

INDEX

S. No.	PARTICULARS	PAGES
1.	Counter Affidavit on behalf of Facebook India Online Services Private Limited, Respondent No. 4	
2.	Annexure R- 4 / 1: Copy of Statement of Rights and Responsibilities, publicly available at www.facebook.com/terms .	
3.	Annexure R- 4 / 2: Copy of Data Policy, publicly available at www.facebook.com/policy .	
4.	Annexure R- 4 / 3: Copy of Certificate of Incorporation of Facebook India Online Services Private Limited.	
5.	Annexure R- 4 / 4: Copy of Memorandum of Association of Facebook India Online Services Private Limited.	
6.	Annexure R- 4 / 5: Copy of Articles of Association of Facebook India Online Services Private Limited	

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (CIVIL) NO. 804 OF 2017

[Arising from the final judgment dated 23.09.2016 passed by the Hon'ble
Delhi High Court in Writ Petition (C) No. 7663/2016]

IN THE MATTER OF:

Karmanya Singh Sareen & Anr. ...Petitioners

Versus

Union of India & Ors. ...Respondents

COUNTER AFFIDAVIT OF RESPONDENT NO. 4 FACEBOOK INDIA

ONLINE SERVICES PRIVATE LIMITED

I, Ankhi Das, aged about 46 years, daughter of Bimal Ranjan Das, power of attorney holder of Facebook India Online Services Private Limited ("Facebook India"), residing at 1st Floor Sonali Apartments, 2 Siri Fort Road, New Delhi 110 049, do hereby solemnly affirm and state as under:

1. I am the power of attorney holder of Facebook India and am competent and authorized to swear and depose the present Counter-Affidavit ("Affidavit") on behalf of Facebook India. I have read the Special Leave Petition ("Petition") filed by the Petitioners and understand its contents.
2. This Affidavit is submitted pursuant to this Hon'ble Court's order dated February 6, 2017 in this Petition regarding the final judgment dated

September 23, 2016 issued by the Hon'ble Delhi High Court in Writ Petition (C) No. 7663/2016, titled "Karmanya Singh Sareen & Anr. v. Union of India & Ors". Facebook India reserves the right to file additional affidavits in reply to the Petition, as appropriate.

3. In the Petition, the Petitioners seek, *inter alia*, the following relief:

Main Relief:

"leave to appeal against the impugned judgment dated 23.09.2016 in WP (C) No. 7663/2016 passed by the Ld. Division Bench of the Hon'ble Delhi High Court."

Interim Relief:

"ad-interim ex-parte stay of the impugned judgment dated 23.09.2016 in WP (C) No. 7663/2016 passed by the Ld. Division Bench of the Hon'ble Delhi High Court."

4. It is most respectfully submitted that the Petition is not maintainable against Facebook India as the information shared by the Respondent No. 2, i.e., WhatsApp Inc. ("WhatsApp"), as a result of the update to the WhatsApp Terms of Service and Privacy Policy dated August 25, 2016, is not received by Facebook India. For the reasons stated herein, the present Petition deserves to be dismissed against Facebook India.
5. Even otherwise, as per the terms governing the use of the Facebook service known as the Statement of Rights and Responsibilities ("SRR"), when registering to use the Facebook service, users located outside of the United States and Canada, including Indian users, enter into the SRR with Facebook Ireland Limited ("Facebook Ireland"), while users

located in the United States and Canada enter into the SRR with Facebook, Inc. A copy of the SRR as readily and freely available on the Facebook service is annexed hereto as ANNEXURE R-4 / 1 from Pages () to (). This is echoed by the Facebook Service's Data Policy. A copy of the Data Policy as readily and freely available on the Facebook service is annexed hereto as ANNEXURE R-4 / 2 from Pages () to ().

6. Facebook India does not own, operate, control, or host the Facebook service or the WhatsApp service, or the servers that host the Facebook service or the WhatsApp service. Rather, Facebook India has been incorporated to carry on a narrow subset of business in India, including, *inter alia*, online support services including marketing support, technical support, and sales support. The Certificate of Incorporation, the Memorandum of Association, and the Articles of Association of Facebook India are annexed hereto and marked as ANNEXURE R-4 / 3 from Pages () to (), ANNEXURE R-4 / 4 from Pages () to (), and ANNEXURE R-4 / 5 from Pages () to (), respectively.
7. It is respectfully submitted that, for the reasons set forth herein, the Petitioners have incorrectly arrayed Facebook India as a respondent and, as a consequence, the Notice is inadvertently and wrongly issued to Facebook India. Facebook India is not an appropriate entity to respond to the Petition.
8. For the reasons stated above, Facebook India does not consider it appropriate to file paragraph-wise responses to the averments and

allegations made in the Petition and accompanying Interim Application for Directions. Nevertheless, Facebook India remains willing to assist this Hon'ble Court to the extent possible.

9. Since there was no notice issued in the Court below, no facts were pleaded or Affidavit was filed before the Court below.
10. It is most humbly prayed that this Hon'ble Court may be pleased to take the present Affidavit on record and dismiss the Petition in view of the foregoing.

SOLEMNLY AFFIRMED AT NEW DELHI ON THIS ____ DAY OF _____, 2017

DEPONENT

VERIFICATION

I, the Deponent above named, do hereby verify the contents of the aforesaid Affidavit are true and correct based on the records and no part of it is false and nothing material has been concealed therefrom.

Verified by me at New Delhi on this the ____ day of _____, 2017.

DEPONENT