

Amazon.Com Nv Investment Holdings Llc vs Signature Not Verified Digitally ... on 2 February, 2021

Author: J.R. Midha

Bench: J.R. Midha

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ O.M.P(ENF)(COMM) 17/2021

AMAZON.COM NV INVESTMENT
HOLDINGS LLC

.... Petitione

Through: Mr. Gopal Subramaniam
Mr. Gourab Banerji, Mr. Rajiv Naya
Mr. Amit Sibal and Mr. Nakul
Dewan, Senior Advocates along with
Mr. Anand S. Pathak, Mr. Amit K.
Mishra, Mr. Shashank Gautam,
Ms. Sreemoyee Deb, Mr. Mohit
Singh, Mr. Harshad Pat
Mr. Promit Chatterjee, Mr. Shivam
Pandey, Ms. Kanika Singhal,
Ms. Saloni Agarwal, Ms. Didon
Misri, Advocates of P&A Law
Offices. Mr. Vijayendra Pratap
Singh, Mr. Rachit Bahl, Ms. Roopal
Singh, Mr. Abhijnan Jha, Mr. Priya
Ladoia, Mr. Aman Shar
Mr. Tanmay Sharma, Mr. Arnab Ray
and Mr. Vedant Kapur, Advocates fo
AZB & Partners. Mr. Pawan
Bhushan, Ms. Hima Lawrence,
Ms. Ujwala Uppaluri, Mr. Mohit
Pandey, Ms. Raka Chatte
Ms. Manjira Dasgupta, Mr. Aishvary
Vikram, Mr. Ambar Bhushan,
Mr. Vinay Tripathi, Ms. Anushka
Shah and Ms. Neelu Mohan,
Advocates

versus

Signature Not Verified
Digitally Signed

By:RAJENDER SINGH
KARKI

O.M.P(ENF)(COMM) 17/2021

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Signing Date:02.02.2021
18:41:00

FUTURE COUPONS PRIVATE
LIMITED & ORS.

..... Respond

Through: Mr. Vikram Nankani,
Advocate with Mr. Sumeet Nankani
Mr. Mahesh Agarwal, Mr. Rishi
Agrawala, Mr. Karan Luthra, Mr.
Pranjit Bhattacharyya and Mr. An
Banati, Advocates for respondent
Nos. 1, 3, 12 and 14
Mr. Harish Salve and Mr. Darius
Khambata, Senior Advocates with
Mr. Somasekhar Sund
Mr. Ameet Naik, Mr.
Shankar, Mr. Aditya
Mr. Tushar Hathi
Mr. Abhishek Kale, Ms. Madhu
Gadodia, Mr. Harshvardhan Jha an
Ms. Arshiya Sharda, Advocates fo
respondents Nos. 2, 15 and 16
Mr. Rohan Shah and Mr. Nakul
Mohta, Advocates for respondents
Nos. 4 to 11 and 13

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

ORDER

% 02.02.2021

1. All the parties have concluded their arguments. Order reserved.
2. Learned senior counsels for the petitioner submits that the respondents have deliberately and wilfully violated and are continuing further with the violation of the order dated 25 th October, 2020 of the Emergency Arbitrator and immediate interim order be passed to protect the petitioner's rights till the pronouncement of the reserved order. It is further submitted that any delay in the protection order would cause irreparable damage/harm to the petitioner.
3. During the course of the hearing, it was put to the respondents by this Court whether they are willing to withhold further action till the pronouncement of the order which was clearly declined by the respondents without even blinking. In that view of the matter, the petitioner's prayer for interim protection till pronouncement of the reserved order is taken up.
4. The petitioner has filed this petition under Section 17(2) of the Arbitration and Conciliation Act, 1996 read with Order XXXIX Rule 2A of the Code of Civil Procedure for enforcement of the order

dated 25 th October, 2020 passed by the Emergency Arbitrator.

5. The petitioner invested Rs.1431 crore on the clear understanding that respondent No.2 would be the sole vehicle for its retail business and its retail assets would not be alienated without Petitioner's consent and never to a Restricted Person, including the Mukesh Dhirubhai Ambani Group ("MDA Group") and respondents No.3 to 13 would continue to remain the controlling shareholders of respondent No.2. The respondents do not dispute that the agreements contain clauses restricting them from transferring the retail assets to the Restricted Person. However, the respondents have taken various steps/actions to transfer the retail assets to the restricted person, namely, MDA Group in violation of the order dated 25th October, 2020 and they are continuing with it.

6. The petitioner initiated the arbitration proceedings on 05th October, 2020 on the basis of the arbitration agreement contained in Clause 25.2.1 of the Shareholders Agreement dated 22nd August, 2019 which provides for reference and resolution of disputes by arbitration according to the Rules of Singapore International Arbitration Centre. Singapore International Arbitration Centre appointed Mr.V.K. Rajah as the Emergency Arbitrator on 05th October, 2020. On 09th October, 2020, the learned Arbitrator enquired from the respondents whether they were willing to maintain status quo till the adjudication of the application. However, upon failure of the respondents to give any assurance, the learned Emergency Arbitrator proceeded with the matter and completed the hearing on 16th October, 2020 and passed the order on 25th October, 2020. The learned Arbitrator examined all the contentions raised and passed a reasoned order. The findings of the learned Emergency Arbitrator are that respondent No.2 is a proper party to the arbitration clause and the proceedings have been properly commenced against all the respondents. The learned Arbitrator observed that the petitioner has built a strong prima facie case on merits by showing that its rights under the agreements have been apparently compromised by the respondents. The learned Emergency Arbitrator passed the following directions in para 285 of the order dated 25th October, 2020: -

"285. In the result, I award, direct, and order as follows:

(a) the Respondents are enjoined from taking any steps in furtherance or in aid of the Board Resolution made by the Board of Directors of FRL on 29 August 2019 in relation to the Disputed Transaction, including but not limited to filing or pursuing any application before any person, including regulatory bodies or agencies in India, or requesting for approval at any company meeting;

(b) the Respondents are enjoined from taking any steps to complete the Disputed Transaction with entities that are part of the MDA Group;

(c) without prejudice to the rights of any current Promoter Lenders, the Respondents are enjoined from directly or indirectly taking any steps to transfer/dispose/alienate/encumber FRL's Retail Assets or the shares held in FRL by the Promoters in any manner without the prior written consent of the Claimant;

(d) the Respondents are enjoined from issuing securities of FRL or obtaining/securing any financing, directly or indirectly, from any Restricted Person that will be in any manner contrary to Section 13.3.1 of the FCPL SHA;

(e) the orders in (a) to (d) above are to take effect immediately and will remain in place until further order from the Tribunal, when constituted; and

(f) the Claimant is to prove within 7 days from the date hereof a cross-undertaking in damages to the Respondents. If the parties are unable to agree on its terms they are to refer their differences to me qua EA for resolution; and

(g) the costs of this Application be part of the costs of this Arbitration."

7. The respondents are objecting to the enforcement of the order dated 25th October, 2020 passed by the Emergency Arbitrator on various grounds, inter alia, that the Emergency Arbitrator is not an Arbitrator/Arbitral Tribunal; the order dated 25th October, 2020 is not an order under Section 17(1) and is not enforceable under Section 17(2) of the Arbitration and Conciliation Act; respondent No.2 is not a party to the arbitration agreement; and the order dated 25th October, 2020 is a nullity.

8. This Court is of the prima facie view that the Emergency Arbitrator is an Arbitrator; the Emergency Arbitrator has rightly proceeded against the respondent No.2; the order dated 25th October, 2020 is not a nullity; the order dated 25th October, 2020 is an order under Section 17(1) of the Arbitration and Conciliation Act. This Court is of the view that the order dated 25th October, 2020 is appealable under Section 37 of the Arbitration and Conciliation Act. This Court is of the clear view that the order dated 25th October, 2020 is enforceable as an order of this Court under Section 17(2) of the Arbitration and Conciliation Act. The detailed reasons shall be given in the reserved order.

9. This Court is satisfied that immediate orders are necessary to protect the rights of the petitioner till the pronouncement of the reserved order. In that view of the matter, the respondents are directed to maintain status quo as on today at 04.50 P.M. till the pronouncement of the reserved order. The respondents are directed to file an affidavit to place on record the actions taken by them after 25th October, 2020 and the present status of all those actions, within 10 days. All the concerned authorities are directed to maintain status quo with respect to all matters in violation of the order dated 25th October, 2020 and shall file the status report with respect to the present status within 10 days of the receipt of this order. The other prayers of the petitioner shall be considered in the reserved order.

10. Copy of this order be given dasti under signatures of the Court Master to counsels for the parties. Copy of this order be also given dasti under signatures of the Court Master to Mr. Kirtiman Singh, learned Central Government Standing Counsel who shall send the same to all the concerned authorities dealing with the actions initiated by the respondents in violation of the order dated 25th October, 2020. The petitioner shall send the list of all the authorities to Mr. Kirtiman Singh, learned Central Government Standing Counsel within three days.

J.R. MIDHA, J.

FEBRUARY 02, 2021 rsk/dk