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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(COMM) 108/2023**

DIGITAL COLLECTIBLES PTE LTD AND ORS.....Plaintiffs

Through: Mr. Prithvi Singh, Mr. Rohan
Krishna Seth and Mr. Prithvi
Gulati, Advs.

versus

**GALACTUS FUNWARE TECHNOLOGY PRIVATE LIMITED
AND ANR. Defendants**

Through: Ms. Raj Latha Kotni, Mr. Rohan
Garg, Mr. Anirudh Ramanathan,
Ms. Swagita Pandey and Ms.
Ananya Singh, Advs. for D-1
Mr. Amit Sibal, Sr. Adv. with Mr.
Maanav Kumar, Ms. Tara Narula,
Mr. Bijaharini G., Mr. Rishabh
Sharma and Mr. Saksham Dhingra,
Advs. for D-2

**CORAM:
HON'BLE MR. JUSTICE SAURABH BANERJEE**

**ORDER
22.07.2024**

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1. Learned senior counsel appearing for the defendant no.2, has handed over a copy of the order dated 15.04.2024 passed by the Division Bench in FAO(OS)(COMM) 95/2023 in an appeal against the order dated 26.04.2023 passed by the learned Single Judge. The said order dated 15.04.2024 is reproduced as under:-

1. We had in our order of 01 April 2024 taken note of the statement made by Mr. Amit Sibal, learned senior counsel appearing for the second respondent, and who had stated that the said respondent had



discontinued and closed all games, features and marketplace services connected with the Striker Platform.

2. Viewed in that backdrop, we had expressed our prima facie opinion that the appeal, for all practical purposes, had been rendered infructuous.

3. Mr. Kaul, learned senior counsel who has appeared today in support of the FAO(OS) (COMM) 96/2023, however contends that although such a statement has been made by the second respondent, respondent no.1 had not made any submission on identical lines. Mr. Kaul also sought to underline the importance of some of the questions which have come to be decided by the impugned judgment and the far reaching ramifications that it may have on other like matters.

4. We are however of the opinion that since the question of grant or refusal of injunction, and which forms the core of the appeal before us itself no longer survives there would be no justification for us to consider the questions of law which are raised in a vacuum. The appeals are clearly rendered infructuous and would merit being disposed of in light of the change in circumstances.

5. We also bear in consideration that the judgment which was impugned before us was one which was made in the context of an application referable to Order XXXIX Rule 1 of the Code of Civil Procedure, 1908 and would, as is well settled, in any case neither operate as res judicata nor constitute a precedent.

6. All that we need observe is that all rights and contentions of respective parties including those who had sought intervention in these proceedings are kept open. We also preserve the right of the appellants to seek revival of its challenge in case the second respondent were to relaunch the Striker Platform.

7. We also take on board the statement made by Mr. Sibal that in case the second respondent decides to relaunch the platform, it will accord a notice of at least two weeks to the appellants.

2. Learned senior counsel for the defendant no.2 in view of the aforesaid submits that the prayer(s) (i) to (v) sought by the plaintiffs in the suit do not survive and further as per the settled law, prayer (vi) qua rendition of accounts and prayer (vii) qua damages, can only be considered and granted alternatively.



3. Thereafter, he seeks and is granted two weeks for filing of an affidavit in consonance with the order dated 15.04.2024 of the Division Bench in FAO(OS)(COMM) 95/2023.
4. Learned counsel appearing for the defendant no.1 submits that the defendant no.1 is merely a platform. He supports the arguments addressed by the learned senior counsel for the defendant no.1.
5. Accordingly, renotify on 04.11.2024.

SAURABH BANERJEE, J

JULY 22, 2024/rr