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

\+ LPA 496/2015 & CM Nos.13468/2015 *(stay)*

M/S BEST IT WORLD (INDIA)
PRIVATE LIMITED (IBALL) ..... Appellant

Through: Mr.Amit Sibal, Sr. Adv. with Mr.Dev Robinson, Mr. Naval Chopra, Ms.Monika Brar, Mr.Aman Sethi, Mr.Jogeshwar Mishra & Ms.Shreya Munoth, Advs.

Versus

TELEFONAKTIEBOLAGET
L M ERICSSON (PUBL) & ANR. ..... Respondents

Through: Mr.C.S.Vaidyanathan, Sr. Adv., Mrs.Pratibha M. Singh, Sr. Adv. with Mr. Ravi Nayar, Mr. Ashutosh Kumar, Ms. Archana Sahadeva, Ms. Sakshi Aggarwal, Ms. Harita Sahadeva & Mr. Sahib Singh, Advs. for R-1.
Mr. Avinash Sharma, Adv. for R-2.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE JAYANT NATH

O R D E R

% 03.08.2015

C.M.No.13469/2015 *(delay in filing)*

Heard both the parties. In the facts and circumstances explained in the application, the delay is condoned.

The application is disposed of.

LPA No.496/2015

1. The Respondent No.2 in W.P.(C) No.5604/2015 preferred this appeal aggrieved by an interim order passed by the learned Single Judge on 27.05.2015.

2. The said writ petition was filed seeking a certiorari to quash the order dated 12.05.2015 passed by the Competition Commission of India (CCI) in Case No.4/2015 directing investigation by the Director General under Section 26(1) of the Competition Act, 2002. By the order under appeal, the learned Single Judge while issuing notice, passed the following order:-

> **"**4. In these circumstances, in my view, the petitioner can only hope to get an interim direction which is in line with the order dated 21.01.2014 and 17.02.2014. Accordingly, while the petitioner may supply information as requisitioned by the DG, neither the DG will submit a final report, nor will the CCI pass a final order in the matter. For the purposes, of investigation, while the DG will be free to call upon any officers, who are stationed abroad, a request will be made to the petitioner, in the first instance. In the event the petitioner is of the view that the request is unreasonable, it would have liberty to move this court for appropriate orders."

3. Shri Amit Sibal, the learned Senior Counsel appearing for the appellant vehemently contended that in the light of the judgment of this Court in **LPA No.733/2014** and **W.P.(C) No.7084/2014** titled ***Google Inc. and Ors. v. Competition Commission of India and Ors.***, the writ petition itself is not maintainable and therefore the learned Single Judge committed a grave error in directing notice in the petition. The learned Senior Counsel would further contend that the interim relief granted is equally erroneous and unwarranted.

4. Though it is submitted by the learned Senior Counsel that the very same objection was raised before the learned Single Judge, on a perusal of the order under appeal we do not find any reference to the contentions stated

to have been advanced on behalf of the appellant. Be that as it may, the writ petition is pending before the learned Single Judge and the appellant is yet to file its counter. Since it is always open to the appellant to raise all the objections available under law and move an application before the learned Single Judge for variation of the directions in the order under appeal, we do not find it appropriate to entertain the present appeal at this stage. According to us it would virtually amount to permitting the appellant to pursue a parallel remedy.

5. However, keeping in view the contention of the learned Senior Counsel for the appellant that the writ petition itself is not maintainable and it is essential to decide the question of maintainability as a preliminary issue in the light of the ratio laid down in ***Google Inc. & Ors. Vs. CCI (Supra)***, apart from seeking variation of the directions in the order under appeal, the appellant is also at liberty to move an application before the learned Single Judge to decide the maintainability of the writ petition as a preliminary issue.

6. In the event of such applications being filed, the learned Single Judge is requested to decide the same in accordance with law. It is made clear that the fact that notice was ordered in the order under appeal shall not come in the way in deciding the preliminary objection as to the maintainability of the writ petition. We also request the learned Single Judge to consider the application(s) by advancing the date fixed in the order under appeal as 16.11.2015.

7. The appeal and C.M.No.13468/2015 are accordingly disposed of.

Dasti under the signatures of the Court Master.

CHIEF JUSTICE

JAYANT NATH, J

AUGUST 03, 2015
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