

Future Retail Ltd vs Amazon.Com Nv Investment Holdings Llc & ... on 8 February, 2021

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO(OS) (COMM) 21/2021

FUTURE RETAIL LTD.

..... Appe

Through: Mr.Harish Salve,
Khambata and Mr.Sandeep Sethi, Senior
Advocates with Mr.Somasekhar Sundaresan
Mr.Ameet Naik, Mr.Raghav Shankar, Mr.Ad
Mehta, Mr.Tushar Hathiramani, Mr.Abhish
Kale, Ms.Madhu Gadodia, Mr.Harshvardhan
and Ms.Arshiya Sharda, Advocates

Versus

AMAZON.COM NV INVESTMENT

HOLDINGS LLC & ORS.

..... Resp

Through: Mr. Gopal Subramaniam, Mr. Gourab Banerji, Mr.Rajiv Nayar, Mr.Amit Sibal, Mr.Anand S. Pathak and Mr.Nakul Dewan, Senior Advocates along with Mr. Amit K.Mishra, Mr.Shashank Gautam, Ms.Sreemoyee Deb, Mr.Mohit Singh, Mr.Harshad Pathak, Mr.Promit Chatterjee, Mr.Shivam Pandey, Ms.Kanika Singhal, Ms.Saloni Agarwal, Ms.Didon Misri, Mr.Vijayendra Pratap Singh, Mr.Rachit Bahl, Ms.Roopali Singh, Mr.Abhijnan Jha, Mr.Priyank Ladoia, Mr.Aman Sharma, Mr.Tanmay Sharma, Mr.Arnab Ray and Mr.Vedant Kapur, Mr.Rohan Jaitley, Mr.Pawan Bhushan, Ms.Hima Lawrence, Ms.Ujwala Uppaluri, Mr.Mohit Pandey, Ms.Raka Chatterji, Ms.Manjira Dasgupta, Mr.Aishvary Vikram, Mr.Ambar Bhushan, Mr.Vinay Tripathi, Ms.Anushka Shah and Ms.Neelu Mohan, Advocates for R-1(Amazon) Mr. Vikram Nankani, Sr. Advocate with Mr.Sumeet Nankani, Mr.Mahesh Agarwal, Mr.Rishi Agarwala, Mr.Karan Luthra, Mr.Pranjit Bhattacharya and Mr. Ankit Banati, Advocates for R-2, 3, 12 and 14.

Mr.Rohan Shah and Mr.Nakul Mohta, Advocates for R-4 to 11 and 13 CORAM:

HON'BLE THE CHIEF J USTICE HON'BLE MS. J USTICE J YOTI SINGH O RDER
% 08.02.2021 Proceedings in the matter have been conducted through video
conferencing.

C.M.No.4125-27/2021 (exemptions) Allowed, subject to all just exceptions.

The application is disposed of.

FAO(OS) (COMM) 21/2021 & C.M.No.4124/2021(stay)

1. Issue notice.

2. Notice is accepted by learned counsels for the respondents as mentioned above.

3. This Appeal has been preferred by original respondent No.2 in OMP (ENF)(COMM) No.17/2021. The Appellant herein is aggrieved by an order dated 2nd February, 2021 passed by the learned Single Judge (Annexure A-1 to the memo of this Appeal), whereby the learned Single Judge has reserved the final order in OMP (ENF)(COMM) No.17/2021 and while reserving the order, has directed the Appellant to maintain status quo as on 2nd February, 2021 at 4:50 p.m.. Learned Single Judge has also directed all the concerned authorities to maintain status quo with respect to all matters in violation of learned Emergency Arbitrator's Interim Award dated 25th October, 2020.

4. The Appellant, as a matter of record, has instituted a suit being C.S.(COMM.) No.493/2020 against Amazon in High Court of Delhi, wherein interim order was passed by the learned Single Judge on 21st December, 2020 and against which an Appeal has been preferred by Amazon. The suit being C.S.(COMM.) No.493/2020 and the Appeal being FAO (OS)(COMM.) No.7/2021 are pending and are yet to be adjudicated.

5. The present case involves three different agreements. One agreement is between Amazon and Future Coupons Private Ltd. (hereinafter referred to as 'FCPL'). Another agreement is between FCPL and Future Retail Ltd.

(hereinafter referred to as 'FRL'). The third agreement is between FRL and Reliance Retail Ltd. (hereinafter referred to as 'RRL').

6. In the first agreement between Amazon and FCPL, FRL is not a party although the stand of the respondent is that FRL is not a signatory. In the agreement between FCPL and FRL, Amazon is not a party. Likewise, in the agreement between FRL and RRL, Amazon is not a party.

7. It is undisputed that on account of an Arbitration Clause in the agreement between Amazon and FCPL, an emergency arbitration was initiated by Amazon. In these proceedings, FCPL and FRL were respondents. An Interim Award dated 25th October, 2020 has been passed by the Emergency Arbitrator, wherein the Emergency Arbitrator has restrained FRL from implementing any agreement with RRL.

8. Amazon filed an application under Section 17(2) of the Arbitration and Conciliation Act, 1996 read with Order XXXIX Rule 2A of the Code of Civil Procedure, 1908, for enforcement of the Interim Award dated 25th October, 2020 passed by the Emergency Arbitrator. Vide the impugned order dated 2nd February, 2021, the learned Single Judge has passed an order of status quo to be maintained by the Appellant herein and by all concerned authorities. This interim order has been passed while reserving the final order, which is yet to be pronounced.

9. Learned Senior Counsels for the parties have articulated several arguments before us during the course of hearing including the maintainability of the present appeal. Since the learned Single Judge is yet to pronounce the final order, we refrain ourselves from dealing with the contentious issues at

this stage. Insofar as the maintainability of the appeal is concerned, we are of the prima facie view that the appeal is maintainable as the impugned order has been passed on a petition filed by Amazon under Section 17(2) of the Arbitration and Conciliation Act, 1996 read with Order XXXIX Rule 2A of the Code of Civil Procedure, 1908, for enforcement of the Emergency Arbitrator's Interim Award dated 25th October, 2020 and the present appeal has been filed under Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908 read with Section 13 of Commercial Courts Act, 2015. We are fortified in our prima facie view by the observations of a Division Bench of this Court in South Delhi Municipal Corporation vs. Tech Mahindra reported as 2019 SCCOnLine Del 11863, relied upon by learned Senior Counsel for the appellant, more particularly, paras 8, 9, 10 and 11.

10. Having heard learned Senior Counsels for the parties, we are satisfied that the appellant has made a prima facie case for grant of interim relief and the balance of convenience also lies in favour of the appellant.

11. We hereby stay the operation, implementation and execution of the impugned order dated 2nd February, 2021 passed by the learned Single Judge, till the next date of hearing, for the following reasons:-

i) that the Appellant herein is not a party to the agreement between Amazon and FCPL;

ii) that in an agreement between RRL and FRL, Amazon is not a party;

iii) Prima facie all the three agreements, as stated hereinabove, are different and therefore, 'Group of Companies Doctrine' cannot be invoked;

iv) Clause No.15.17 of the agreement dated 22nd August, 2019 between Amazon and FCPL reads as under:-

"For the avoidance of doubt, Parties hereby expressly record their understanding that the Promoters and the Investor have no agreement or understanding whatsoever in relation to the acquisition of shares or voting rights in, or exercising control over, FRL and that the Company, the Promoters and the Investor otherwise do not intend to act in concert with each other in any way whatsoever."

(emphasis supplied) A reading of the aforesaid clause evidences that Amazon have no intent to exercise control over FRL and thus, Prima facie there was no reason to seek a status quo order before the learned Single Judge.

v) Statutory authorities, like SEBI, NCLT etc. should not be restrained from proceeding in accordance with law;

12. It is made clear that the observations made in this order are only a prima facie view for the purpose of grant of interim relief and shall not come in the way of the learned Single Judge in

passing the final order in OMP(ENF)(Comm) No.17/2021 and needless to state that the order shall be passed uninfluenced by any observations made hereinabove.

13. List this matter for further hearing on 26th February, 2021.

CHIEF J USTICE J YOTI SINGH, J FEBRUARY 08, 2021 'anb'