint himself with the players of multiple teams and make an assessment of the relative worth of each player as against all the players available for selection which involves the consideration of factors such as past performances, current form, injuries. Such an assessment is based on the user's knowledge of the sports and the players such as strengths and weaknesses of players, opportunity cost of selecting a particular player, current form of the player, statistic trends. Post-election of the team players to the virtual team, its success is further dependent upon the user's interaction in the game in terms of monitoring the scores accumulated by each selected player and the performance of the team as a whole and thereby making substitutions wherever required, basis the factors as discussed above which includes past performance, statistics, form of the player etc.
- 4.38. Therefore, in the present case, 'drafting' a virtual team involves material and considerable skills by the user which acts as a determinative factor in the results of the game and winning the outcome thereafter. Further, in terms of 'playing' the fantasy sport offered by the Platform, skill outweighs the element of chance as the user while interacting in the game post the drafting of the virtual team, exercises superior knowledge, judgement, attention and adroitness in managing the virtual team and playing the fantasy sport. Hence, in reference to the discussion above, specifically the SC decision in Varun Gumber Case, the fantasy cricket offered by the Platform can be categorized as game of skill unless specifically prohibited by state legislations. Similarly, the other fantasy games offered by the Platform i.e., fantasy football and fantasy kabaddi can also be categorized as games of skill.

#### E-sports: Analysis

##### Statutory Position & Judicial Position

- 4.39. As mentioned in paragraph 3.13, most state legislations as well as the Public Gambling Act do not contemplate any specific legal position with respect to e-sports. However, Nagaland Gaming Act and Meghalaya Gaming Act provide for a list of skill-based games which specifically mentions 'virtual adventure games'; 'virtual combat games'; 'virtual mystery and detective games' etc. as game of skill. Furthermore, there is no authoritative adjudication by





the HC or the SC regarding e-sports. However, as mentioned in paragraph 3.12, the same has been officially recognized by the Central Government.

- 4.40. We understand that BGMI is a virtual combat game in which players compete to be the last one standing. Each game starts with players parachuting from a plane onto the ground. Players then search buildings, ghost towns, and other locations for weapons, vehicles, armour, and other items. Every few minutes, the map's playable area shrinks towards a random location, with any player caught outside the safe zone taking incremental damage and eventually being eliminated if the safe zone is not entered in time.
- 4.41. As elucidated in the paragraph 3.13, the absence of specific legislation concerning e-sports necessitates a thorough examination of the particular game for which tournaments are supposed to be hosted by the Company to ascertain its permissibility within India, from the standpoint of gambling legislations. In order to play and achieve a successful outcome in the game of BGMI, a user is required to have various skill sets such as attention, precision, quick decision making while analysing the right time to land in the game, eye-hand co-ordination and shooting skills in combating with the enemies on the ground, strategic positioning of the players in the game, choosing the right equipment.
- 4.42. Therefore, in light of the parameters laid down by the SC in Satyanarayana Case & Lakshmanan Case as discussed in paragraph 3.11, **the game of BGMI can be regarded as game of skill, unless specifically prohibited by state legislations, as success in the game is principally dependent upon the superior knowledge, training, attention, experience and adroitness of the player which is reflected in users action to achieve the winning outcome such as attention, precision, quick decision making, eye-hand co-ordination, shooting skills, strategic positioning, decision-making in respect of equipment.**

#### Conclusion

- 4.43. In view of the above analysis, it can be considered that casual games (i.e., quizzes, word search, droid-o), card games (i.e., rummy and court piece pro), fantasy sports (FanBattle (only for cricket) and clash X (for cricket, football and kabaddi) and e-sports, **as offered by the Platform, falls under the category of game of skill, unless specifically prohibited by state legislations, as per paragraph 3.4.**
- 4.44. Further, in case of ludo, so long as it can be factually established that the game involves a predominant element of skill, and therefore qualifies as a 'game of skill', such game would fall outside the ambit of 'gambling' under state legislations and consequently, the Platform would be permitted to offer such variants, unless specifically prohibited by state legislations, as per paragraph 3.4.
- 4.45. Therefore, basis our analysis in paragraph 3.4, casual games (i.e., ludo, quizzes, word search, droid-o), card games (i.e., rummy and court piece pro) fantasy games (FanBattle (only for cricket) and clash X (for cricket, football and kabaddi) and e-sports offered by the Platform can





be offered without a license under the relevant gaming laws in the states such as Andaman & Nicobar Islands, Bihar, Chandigarh, Chhattisgarh, Dadar & Nagar Haveli, Daman & Diu, Delhi, Goa, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Tamil Nadu, Jharkhand etc., as their state legislations provide an exemption to 'games of mere skill'.

- 4.46. The casual games (i.e., ludo, quizzes, word search, droid-o), card games (i.e., rummy and court piece pro) fantasy games (FanBattle (only for cricket) and clash X (for cricket, football and kabaddi) and e-sports offered by the Platform are not allowed to be offered in the states of Andhra Pradesh, Arunachal Pradesh, Assam, Orissa and Telangana.
- 4.47. Furthermore, casual games (i.e., ludo, quizzes, word search, droid-o), card games (i.e., rummy and court piece pro) fantasy games (FanBattle (only for cricket) and clash X (for cricket, football and kabaddi) and e-sports may be offered with license in the states of Meghalaya, Nagaland, Sikkim, West Bengal as they follow a license-based regime which is subject to licensing requirements.

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#### ASSUMPTIONS & QUALIFICATIONS

- (i) The memorandum is addressed only to Techbelievers Technologies Pvt Ltd. and is solely for its benefit and may not be relied upon by any other person or for any other purpose. We accept no responsibility to any other party.
- (ii) This memorandum has been prepared solely on the basis of facts narrated and recorded in Paragraphs I & II of this memorandum and detailed written descriptions of games shared with us. Any change or amendments in any of the facts may require a modification in all or part of our analysis in this memorandum.
- (iii) We have not provided any advice or expressed any view other than on the specific issues raised and therefore our advice is limited to that extent. Our advice is based on the fact that all acts enumerated in the background have been legally and validly done.
- (iv) Our views are based on our interpretation of the prevailing law and Government policy, as applicable, and there is no assurance that a court or regulatory body or other governmental authority will not take a position contrary to our advice.
- (v) The aggregate liability of the Firm and the Firm's partners, retainers, counsel, employees and off-counsel, and/or any of them, to the Client for any and all claims, losses, costs or damages of any nature whatsoever resulting from or in any way related to the professional services rendered with respect to any assignment pursuant to this engagement letter shall not exceed the total professional fees we have received, with respect to such assignment. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

*Luthra and Luthra*

