

FUTURE COUPONS PRIVATE LIMITED & ORS. A
v.
AMAZON.COM NV INVESTMENT HOLDINGS LLC & ORS.
(Civil Appeal Nos. 859-860 of 2022)
FEBRUARY 15, 2022 B
**[N. V. RAMANA, CJ, A. S. BOPANNA AND
HIMA KOHLI, JJ.]**

Companies Act, 2013 – ss. 230 to 232 – Continuation of proceedings before NCLT – Aggrieved by the sale transaction between FRL-RG, respondent initiated an arbitration proceeding before the Singapore International Arbitration Center (SIAC) – Respondent obtained an injunction order from an Emergency Arbitrator appointed in pursuance of the arbitration agreement between the parties, by which FRL was injunction from taking any steps to materialize the deal, including injunction against proceedings before various Regulatory authorities – Meanwhile, CCI and SEBI approved the composite scheme proposed following the suit filed by the appellant-FRL – Thereafter, appellant-FRL filed sanction of the composite scheme of arrangement under the provisions of ss.230 to 232 of the Companies Act before NCLT and the same was pending – Supreme Court in SLP(civil) No. 13556-57 of 2021 by an interim order directed all the authorities i.e. NCLT, CCI and SEBI not pass any order for a period of four weeks – In W.P.(c) No.48 of 2022 before the Supreme Court, petitioner submitted that the NCLT proceedings for grant of final approval of the proposed scheme ought to continue as the culmination in the final order would take six to eight months for completing all the steps as required under the Companies Act, 2013 – Now, in the instant case, it was submitted that FRL is incurring expenditure everyday and there is an imminent threat of insolvency – Any delay in the proceedings before the NCLT will have serious ramifications and virtually render the agreement between FRL-RG redundant – Furthermore, the livelihood of employees of FRL was also at stake – Also, the continuation of the NCLT proceedings will not adversely affect respondent in any manner – Held: Considering the nature of the dispute and the fact that the proceedings before the NCLT are at advanced stage (at stage serial No.8, as per pleadings) along with H

- A *the fact that the appellant has incurred certain expenditure with respect to such proceedings, the appellant is given liberty to approach the High Court by filing an application seeking continuation of the NCLT proceedings beyond the stage at serial no. 8.*
- B CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 859-860 of 2022.

From the Judgment and Order dated 02.02.2021 and 18.03.2021 of the High Court of Delhi at New Delhi in OMP (ENF.) (COMM.) No. 17 of 2021.

- C With Civil Appeal Nos. 861-862, 864 and 863 of 2022.
Harish Salve, Mukul Rohatgi, K. V. Vishwanathan, Gopal Subramanium, Ranjit Kumar, Aspi Chinoy, Gourab Banerji, Amit Sibal,
- D Nakul Dewan, Sr. Advs., Ameet Naik, Raghav Shankar, Abhishek Kale, Ms. Madhu Gadodia, Harshvardhan Jha, Mrs. Yugandhara Pawar Jha, Pankaj Patel, Mahesh Agarwal, Rishi Agarwala, Karan Luthra, Pranjit Bhattacharya, Rishabh Parekh, E. C. Agrawala, Ashok Panigrahi, Ms. Geetanjali, Nabab Singh, Nagarkatti Kartik Uday, Ramesh Babu M. R., Ms. Manisha Singh, Ms. Nisha Sharma, Advs. for the appearing parties.

- E The following Order of the Court was passed:

ORDER

1. Before we deal with the issue at hand, it may be necessary to recount brief facts. Aggrieved by the sale transaction between Future F Retail Limited (FRL)-Reliance Group, Amazon initiated an arbitration proceeding before the Singapore International Arbitration Center (SIAC), in terms of Future Coupons Pvt. Ltd. (FCPL)-Amazon agreements.
2. Amazon filed an application for emergency relief with the registrar of the SIAC court of arbitration seeking interim prohibitory injunction to prevent FRL and FCPL from taking further steps in the aforesaid transaction with the Reliance group. Parallelly, FRL filed a suit before the Delhi High Court in CS(COMM) No. 493 of 2020, against amazon for tortious interference in the scheme for the sale of assets.
3. Emergency Arbitrator, by order dated 25.10.2020, injunctioned H FRL from taking any steps to materialize the deal, including injunction

against proceedings before various Regulatory authorities. However, by order dated 21.12.2020, Delhi High Court came to a conclusion that Regulatory authorities had to pass appropriate orders considering the representation of both FRL and Amazon, before granting approvals.

4. In the meanwhile, CCI and SEBI approved the Scheme following the filing of the FRL suit. Further, FRL filed sanction of the composite Scheme of Arrangement under the provisions of Section 230 to 232 of the Companies Act, 2013 before National Company Law Tribunal (NCLT) for its consideration on 26.01.2021, which is pending.

5. Amazon filed a Petition for enforcement of Emergency Arbitrator award before the Delhi High Court on 25.01.2021 in OMP (ENF) (COMM.) No.17 of 2021. Vide orders dated 02.02.2021 and 18.03.2021, Delhi High Court passed orders *inter alia*, enforcing the emergency award.

6. When the matter was carried by Amazon to this Court in SLP (C) No. 2856-57 of 2021, *vide* order dated 22.02.2021, this Court allowed the NCLT proceedings to continue without culminating in a final order of Sanction of Scheme.

7. However, as noted earlier, this Court by final order dated 06.08.2021, did not adjudicate the merits of the case and limited its reasoning only to answering the legal questions concerning the maintainability of a first appeal against an order of the learned Single Judge in an enforcement proceeding.

8. Aggrieved by the merits of the orders of the learned Single Judge dated 02.02.2021 and 18.03.2021, FCPL and FRL filed appeals directly before this Court in SLP (C) No. 13547-48 of 2021 and SLP (C) No. 13556-57 of 2021 respectively. This court by interim order dated 09.09.2021, passed the following order:

“Heard learned senior counsel for the parties at length and carefully perused the material placed on record.

Issue notice.

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Taking into consideration the submissions advanced by the learned senior counsel for the parties and particularly the fact that the parties have approached the Singapore International Arbitration Centre for vacating the Emergency Award passed by the Emergency Arbitrator and the

- A **arguments in the said matter have been concluded and the order is going to be pronounced shortly,** we think it fit to balance the interest of both the parties by staying all further proceedings before the Delhi High Court for the time being. Ordered accordingly. **We further direct to all the authorities i.e. NCLT, CCI and SEBI not to pass any final order for a period of four weeks from today. This order has been passed with the consent of both the parties.**
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List these matters after four weeks.”

(Emphasis supplied)

- C 9. Thereafter, the applications filed by FRL and FCPL for vacating the award of the Emergency Arbitrator was dismissed by the Arbitral Tribunal by order dated 21.10.2021. The aforesaid order of the Arbitral Tribunal, rejecting the vacate application, was challenged by FCPL and FRL before the Delhi High Court in Arb. Pet. No. 63 of 2021 and Arb. Pet. No. 64 of 2021. The Delhi High Court, while issuing notice in both the matters by orders dated 29.10.2021, rejected immediate relief to FRL. Aggrieved by the aforesaid orders, FCPL and FRL have approached this Court in SLP (C) Nos. 18089 and 18080 of 2021 respectively.
- E 10. This Court by a detailed order dated 01.02.2022, passed the following order in SLP (C) Nos. 13547-13548, 13556-13557, 18089 and 18080 of 2021 :

“Leave granted.

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- F “I. Setting aside of impugned orders dated 02.02.2021 (1st impugned Order) and 18.03.2021 (2nd impugned order) in OMP (ENF)(Comm.) No. 17 of 2021.
- G II. Setting aside of 3rd impugned order dated 29.10.2021 in Arb. A. (Comm.) No. 64 and 63 of 2021. The learned Single Judge shall reconsider the issues and pass appropriate orders on its own merits, uninfluenced by any observation made herein.”
- H **At the time of the arguments of these matters, learned Senior Counsel for the appellants argued vehemently for continuation of proceedings before the NCLT during the**

pendency of the above remanded matters. After reserving these matters, W.P. (C) No. 48 of 2022 was filed by Future Retail Limited and mentioned before this Bench on 27.01.2022. We are of the opinion that the facts pleaded and arguments raised in the writ petition may have a bearing on the above-mentioned relief. We, therefore, consider it apposite to defer our orders in this context. We will consider this relief at the time of hearing of aforesaid writ petition.

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Post these matters along with W.P. (C) No. 48 of 2022.

After the pronouncement of this judgment, learned Senior Counsel for the appellant, Mr. Harish Salve sought posting of all these matters before one Bench. In view of the prayer made, we request the Chief Justice of Delhi High Court to post all these matters before one Bench.”

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11. On 03.02.2022, when the matter was taken along with W.P. (C) 48 of 2022, learned Senior Counsel, Mr. Harish Salve appearing for the petitioners submits that the NCLT proceedings for grant of final approval of the proposed Scheme ought to continue as the culmination in the final order would take six to eight months for completing all the steps as required under the Companies Act, 2013. He took us through the written submissions filed on 09.01.2022, wherein the following stages were listed:

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S.No.	Process
1	Pronouncement of Order by NCLT, Mumbai bench
2	Receipt of admission stage order from NCLT
3	Dispatch of Notice/ addendum to Notice
4	Advertisement of Notice in Newspaper in Form CAA-2 (not less than 30 days before the date of meeting)
5	Notice u/s. 230(5) to the regulatory authorities
6	Filing of requisite documents with ROC, RD and OL
7	Affidavit to be filed not less than 7 days before the scheduled date of meetings

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A	8	Meetings of Shareholders and Creditors 1. First date of the Meetings 2. Last date of Meetings
	9	Chairman report in Form CAA.4 to be filed with NCLT
B	10	Filing of Petition with NCLT in Form CAA.5 within 7 days of Chairman Report
	11	Admission of Petition and determination of date of final hearing by NCLT
C	12	Advertisement in newspaper of final hearing of petition (not less than 10 days before the final hearing)
	13	Notice of final hearing also to be given to the regulators/ objectors from whom the representation is received
D	14	Filing of Affidavit confirming service of notice, publication of advertisement (at least 3 days before the hearing)
	15	Final hearing of petition by NCLT for approval of the scheme
	16	After hearing, passing of final order sanctioning the scheme

E Mr. Salve stated that it would take six to eight months for completing all the fifteen steps set out above. He finally submitted that it is only when the final Scheme is sanctioned by the NCLT that the retail assets of FRL would get alienated. So long as the final order of sanctioning is not passed by the NCLT, Amazon is not prejudiced in any manner.

F 12. Mr. Mukul Rohatgi, learned Senior Counsel appearing on behalf of FCPL has submitted that the Competition Commission of India has revoked initial Amazon-FCPL share purchase, which effectively nullifies the arbitration. He submits that these facts have bearing on the continuation of the proceedings which needs to form a part of consideration. Accordingly, he submits that he is willing to argue on the aforesaid consideration before the High Court in remand.

G 13. On the contrary, Mr. Gopal Subramanium, learned Senior Counsel appearing for Amazon submitted that up till now FRL has conducted NCLT proceedings in contravention of the order of the Emergency Arbitrator as well as the Enforcement order passed by the learned Single Judge of Delhi High Court in OMP (ENF) (Comm) No.

17 of 2021. He stated that the order of this Court dated 01.02.2022 has clearly remanded the matter for reconsideration by the High Court. If this Court were to grant any ad-interim relief, then this Court would be binding the High Court as to the possible view to be taken thereafter.

14. Mr. Aspi Chinoy, learned Senior Counsel appearing for the Amazon submits that FRL and FCPL are not entitled for any interim relief as they have not challenged the initial order of the Emergency Arbitrator, which is binding on them. Lastly, Mr. Ranjit Kumar, learned Senior counsel appearing for the Amazon, submits that FRL has already undertaken to complete eight out of the fifteen steps listed above.

15. The aforesaid submission, is also accepted by Mr. Harish Salve, learned Senior Counsel appearing for FRL, that the proceedings before the NCLT have reached the stage listed at serial no. 8 (Meeting of the shareholders and creditors) as indicated in the abovementioned chart. He further contended that it would take 6-8 months to complete the entire process and for actual sanctioning of the Scheme by the NCLT. In this context, if an order is passed, by the Arbitral Tribunal, in favour of FRL, then it will be difficult to initiate fresh proceedings before NCLT at that stage. It is his submission that FRL is incurring expenditure everyday and there is an imminent threat of insolvency. Any delay in the proceedings before the NCLT will have serious ramifications and virtually render the agreement between FRL-Reliance group redundant. Furthermore, the livelihood of 22,000 employees of FRL are also at stake. In the same breath, he has submitted that continuation of the NCLT proceedings will not adversely affect Amazon in any manner.

16. In view of the above submissions, we grant liberty to FRL to approach the High Court by filing an application seeking continuation of the NCLT proceedings beyond the 8th Stage (Meeting of Shareholders and creditors). Accordingly, we request the learned Single Judge of the Delhi High Court, to consider all the contentions raised by both the parties in this regard and pass appropriate order as to continuation of the NCLT proceedings beyond the stage mentioned at serial no. 8 and other regulatory approvals expeditiously, uninfluenced by any observations made herein.

17. Civil Appeals are disposed of in terms of the aforesaid order.