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

+ **ARB. A. (COMM.) 63/2021**

**FUTURE COUPONS PRIVATE
LIMITED & ORS.**

Petitioners

Through Mr. Mukul Rohatgi and Mr. Dayan Krishnan, Sr. Advocates with Mr. Mahesh Agarwal, Mr. Rishi Agrawala, Mr. Karan Luthra, Mr. Pranjit Bhattacharya, Mr. Sanjeevi Seshadri, Advs.

versus

**AMAZON.COM NV INVESTMENT
HOLDINGS LLC & ANR.**

..... Respondents

Through Mr. Gopal Subramaniam, Mr. Rajiv Nayar, Mr. Gourab Banerji, Mr. Amit Sibal, Mr. Nakul Dewan, Senior Advocates with Mr. Anand S Pathak, Mr. Amit K Mishra, Mr. Shashank Gautam, Ms. Sreemoyee Deb, Mr. Vijay Purohit, Mr. Mohit Singh, Mr. Promit Chatterjee, Ms. Anubhuti Mishra, Ms. Samridhi Hota, Mr. Shivam Pandey, Ms. Nikita Bangera, Mr. Pratik Jhaveri, Ms. Didon Misri, Mr. Chetan Chawla, Mr. Faizan Mithaiwala, Mr. Vijayendra Pratap Singh, Mr. Rachit Bahl, Ms. Roopali Singh, Mr. Abhijnan Jha, Mr. Priyank Ladoia, Mr. Tanmay Sharma, Ms. Vanya Chhabra, Mr. Arnab Ray, Mr. Vedant Kapur, Mr. Shaurya Mittal, Mr. Abhisar Vidyarthi, Mr. Kartik Nayar, Mr. Pawan Bhushan, Ms. Hima Lawrence, Ms. Ujjwala Uppaluri, Mr. SP Mukherjee, Mr. TS Sundaram, Mr. Vinay Tripathi, Mr. Aishvary Vikram, Mr. Kaustubh Prakash, Ms. Anushka Shah, Ms. Neelu Mohan and Ms. Manjira Dasgupta, Advocates for Respondent 1



Mr. Harish Salve, Mr. Ritin Rai, Sr. Advocates with Mr. Ameet Naik, Mr. Raghav Shankar, Ms. Madhu Gadodia, Mr. Abhishek Kale, Mr. Harshvardhan Jha and Mr. Pankaj Patel, Advs. for Respondent 2/FRL

+ ARB. A. (COMM.) 64/2021

FUTURE RETAIL LTD.

..... Petitioner

Through Mr. Harish Salve, Mr. Ritin Rai, Sr. Advocates with Mr. Ameet Naik, Mr. Raghav Shankar, Ms. Madhu Gadodia, Mr. Abhishek Kale, Mr. Harshvardhan Jha and Mr. Pankaj Patel, Advs. for FRL

versus

AMAZON.COM NV INVESTMENT
HOLDINGS LLC & ORS.

..... Respondents

Through Mr Gopal Subramaniam, Mr. Rajiv Nayar, Mr. Gourab Banerji, Mr. Amit Sibal, Mr Nakul Dewan, Senior Advocates with Mr. Anand S Pathak, Mr. Amit K Mishra, Mr. Shashank Gautam, Ms. Sreemoyee Deb, Mr. Vijay Purohit, Mr. Mohit Singh, Mr. Promit Chatterjee, Ms. Anubhuti Mishra, Ms Samridhi Hota, Mr Shivam Pandey, Ms. Nikita Bangera, Mr. Pratik Jhaveri, Ms. Didon Misri, Mr. Chetan Chawla, Mr Faizan Mithaiwala, Mr. Vijayendra Pratap Singh, Mr. Rachit Bahl, Ms. Roopali Singh, Mr. Abhijnan Jha, Mr. Priyank Ladoia, Mr. Tanmay Sharma, Ms. Vanya Chhabra, Mr. Arnab Ray, Mr. Vedant Kapur, Mr. Shaurya Mittal, Mr. Abhisar Vidyarthi, Mr. Kartik Nayar, Mr. Pawan Bhushan, Ms Hima Lawrence, Ms. Ujjwala Uppaluri, Mr. SP Mukherjee, Mr. TS Sundaram, Mr. Vinay Tripathi, Mr. Aishvary



Vikram, Mr. Kaustubh Prakash, Ms. Anushka Shah, Ms. Neelu Mohan and Ms. Manjira Dasgupta, Advocates for Respondent 1

Mr. Mukul Rohatgi and Mr. Dayan Krishnan, Sr. Advocates with Mr. Mahesh Agarwal, Mr. Rishi Agrawala, Mr. Karan Luthra, Mr. Pranjit Bhattacharya, Mr. Sanjeevi Seshadri, Advs. for Respondent Nos. 2 to 13

- + OMP (ENF.) (COMM.) 17/2021, EX.APPL.(OS) 880/2021 (Section 151 CPC for exemption) EX.APPL.(OS) 881/2021 (Section 151 CPC for exemption), EX.APPL.(OS) 882/2021 (Section 151 CPC for exemption), EX.APPL.(OS) 883/2021 (Section 151 CPC for exemption), EX.APPL.(OS) 884/2021 (Section 151 CPC for exemption), EX.APPL.(OS) 885/2021, EX.APPL.(OS) 886/2021 (Section 151 CPC for exemption), EX.APPL.(OS) 887/2021 (Section 151 CPC for exemption), EX.APPL.(OS) 888/2021 (abeyance), EX.APPL.(OS) 889/2021 (Section 151 CPC for exemption), EX.APPL.(OS) 890/2021 (for adjournment of the proceedings), EX.APPL.(OS) 891/2021 (Section 151 CPC for exemption), EX.APPL.(OS) 892/2021 (Section 151 CPC for exemption), EX.APPL.(OS) 893/2021 (Section 151 CPC for exemption), EX.APPL.(OS) 894/2021 (Section 151 CPC for exemption), EX.APPL.(OS) 895/2021 (exemption), EX.APPL.(OS) 896/2021 (exemption), EX.APPL.(OS) 897/2021 (Section 151 CPC for exemption), EX.APPL.(OS) 936/2021 (Order I Rule 10 of the CPC) and EX.APPL.(OS) 937/2021 (Order XXI Rules 58 and 59 of the CPC for clarification of judgment dt. 18.03.21)

AMAZON.COM NV INVESTMENT
HOLDINGS LLC

..... Decree Holder

Through Mr Gopal Subramaniam, Mr. Rajiv Nayar, Mr. Gourab Banerji, Mr. Amit Sibal, Mr. Nakul Dewan, Senior Advocates with Mr. Anand S Pathak, Mr. Amit K Mishra, Mr. Shashank Gautam, Ms. Sreemoyee Deb, Mr. Vijay Purohit, Mr. Mohit Singh, Mr. Promit Chatterjee,



Ms.Anubhuti Mishra, Ms Samridhi Hota, Mr Shivam Pandey, Ms. Nikita Bangera, Mr. Pratik Jhaveri, Ms. Didon Misri, Mr. Chetan Chawla, Mr Faizan Mithaiwala, Mr. Vijayendra Pratap Singh, Mr. Rachit Bahl, Ms.Roopali Singh, Mr. Abhijnan Jha, Mr. Priyank Ladoia, Mr.Tanmay Sharma, Ms. Vanya Chhabra, Mr. Arnab Ray, Mr.Vedant Kapur, Mr. Shaurya Mittal, Mr. Abhisar Vidyarthi, Mr. Kartik Nayar, Mr. Pawan Bhushan, Ms Hima Lawrence, Ms. Ujwala Uppaluri, Mr. SP Mukherjee, Mr. TS Sundaram, Mr. Vinay Tripathi, Mr. Aishvary Vikram, Mr. Kaustubh Prakash, Ms. Anushka Shah, Ms. Neelu Mohan and Ms Manjira Dasgupta, Advocates

versus

FUTURE COUPONS

PRIVATE LIMITED & ORS.

..... Judgement Debtors

Through Mr. Harish Salve and Mr. Ritin Rai, Sr. Advocates with Mr. Ameet Naik, Adv. for Judgment Debtor 1

Mr. Raghav Shankar, Ms. Madhu Gadodia, Mr. Abhishek Kale, Mr. Harshvardhan Jha and Mr. Pankaj Patel, Advs. for Judgment Debtor 2

+ CS(COMM) 493/2020, I.A. 10377/2020 (Order II Rule 2 of the CPC), I.A. 8888/2021 (Section 8) and I.A. 8889/2021 (Order VIII Rule 1 of the CPC)

FUTURE RETAIL LTD.

..... Plaintiff

Through Mr. Harish Salve and Mr. Ritin Rai, Sr. Advocates with Mr. Ameet Naik, Mr. Raghav Shankar, Ms. Madhu Gadodia, Mr. Abhishek Kale, Mr. Harshvardhan Jha and Mr. Pankaj Patel, Advs.



versus

AMAZON.COM NV INVESTMENT
HOLDINGS LLC & ORS.

..... Defendants

Through Mr Gopal Subramaniam, Mr. Rajiv Nayar, Mr. Gourab Banerji, Mr. Amit Sibal, Mr Nakul Dewan, Senior Advocates with Mr. Anand S Pathak, Mr. Amit K Mishra, Mr. Shashank Gautam, Ms. Sreemoyee Deb, Mr. Vijay Purohit, Mr. Mohit Singh, Mr. Promit Chatterjee, Ms. Anubhuti Mishra, Ms Samridhi Hota, Mr Shivam Pandey, Ms. Nikita Bangera, Mr. Pratik Jhaveri, Ms. Didon Misri, Mr. Chetan Chawla, Mr Faizan Mithaiwala, Mr. Vijayendra Pratap Singh, Mr. Rachit Bahl, Ms. Roopali Singh, Mr. Abhijnan Jha, Mr. Priyank Ladoia, Mr. Tanmay Sharma, Ms. Vanya Chhabra, Mr. Arnab Ray, Mr. Vedant Kapur, Mr. Shaurya Mittal, Mr. Abhisar Vidyarthi, Mr. Kartik Nayar, Mr. Pawan Bhushan, Ms Hima Lawrence, Ms. Ujjwala Uppaluri, Mr. SP Mukherjee, Mr. TS Sundaram, Mr. Vinay Tripathi, Mr. Aishvary Vikram, Mr. Kaustubh Prakash, Ms. Anushka Shah, Ms. Neelu Mohan and Ms Manjira Dasgupta, Advocates for Defendant

1

Mr. Mukul Rohatgi and Mr. Dayan Krishnan, Sr. Advocates with Mr. Mahesh Agarwal, Mr. Rishi Agrawala, Mr. Karan Luthra, Mr. Pranjit Bhattacharya, Mr. Sanjeevi Seshadri, Advs. for Defendants 2 to

13

Mr. K. R. Sasiprabhu, Mr. Vishnu Sharma and Mr. Tushar Bhardwaj, Advs for Defendants 14 and 15



+ W.P.(C) 14967/2021, CM APPL. 47253/2021, CM APPL. 354/2022 , CM APPL. 487/2022 and CM APPL. 2122/2022

AMAZON WHOLESALE
INDIA PVT & ANR.

Petitioners

Through Mr. Siddharth Luthra and Mr. Siddharth Aggarwal Sr Advs. Mr. Anand S. Pathak, Mr. Amit Kumar Mishra, Mr. Rohan Jaitley, Mr. Gaurav Mahajan, Mr. Abhinav Tandon, Mr. Nakul Gandhi, Mr. Tushar Bhatnagar and Mr. Yash Kumar. Advs for Petitioner 1

Mr. Rajeev Nayar, Sr Adv, Mr. Anand S. Pathak, Mr. Amit Kumar Mishra, Mr. Gaurav Mahajan, Mr. Abhinav Tandon, Mr. Nakul Gandhi, Mr. Tushar Bhatnagar, Mr. Yash Kumar and Ms. Manjira Dasgupta, Advs. for Petitioner 2

Versus

THE DIRECTORATE OF
ENFORCEMENT & ORS.

..... Respondents

Through Mr. Zoheb Hossain, Spl. Counsel for ED with Mr. Vivek Gurnani and Ms. Snehal Kaila, Advs.

Mr. Mukul Rohatgi and Mr. Dayan Krishnan, Sr. Advocates with Mr. Mahesh Agarwal, Mr. Rishi Agrawala, Mr. Karan Luthra, Mr. Pranjit Bhattacharya, Mr. Sanjeevi Seshadri, Advs. for Future Coupons Pvt Ltd-Intervenor

Mr. Krishnan Venugopal Sr. Advocate with Mr. Rajat Sehgal, Advocate for Intervener/CAIT

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

11.02.2022

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(By Video Conference on account of COVID-19)

1. This batch of petitions and appeals has been listed before this Court pursuant to the judgment dated 1st February, 2022 passed by the Hon'ble Supreme Court in Civil Appeal 864/2022.

2. In order to ease hearing of these matters at a later stage, it would be appropriate to briefly set out the manner in which these matters have come to be filed and now listed before this Bench.

3. There are, essentially, four *dramatis personae* in these proceedings. They are Future Coupons Pvt Ltd ("FCL"), Future Retail Ltd ("FRL"), Reliance Industries Ltd ("Reliance") and Amazon.com NV Investment Holdings LLC ("Amazon").

4. Three agreements came to be executed, amongst FRL, FCL and Amazon. These were (i) a Share Holders Agreement, dated 12th August, 2019, between FRL and FCL (hereinafter referred to as "FRSHA"), (ii) a Share Holders Agreement, dated 22nd August, 2019, between FCL and Amazon (hereinafter referred to as "FCSHA") and (iii) a Share Subscription Agreement, dated 22nd August, 2019, between FCL and Amazon (hereinafter referred to as "FCSSA").

5. The FRSHA, dated 12th August, 2019, between FRL and FCL restrained FRL from disposing of its retail assets to third parties including, for the purpose of the present controversy, Reliance.

6. The FCSHA and FCSSA, dated 22nd August, 2019, executed



between FCL and Amazon, envisaged investment, by Amazon, of ₹ 1,431 crores, to acquire 49% equity in FCL. Clause 3.4 of the FCSSA required Amazon to obtain prior approval from the Competition Commission of India (CCI) before investment.

7. On 23rd September, 2019, Amazon applied to the CCI for approval to invest in FCL. This was, purportedly, to strengthen the business of FCL and unlock its value. Conditional approval was granted by CCI on 28th November, 2019, for Amazon to invest in FCL.

8. On 29th August, 2020, FCL gave consent to FRL entering into a Scheme of Arrangement (“SOA”, hereinafter) with Reliance, *vide* a Board Resolution. Under the said SOA, the retail assets of FRL and its group companies were to be sold to Reliance for approximately ₹25,000 crores, apart from an additional investment of ₹2,400 crores to be infused by Reliance.

9. Aggrieved thereby, Amazon initiated arbitral proceedings under Clause 25.2.1 of the FCSHA, on 5th October, 2020, under the aegis of the Singapore International Arbitration Centre (SIAC). Apparently and subject to the clarification from learned Counsel, the primary contention of Amazon in the said arbitral proceedings, were that (i) the FCSHA, FCSSA and FRSOA constituted a single integrated transaction, (ii) Amazon has special protective rights in FRL through FCL and (iii) the prior consent of Amazon had not been obtained before sale or disposal of the retail assets of FRL. Resultantly,



Amazon sought, from the learned Arbitral Tribunal, a restraint against FRL from proceeding in terms of the SOA.

10. Simultaneously, an application for emergency reliefs was also filed in the arbitral proceedings.

11. On 25th October, 2020, an interim order came be passed by the Emergency Arbitrator, from which all these proceedings have germinated. By the said order, the Emergency Arbitrator restrained FCL and FRL from proceeding with the SOA with Reliance.

12. Therefrom, four sets of proceedings have emanated. They may be individually noted thus:

CS (Comm) 493/2020

13. FRL filed CS (Comm) 493/2020 before this Court to restrain Amazon from interfering with the SOA between FRL and Reliance.

14. On 21st December, 2020, a learned Single Judge of this Court (Hon'ble Ms. Justice Mukta Gupta) came to pass an interim order in CS (Comm) 493/2020.

15. Amazon challenged the aforesaid order dated 21st December, 2020 of the learned Single before a Division Bench of this Court *vide* FAO (OS) (Comm) 7/2021, which is presently pending and is next listed on 26th March, 2022. No stay has been granted in the said



proceedings.

OMP (Enf) (Comm) 17/2021

16. Amazon filed OMP (Enf) (Comm) 17/2021, under Section 17(2) of the 1996 Act, to enforce the order dated 25th October, 2020 passed by the learned Emergency Arbitrator.

17. *Vide* order dated 2nd February, 2021, a learned Single Judge of this Court (Hon'ble Mr. Justice J.R. Midha) passed an interim order, directing *status quo* to be maintained. This order was confirmed on 18th March, 2021.

18. Subsequently, however, the order dated 18th March, 2021 was stayed by the Division Bench of this Court *vide* order dated 22nd March, 2021.

19. This stay came to be vacated by the Supreme Court *vide* a detailed judgment dated 6th August, 2021. The Supreme Court in the said judgment opined, *inter alia*, that the orders of the learned Single Judge dated 2nd February, 2021 and 18th March, 2021 were not amenable to appeal before a Division Bench of this Court.

20. In view thereof, FCL challenged the order dated 2nd February, 2021 of the learned Single Judge of this Court before the Supreme Court by way of SLP (C) 13547-13548/2021.

21. By judgment dated 1st February, 2022, the Supreme Court has



set aside the order dated 2nd February, 2021 of the learned Single Judge, and remanded OMP (Enf) (Comm) 17/2021 to be heard by the Single Judge as a result of which it has come up before this Bench.

Arb A (Comm) 63/2021 and Arb A (Comm) 64/2021

22. On 11th March, 2021, FRL filed an application before the learned Arbitral Tribunal, seeking vacation of the order dated 25th August, 2020 of the learned Emergency Arbitrator.

23. The response filed by FCL, to the said application of FRL, was permitted by the learned Arbitral Tribunal to be treated as an independent application for vacation of the Emergency Arbitrator's order dated 25th August, 2020. Thus, vacation of the order dated 25th August, 2020 came be sought, before the learned Arbitral Tribunal, both by FCL and FRL.

24. By order dated 21st October, 2021, the learned Arbitral Tribunal dismissed both the applications seeking vacation of the order dated 25th August, 2020 and confirmed the directions contained in the said order passed by the learned Emergency Arbitrator.

25. FCL and FRL have both challenged the said order dated 21st October, 2021 of the learned Arbitral Tribunal, by way of Arb A (Comm) 63/2021 and Arb A (Comm) 64/2021 respectively. Side by Side, FCL and FRL have also sought stay of operation of the said order dated 21st October, 2021 passed by the learned Arbitral Tribunal



by way IA 14257/2021 and IA 14285/2021 respectively.

26. By order dated 29th October, 2021, the learned Single Judge of this Court dismissed IA 14285/2021 and, thereby, declined stay of operation of the order dated 21st October, 2021, passed by the learned Arbitral Tribunal.

27. This order dated 29th October, 2021 was challenged by the FCL before the Supreme Court by way of SLP (C) 18089/2021 which, consequent to grant of leave, was renumbered CA 864/2022.

28. By the judgment dated 1st February, 2022, to which allusion has already been made hereinbefore, the Supreme Court also set aside the order dated 29th October, 2021 of the learned Single Judge and has remanded IA 14285/2021 to the Single Judge for a decision on merits.

29. As such, IA 14285/2021 as well as IA 14257/2021, filed by FRL and FCL respectively, seeking stay of operation of the order dated 21st October, 2021 of the learned Arbitral Tribunal, have to be reheard by this Bench.

30. There are, therefore, presently before this Bench four proceedings relating to the orders passed by the learned Arbitral Tribunal, i.e. CS (Comm) 493/2020, OMP (Enf) (Comm) 17/2021, Arb A (Comm) 63/2021 and Arb A (Comm) 64/2021. This Bench is required to consider all these matters.



31. Insofar as Arb A (Comm) 63/2021 and Arb A (Comm) 64/2021 are concerned, the Bench would first have to take up, initially, IA 14285/2021 and IA 14257/2021 filed in the said appeals, seeking stay of operation of the order dated 21st October, 2021 of the learned Arbitral Tribunal.

32. To this extent, learned Counsel are *ad idem*.

33. This Court is proceeding to list these matters together and would take a call on the next date of hearing as to which matter would have to be taken up first.

34. Accordingly, list OMP (Enf) (Comm) 17/2021, IA 14257/2021 in Arb A (Comm) 63/2021 and 14285/2021 in Arb A (Comm) 64/2021 for hearing before the Bench at 2:15 PM on 24th February, 2022.

35. Mr. Harish Salve, learned Senior Counsel for FRL, seeks and is granted a week's time to file reply to OMP (Enf) (Comm) 17/2021. He is permitted to do so with an advance copy to learned Counsel for the petitioner, who may file rejoinder thereto, if any, before the next date of hearing.

36. It is made clear that the aforesaid recital of facts is only intended for fixing a schedule of hearing in these matters and is not intended to amount to any expression of opinion. This Court has not applied its mind even tentatively on the rival contentions of the parties



before it.

37. Learned Counsel for the parties are requested to place on record *precise* short notes of their respective submissions, as precise as possible, to facilitate hearing of these matters on the next date of hearing, after exchanging copies with each other, well before the next date of hearing.

38. Additionally, learned Counsel are requested to place, on record, well before the next date of hearing, indexed compilations of judicial authorities, on which they may seek to place reliance, on record. The judgements should not be marked or highlighted. Relevant para no's from the judgements should, however, be indicated in the index accompanying the compilations to facilitate ease of study.

39. Copies of the submissions and compilations of judgements be also emailed to the Court Master, at least 48 hours in advance of the next date of hearing.

C.HARI SHANKAR, J

FEBRUARY 11, 2022

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