

AMAZON MOVES NCLAT AFTER CCI REVOKES FUTURE DEAL NOD

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Amazon Holdings NV has moved the National Company Law Appellate Tribunal (NCLAT) against the 17 December order of the Competition Commission of India (CCI), revoking its approval for Amazon's deal with Future Coupons over alleged misrepresentation, said a lawyer privy to the matter, seeking anonymity. The matter is expected to be heard in the coming week, he said.

The move follows a Delhi high court order on 5 January, suspending Amazon's arbitration proceedings in Singapore against Future Group for contract violations. According to CCI's 57-page order, approval for the deal between Amazon and Future group would be kept in abeyance.

The anti-trust watchdog fined Amazon 202 crore for allegedly misrepresenting and suppressing information while seeking regulatory approval in 2019 to buy a stake in Future Coupons.

A favourable verdict for Amazon will probably help the firm re-initiate the arbitration proceedings and fight for its contractual rights.

However, if NCLAT finds merit in CCI's order, the American firm has to move the Supreme Court. If the apex court, too, backs the CCI decision, Amazon will have no locus standi for arbitration proceedings against Future Group.

It is natural for Amazon to contest the CCI order suspending its 2019 deal with Future Coupons and imposing a 202 crore fine, the highest ever imposed by CCI, said Nikhil Varma, managing partner, Miglani Varma and Co., advocates, solicitors and consultants.

In all likelihood, Amazon will get a stay on the CCI order, but will be asked to deposit a part of the penalty amount upfront, according to Varma.

"The decision of the NCLAT in this matter is set to be a crucial one, for it will determine the import of the CCI's power to suspend its approval under the merger control regime introduced in 2011. A favourable verdict would mean that Amazon does not have to pay a hefty fine. Overall, the appeal will not hurt Amazon, for the transaction has already been consummated," Varma said.

The NCLAT order could have a significant bearing on Future Group's asset sale deal with Reliance Industries Ltd signed in 2020.

A favourable verdict for Amazon will bolster its claim against the Future group-RIL deal before the Singapore International Arbitration Court (SIAC), Varma said. "However, an unfavourable verdict will help RIL acquire Future's retail assets as it may nullify the investment made by Amazon in Future Coupons and its rights under the shareholders' agreements and share subscription agreement," he said.

Last week, Future Group had moved Delhi high court seeking quashing of the proceedings initiated by Amazon before the Singapore arbitration centre.

The group had earlier filed a termination application at the Singapore tribunal to halt the proceedings. However, the tribunal had turned down the retailer's request as it was set to hear the Amazon-Future dispute on 5–7 January.

SIAC has stalled the arbitration proceedings, following the order by the division bench of Delhi high court.

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