



2025:DHC:5036-DB



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

*Reserved on : 7 May 2025  
Pronounced on: 1 July 2025*

+ RFA(OS)(COMM) 11/2025 & CM APPL. 26455/2025

AMAZON TECHNOLOGIES INC .....Appellant  
Through: Mr. Neeraj Kishan Kaul and Mr  
Arvind Nigam, Sr. Advs. with Mr.  
Saikrishna Rajagopal, Mr. Sidharth Chopra,  
Ms. Sneha Jain, Mr. Devvrat Joshi, Mr.  
Angad S Makkar, Ms. Ira Mahajan, Ms.  
Pritha Suri, and Mr. Agnish Aditya, Advs.

versus

LIFESTYLE EQUITIES CV & ANR. ....Respondents  
Through: Mr. Gaurav Pachnanda, Mr. J.  
Sai. Deepak and Mr. Ankit Jain, Sr. Advs.  
with Mr. Mohit Goel, Mr. Sidhant Goel, Mr.  
Deepankar Mishra, Mr. Karmanya Dev  
Sharma, Mr. Aditya Goel, Mrs. Namrata  
Sinha and Mr. Love Virvani, Advs.

**CORAM:  
HON'BLE MR. JUSTICE C. HARI SHANKAR  
HON'BLE MR. JUSTICE AJAY DIGPAUL**

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**JUDGMENT  
01.07.2025**

**C. HARI SHANKAR, J.**

**CM APPL. 26455/2025****Facilitative Index to the Judgment**

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1. This order disposes of CM Appl 26455/2025, preferred by Amazon Technologies Inc<sup>1</sup> under Order XLI Rule 5(1) and (3)<sup>2</sup> of the CPC<sup>3</sup>, seeking stay of operation of judgment and decree dated 25 February 2025 passed by a learned Single Judge of this Court in CS (Comm) 443/2020<sup>4</sup>. The impugned judgment decrees the suit, against the appellant/Defendant 1 Amazon Tech for ₹ 336,02,87,000/-, apart from costs of ₹ 3,23,10,966.60.

### A prefatory note

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<sup>1</sup> “Amazon Tech” hereinafter

<sup>2</sup> 5. **Stay by Appellate Court.** –

(1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

*Explanation.* – An order by the Appellate Court for the stay of execution of the decree shall be effective from the date of the communication of such order to the Court of first instance, but an affidavit sworn by the appellant, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the Appellate Court shall, pending the receipt from the Appellate Court of the order for the stay of execution or any order to the contrary, be acted upon by the Court of first instance.

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(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied—

- (a) that substantial loss may result to the party applying for stay of execution unless the order is made;
- (b) that the application has been made without unreasonable delay; and
- (c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

<sup>3</sup> Code of Civil Procedure, 1908

<sup>4</sup> **Lifestyle Equities CV & anr v Amazon Technologies, Inc. & others**, also referred to, hereinafter, as “the suit”



2. We must, at the very outset, enter a word of apology for the length of this judgment, which disposes only of an interim application. We, however, had no option in the matter.

3. For reasons which would become clearer before the conclusion of this judgment, we are of the opinion that a case for complete stay of operation of the impugned judgment, including the requirement of security, by the appellant Amazon Tech, of any part of the decretal amount, is made out in the present case. As this marks a significant departure from the general principle that no complete stay of money decrees should be granted by the Court, and the exordium, by the judgment of the Supreme Court in *Malwa Strips Pvt Ltd v Jyoti Ltd*<sup>5</sup>, that, if the Court is, in a rare case, inclined to grant stay of operation of a money decree, cogent reasons justifying the decision must be forthcoming, we have endeavoured to be as comprehensive as possible. This has resulted in the present judgement becoming more prolix than judgements dealing with interlocutory reliefs ordinarily would be.

4. This is an extraordinary case, in which a suit which, at least facially, seeks damages against the Appellant Amazon Tech, quantified that ₹ 2,00,05,000/-, has been decreed against Amazon Tech for ₹ 336,02,87,000/-, apart from costs of ₹ 3,23,10,966.60, without the pleadings having been amended at any stage. At no stage of the proceedings did the plaintiffs Lifestyle Equities CV and Lifestyle Licensing BV, in their pleadings, ever claim the awarded amount of ₹

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<sup>5</sup> (2009) 2 SCC 426



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336,02,87,000/-. Till the filing of written submissions, after conclusion of arguments before the learned Single Judge, the claim of the plaintiffs continued to remain ₹ 2,00,05,000/-. *It was only in written submissions, filed by the plaintiffs after arguments were concluded,* that the claimed damages were enhanced, nearly 2000-fold, to approximately ₹ 3780 crores. As against this claim, the impugned judgment awards, to the plaintiffs, ₹ 336,02,87,000/-, for which, too, there are no supportive pleadings.

5. Moreover, the entire trial, recording of evidence, arguments and filing of written submission took place only in the presence of the plaintiffs Lifestyle Equities CV and Lifestyle Licensing BV and, after 2 March 2023, till the passing of the final impugned judgment, there has been no other party before the learned Single Judge. The proceedings have, therefore, been entirely conducted in the absence of the defendants. Of course, it is the endeavour of learned Senior Counsel for the plaintiffs to convince us that there was no procedural irregularity in this, as there were only three defendants, of whom, by order dated 2 March 2023, Defendant 3 was deleted from the array of parties, the suit was decreed against Defendant 2 for ₹ 4,78,484/-, and Defendant 1, i.e. the present appellant Amazon Tech and already been proceeded ex parte by order dated 20 April 2022. If, therefore, there were no defendants before the learned Single Judge after 2 March 2023, this was but in the ordinary goes of things, and no exception could legitimately be taken thereto. We would examine this contention by and by.



The appellant's submission, in a nutshell

6. There were three defendants in the suit, of which the appellant was Defendant 1. The plaint computed the damages claimed, from all defendants, as ₹ 2,00,05,000/- or such other amount as the Court would find to be payable. The plaint was never amended. No pleadings were introduced, enhancing this claim. The appellant was proceeded *ex parte vide* order dated 20 April 2022. Of the remaining two defendants, the suit was decreed, against Defendant 2, for ₹ 4,78,484/-, *vide* order dated 2 March 2023. The same order deleted Defendant 3 from the array of parties. There was, therefore, after 2 March 2023, no defendant before the learned Single Judge, and the plaintiff alone was present during the entire trial, recording of evidence and advancing of arguments. The proceedings were, therefore, one-sided. Without amending the plaint, the plaintiff's witnesses sought to introduce, through evidence, a colossally enhanced claim for damages of ₹ 3780 crores, against the appellant. No pleadings, supporting such a humongous claim, are on record. No such claim for damages has ever been pleaded, even tentatively. This figure, in fact, does not even figure in the evidence led by the plaintiff, but has been worked out *solely in written submissions tendered to the Court*. The appellant was never confronted with this claim. Such a blowing up of an original claim of a little over ₹ 2 crores, to ₹ 3780 crores, could not have been effected without amending the claim, and putting the appellant on notice in that regard. As no defendant was present before the learned Single Judge, the evidence went untested. Solely on the basis of the evidence so led, and without the plaint ever



having been amended, the learned Single Judge has awarded, in favour of the plaintiffs-respondents and against the appellant-Defendant 1, damages of ₹ 336,02,87,000/-.

7. Moreover, points out Mr. Nigam, the grievance of the plaintiff

was that the mark , which infringes the plaintiff's registered



trade mark, was being affixed on apparel which were sold by Defendant 2 Cloudtail India Pvt Ltd<sup>6</sup> on the website of Defendant 3. Defendant 2 had, on 2 March 2023, conceded, before this Court, that

the affixing of the  mark *was the sole decision of Defendant 2, and the appellant-Defendant 1 has no liability in the matter.* The

plaintiff also conceded, in the same order, that the  mark *was not subject matter of the agreement between the appellant-Defendant 1 and Defendant 2 Cloudtail.* It was on this basis that the suit was decreed against Defendant 2 Cloudtail for ₹ 4,78,484/-. It was *after this order was passed, and no defendant remained to contest the suit, that the trial commenced.* On the basis of the evidence so led, *after the order of 2 March 2023, the plaintiff sought, in its written submissions, to raise a claim of ₹ 3780 crores against the appellant-Defendant 1, out of which the impugned judgment decrees, in favour of the plaintiff and against the appellant, an amount of ₹ 336,02,87,000/-.*

<sup>6</sup> "Cloudtail" hereinafter



8. Mr. Nigam, who led the initial arguments on behalf of the appellant, opened his submissions by contending that, *de hors* the legality of the decision to proceed *ex parte* against his client, and without prejudice to his submissions that there was, in fact, no evidence whatsoever against his client at all, these facts are by themselves startling enough to warrant entertainment of the present appeal without requiring *any deposit*, even by way of security, of the decretal amount.

### The lis

9. We now proceed to reconnoitre the facts and the issues involved, in somewhat greater detail.

10. As mentioned earlier, there were three defendants in the suit. Amazon Tech was Defendant 1, Clouddtail was Defendant 2, and Amazon Seller Service Pvt Ltd<sup>7</sup> was Defendant 3. The appellant Amazon Tech was proceeded *ex parte vide* order dated 20 April 2022. (The legality of the decision to proceed *ex parte* against Amazon Tech is seriously disputed before us, and we would advert thereto by and by.) Thus, Amazon Tech was *never* represented before the learned Single Judge.

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<sup>7</sup> “ASSPL” hereinafter



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11. The plaintiffs in the suit were Lifestyle Equities CV and Lifestyle Licensing BV, who would be referred to, collectively and for the sake of convenience, as “Lifestyle” hereinafter.

12. By order dated 2 March 2023, the suit was decreed against Defendant 2 Cloudtail for ₹ 4,78,484/-, and Defendant 3 ASSPL was deleted from the array of parties.

13. Thus, post 2 March 2023, *the only party before the learned Single Judge, till the impugned judgment and decree came to be passed*, was Lifestyle.

14. The prayers in the suit were for issuance of a decree of permanent injunction, restraining the defendants Amazon Tech,

Cloudtail and ASSPL from infringing the registered



trade

mark of Lifestyle by use of the  logo, apart from rendition or accounts, delivery up, costs and damages. The damages claimed in the suit were “₹ 2,00,05,000/- or any such amount as found due in favour of the plaintiffs”. *It merits mention that the plaint was never amended, to incorporate any claim, or prayer, for any specific quantum of damages in excess of ₹ 2,00,05,000/-.*

15. Having decreed the suit against Defendant 2 Cloudtail for ₹ 4,78,484/-, and deleted Defendant 3 ASSPL from the array of parties, the impugned judgment decrees the suit, against the



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appellant/Defendant 1 Amazon Tech for ₹ 336,02,87,000/-, apart from costs of ₹ 3,23,10,966.60.

16. Amazon Tech has appealed, to us, against the said judgment and decree *vide* RFA (OS) (Comm) 11/2025. We have issued notice in the RFA, returnable on 9 October 2025.

17. Along with the appeal, Amazon Tech has filed the present CM Appl 26455/2025, under Order XLI Rule 5 of the CPC, seeking stay of operation of the impugned judgment and decree.

18. We have heard Mr. Neeraj Krishan Kaul and Mr. Arvind Nigam, learned Senior Counsel for the appellant Amazon Tech and Mr. Gaurav Pachnanda, Mr. J. Sai Deepak and Mr. Ankit Jain, learned Senior Counsel for the respondents, at length on the stay application. By this order, we proceed to dispose of the application.

### **Rival Pleadings in the suit**

19. Before we advert to rival submissions addressed by learned Senior Counsel, it is appropriate, in our view, to understand the exact case set up by Lifestyle before the learned Single Judge, especially to assess the extent to which it had made out a case against Amazon Tech.

### **The Plaintiff**



20. Paras 2 to 40 of the plaint extol Lifestyle, the allegedly



infringed  mark, and its reputation in the market, besides referencing the various registrations held by Lifestyle under the Trade



Marks Act, 1999, of the  mark.

21. The allegedly infringing activities of the defendants in the suit, i.e. Amazon Tech, Cloutail and ASSPL, are contained in paras 41 to 53, which read thus:

“41. As per the information available with the Plaintiffs, *Defendant No.1*, Amazon Technologies, Inc., is an entity based out of 410 Terry Avenue North, Seattle, Washington 98109, U.S.A. and is dealing in, inter alia, apparel products under the brand name ‘Symbol’. *Defendant No.1*, under its brand ‘Symbol’ is manufacturing, offering for sale and/or selling products which



bear the Infringing Logo Mark . It is submitted that *Defendant No.2*, Cloutail India Private Limited, in accordance with the information available with the Plaintiff, is conducting its business through *Defendant No.3*'s website <www.amazon.in>. In accordance with the information available with the Plaintiffs, *Defendant No.3* is engaged in a business of managing and operating the website, <www.amazon.in> for the purpose of selling and/or offering for sale products of person/entities with which it executes contracts, including *Defendant No.2*, in India and other jurisdictions. *Defendant No.3*, Amazon Seller Service Private Limited, is selling and offering for sale products of *Defendant No.1* under the trade mark ‘Symbol’ bearing the Infringing Logo Mark. To the best of the Plaintiffs knowledge, *Defendant No.1* sells products on the website of *Defendant No.3* through *Defendant No.2*. The Plaintiffs are not certain about the exact and actual relation between the Defendant Nos. 1, 2, and 3 and, therefore, call upon the Defendants to disclose the relation between them. For ease of reference, Defendant No. 1, Defendant No. 2, and Defendant No.3 are collectively referred to as the “Defendants” in this Suit.



42. *The Plaintiffs are not certain about the exact constitution of the Defendants and, thus, the Defendants should be directed to disclose their constitution before this Hon'ble Court, including detail of their promoters, partners, and owners.*

43. It will not be out of place to mention that the Plaintiffs do not sell or offer for sale their products through e-commerce platforms. The only exception to this is the sale of fragrance/perfumery products sold by Plaintiffs through Defendant No.2. It is submitted that apart from this, all other Plaintiffs' products are only available for purchase in brick and mortar stores operated by the licensees of the Plaintiffs or on the websites of such licensees or through exclusive retail stores of the Plaintiffs. Thus, any or all products being sold by Defendants, except for fragrance/perfumery products being sold by Defendant No.2, are admittedly unauthorized and/or counterfeit.

44. Sometime in the month of May 2020, *the Plaintiffs came across the Infringing Logo Mark of the Defendant No.1*, when the Plaintiffs searched for T-Shirts & Polos on Defendant No.3's website. A bare perusal of the Infringing Logo Mark makes it evident that the idea and concept behind the adoption of the Infringing Logo Mark has been derived from the Plaintiff's Logo Mark. The essential feature of the Plaintiff, which is "charging

pony with the polo player" (  ), has been replicated in its

entirety in the Infringing Logo Mark (  ), for the illicit purpose of showing an association/affiliation with the Plaintiffs and causing confusion amongst consumers and traders.

45. *The trademark 'Symbol' is a private label of Defendant No.1*, which was introduced to compete with brands sold on Defendant No.3's website. Defendant No.1's products primarily replicate popular designs and trademarks, like that of the Plaintiffs' Logo Mark. Being the private label of Defendant No.1, the products of Defendant No.1 are perpetually promoted on the website of Defendant No.3 and as a consequence, the chances of confusing Defendants' product bearing the Infringing Mark with Plaintiffs' Logo Mark are exponentially magnified.

46. After acquiring knowledge of the Infringing product on the website of Defendant No.3, *the Plaintiffs purchased some products of Defendant No.1 from the website of Defendant No.3. The*



*Plaintiffs upon receipt of these products immediately identified these products to be containing the Infringing Mark, which is a blatant imitation of the Plaintiff's Logo Mark. The invoice issued by the Defendant No. 3 towards the purchase of these Infringing Products only disclosed the name and details of Defendant No.2.*

47. At this juncture, it is relevant to note that this Hon'ble Court had passed ad interim orders in CS(COMM) 1015 of 2018, titled Lifestyle Equities C.V. and Ors. v. Amazon Seller Services Pvt. Ltd., dated 16 July 2018 and 22 November 2018, restraining the Defendant No.3 along with another related party from selling counterfeit/infringing products bearing Plaintiffs' Logo Mark on the website <www.amazon.in>.

48. *The Defendant Nos. 2 and 3 have intentionally sold the Infringing goods of Defendant No.1's on Defendant No.3's website. It is the admitted case of Defendant No.3 that orders for the Infringing product of the Defendant No.1 are being fulfilled by Defendant No.2.*

49. It is clear from an overall comparison that *the Defendants, with clear dishonesty, has sold products bearing a logo mark which are both identical to, and/or are a close dishonest imitation of, the Plaintiffs' Logo Mark.* Furthermore, from a bare comparison of the marks, it is clear that the Defendants have made every effort to copy each and every element of the Plaintiffs' Logo Mark.

50. Furthermore, *the purpose of the Defendant No.1 by adopting the Infringing Logo Mark* which is identical/similar to the Plaintiff's Logo Mark is to create confusion at the first instance and take benefit of the initial interest created due to the similarity in both the logo marks. Such continued Infringing Activities of the Defendants are contrary to the provisions of the TM Act and the common law rights of the Plaintiffs and is likely to result in the dilution, diminution, and eventual erosion of the tremendous goodwill and reputation of the Plaintiffs' BHPC Marks.

51. *The Defendant No.1 has no excuse whatsoever or reason to adopt the Infringing Logo Mark.* An unwary consumer having imperfect re-collection is liable to confuse the Defendant No.1's Infringing Logo Mark, as used on its apparel products, with that of the Plaintiffs or vice versa, on account of the overall similarities existing between the two. It is a clear calculated attempt of the Defendant No.1 to purely to mislead consumers and piggyback on the reputation and goodwill of the Plaintiffs in the market. This despite the Plaintiffs registering its brand with the Brand Service Registry offered by the Defendant No.3.



52. It is also relevant that, at least in the facts of this case, Defendant No.3 is not merely a market place, and in fact is practicing the role of supplying the Infringing Counterfeit Products of the Defendant No.1. *Admittedly, Defendant No.2 is the entity which is responsible for fulfilling the orders for these Infringing Products*, which only implies that these Infringing products are stocked by the Defendant No.2 for further sale through the website of Defendant No.3.

53. The adoption and user of the Infringing Logo Mark constitutes an infringement/violation of the statutory rights of the Plaintiffs under Section 29 of the TM Act and under Section 51 of the Copyright Act. It is noteworthy that the Plaintiffs and the Defendants are both offering similar and/or allied products, which are sold through the same trade channels and targeted at the same consumer base. Therefore, inevitably and undeniably, the Defendant No.1's use of Infringing Logo Mark, would cause confusion and deception amongst consumers with imperfect recollection. These activities of the Defendants are, thus, bound to lead to passing off, dilution of goodwill of the Plaintiffs as well as unfair competition. The same has resulted in immense and substantial harm, loss and injury to the Plaintiffs. Consequently, the act of the Defendants amount to an infringement of the registered Plaintiffs' Trade Mark and Copyright. It is, therefore, imperative that the infringing and illegal activities of the Defendants be restrained.”

(Emphasis supplied)

**22.** Apropos Amazon Tech, the present appellant/Defendant 1 in the suit, the allegations are as under:

(i) Amazon Tech, “under its brand ‘Symbol’, (was) manufacturing, offering for sale and/or selling products which



bear the infringing logo mark ” (in para 41) (though the same paragraph goes on to assert, shortly thereafter, that “Defendant No. 3, Amazon Seller Service Pvt Ltd, (was) selling



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and offering for sale products of Defendant No. 1 under the trade mark ‘Symbol’ bearing the infringing logo mark”).

(ii) *To the best of the Plaintiff’s knowledge, Amazon Tech was selling its products on the website of ASSPL through Cloutail. (para 41)*

(iii) Lifestyle purchased some products of Amazon Tech from the website of ASSPL, which contained the infringing mark. (para 46)

(iv) Cloutail and ASSPL had intentionally sold the products of Amazon Tech on ASSPL’s website. (para 48)

(v) It was the admitted case of ASSPL that orders for the infringing product of Amazon Tech were being fulfilled by Cloutail. (para 48)

(vi) The defendants, with clear dishonesty, were selling products bearing the infringing mark. (para 49)

(vii) The purpose of Amazon Tech, in adopting the infringing mark, was to create confusion and take benefit of the initial interest created due to the similarity of both logo marks. (para 50)



(viii) Admittedly, Cloutail was responsible for fulfilling orders for the infringing counterfeit products of Amazon Tech. (para 52)

23. The upshot of the above assertions, which alone seek to incriminate the appellant Amazon Tech, is that *the products bearing the infringing mark were of Amazon Tech*, and were sold on ASSPL's website through Cloutail. Else, *there is no averment to the effect that*



*was Amazon Tech's mark. Rather, it is categorically asserted, in para 41 of the plaint, that Amazon Tech's mark was 'SYMBOL'.*

24. In the absence of any averment to the effect that  was the appellant's mark, *the very foundation of Lifestyle's case against Amazon Tech, as set up in the plaint, is that the goods, bearing the*

*allegedly infringing  logo, were of Amazon Tech.*

25. As against the above assertions, Lifestyle, in its plaint, also averred thus:

(i) The assertion that Amazon Tech was selling its products on the website of ASSPL through Cloutail was only "to the best of Lifestyle's knowledge". (para 41)

(ii) Lifestyle was not certain about the exact and actual relation between the defendants. (para 41)



(iii) Lifestyle was not certain about the exact constitution of the defendants. (para 42)

(iv) The trademark 'Symbol' was the private label of Amazon Tech. (para 45)

(v) The invoice issued by ASSPL to Lifestyle, against the

purchase made, by it, of the goods bearing the impugned  mark, only disclosed the name and details of Clouddtail. (para 46)

**26.** Except for a bald averment that the goods, purchased by Lifestyle *by placing an order on ASSPL, and received under an invoice which only named Clouddtail*, belonged to Amazon Tech, there is nothing to so indicate.

**27.** Notably, *there is, in the entire plaint, no averment that the*

*goods bearing the allegedly infringing  mark, sold on the website of ASSPL, were manufactured by Amazon Tech.*

**28.** The averments with respect to damages were contained in paras 54 to 57 of the plaint, which read thus:

“54. Notwithstanding the level of gain made by the Defendants from its Infringing Activities, the Plaintiffs will suffer direct and



indirect monetary loss and damage. It is submitted that by engaging in the Infringing Activities, the Defendants are able to make sales and get a foothold in the market, and thereby, learn more money and profit, at the expense of the Plaintiff. Customers searching for the Plaintiffs' apparel products, and seeing the Defendants' apparel products, and mistakenly believe that the Defendants are in some way related/associated with the Claim tips and purchasing the Defendants' apparel products. This increases the revenue of the Defendants, while causing financial loss to the Plaintiffs.

55. It is submitted that the damages/losses (a) were/are directly attributable to the unauthorised and illegal activities of the Defendants; and (b) were/are foreseeable by the Defendants to be the laws/damage that would because to the Plaintiff's because of its Infringing Activities, and have arisen in the usual course of business. It is submitted that the damages/losses in above are of a nature that would put the Plaintiff's in the same position that it would have been at the Defendants not engaged in the impugned activities.

56. In your above referred fact, it is ample clear that the Infringing Activities of the Defendants are wilful. Apart from the above, the Plaintiff are also entitled to damages towards the moral prejudice costs to it by the illegal activities of the Defendants. It is submitted that the Plaintiffs are also entitled to exemplary and punitive damages from the Defendants. Moreover, the Plaintiff are also entitled to the costs of the Commercial Suit, including attorney's fees.

57. The Plaintiff estimate that it has and/or is likely to have suffered damages of over ₹ 2,00,00,000. In addition to the damages that the plaintiffs will suffer due to the above illegal and impugned acts of the Defendants, all classes of consumers and the society at large will face negative consequences of such Infringing Activities being carried out by the Defendants herein.”

**29.** Following these averments, para 62 of the plaint, which dealt with valuation of the suit, averred, inter alia, as under:

“62. The value of the Suit for the purposes of court fees and jurisdiction in respect of the reliefs as prayed for is as follows:

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(e) For a decree of damages as prayed for in prayer (e) of paragraph 63 below, the relief is collectively valued for the purposes of court fees and jurisdiction at ₹ 2,00,05,000/-and court fees of ₹ 2,00,050/- is affixed thereon;”

**30.** The prayers in the suit, insofar as they claim to damages, read:

“64. In the circumstances aforesaid, the Plaintiffs most respectfully prays that this Hon’ble Court may be pleased to pass:

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(e) A decree for damages amounting to ₹ 2,00,05,000/- or any such amount as found due in favour of the Plaintiffs. There Plaintiffs submits that the valuation of damages is an approximate figure only, and the Plaintiffs undertakes to pay further Court fees as may be determined by this Hon’ble Court upon the damages that the Plaintiffs is able to prove in the course of trial.”

### **Replication of Lifestyle to written statement of Cloutail**

**31.** As against the above averments in the plaint, paras 11, 12 and 15 to 17 of the replication of Lifestyle to the written statement of Cloutail, aver thus:

“11. The contents of paragraphs 16 and 18, except for those that already form part of the record, of the Written Statement are wrong and denied. Defendant No.2 has listed the product bearing the Infringing Mark only to usurp the goodwill and reputation subsisting in the Plaintiffs’ BHPC Logo mark. It is humbly submitted that whether the Plaintiffs have approached any alleged redressal mechanism of Defendant No.3 or not, is not a defence of Defendant No.2 as they are the suppliers of the infringing products against whom the Plaintiffs can take infringement and passing off action even in case of a single instance of such illicit activity. For the sake of brevity and to avoid repetition, the Plaintiffs seek leave of the Hon’ble Court to rely on the contents of the present Replication and Plaint filed by the Plaintiffs.



Para-wise reply to 'Para-Wise Reply' of Written Statement

12. The contents of paragraphs 19 to 22 of the Written Statement are wrong and denied and the contents of paragraphs 1 to 7 of the Plaint are reaffirmed and reiterated. It is reiterated that Defendant No.2 has indulged in activities amounting to infringement of the Plaintiffs' well-known trade marks and copyright. Defendant No.2 has manufactured, sold, or distributed Infringing Products bearing the Impugned Mark. It is also submitted that Defendant No.2 has listed Infringing Products containing the Impugned mark, with the knowledge of nature of goods, amounting to infringement and/or passing off of the Plaintiffs' rights in their trade mark under the TM Act and/or the Copyright Act. It is reiterated that Plaintiff No.2 is the licensee of Plaintiff No.1 and Mr. M.K is authorized to sign the Plaint and Replication. For the sake of brevity and to avoid repetition, the Plaintiffs seeks leave of the Hon'ble Court to rely on the contents of the present Replication and Plaint filed by the Plaintiffs.

\*\*\*\*\*

15. The contents of paragraphs 32 to 34 of the Written Statement, except for those that already form part of the record, are wrong and denied and the contents of paragraphs 44 to 47 of the Plaint are reaffirmed and reiterated. It is reiterated that Defendant No.2 has adopted the Infringing Mark, which has been admitted by the Defendant No.2. It is reiterated that the Plaintiffs have placed on record sufficient evidence to show that the Infringing Products which bears the Impugned Mark was sold by Defendant No.2. For the sake of brevity and to avoid repetition, the Plaintiffs seek leave of the Hon'ble Court to rely on the contents of the present Replication and Plaint filed by the Plaintiffs.

16. The contents of paragraphs 35 and 37 of the Written Statement are wrong, repetitive and denied and the contents of paragraphs 48 to 53 of the Plaint are reaffirmed and reiterated. It is reiterated that Defendant Nos. 1 and 2 have intentionally sold the Infringing Products containing the Impugned mark on Defendant No.3's website. It is reiterated that Defendant No.3 has admitted that the orders for the Product have been fulfilled by Defendant No.2. It is further reiterated that Defendant No.2 is piggybacking on the goodwill and reputation of the Plaintiffs. It is submitted that in light of the admissions made by Defendant No.2, it is liable under TM Act and Copyright Act for infringement and passing off. It is reiterated that substantial harm has been caused to the Plaintiffs due to the infringing acts of Defendant No.2. For the



sake of brevity and to avoid repetition, the Plaintiffs seek leave of the Hon'ble Court to rely on the contents of the present Replication and Plaint filed by the Plaintiffs.

17. The contents of paragraph 38 of the Written Statement are wrong and denied and the contents of paragraphs 54 to 56 of the Plaint are reaffirmed and reiterated. It is reiterated that Defendant No.2 has willfully engaged in infringing activity and caused damages to the Plaintiffs, piggybacking on the Plaintiffs' reputation and goodwill. It is reiterated that the Plaintiffs have suffered losses, which are attributable to infringing activities of Defendants. It is submitted that in light of this, the Plaintiffs are entitled to exemplary and punitive damages and cost. It is denied that the present suit is frivolous and/ or vindictive against Defendant No.2. For the sake of brevity and to avoid repetition, the Plaintiffs seek leave of the Hon'ble Court to rely on the contents of the present Replication and Plaint filed by the Plaintiffs."

**32.** In the above paragraphs from its replication to the written statement of Cloudtail, therefore, Lifestyle asserts, emphatically, that

- (i) Cloudtail was the supplier of the infringing products (para 11),
- (ii) Cloudtail had indulged in activities amounting to infringement of Lifestyle's trade marks (para 12),
- (iii) *Cloudtail had manufactured, sold and distributed* the

products bearing the allegedly infringing  mark (para 12),

(iv) *Cloudtail had adopted the infringing mark* (para 15), and

(v) Cloudtail was piggybacking on the goodwill and reputation of Lifestyle (para 16).



33. Thus, in the replication, Lifestyle squarely lays the blame *for manufacturing as well as selling* the goods bearing the allegedly

infringing  mark on Cloudtail.

### **Related contentions of learned Senior Counsel for Amazon Tech**

34. These aspects are of pivotal importance because it is the contention, of learned Senior Counsel for Amazon Tech, that the entire case against Amazon Tech is moonshine. The specific case of learned Senior Counsel is that the role of Amazon Tech, in the entire imbroglio, was limited to licensing, to Cloudtail, the right to use the SYMBOL mark – of which Amazon Tech admits itself to be the proprietor – on the goods sold by it on the website of ASSPL.

Amazon Tech denies that it has anything to do with the  mark, or that it had ever authorized the use of the said mark on any goods. Nor are the goods sold by Cloudtail – T-shirts and the like – bearing the SYMBOL mark of Amazon Tech, manufactured by Amazon Tech. They are manufactured and sold by Cloudtail, and, under the licence granted by Amazon Tech, carry the SYMBOL mark. If, therefore, they

carry any other mark, including , Amazon Tech submits that it has nothing to do with it.

35. Apart from their grievances at that Amazon Tech having been proceeded *ex parte*, learned Senior Counsel emphatically contend that



there is neither any evidence, nor, for that matter, any finding, either, of the learned Single Judge, of Amazon Tech being engaged in any infringing activity. The infringement, if any, was committed by Cloudbtail, for which the suit already stands decreed against Cloudbtail for ₹ 4,78,484/-, *vide* order dated 2 March 2023 (to which we would allude in greater detail later in this order). There was, therefore, no justification, whatsoever, to award, against the appellant Amazon Tech, any damages whatsoever, let alone damages as colossal as ₹ 336,02,87,000/-.

**36.** Learned Senior Counsel also submit that there is no averment, whatsoever, in the pleadings of Lifestyle, which could justify these damages. They point out that, even in the plaint, following the somewhat vague allegations against Amazon Tech, the total damages computed by Lifestyle, against all defendants, is only ₹ 2,00,05,000/-.

### **Trajectory of the suit before the learned Single Judge**

**37.** In view of the objection raised by Mr. Kaul and Mr. Nigam against Amazon Tech having been proceeded *ex parte*, it would also be necessary to chart the trajectory of the proceedings in the suit. To the extent relevant, this may be outlined thus:

- (i) On 12 October 2020, summons in CS (Comm) 443/2020 and notice in IA 9254/2020 were directed to be issued. Summons and notice were accepted by learned Counsel on behalf of Cloudbtail and ASSPL. Summons and notice were



directed to be served on the appellant through e-mail and Whatsapp, returnable for 2 February 2021.

(ii) On 23 December 2020, an affidavit of service was filed by Lifestyle, deposing that a complete set of the paper book in the suit, including the plaint, applications and documents, along with the order dated 12 October 2020 had been served on Amazon US *through courier and Speed Post*.

(iii) On 1 March 2021, apropos service of CS (Comm) 443/2020 on Amazon US, it was observed that

(a) the affidavit of service filed by the plaintiff reflected service of the entire paper book of the suit on Amazon US through Speed Post and Courier,

(b) however, Process Fee had not been filed with the Registry for service on Amazon US, *as a result of which summons of CS (Comm) 443/2020 were not served on Amazon US as per the order dated 12 October 2020 of the Court*, and

(c) Lifestyle was directed to comply with the order, whereupon process was directed to be issued returnable for 22 April 2021 *to ascertain completion of service*.

(iv) On 25 March 2021, another affidavit of service, of that date, i.e. 25 March 2021, was filed by Lifestyle, deposing that “the plant, documents, applications filed by the Plaintiff, all the Orders of this Hon’ble in the Commercial Suit *along with the*



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*summons issued by this Hon'ble*” had been served on Amazon US, *vide* e-mail dated 8 March 2021. *However, even till then, Process Fee, for issuance of summons to Amazon US by the Registry, had not been filed by Lifestyle, so that there could be no question of Amazon US having been served with the summons issued by the Court.*

(v) On 10 March 2021, Lifestyle filed Process Fee for effecting service on Amazon US. The Process Fee was returned under objections as it was delayed. The Process Fee was refiled on 17 March 2021 with an application for condonation of delay. Delay was condoned on 17 March 2021. Simultaneously, Summons to Amazon US were issued via International e-mail/Whatsapp for 22 April 2021. This was again noted *vide* File Noting dated 16 April 2021 of the Registry.

(vi) On 7 July 2021, *it was noted that there was no report regarding service of CS (Comm) 443/2020 and IA 9254/2020 on Amazon US.* Affidavit of service was directed to be filed. The matter was renotified before the Court on 13 July 2021.

(vii) Nothing further was filed by Lifestyle.

(viii) On 13 July 2021, the learned Judge was on leave, and the matter was renotified for 20 September 2021.



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(ix) On 20 April 2022, it was noted that Amazon US had not entered appearance despite service and was, therefore, proceeded against *ex parte*. ASSPL was directed, by the said order, to place on record, on affidavit, the relationship between Amazon Tech and ASSPL, and Cloudtail was directed to file an affidavit enclosing the licence agreement between Amazon Tech and Cloudtail. These affidavits were duly filed.

(x) Amazon US, therefore, *was never present in the proceedings, on any date.*

(xi) On 2 March 2023, CS (Comm) 443/2020 was decreed against Cloudtail for ₹ 4,78,484/- and ASSPL was deleted from the array of parties as no relief had been sought against it. As Amazon US had already been proceeded *ex parte*, after this date, there were no defendants before the Court on any date of hearing, and the plaintiff, i.e. Lifestyle, alone was represented, till the impugned judgment and decree came to be passed. As much turns on the order dated 2 March 2023, we deem it necessary to reproduce the order in entirety, thus:

“1. Plaintiffs have filed the present suit, inter alia, to restrain Defendants from using and/or reproducing in any manner whatsoever, including manufacture, sale and distribution of apparel products or any other products bearing the infringing device/logo mark –



[hereinafter “Infringing Device Mark”], which violates Plaintiffs’ statutory and common law rights in their registered logo/device marks in several classes being –



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‘ BEVERLY HILLS POLO CLUB ’ and ‘ BEVERLY HILLS POLO CLUB ’, under Trade Marks Act, 1999 and the Copyright Act, 1956.

2. Plaintiff have arrayed Amazon Technologies, Inc. [Defendant No. 1 – hereinafter “Amazon”], as a party to the present suit alleging that they are manufacturing/offering for sale/ selling, inter alia, apparel products under the brand name ‘Symbol’ bearing the Infringing Device Mark. It is further about that Cloudbtail India Pvt Ltd [Defendant No. 2 – hereinafter “Cloudbtail”], is conducting its business on the website [www.amazon.in](http://www.amazon.in) an online marketplace, operated by Amazon Seller Service Pvt Ltd [Defendant No. 3 – hereinafter “Amazon Seller”]. It is alleged that Cloudbtail coupled with Amazon manufacturer/offer for sale/sell, inter alia, apparel products bearing the brand name ‘Symbol’ coupled with the Infringing Device Mark on the website of Amazon Seller.

3. On 12<sup>th</sup> October, 2020, and add interim injunction was granted in favour of Plaintiff, relevant portion where of is extracted below:

“12. Considering that the defendant No. 1’s is a separate entity, this Court is *prima facie* of the view that the present suit would be maintainable. From the averments in the plaint as also the documents filed therewith, this Court finds that the Plaintiff has made out a *prima facie* case in its favour and in case no *ex parte* ad interim injunction is granted, the Plaintiff would suffer irreparable loss. Balance of convenience also lies in favour of the Plaintiff. Consequently, until the next date of hearing, defendant No. 1 and defendant No. 2, there Partners, Directors, Proprietors, Shareholders, Affiliates, Licensees, Agents etc are restrained from selling, offering for sale, advertising, directly or indirectly dealing in any products or reproducing or using in any manner whatsoever the infringing logo mark



which is identically/deceptively similar to the Plaintiff logo mark “BEVERLY HILLS POLO



CLUB” POLO CLUB . In the meantime, defendant No. 3 is directed to take down the products of the



defendant No. 1 with the infringing logo within 72 hours of the URLs being provided by the Plaintiff.”

4. Amazon has not appeared despite service and has been proceeded ex parte vide order dated 20<sup>th</sup> April, 2022. On the same date, injunction order dated 12<sup>th</sup> October, 2020 was confirmed and made absolute till the pendency of the present suit. Later, on 5<sup>th</sup> September, 2022, Cloudtail made a statement, that they are willing to suffer a decree of injunction and prayed that the Court may consider awarding reasonable damages in favour of Plaintiff. Parties were referred to mediation which, unfortunately, was unsuccessful.

5. *Mr. Nischal Anand, counsel for Cloudtail, reiterated his stand as noted on 5<sup>th</sup> September, 2022. He emphasises that Cloudtail has stopped using Infringing Device Mark or any marks similar thereto and the same was used only for a brief period from year 2015 till July 2020, and in this period, on account of sale of infringing products, Cloudtail earned a revenue of only INR 23,92,420/- on which the profit margin is no more than 20%. He submits that the Court may award damages on the basis of above noted figures. Mr J. Sai Deepak, counsel for Plaintiff, do not dispute the sales figures and agrees that for award of damages, aforementioned data is sufficient and no further evidence is required.*

6. *At this juncture, it must also be noted that Mr. Anand submits that the liability for damages should be solely fixed on Cloudtail and not Amazon. He states that the decision to use the Impugned Device Mark was solely that of Cloudtail and Amazon has no liability in the matter. Reliance is placed on Amazon Brand License and Distribution Agreement dated 23<sup>rd</sup> December, 2015 [hereinafter “Agreement”] to demonstrate that Amazon’s Mark ‘Symbol’ was licensed to Cloudtail and the use thereof, in relation to the infringing products was entirely that of Cloudtail. He further highlights that under the Agreement Cloudtail is liable to indemnify Amazon for any*



*loss arising from any breach on their part. Mr Sai Deepak refutes the above statement and argues that the Infringing Device Mark is not a subject matter of the Agreement between Amazon and Cloudbtail and damages are liable to be awarded against both Amazon and Cloudbtail.*

7. The obligations arising from the Agreement referred above between Amazon and Cloudbtail cannot bind Plaintiffs and consequently, the admission of liability on part of Cloudbtail cannot bind Plaintiffs. They cannot be denied the opportunity to seek damages from Amazon, if any. Considering the above and since there is no contest to the sales figures for computation of damages, the Court proceeds to pass a decree qua Cloudbtail.

8. Accordingly, the suit is decreed in favour of Plaintiff against Defendant No. 2/Cloudbtail, in terms of paragraph No. 64 prayer clauses (a), (b) and (c). Towards use of Infringing Device Market, accepting the stand of Cloudbtail that profit margin is only 20%, Plaintiffs are awarded damages of 20% of INR 23,92,420/- i.e., INR 4,78,484/-. Since Amazon has not contested the suit and use of products bearing the Infringing Device Mark was discontinued in July 2020, prior to the filing of the suit, no costs are being awarded.

9. Decree Sheet be drawn up against Defendant No. 2.

10. This brings us to the remaining Defendants. Amazon Seller is an intermediary, on whose platform, products bearing Infringing Device Mark were offered/listed. Ms Sneha Jain, counsel for Amazon Seller, requests that the said Defendant be deleted from the array of parties as they have complied with all directions issued by this Court. She states that in future, as and when directed by this Court, listings qua products bearing Infringing Device Mark shall be removed. She adds that no substantive relief is sought against them. Accordingly, taking her statement on record, and binding Defendant No. 3/Amazon Seller, to the same, they are deleted from the array of parties. Plaintiff Sir directed to file an amended memo of parties for the next date of hearing.

11. Now the suit has to proceed ex parte qua Defendant No. 1/Amazon. Mr. Sai Deepak seeks leave of the Court to produce additional documents. Let the same be done within three weeks' from today.



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12. List on 04<sup>th</sup> May, 2023.”

(Emphasis supplied)

(xii) *After 2 March 2023, Lifestyle alone appeared before the learned Single Judge.*

(xiii) Trial of the suit commenced after 2 March 2023. In view of Mr. Nigam’s objection that the entire trial, and subsequent proceedings, took place in the absence of Amazon Tech, we deem it appropriate to reproduce the orders passed after the said date, in their entirety, thus:

“Order dated 25 May 2023

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

**CS(COMM) 443/2020**

LIFESTYLE EQUITIES CV & ANR. ... Plaintiffs  
Through: Mr. J. Sai Deepak, Mr.  
Sidhant Goel and Mr. Deepankar  
Mishra, Advocates.

versus

AMAZON TECHNOLOGIES INC & ORS.  
..Defendants

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE SANJEEV NARULA**

**ORDER**

**25.05.2023**

1. Mr. J. Sai Deepak, counsel for Plaintiffs, states that pursuant to the leave granted on 02<sup>nd</sup> March, 2023, Plaintiff has filed the additional documents and would now like to lead ex-parte evidence.



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2. Plaintiffs are permitted to file a list of witnesses within a period of one week from today along with the affidavit(s) of evidence. Mr. Sai Deepak submits that the witnesses to be deposed are not residents of India. Considering the same, it is directed that as and when Plaintiffs request for recording of witnesses' statement(s) through video conferencing mechanism, the Joint Registrar shall consider the same and pass necessary orders, in accordance with law.

3. List before the Joint Registrar for recording of evidence on 12<sup>th</sup> July, 2023.

4. List before the Court on 7<sup>th</sup> August, 2023.

**SANJEEV NARULA, J.”**

“Order dated 5 July 2023

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

**CS(COMM) 443/2020 and I.A. 11923/2023**

LIFESTYLE EQUITIES CV & ANR. ...Plaintiffs  
Through: Mr. Sidhant Goel and  
Mr. Deepankar Mishra, Advocates  
(M: 9716746496).

versus

AMAZON TECHNOLOGIES INC & ORS. Defendants  
Through: None.

**CORAM:  
JUSTICE PRATHIBA M. SINGH**

**ORDER**  
**05.07.2023**

1. This hearing has been done through hybrid mode.

**I.A. 11923/2023 (for recording of evidence through video conferencing)**



2. This is an application seeking permission to lead *ex-parte* evidence of one witness through video conferencing.

3. Considering the fact that the witness is from the United Kingdom and Defendant No.1 is not appearing in the matter, the permission is granted. The Joint Registrar shall record the evidence of Mr. Gavin Rawlings through Video Conferencing in terms of the applicable Delhi High Court (Original Side) Rules, 2018, and High Court of Delhi Rules for Video Conferencing for Courts, 2021.

4. IA is disposed of.

**CS(COMM)-443/202020**

5. List on the date already fixed.

**PRATHIBA M. SINGH, J.”**

“Order dated 19 July 2023

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

**CS(COMM) 443/2020**

LIFESTYLE EQUITIES CV & ANR. ....Plaintiffs  
Through: Mr. Sidhant Goel and  
Mr. Deepankar Mishra, Advocates  
(M: 9716746496).

versus

AMAZON TECHNOLOGIES INC & ORS....Defendants  
Through: Mr. S. N. Jha, Senior  
Advocate with Mr. Anil Kamwal,  
Advocates for Applicant. (M:  
9810044429)

**CORAM:  
JUSTICE PRATHIBA M. SINGH**

**ORDER  
19.07.2023**

1. This hearing has been done through hybrid mode.



2. The present suit has been filed by the Plaintiffs seeking permanent injunction restraining the infringement of trade mark, copyright, passing off, dilution of goodwill, unfair competition, etc.
3. Vide order dated 5<sup>th</sup> July, 2023, this Court had permitted evidence of Mr. Gavin Rawlings, located in the U.K., to be recorded through video conferencing in terms of the High Court of Delhi Rules for Video Conferencing for Courts, 2021 (hereinafter 'VC Rules').
4. The Joint Registrar has placed the matter before this Court for appointing a remote point co-ordinator and fixation of his fee.
5. It is submitted by Mr. Goel, Id. Counsel that in terms of Rule 5.3.1 of the VC Rules an official of the Indian Consulate or High Commission in the UK would have to be appointed as a remote point coordinator for the purpose of recording of evidence.
6. Accordingly, it is directed that the High Commissioner, High Commission of India, London may appoint an official of the High Commission for being the remote point coordinator to enable recording of evidence through video conferencing.
7. The fee of the said coordinator is fixed at £500 for one session.
8. The Plaintiff to coordinate with the High Commission of India for nomination of the remote point coordinator.
9. List on 2<sup>nd</sup> August, 2023 for recording of evidence through video conferencing before the Joint Registrar.
10. List before Court on 7<sup>th</sup> August, 2023.

**PRATHIBA M. SINGH, J.”**

“Order dated 2 August 2023

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



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**CS(COMM) 443/2020**

LIFESTYLE EQUITIES CV & ANR. ....Plaintiffs

Through: Mr. Sidhant Goel,  
Mr. Deepankar Mishra, Advocates

versus

AMAZON TECHNOLOGIES INC & ORS .Defendants

Through: None

**CORAM:**

**JOINT REGISTRAR (JUDICIAL) SH. PURSHOTAM  
PATHAK (DHJS)**

**ORDER**

**02.08.2023**

Commencement of evidence: 2:15 pm

Conclusion of evidence: 3:40 pm

No of pages – 03

PW-5 Mr. Gavin Rawlings is examined through Video Conferencing vide separate proceedings. Scanned copy of the statement signed by the witness at remote point is received through email and same is also signed by the undersigned.

By way of separate statement of Ld. Counsel for the plaintiff recorded today, PE stands closed.

Matter is ripe for final arguments.

Put up before Hon'ble Court on date already fixed i.e. 07.08.2023 for further directions.

**PURSHOTAM PATHAK (DHJS),  
JOINT REGISTRAR (JUDICIAL)”**

“Order dated 7 August 2023

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

**CS(COMM) 443/2020**

LIFESTYLE EQUITIES CV & ANR. .... Plaintiffs



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Through: Mr. Gaurav Pachnanda Senior Advocate with Mr. Sidhant Goel, Mr. Mohit Goel, Ms. Jyotika Jain, Mr. Deepankar Mishra, Mr. Abhishek Kotnala, Mr. Karmanya Dev Sharma, Mr. Aditya Goel and Ms. Avni Sharma, Advocates (M: 9716746496).

versus

AMAZON TECHNOLOGIES INC & ORS .....Defendants

Through: None

**CORAM:**  
**JUSTICE PRATHIBA M. SINGH**

**ORDER**  
**07.08.2023**

1. This hearing has been done through hybrid mode.
2. The present suit for infringement of trademark, copyright and passing off has been filed seeking protection of the following "BEVERLY HILLS POLO CLUB" mark, logo and the accompanying device (*hereinafter "BHPC marks"*):



3. Plaintiff No.1-Lifestyle Equities C.V., based in the Netherlands, owns the said mark and also globally licenses it. Plaintiff No.2- Lifestyle Licensing B.V., which is a group concern, is the master licensee of Plaintiff No.1. It enters into license agreements with other companies in respect of BHPC marks in various jurisdictions.
4. The said mark has been licensed in India to various third parties. The grievance of the Plaintiffs is that there were various products being sold on the www.amazon.in platform with a logo which was identical to the BHPC marks. As per the Plaintiffs, further enquiries revealed that Defendant No.1- Amazon Technologies, Inc. based in Seattle, USA is using the infringing device mark on



apparels. Defendant No.2 in the suit- Cloudtail India Private Limited is also a retailer who was reflected as the seller of the goods bearing infringing mark on the Amazon website which is hosted and maintained by Amazon Seller Service Private Limited-Defendant No.3.

5. On the first date of hearing in the suit, an *ex parte ad interim* injunction was granted on 12th October, 2020 by the Court in the following terms:

*“9. None appears on behalf of defendant No.1 despite advance notice however, learned counsel for defendant No.3, that is, Amazon Seller Service Pvt. Ltd. enters appearance and states that in an earlier suit filed by the plaintiff being CS(COMM) 1015/2018 Lifestyle Equities C.V. and Ors. vs. Amazon Seller Services Pvt. Ltd., vide order dated 16th July, 2018, this Court had already directed the defendant No.3 to take down the URLs wherein the brand/logo/device mark of the plaintiff is copied including those mentioned in the plaint and as and when the plaintiff gives any further information in this regard. Learned counsel for the defendant No.3 states that since the defendant No.3 is covered by the said order of this Court dated 16<sup>th</sup> July, 2018, no fresh suit is maintainable and the plaintiff was only required to intimate the same to the defendant No.3 and hence the present suit is mala fide.*

*10. Learned counsel for the defendant No.2 states that the defendant No.2 has already taken down the listing and will further investigate into the matter and take down any further listing which is either on the defendant No.3’s platform or any other platform.*

*11. Case of the plaintiff is that in the earlier suit, that is, CS (COMM) No.1015/2018, the plaintiff had impleaded parties who were selling their products on the defendant No.3’s listing by infringing the plaintiff’s device mark and the copyright and in the earlier suit the defendant No.1 was not a party and in the present suit, not only does the plaintiff seek delisting of the brand of the defendant No.1 from the defendant No.3’s platform but also seeks the relief of injunction against the defendant No.1 which is infringing and diluting the plaintiff’s mark by selling its products on a much cheaper rates representing to be that of the plaintiff.*



12. Considering that the defendant No.1 is a separate entity, this Court is prima facie of the view that the present suit would be maintainable. From the averments in the plaint as also the documents filed therewith, this Court finds that the plaintiff has made out a prima facie case in its favour and in case no ex parte ad-interim injunction is granted, the plaintiff would suffer an irreparable loss. Balance of convenience also lies in favour of the plaintiff. Consequently, till the next date of hearing, defendant No.1 and defendant No.2, their Partners, Directors, Proprietors, Shareholders, Affiliates, Licensees, Agents etc. are restrained from selling, offering for sell, advertising, directly or indirectly dealing in any products or reproducing or using in any manner whatsoever the infringing logo



mark which is identically/deceptively similar to the plaintiff's logo mark "BEVERLY HILLS



POLO CLUB" . In the meantime, CS(COMM) 443/2020 defendant No.3 is directed to take down the products of the defendant No.1 with the infringing logo



within 72 hours of the URLs being provided by the plaintiff."

6. Since Defendant No.1 did not appear despite service, vide order dated 20<sup>th</sup> April, 2022, the said Defendant was proceeded *ex parte*, and an affidavit was sought from Defendant No.3 as to the exact relationship between various Amazon group companies. Defendant No.2 was also directed to place an affidavit on record giving details of the total stock of products sold by the said Defendant. The relevant portion of the order reads as under:

"3. Let an affidavit be filed by the Defendant No.3 - Amazon Seller Service Private Limited giving exact details of whether Defendant No.1- Amazon



Technologies, Inc. is, in any manner, related to Defendant No.3, or any of its subsidiary or holding companies. The affidavit shall also state as to whether Defendant No.1-Amazon Technologies, Inc. is, in any manner, related to Amazon.com, Inc.

4. Let an affidavit be filed by Defendant No.2 giving details as to the total stock of products sold by the Defendant No.2 on Defendant No.3's platform, under the impugned logo and motif which was injuncted by the Court, vide order dated 12th October, 2020. Similar affidavit shall also be filed by Defendant No.3 as to the total sales made under the mark 'Symbol' as also the impugned logo on its platform. Let the said affidavits be filed, within four weeks.

5. Let Defendant No.2 also place before this Court the agreement between itself and Defendant No.1-Amazon Technologies, Inc., which is stated to be the owner of the mark/label 'Symbol', in respect of which Defendant No.2 is a licensee, as pleaded in the written statement.

6. Both the Defendant Nos. 2 and 3 confirm that, there are no products with the impugned logo which are now sold on the platform of Defendant No.1-Amazon Technologies, Inc. Accordingly, the interim injunction is made absolute during the pendency of the present suit.”

7. A perusal of the above order shows that during the pendency of the suit, the interim injunction was confirmed. In view of the order of the Court, an affidavit has been placed on record by Defendant No.3 explaining how the Defendants are related to each other. Moreover, Defendant No.2 filed an affidavit as to sales. The Court, vide 2nd March, 2023 order decreed the suit against Defendant No.2 directing payment of a sum of Rs.4,78,484/- as damages for the infringing use of the logo.

8. Further, Defendant No.3 was deleted vide the said order as it claimed to be an intermediary which was selling the products of Defendant No. 2 and no substantive relief was sought against it.

9. Defendant No.1 is claimed to be the owner of the infringing



logo/mark which is known by the name 'SYMBOL'. Insofar as Defendant No.2 is concerned, the suit already stands decreed. Insofar as Defendant No. 3 is concerned, the same has been deleted vide order dated 2nd March, 2023.

10. In view of this position, the Plaintiff led its evidence on the question of damages/rendition of accounts of profits. The evidence of the following witnesses has been filed on record:

- i. Mr. Eli Haddad;
- ii. Mr. Sanjay Shetty;
- iii. Mr. Gaganpreet Singh Puri;
- iv. Mr. Arvind Dhingra;
- v. Mr. Gavin Rawlings

11. Today, Mr. Gaurav Pachnanda, Id. Sr. Counsel has addressed some submissions.

12. Since Defendant No.1 is already proceeded *ex parte* in the matter, On the next date the Court would consider as to whether the witnesses ought to appear for the purposes of being examined by the Court.

13. List for further hearing on 31<sup>st</sup> October, 2023.

**PRATHIBA M. SINGH, J.”**

“Order dated 6 October 2023

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

**CS(COMM) 443/2020 and I.A. 19609/2023**

LIFESTYLE EQUITIES CV & ANR. .... Plaintiffs  
Through: Mr. Mohit Goel, Mr.  
Sidhant Goel and Mr. Deepankar  
Mishra, Advs. (M:9818432059)

versus

AMAZON TECHNOLOGIES, INC. ....Defendant  
Through: None

**CORAM:  
JUSTICE PRATHIBA M. SINGH**



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**ORDER**  
**06.10.2023**

1. This hearing has been done through hybrid mode.

**I.A. 19609/2023 (for direction) in CS(COMM)-443/2020**

2. The present application filed by the Plaintiff seeks the fixing of a specific time for hearing, considering that some of the witnesses will be traveling from abroad.
3. Accordingly, list this matter on 31st October, 2023 at 3:30 pm.
4. Applications disposed of.

**PRATHIBA M. SINGH, J.”**

“Order dated 1 November 2023

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

**CS(COMM) 443/2020**

LIFESTYLE EQUITIES CV & ANR. ....Plaintiffs  
Through: Mr. Gaurav  
Pachnanda, Sr. Adv. Mr. Mohit Goel,  
Mr. Sidhant Goel, Mr. Deepankar  
Mishra, Ms. Jyotika Jain, Ms. Avni  
Sharma, Ms. Rakshita Singh & Mr.  
Aditya Goel, Advs (M. 9818432059)

versus

AMAZON TECHNOLOGIES, INC. ....Defendant  
Through: None

**CORAM:**  
**JUSTICE PRATHIBA M. SINGH**

**ORDER**  
**01.11.2023**

1. This hearing has been done through hybrid mode.



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2. Submissions on behalf of the Plaintiff – M/s. Lifestyle Equities on the quantum of damages that the Plaintiff is entitled in the suit, have been partly made by Mr. Gaurav Pachnanda, Id. Sr. Counsel. Two witnesses of the Plaintiff, Mr. Eli Haddad, Managing Director of Plaintiff No. 1 and 2 & Mr. Gaganpreet Singh Puri, Managing Director at Alvarez & Marsal India Private Limited are present physically in Court. Two other witnesses of the Plaintiff-Mr. Gavin Rawlings & Mr. Sanjay Shetty are present virtually before the Court.

3. During the course of hearing, the report of Mr. Gaganpreet Singh Puri has been perused by the Court, and queries have been addressed to both Mr. Eli Haddad and Mr. Gaganpreet Singh Puri. The Plaintiffs have also presented a T-Shirt, which according to the Plaintiffs, bears a mark similar to the Plaintiff's mark and marketed by the Defendant on its online marketplace under the brand name 'SYMBOL'. The said T-shirt has been handed over to the Court. It is submitted that the said brand name is used by the Defendant Amazon Technologies to market its products, which are predominantly apparel products.

4. Mr. Gaurav Pachnanda, Id. Sr. counsel has addressed submissions on the aspect of damages. The hearing is inconclusive.

5. PW-1 shall file on affidavit the details of the actual royalties remitted along with actual sales – both online and offline separately, on an annual basis, received from its licensees from the date of execution of the license agreement till date.

6. Witnesses are permitted to be present either physically or virtually on the next date of hearing.

7. This shall be treated as a part heard matter.

8. List on 19<sup>th</sup> December, 2023 at 2:30 p.m.

**PRATHIBA M. SINGH, J.”**

“Order dated 19 December 2023

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



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**CS(COMM) 443/2020**

LIFESTYLE EQUITIES CV & ANR. ....Plaintiffs  
Through: Mr. Gaurav  
Pachnanda Sr. Adv with Mr. Mohit  
Goel, Mr. Sidhant Goel, Mr.  
Deepanka Mishra, Ms. Jyotika Jain,  
Ms. Anvi Sharma, Mr. Adiya Goel,  
Adv. (M. 9873021858)

versus

AMAZON TECHNOLOGIES, INC. ....Defendant  
Through: None

**CORAM:  
JUSTICE PRATHIBAM. SINGH**

**ORDER  
19.12.2023**

1. This hearing has been done through hybrid mode.
2. Due to lack of time, the Court is unable to hear further submissions in this matter.
3. The matter shall continue to be treated as a part-heard matter.
4. List for further hearing on 27th February 2024.

**PRATHIBA M. SINGH, J.”**

“Order dated 27 February 2024

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

**CS(COMM) 443/2020**

LIFESTYLE EQUITIES CV & ANR. ....Plaintiffs  
Through: Mr. Gaurav  
Pachnanda, Sr. Adv. with Mr. Mohit  
Goel, Mr. Sidhant Goel, Mr.  
Deepankar Mishra, Ms. Jyotika Jain,  
Mr. Vivek P Singh, Mr. Karmanya D



2025:DHC:5036-DB



Sharma, Ms. Nikita Jaitly & Ms. Avni  
Sharma, Advs. (M: 9873021858)

versus

AMAZON TECHNOLOGIES, INC. ....Defendant  
Through: None

**CORAM:**  
**JUSTICE PRATHIBA M. SINGH**

**ORDER**  
**27.02.2024**

1. This hearing has been done through hybrid mode.
2. List for hearing on 25th April, 2024 at 3:30 pm.
3. This is a part-heard matter.

**PRATHIBA M. SINGH, J.”**

“Order dated 25 April 2024

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

**CS(COMM) 443/2020**

LIFESTYLE EQUITIES CV & ANR. ....Plaintiffs  
Through: Mr. Gaurav  
Pachnanda, Sr. Advocate with Mr.  
Sidhant Goel, Mr. Mohit Goel, Mr.  
Deepankar Mishra, Ms. Jyotika Jain,  
Ms. Avni Sharma, Mr. Vivek Pratap  
Singh, Advocates (8956009494).

versus

AMAZON TECHNOLOGIES, INC. ....Defendant  
Through: Appearance not given.

**CORAM:**  
**JUSTICE PRATHIBA M. SINGH**

**ORDER**  
**25.04.2024**



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1. This hearing has been done through hybrid mode.
2. Mr. Gaurav Pachnanda, Id. Senior Counsel for the Plaintiffs has continued his submissions.
3. List for further hearing on behalf of the Plaintiffs on 29th May, 2024.
4. On the said date, if any product of the Plaintiffs has been filed in the present case, the same shall be sent to the Court.
5. This is a part-heard matter.

**PRATHIBA M. SINGH, J.”**

“Order dated 29 May 2024

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

**CS(COMM) 443/2020**

LIFESTYLE EQUITIES CV & ANR. ....Plaintiffs  
Through: Mr. Gaurav  
Pachnanda, SA, Mr. Mohit Goel, Mr.  
Sidhant Goel, Mr. Deepankar Misra,  
Ms. Jyotika Jain, Mr. Vivek P Singh,  
Ms. Avni Sharma, Advs.

versus

AMAZON TECHNOLOGIES, INC. .... Defendant  
Through: None.

**CORAM:  
JUSTICE PRATHIBA M. SINGH**

**ORDER  
29.05.2024**

1. This hearing has been done through hybrid mode.
2. Oral submissions have been heard and have been concluded by Id. Sr. Counsel Mr. Pachnanda. Written submissions have also been filed on behalf of the Plaintiffs.



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3. List for filing statement of actual costs, along with requisite documentation on 5th July, 2024.
4. This is a part-heard matter.

**PRATHIBA M. SINGH, J.”**

“Order dated 5 July 2024

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

**CS(COMM) 443/2020**

LIFESTYLE EQUITIES CV & ANR. ....Plaintiffs  
Through: Mr. Gaurav  
Pachnanda, Senior Advocate with Mr.  
Sidhant Goel, Mr. Mohit Goel, Ms.  
Jyotika Jain, Mr. Deepankar, Mr.  
Mishra, Mr. Vivek Pratap Singh, Ms.  
Avni Sharma

versus

AMAZON TECHNOLOGIES, INC. ....Defendant  
Through: None.

**CORAM:  
JUSTICE PRATHIBA M. SINGH**

**ORDER  
05.07.2024**

1. This hearing has been done through hybrid mode.
2. The statement of costs has been placed on record in the form of an affidavit. List for consideration of judgments and for closing submissions.
3. List on 12th July, 2024.

**PRATHIBA M. SINGH, J.”**

“Order dated 12 July 2024



2025:DHC:5036-DB



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

**CS(COMM) 443/2020**

LIFESTYLE EQUITIES CV & ANR. ....Plaintiffs  
Through: Mr. Gaurav  
Pachnanda, Sr. Adv. with Mr. Mohit  
Goel, Mr. Sidhant Goel, Mr.  
Deepankar Mishra, Ms. Avni Sharma,  
Mr. Vivek Pratap Singh, Mr.  
Abhishek Katnal & Ms. Jyotika Jain,  
Advs.

versus

AMAZON TECHNOLOGIES, INC. ....Defendant  
Through: None.

**CORAM:  
JUSTICE PRATHIBA M. SINGH**

**ORDER**  
**12.07.2024**

1. This hearing has been done through hybrid mode.
2. The compilations and the submissions which have been handed over by the Plaintiffs are taken on record.
3. Arguments heard. Judgment reserved.

**PRATHIBA M. SINGH, J.”**

**38.** From these orders, the position that emerges is as under:

- (i) On 25 May 2023, Lifestyle was granted permission to file a list of witnesses within one week with a request for recording evidence by video conferencing in the event of the witnesses being outside India. The matter was directed to be listed before the learned JR for recording of evidence on 12 July 2023.



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(ii) On 5 July 2023, the Court granted permission for recording of the evidence of Mr. Gavin Rawlings through Video Conferencing.

(iii) On 12 July 2023, the learned JR completed recording of evidence of PW-1, PW-2, PW-3 and PW-4 and renotified the matter before the Court on 19 July 2023 for appointment of a remote point coordinator for recording of the evidence of Mr. Gavin Rawlings.

(iv) On July 2023, the Court directed the High Commissioner, High Commission of India, London, to appoint an official of the High Commission as the remote point coordinator for recording of the evidence of Mr. Gavin Rawlings through video conferencing, and renotified the matter for 7 August 2023 for recording of Mr. Rawling's evidence.

(v) The recording of the evidence of Mr. Rawlings was conducted and closed on 2 August 2023. Plaintiff's evidence being concluded, the matter was directed to be listed for final arguments on 7 August 2023.

(vi) On 7 August 2023, the learned Single Judge noted, in para 9, that "Defendant No. 1 (the appellant Amazon Tech) is claimed to be the owner of the infringing logo/mark *which is known by the name 'SYMBOL'*. This was apparently incorrect,



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as it was not even the pleaded case of Lifestyle that the mark was known by the name SYMBOL. Part arguments of learned Senior Counsel for Lifestyle were heard, and the matter renotified for 31 October 2023. Lifestyle's witnesses were directed to be present in Court.

(vii) On 1 November 2023, Lifestyle's witnesses were present in Court, as directed. The court addressed queries to two of the witnesses and heard Lifestyle, in part, on the aspect of damages. PW-1 was directed to place an additional affidavit on record, setting out the details of the royalties remitted by Lifestyle's licensees along with actual sales.

(viii) Oral submissions on the aspect of damages were concluded by Lifestyle on 29 May 2024 and written submissions were filed. Lifestyle was directed to file a statement of costs on 5 July 2024.

(ix) On 12 July 2024, arguments of Lifestyle were concluded and judgment was reserved.

(x) On 25 February 2025, the impugned judgment came to be rendered by the learned Single Judge.

### The impugned judgment



39. While recording the case of Lifestyle as set up in the plaint, the impugned judgment notes, in para 14, thus:

“As per the plaint Defendant No. 1 was dealing with apparel products under the private label ‘Symbol’ *consisting of a horse device mark almost identical to the BHPC logo device* thereby leading to infringement and unauthorized use.”

We may note, even here, that this observation is incorrect. *There is no averment, in the plaint, that the label ‘SYMBOL’ consisted of a horse device mark which was identical to the BHPC logo device. In fact, this position was specifically acknowledged by learned Counsel for Lifestyle as recorded in the order dated 2 March 2023, thus:*

*“6. ...Mr. Sai Deepak refutes the above statement and argues that the Infringing Device Mark is not a subject matter of the Agreement between Amazon and Cloutail.”*

The licence agreement between Amazon Tech and Cloutail was, admittedly, for the mark SYMBOL. The infringing device mark is



. Thus, it was admitted and acknowledged, by learned Counsel



for Lifestyle, before this Court, that *the*  *mark and the mark SYMBOL, which was subject matter of the licence agreement between Amazon Tech and Cloutail, were different. In fact, the specifically pleaded case of Lifestyle was that the apparel, which bore the mark SYMBOL, also carried the offending horse device mark, and not that they were the same.*



40. In para 22 of the impugned judgment, the learned Single Judge proceeds to record and observe as under:

“On 5<sup>th</sup> September 2022, it was submitted on behalf of Defendant No. 2 and Defendant No. 1 that they were willing to (i) suffer a decree of injunction and (ii) pay reasonable damages. The matter was then referred to the Delhi High Court Mediation and Conciliation Centre. *It is, thus, clear that the Defendant No. 1 has also entered appearance before this Court.*”

(Emphasis supplied)

*Notably, the order of 5 September 2022 was passed after Amazon Tech was already proceeded ex parte on 20 April 2022.*

41. Para 23 of the impugned judgment proceeds to observe that, by agreement of the parties, a confidentiality club was constituted *vide* order dated 15 September 2022, which perused the licence agreement between Amazon Tech and Cloutail. In actual fact, Amazon Tech was not a party to the said order, so that the constitution of the confidentiality club could not be said to have been with consent of Amazon Tech.

42. The “Analysis of Evidence” and the reasoning, in the impugned judgment, commence from para 54.

43. Paras 54 to 78 refer to the evidence led by the various PWs, PW-1 to PW-5. The learned Single Judge has quoted, extensively, from

(i) the evidence of PW-1 Mr. Eli Haddad, “the founder of Plaintiff No. 1 and the Managing Director of Plaintiff No. 2 (who) has personal knowledge of the business of the Plaintiffs”,



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(ii) PW-2 Mr. Sanjay Shetty, of Major Brands (India) Ltd, one of the licensees of Amazon Tech, who “was handling operations under the BHPC brands since 2014 and had personal knowledge of the various retail stores, etc, under the BHPC brand”,

(iii) PW-3 Mr. Gaganpreet Singh Puri, a Chartered Accountant with 20 years’ experience, who deposed with regard to different models for computation of damages, as an independent expert,

(iv) PW-4 Mr. Arvind Dhingra, “an independent expert engaged by the Plaintiffs to assess the impact of the Defendants’ alleged infringing activities on the business performance of BHPC”, and

(v) PW-5 Mr. Gavin Rawling, also “an independent expert who has 30 years of experience in branded fashion business”.

**44.** Thereafter, the findings of the learned Single Judge commence from para 79.

**45.** One of Mr. Nigam’s and Mr. Kaul’s fundamental submissions is that the impugned judgment fastens damages on Amazon Tech without a single scrap of evidence or material to indicate that Amazon Tech was in any way involved in, much less responsible for, the



affixation of the mark on the apparel sold by Cloudtail on the website of ASSPL. This submission, if correct, would render the very



sustainability of the impugned judgment on merits doubtful. It requires, therefore, to be examined carefully.

46. For this, it is necessary to closely study the findings of the learned Single Judge, which have concluded in the awarding of damages, against Amazon Tech, of over ₹ 336 crores. If, as contended, the awarding of damages is *sans* any material to indicate the

complicity of Amazon Tech in the infringement of Lifestyle's



mark, by use of the  mark, it would, in our opinion, be unfair as well as unjust to require any deposit to be made by the appellant.

47. Paras 79 to 83 of the impugned judgment read thus:

“79. The Court has perused the pleadings, the documents placed on record and the evidence led by the Plaintiffs. As already discussed above, the Defendant No. 1 has failed to contest the suit though it has complete knowledge of the proceedings of the suit. In fact, *counsel for Defendant no. 2 had appeared for Defendant no. 1 and made submissions before the Court. Thus, the pendency of the suit is well within Defendant no. 1's knowledge.* The infringing products were being sold in India and thus this Court is a Court of a competent jurisdiction. Defendant No. 2 and Defendant No. 3 are the retailers and the platforms respectively who have already suffered a permanent injunction. Defendant No. 2 has in fact suffered a decree of monetary damages and has complied with it by depositing the said amount in the Court. *As is evident from the order dated 5<sup>th</sup> September, 2022, Defendant Nos. 1 and 2 are connected as Defendant No. 2's Counsel represented Defendant No. 1 in the said hearing and stated in no uncertain terms the Defendant No. 1 is willing to suffer a permanent injunction.* In the absence of any defence or challenge to the ownership of the brand and the infringing conduct complained of, the Court could have in fact pronounced judgment even without evidence in terms of the provisions of Order VIII Rule 10 CPC as also Rule 27 of the Delhi



High Court Intellectual Property Division Rules, 2022 (hereinafter 'IPD Rules'). As per Rule 27 of the IPD Rules, this Court was empowered to pass a summary judgment, without the requirement of filing a specific application seeking summary judgment on principles similar to that of Order XIII-A, CPC as amended by Commercial Courts Act, 2015.

80. The Plaintiffs have, however, claimed damages in the present suit and considering the sheer expanse of Amazon's activities globally and in India, the Plaintiffs have chosen to lead evidence in the matter for quantifying actual damages. The evidence of all the five witnesses has been summarized above by this Court. On behalf of the Plaintiffs, two witnesses *i.e.*, PW-1 and PW-2 have deposed - both of whom had personal knowledge as to vital aspects such as reputation of the plaintiffs' brand, their consumer base, licensing models, trademark registrations and sale figures etc. *They have deposed in respect of the activities of the Plaintiffs, the rights owned by the Plaintiffs, the agreements entered into and the claim for damages. A perusal of the infringing marks and products shows that this is a case where the 'TRIPLE IDENTITY TEST' for determining if a trademark has been infringed, has been satisfied:*

- *The horse device logo is almost identical.*

Plaintiffs Device Mark	Mark used by the Defendant

- *The goods are identical — apparel.*
- *The consumers/trade channels are also identical.*

*The Court has already held vide order dated 2<sup>nd</sup> March, 2023 that the Plaintiffs are entitled to permanent injunction against Defendant No. 1 from using BHPC logo in any manner whatsoever. Thus, the suit is liable to be decreed qua Defendant no. 1, in terms of paragraph 64(a), (b) and (c) of the plaint.*

81. Insofar as the aspect of damages is concerned, this Court has given considerable thought to this aspect. With the advent of e-



commerce platforms, selling of goods and services in the traditional manner has almost been disrupted. Consumers prefer to buy from the comforts of their homes. The emphasis is on quick reviewing, ordering and delivery. As time is at a premium, sales through e-commerce platforms have not merely risen but grown to astronomical limits. One of the biggest players in the e-commerce industry globally is Amazon. Defendant No. 1 - Amazon Technologies Inc. has its headquarters at Seattle, U.S.A. but runs its e-commerce businesses in several countries of the world including in India. In most major markets, the Amazon platform runs on a country-based website through its subsidiaries, associate companies or group companies. The platform [www.amazon.in](http://www.amazon.in) like other e-commerce platforms would be selling at least two kinds of products on its website *i.e.*,

- i) Products belonging to third party retailers who are no way connected with any of its group or associate companies,
- ii) Products which are retailed under brands belonging to the principal company - Amazon Technologies Inc. or group companies or associate companies or subsidiaries.

82. In the present case, the Defendants have failed to disclose the exact relationship between each other despite specific orders. However, *the admitted position is that the brand 'Symbol' belongs to Defendant No. 1. It was licensed to Defendant No. 2 under the Amazon Brand License and Distribution Agreement. Defendant No. 3 is also a company which is part of the Amazon group.*

83. The use of the impugned logo/mark is not in dispute. Defendant No. 2 and Defendant No. 3 have already suffered a permanent injunction. This Court has also enjoined Defendant No. 1. *The question is whether Defendant No. 1 would be liable to pay damages for such blatant infringement on the ecommerce platform which can also be termed as **e-infringement**, as it was the entity which was responsible for the infringing conduct of Defendant No. 2 on Defendant No. 3's platform.* The answer is clearly in the affirmative.”

Insofar as the complicity of Amazon Tech (Defendant 1) in the alleged

infringement of Lifestyle's  trade mark is concerned, it is



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apparent that, in the afore extracted passages from the impugned judgment, *there is nothing whatsoever, except a concluding observation that Amazon Tech “was the entity which was responsible for the infringing conduct of Defendant No. 2 (Cloudtail) on Defendant No. 3 (ASSPL)’s platform”*. Mr. Kaul and Mr. Nigam would contend that there is no basis, whatsoever, for this finding, and we find, on a complete reading of the impugned judgment that there is, in fact, none.

48. Paras 84 to 97 of the impugned judgment then proceed to deal with the computation of damages in the case of trade mark infringement, and various available methodologies in that regard. They make no mention, whatsoever, to the involvement of any of the

defendants in the alleged infringement of Lifestyle’s  trade mark.

49. Para 98 then goes on to state that the Court was proceeding to “examine the extent and nature of the infringement, the degree of culpability of the Defendants, and the quantification of damages necessary to adequately compensate the Plaintiffs”. Insofar as any mention of Defendant 1 Amazon Tech, the present appellant, is concerned, it is to be found in paras 98 to 101 of the impugned judgment:

“98. Applying the above stated principles to the present case, this Court shall now examine the extent and nature of the infringement, the degree of culpability of the Defendants, and the quantification of damages necessary to adequately compensate the



Plaintiffs. Some of the important aspects that this Court now considers in the enquiry on damages are as under:

i) The mark-Symbol, which is owned by Defendant No. 1, and the fact that *it has along with Defendant No. 2 used a logo* which is nearly identical to BHPC's logo of the Plaintiffs. The images of the same are set out below<sup>8</sup>:

\*\*\*\*\*

ii) The Defendant No. 1 is well-aware of the exclusive rights of the Plaintiffs in the BHPC mark and logo as it has been involved in litigation with the Plaintiffs multiple jurisdictions, including the UK<sup>9</sup>.

99. *Defendant No. 1 is also in the apparel trade by owning the mark 'SYMBOL' under which the garments are sold. The infringing horse logo was used on 'Symbol' branded apparel. It is a known fact that Defendant No. 1 is one of the most dominant players in the e-commerce space. Consequently, Defendant No. 1 possesses ways and means to utilize its dominant presence in the e-commerce space to promote its own products as also products which it might otherwise wish to promote. Defendant No. 1 also has the leverage through its own platforms to dilute Plaintiff's brand/logo by indulging in deep-discounting of its own products which compete with the Plaintiff by using a similar mark/logo. In the present facts, the Defendant is placing products priced at 10% of the Plaintiffs' product cost. Further, it is also evident that Defendant No. 1 is engaging in a deliberate strategy of obfuscation, pretending to wear different hats—one as an intermediary, one as a retailer, and one as a brand owner - all in an attempt to shift responsibility and evade liability for trademark infringement. However, it is well known reality that all three Defendants belong to the Amazon Group of Companies and operate as a cohesive commercial entity. Defendant No. 1 has selectively chosen when to appear and not appear before the Court. At a time when the Court directed vide order dated 20<sup>th</sup> April, 2022 to explain the exact relationship between the three Defendants, it agreed to suffer a permanent injunction, thereby evading scrutiny. Thus, the clear attempt is to not disclose the exact relationship between the said three Defendants to this Court. Accordingly, in the opinion of this Court, this is not a bona fide conduct of a party before the Court and the conduct of the Defendant clearly demonstrates that there is an intent to withhold crucial information from the Court, rather than*

<sup>8</sup> Omitted as they are not relevant

<sup>9</sup> **Lifestyle Equities CV and another (Respondents) v Amazon UK Services Ltd and others (Appellants), [2024] UKSC8**



engage in *bona fide* conduct as expected of a party before a judicial forum.

100. Defendant No. 1 also chose not to even file its defence before the Court. *It is not disputed that it owns the 'Symbol' brand which it has permitted Defendant No. 2 to use.* Some of the trademark registrations of the mark SYMBOL are set out below<sup>10</sup>:

\*\*\*\*\*

101. *The agreement between Defendant No. 1 and Defendant No. 2 reveals that **Defendant No. 1 retains control over the trademark usage, licensing, and distribution of the infringing mark**, thereby making it directly liable for the unauthorized use of the Plaintiffs' mark. This agreement is demonstrative of the direct commercial and operational nexus between the Defendants, making it evident that Defendant No. 1 cannot escape liability under the guise of being a mere intermediary."*

**50.** In our view, these paragraphs suffer from several errors and also include presumptive findings unsupported by any evidence. These may be enumerated as under:

(i) There is *no basis* for the finding, in para 98, that Amazon Tech had, "*along with Defendant No. 2 (Cloudbtail)*",



used the allegedly infringing logo.

(ii) Para 99 proceeds to note that "Defendant No. 1 (the appellant Amazon Tech) was also in the apparel trade *by owning the mark 'SYMBOL' under which the garments are sold*" and "*the infringing horse logo was used on 'SYMBOL' branded apparel*". Thus, the learned Single Judge

<sup>10</sup> Omitted as they are not relevant



acknowledges the fact that *the mark owned by Amazon Tech was 'SYMBOL'*. The impugned judgment thereafter notes that

the infringing  logo was used on the apparel bearing the SYMBOL mark. What the learned Single Judge fails to note is

that the apparel, which bore the infringing  logo, was not manufactured, or sold, by Amazon Tech, but was manufactured and sold by Defendant 2 Cloudtail, as was admitted by Lifestyle itself in its replication to the written statement of Cloudtail (extracted in para 34 supra), as well as by Cloudtail itself before this Court as recorded in the order dated 2 March 2023.

(iii) Thereafter, para 99 proceeds on considerations which are entirely irrelevant for ascertaining the involvement or complicity, if any, of the appellant Amazon Tech in the

affixation of the infringing  logo on the apparel sold by Cloudtail, viz.

(a) that it was “a known fact that Defendant No. 1 is one of the most dominant players in the e-commerce space”,

(b) that Defendant 1 Amazon Tech possessed “ways and means to utilize its dominant presence in the e-commerce space to promote its own products as also products which it might otherwise wish to promote”, and



(c) that Defendant 1 Amazon Tech “also has the leverage through its own platforms to dilute Plaintiff’s brand/logo by indulging in deep-discounting of its own products which compete with the Plaintiff by using a similar mark/logo”.

With respect, these findings do not, in any manner, indicate that Amazon Tech was responsible, in any way or to any

extent, for the affixation of the infringing  logo on the apparel sold by Cloutail. The fact that Amazon Tech may be a “dominant player” in the e-commerce market can hardly be a basis to return findings of infringement, against it, without any evidence.

(iv) Thereafter, para 99 proceeds to observe that it was a “well known reality that all three Defendants belong to Amazon Group of Companies and operate as a cohesive commercial entity”. The basis of this finding is completely unknown. It was not even the case of Lifetyle, in its plaint, that Cloutail and Amazon Tech operated as “a cohesive commercial entity”. In our considered opinion, the learned Single Judge has fundamentally erred in returning such a finding, unsupported by evidence and even by pleadings. Interestingly, in order dated 12 October 2020, this Court had already held, in para 12, that “Defendant 1 *is a separate*



entity”, and the impugned judgment of the learned Single Judge also records this in para 19.

(v) Para 100 of the impugned judgment, in fact, correctly records that Amazon Tech owned the SYMBOL brand, “which it has permitted Defendant No. 2 (Clouddtail) to use”. Thus, the learned Single Judge acknowledges the fact that the only brand, with which the appellant Amazon Tech was concerned and the use of which it had licensed to Clouddtail, was SYMBOL.

(vi) Para 101 proceeds to record, somewhat bemusingly, that the licence agreement between Amazon Tech and Clouddtail revealed that Amazon Tech retained control over the trademark usage, licensing and distribution *of the infringing mark*, thereby making it directly liable *for the unauthorized use of the Plaintiff’s mark*. We have seen the licensing agreement. As it was produced before the learned Single Judge in a sealed cover, we refrain from reproducing its contents. Suffice it, however, to state that it makes no mention, whatsoever, of the



infringing mark, and is entirely concerned with the SYMBOL mark of Amazon Tech, the use of which it has licensed to Clouddtail. This finding of the learned Single Judge is, therefore, *ex facie* contrary to the evidence on record, and the terms of the licence agreement between Amazon Tech and Clouddtail.



51. Para 102 of the impugned judgment does not concern itself with Amazon Tech, but deals with the general aspect of infringement

of Lifestyle's  mark. It reads:

“102. Apart from the above factors which exhibits the conduct of Defendant No. 1, there are some further factors which are also required to be considered while computing damages in a case of this nature:

- i) The infringing conduct is on an e-commerce platform where the consumer tends to order by looking at the image rather than the actual product;
- ii) The consumer does not feel the product or the quality thereof and goes by the prominence of a logo which is almost identical to the Plaintiffs' BHPC logo;
- iii) The differences in the logo are almost non-existent and are not assessable by the naked eyes especially on a computer screen or an electronic device like a phone or tablet;
- iv) The Plaintiffs' logo is the prominent feature of the registered trade marks of the Plaintiffs and thus use of an identical or deceptively similar logo or device results in infringement of the Plaintiffs' mark;
- v) The products are identical; the class of consumer is identical and the logos are nearly identical. Thus, this is a case of triple identity;
- vi) The pricing of the Defendants' products is not merely diminishing the Plaintiff's brand value but is meant to erode the brand equity of the Plaintiffs completely;
- vii) PW-5 who was an independent expert has given specific examples as to how online counterfeiting has led to destruction of brands. PW-5 goes to the extent of saying that such infringement can lead a brand to the brink of extinction;



viii) Sale of products on huge discounts could completely lead the consumer to start de-testing the brand as it could lead to negative social impact linked with law quality and low price.”

**52.** On the aspect of entitlement of Lifestyle to damages from Amazon Tech, para 103 of the impugned judgment concludes thus:

“103. The factors set out above led this Court to conclude that the Plaintiffs are entitled to damages both as compensation as also on lost sales and royalty. Unlike in most other cases where the Court is expected to make estimates of such amounts, in the present case the Trade Mark License Agreement between the Plaintiffs and major brands which was the licensee for the Indian and neighbouring markets gives sufficient basis to calculate the damages that ought to be awarded.”

**53.** Paras 104 to 117 of the impugned judgment is devoted to calculation of the damages to be awarded to Lifestyle. We need not dwell on this aspect, as it is entirely based on the material produced by Lifestyle’s witnesses in evidence, and the testimonies of the “independent experts”, and no substantial submissions in that regard were advanced before us. For the sake of completion, however, we deem it appropriate to reproduce part of para 108 of the impugned judgment, thus:

“108. The evidence also points out that the sales made by the Defendants under the infringing logo were at extremely low prices, thereby eroding the brand value of the Plaintiffs. Thus, without even going into the complicated analysis as to how to quantify damages, one of the simplest ways in which the damages can be assessed in this case is by quantifying the lost royalties to the Plaintiffs. If the same is taken at the minimum in terms of the license agreement with the bonus royalties as per Clause 4.1(b), the Plaintiffs have lost a substantial amount of royalties. The expert who has given evidence i.e., PW-3 has quantified the same for a



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period of ten years i.e., 2015 to 2024. He has quantified the same in the following manner:

\*\*\*\*\*”

(Underscored in original)

**54.** Paras 118 and 119 of the impugned judgment deal with costs. Costs have been awarded on the basis of the affidavit of costs filed by Lifestyle with the Court in terms of the order dated 29 May 2024 passed by the learned Single Judge.

**55.** Para 120 permits Lifestyle to deposit additional court fees payable on the amount of awarded damages within four weeks.

**56.** Paras 121 and 122, which set out the relief granted to Lifestyle, against Amazon Tech, read:

“121. The suit is accordingly decreed as under in favour of Plaintiffs and against Defendant No. 1 in the following terms:

(i) A decree of permanent injunction is granted in terms of paragraphs 64(a), (b) and (c) of the plaint.

(ii) A decree of damages to the tune of **\$38.78 million**, as on date equal to **Rs. 336,02,87,000.00/-** is granted in favour of the Plaintiffs against Defendant No. 1. If the said amount is paid within three months, no interest would be liable to be paid. However, if the same is not paid by the Defendant No. 1, interest @ 5% per annum would be payable, from the date of this judgment until the full realization of the said amount.

(iii) A decree of costs to the tune of **Rs. 3,23,10,966.60/-** along with the Court Fee.

122. The details of the relief granted are summarized below:



S. No.	Decree Details	Amount / Terms (\$1= ₹ 86.65)
1	Compensatory Damages	
1A	Lost Royalties	USD 33.78 million (₹292,70,37,000.00/-)
1B	Increased Advertising & Promotional Expenses	USD 5 million (₹43,32,50,000.00/-)
1C	<b>Total Compensatory Damages</b>	<b>USD 38.78 million</b> <b>(₹336,02,87,000.00/-)</b>
2	<b>Costs</b>	<b>₹3,23,10,966.60/- along with the Court Fee.</b>
3	<b>Grand Total (Damages + Costs)</b>	<b>₹ 339,25,97,966.60/- + Court Fee</b>

## Rival Submissions before us

### **Submissions of Mr. Arvind Nigam**

#### A. No infringement by Amazon Tech

57. Mr. Arvind Nigam, commencing arguments on behalf of the appellant Amazon Tech, submits that, as per the plaint instituted by Lifestyle before the learned Single Judge, it was the SYMBOL mark of Amazon Tech which was used and retailed by Cloudbtail through ASSPL. Amazon Tech was the owner of the brand SYMBOL, which was duly registered under the Trade Marks Act, and had licensed the use of the SYMBOL mark to Cloudbtail. On the basis of the said licence, Cloudbtail was retailing goods, bearing the SYMBOL mark, through ASSPL. If the goods bore any other mark, the responsibility for affixing that mark could not be laid on the shoulders of Amazon Tech. The agreement between Amazon Tech and Cloudbtail was expressly restricted to use of the SYMBOL mark. The pleadings in



the plaint clearly indicate that the case set up was that, in addition to the SYMBOL mark of Amazon Tech, Cloudtail was using, on the

apparel sold by it through ASSPL, the infringing  mark, of which Lifestyle claimed to have come to know in May 2020. Cloudtail ceased using the said mark in July 2020. The suit came to be instituted in September 2020.

**58.** Mr. Nigam submits that Lifestyle has, with no justification whatsoever, included Amazon Tech as a defendant in the suit. In fact, in para 41 of the plaint, it is expressly conceded thus:

*“... To the best of the Plaintiffs knowledge, Defendant No.1 sells products on the website of Defendant No.3 through Defendant No.2. The Plaintiffs are not certain about the exact and actual relation between the Defendant Nos. 1, 2, and 3 and, therefore, call upon the Defendants to disclose the relation between them.”*

(Emphasis supplied)

Thus, far from levying any specific allegations against Amazon Tech, it was an admitted position that Lifestyle was not even aware of the relationship between Amazon Tech and Cloudtail. The entire case against Amazon Tech was, therefore, purely presumptive in nature.

**59.** Mr. Nigam submits that, in paras 11, 12 and 15 to the written statement of Cloudtail, Lifestyle has asserted that it was Cloudtail who manufactured, sold and distributed the products bearing the

allegedly infringing  mark, and, by adopting the said mark, sought to piggyback on Lifestyle’s reputation and goodwill. Even as



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per the pleadings of Lifestyle, therefore, the appellant Amazon Tech

was neither the owner of the  mark, nor was the manufacturer of the apparel sold by Cloudtail over the website of ASSPL on which the said mark was affixed. Nor was there anything to indicate that Amazon Tech had ever authorised Cloudtail to affix the said mark. The license agreement dated 23 December 2015 between Amazon Tech and Cloudtail was only with respect to the SYMBOL mark and

had nothing to do with the  mark.

**60.** Mr. Nigam further points out that, in para 10 of order dated 7 August 2023, the learned Single Judge notes that Lifestyle had led its evidence “*on the question of damages/rendition of profits*”. The evidence of Lifestyle’s witnesses, therefore, did not touch on the liability or responsibility of Amazon Tech for the alleged infringement

of Lifestyle’s  trade mark. There was, therefore, no basis for the learned Single Judge to hold that Amazon Tech was in any way complicit in the alleged infringement of Lifestyle’s registered trade mark.

**61.** Thus, in the absence of any amendment in the plaint, the learned Single Judge, submits Mr. Nigam, was in manifest error in holding Amazon Tech in any way responsible for the infringement of Lifestyle’s registered trade mark.



**62.** In the absence of any such pleading, Mr. Nigam submits that Lifestyle could not seek to rely on any evidence against Amazon Tech, as evidence cannot travel beyond the pleaded facts.

**63.** Mr. Nigam submits that a reading of the impugned judgment reveals that it has confused the mark SYMBOL, of which Amazon Tech was the proprietor, and the use of which had been licensed by Amazon Tech to Cloutail by the License Agreement dated 23

December 2015, with the allegedly infringing  mark, with which mark Amazon Tech had no concern. A trademark licensor's control and oversight, as well as liability, had to be restricted to the licensed mark. It could not extend to every branding decision of the licensee, even with respect to marks with which the licensor had no concern and which had never been licensed by the licensor to the licensee.

**64.** *Dehors* the aspect of whether the learned Single Judge was correct in proceeding *ex parte* against Amazon Tech, therefore, Mr. Nigam submits that, even on merits, the case is one of no evidence whatsoever and of, in fact, creating a case against Amazon Tech which is foreign to the case set up by Lifestyle in its plaint.

**B.** Order dated 2 March 2023

**65.** Mr. Nigam then draws our attention to the order dated 2 March 2023 passed in the suit and reproduced in para 10.1 (xi) *supra*. He



points out that, in para 4 of the said order, the learned Single Judge has noted that Cloudbtail had expressed its agreement to suffer a decree of injunction and damages. Cloudbtail suggested that damages could be awarded on the basis of the revenue of ₹ 23,92,420/- earned by it by selling the allegedly infringing products, and learned Counsel for Lifestyle clearly stated that “*for award of damages, aforementioned data is sufficient and no further evidence is required*”. The impugned judgment, which separately awards damages of over ₹ 336 crores, on the basis of evidence unilaterally produced and, in fact, requisitioned, from Lifestyle, after proceeding *ex parte* against Amazon Tech was, therefore, clearly unsustainable in law.

**66.** Mr. Nigam further points out that Cloudbtail had, before this Court on 2 March 2023, clearly owned its entire responsibility for the damages payable to Lifestyle, and had submitted, categorically, that “the decision to use the impugned device mark was solely that of Cloudbtail and Amazon has no liability in the matter”. In this context Cloudbtail had also drawn attention to the License Agreement dated 23 December 2015 between Amazon Tech and Cloudbtail. Learned Counsel for Lifestyle also admitted, in para 6 of the order dated 2



March 2023, that the allegedly infringing  mark was not subject matter of the agreement between Amazon Tech and Cloudbtail. These factors, submits Mr. Nigam, have been entirely ignored by the learned Single Judge while holding Amazon Tech liable to indemnify Lifestyle by way of damages for participating in the allegedly infringing activities.



67. Following this, para 8 of the order dated 2 March 2023 decrees the suit in favour of Lifestyle and against Cloudtail, in terms of the prayer clauses (a), (b) and (c) in the plaint, for an amount of ₹ 4,78,484/-. Mr. Nigam submits that there could have been no further decree for damages against Amazon Tech, especially as it is not even the pleaded case, in the plaint of Lifestyle, that Amazon Tech has committed any act of infringement over and above the acts attributed to Cloudtail.

C. Re. apparent error in para 9 of impugned judgment

68. Mr. Nigam next draws our attention to para 9 of the order dated 7 August 2023 passed by the learned Single Judge, reproduced *in extenso supra*, in which it is recorded that “Defendant No. 1 is claimed to be the owner of the infringing logo/mark which is known by the name ‘SYMBOL’.” He points out that this is a fundamentally erroneous assumption, as Lifestyle never sought to contend that the

infringing  logo was known by the name SYMBOL.

D. Damages claimed could not have been enhanced without amendment, merely on the basis of evidence led during trial and in written submissions – itself insufficient to sustain enhanced damages – No opportunity to Amazon Tech to meet claim for enhanced damages – Violation of principles of natural justice



69. Drawing attention next to para 111 of the impugned judgment, Mr. Nigam submits that the very opening sentence of the said paragraph acknowledges the fact that the claim for damages was first filed by Lifestyle with its written submissions, for compensatory damages of ₹ 1260 crores and exemplary damages of twice the said amount. While doing so, no court fee was filed by Lifestyle on the said amount. He submits that the said damages were claimed against sale of T-shirts of around ₹ 23 lakhs, against which damages of ₹ 4,78,484/- already stand awarded against Clouddtail on 2 March 2023, and accepted by Lifestyle in Court.

70. Mr. Nigam further submits that Lifestyle could not have enhanced the initially claimed damages to ₹ 3780 crores merely by way of written statements filed after evidence had been led. This constitutes a substantive change to the nature of the claim, which could only be effected by amendment. Reliance is placed, in this context, on the judgment of the Supreme Court in *Ramnik Madhvani v Taraben Madhvai*<sup>11</sup> and of the Division Bench of this Court in *Flight Centre Travels Pvt Ltd v Flight Centre Ltd*<sup>12</sup>. In both these decisions, it was settled that, if, consequent to leading of evidence, the plaintiff desired to enhance the claim in the plaint, it was required to amend the plaint and put the defendants on fresh notice regarding the amendment.

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<sup>11</sup> (2004) 1 SCC 497

<sup>12</sup> 2013 SCC OnLine Del 331



71. In the absence of such amendment, Mr. Nigam submits that no amount of evidence could suffice to assert, much less decree, the claim. The Court was bound by pleadings.

72. In fact, submits Mr. Nigam, the various elements on the basis of which damages were sought to be computed, in the evidence led by the various PWs, were all unsupported by any pleadings. By way of example, Mr. Nigam has referred to the plea of “compensatory damages for lost opportunity for royalties from Bangladesh, Sri Lanka and Nepal based on Business Plan Sales”. He submits that these lost royalties have not even been pleaded in the plaint, and were only sought to be asserted during evidence.

73. Mr. Nigam further submits, on the aspect of reasonable opportunity having been granted to Amazon Tech to meet the case set up by Lifestyle that, even if it were to be assumed that Amazon Tech had knowledge of the suit and its contents, an entirely new basis of liability, with damages enhanced more than two thousand-fold had been sought to be introduced after recording of evidence by way of written submissions.

74. These written submissions were never served on Amazon Tech. Nor was Lifestyle ever called upon to amend its claim to incorporate the said enhanced claim for damages. The acceptance of the claim for enhanced damages, by the learned Single Judge in the impugned judgment was, therefore, manifestly violative of the principles of *audi alteram partem*. There was, therefore, independent of the aspect of



whether summons in the suit had been properly served on Amazon Tech, manifest violation of the principles of natural justice which, too, went to vitiate the impugned judgment.

E. Re. finding of Amazon Tech, Cloudbtail and ASSPL operating as “single commercial entity”

75. The finding of the learned Single Judge, in para 99 of the impugned judgment, that Amazon Tech, Cloudbtail and ASSPL “operate as a single commercial entity”, points out Mr. Nigam, is also outside the pleadings, as no such case has been set up by Lifestyle in its plaint.

F. Misguided reliance on Licence Agreement dated 23 December 2015

76. The reliance, in para 101 of the impugned judgment, on the Agreement dated 23 December 2015 between Amazon Tech and Cloudbtail, submits Mr. Nigam, is also completely misdirected, as the said Agreement only licensed, to Cloudbtail, the right to use the SYMBOL trade mark, and did not authorize Cloudbtail to infringe any



trade mark, including the POLO CLUB mark of Lifestyle.

77. Mr. Nigam then took us to para 52 of the impugned judgment. He submits that the conclusion expressed, in the said paragraph, that, “in the opinion of (the) Court, the clauses in the Agreement clearly diminish Amason’s ability to distance itself from the alleged



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infringement committed by Cloutail” is a finding without any reasons whatsoever. The further observation, or finding, that “Defendant No. 1 (Amazon Tech) being a licensor and Defendant No. 2 (Cloutail) being a licensee, any infringement or unlawful use by the licensee would also affix liability upon the licensor” is, again, vitiated by non-application of mind, as the Agreement dated 23 December 2015 between Amazon Tech and Cloutail was only with respect to the SYMBOL mark, and did not authorise Cloutail to infringe Lifestyle’s – or anybody else’s – registered trade mark. He submits that the learned Single Judge has analogized the Licence Agreement with an agreement of agency between a principal and agent, which is totally fallacious. No “consequences of infringement”, he submits, could “fall upon” Amazon Tech, unless Amazon Tech was complicit in



the alleged infringement of Lifestyle’s registered trade mark, which it was not.

G. Quantification of damages cannot be left to speculation – No pleading qua enhanced damages

78. Mr. Nigam further submits that, in law, quantification of damages cannot be left to speculation. The plaint in the suit merely quantified the damages assessed by Lifestyle as ₹ 2 crores or such sum as may be found due and payable. The damages could not have been enhanced to almost ₹ 4000 crores, on the basis of evidence led during the trial.



H. Re. finding of knowledge, by Amazon Tech, regarding pendency of suit

79. Though the plea of knowledge, by Amazon Tech, of the filing of the suit, was itself unsustainable on facts, Mr. Nigam submits that, even if this were to be treated as correct, the suit quantified the damages claimed by Lifestyle as only ₹ 2 crores. Even if it were to be presumed that Amazon Tech was aware that a suit, claiming damages of approximately ₹ 2 crores, had been filed by Lifestyle against it, that did not absolve Lifestyle of its responsibilities either to establish liability against Amazon Tech or restrict its damages to those to the extent claimed in the plaint.

I. Payment of Court Fees

80. Relying on the judgment of the Division Bench of this Court in ***Dr. Zubair Ul Abidin v Sameena Abidin***<sup>13</sup>, Mr. Nigam submits that the payment of *ad valorem* court fees could not be deferred till damages were decreed in favour of the plaintiff. The moment enhanced damages were asserted, the decision of the Division Bench holds that payment of *ad valorem* court fees on the enhanced claim for damages was mandatory. This could not be deferred till the conclusion of the suit and the passing of the decree thereon.

J. Amazon Tech never served summons in the suit

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<sup>13</sup> 2014 SCC OnLine Del 3575



**81.** Mr. Nigam next addresses the issue of whether, in fact, Amazon Tech had been served summons in the suit. He submits that, in fact, there had been no service, on Amazon Tech, of summons in the suit, at any point of time. The only service that was effected was in October 2020, of notice in compliance with the proviso to Order XXXIX Rule 3<sup>14</sup> of the CPC.

**82.** No summons in the suit were, Mr Nigam reiterates, ever served on Amazon Tech. There was no document indicating that, after the requisite process fees had been tendered by Lifestyle, for service of summons on Amazon Tech, the said summons were forwarded to Amazon Tech by any mode including email. Process fees were filed only in March 2021. The suit paper book was, on the other hand, purportedly couriered by Lifestyle to Amazon Tech in October 2020. Quite obviously, summons could not have been served on Amazon Tech even before process fees were filed.

**83.** In fact, the order dated 1 March 2021, passed by the learned Joint Registrar, recorded that as no process fees had been filed, service of summons on Amazon Tech could not be effected. The email dated 8

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<sup>14</sup> 3. **Before granting injunction, Court to direct notice to opposite party.** – The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party:

Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, and require the applicant—

(a) to deliver to the opposite party, or to send to him by registered post, immediately after the order granting the injunction has been made, a copy of the application for injunction together with—

(i) a copy of the affidavit filed in support of the application;  
(ii) a copy of the plaint; and  
(iii) copies of documents on which the applicant relies, and

(b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent.



March 2021, purportedly sent by Amazon Tech in compliance of the order dated 1 March 2021 does not indicate that any summons were attached to the documents served by the said email. In any case, no service of summons on Amazon Tech could have taken place even at that stage, as delay in filing process fees was condoned only on 16 March 2021.

**84.** Lifestyle was seeking to rely, in this context, on the second proviso to Order IX Rule 13<sup>15</sup> of the CPC. The provision had no application. It dealt with knowledge being relevant to refuse setting aside of an *ex parte* decree where there was irregularity in service of summons. In the present case, as no summons in the suit had been served on Amazon Tech at all, at any point of time, the second proviso to Order IX Rule 13 would not apply.

**85.** That apart, as Amazon Tech was located in the US, service on Amazon Tech had to be in compliance with the Hague Convention. This was never done.

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<sup>15</sup> **13. Setting aside decree *ex parte* against defendant.** – In any case in which a decree is passed *ex parte* against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also:

Provided further that no Court shall set aside a decree passed *ex parte* merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.

*Explanation.* – Where there has been an appeal against a decree passed *ex parte* under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside that *ex parte* decree.



**86.** On the basis of the aforesaid contentions, Mr. Nigam submits that a case for complete dispensation with the requirement of any deposit being made by Amazon Tech, for the hearing of its appeal, is made out. For the proposition that this Court has power to grant absolute and unconditional stay in an appropriate case under order XLI Rule 5 of the CPC, Mr. Nigam relies on *Malwa Strips* as well as the judgment of this Court in *Aurum Ventures Pvt Ltd v HT Media Ltd*<sup>16</sup> and the judgment of the High Court of Bombay in *Kishor Shah v Urban Infrastrucutre Trustees Ltd*<sup>17</sup>.

#### **Submissions of Mr. Pachnanda and Mr. Sai Deepak for the respondents**

##### **A. Sufficient assertions in the plaint re. complicity of Amazon Tech**

**87.** Responding to the submissions advanced by Mr. Nigam, Mr. Pachnanda, leading arguments for the respondents, submits, at the outset, that paras 41 to 45 and 47 to 53 of the plaint contain sufficient assertions and averments against Amazon Tech and provide reasonable foundation for basing a claim for damages against it. It could not, therefore, be alleged that the claim for damages against Amazon Tech was beyond the pleadings in the plaint.

##### **B. Stand of Cloudbtail in its written statement**

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<sup>16</sup> 2024 SCC OnLine Del 4061

<sup>17</sup> 2020 SCC OnLine Bom 4098



**88.** Mr. Pachnanda further draws attention to paras 17, 31 and 32 of the written statement filed by Cloudbtail, which read thus:

“17. It is pertinent to highlight that Defendant No. 2 is merely a retailer of goods on Defendant No. 3’s online marketplace. The listing relied by the Plaintiff, if attributable to the Defendant No. 2, was an isolated incident and an inadvertent act, devoid of any *mala fide* intention on Defendant No. 2’s part to infringe the Plaintiffs’ trademark.

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31. That the contents of paras 41 to 43 are matters of record to the extent of it being true. The Plaintiffs are however put to strict proof of the same. *It is submitted that Defendant Nos. 1, 2 and 3 are separate legal entities and Defendant No. 2 has no role to play in the operation of Defendant Nos. 1 and 3.* It is further clarified that Defendant No. 2 is merely a retailer on Defendant No. 3’s online marketplace. The Plaintiffs are put to strict proof of their averments.

32. The contents of paras 44 and 45 of the Plaint are denied as misleading. It is vehemently denied that Defendant No. 2 has adopted the Impugned Marked in any manner whatsoever. The Plaintiffs are put to strict proof of their allegations.”

(Emphasis supplied)

**89.** Thus, in the aforesaid paragraphs, Cloudbtail had clearly distanced itself from the aspect of infringement or use of the



infringing mark. It had clearly asserted that it was merely a retailer of goods on ASSPL’s website. It was also asserted, by Cloudbtail, that Amazon Tech, Cloudbtail and ASSPL was separately legal entities and that Cloudbtail had no concern with the operation of



Amazon Tech or of ASSPL. Cloudbtail vehemently denied adopting the

allegedly infringing  mark.

C. Affidavit dated 20 July 2022 of ASSPL – Finding re. group companies

90. Mr. Pachnanda next refers to the affidavit dated 20 July 2022, filed by ASSPL in compliance with order dated 20 April 2022 passed by the learned Single Judge. In the order dated 20 April 2022, the learned Single Judge required ASSPL to file an affidavit providing details of whether there was any relationship between Amazon Tech and ASSPL or of its subsidiary or holding companies. In compliance with the said direction, ASSPL had filed its affidavit, para 5 of which reads thus:

“5. In light of the above, the Defendant No. 3 is filing the present Affidavit in response to the queries put forth by this Hon'ble Court vide the Order 20.04.2022. The responses to the said queries are as follows:

**A. Relation between Defendant Nos. 1 (Amazon Technologies, Inc.) and 3 (Amazon Seller Services Private Limited):**

Both Defendant Nos. 1 and 3 are subsidiaries of Amazon.com, Inc.

**B. Relation between Defendant No. 1 (Amazon Technologies, Inc.) and Amazon.com, Inc.:**

Amazon.com, Inc. holds ~96% shareholding in the Defendant No. 1. The balance shareholding (~4%) is held by Amazon.com Sales, Inc. (which is a wholly owned subsidiary of Amazon.com, Inc.).



**C. Total sales of products bearing the impugned logo**

mark, ', on the Defendant No. 3's online platform:

Total sales made of products bearing the impugned logo

mark, ''.

The sales data provided below is based on the records of the Defendant No. 3 and has also been verified against the records of sales of products bearing the impugned logo

mark, ', maintained by the Defendant No. 2:"

S. No.	Financial Year	Total stock of products sold	Sales Figures (in INR)
1.	2015-16	492 units	1,69,810
2.	2016-17	5,823 units	21,82,914
3.	2017-18	103 units	35,523
4.	2018-19	8 units	3,024
5.	2019-July 2020	3 units	1,130
	<b>Total</b>	6,429 units	23,92,420

**91.** The assertions in para 5 of the affidavit filed by ASSPL, submits Mr. Pachnanda, clearly indicate that Amazon Tech and ASSPL were group companies. In view thereof, Mr. Pachnanda submits that the following findings, in paras 42 to 47 of the impugned judgment, are clearly merited, and make out sufficient ground to proceed independently against Amazon Tech:



“42. Traditionally, violation of rights in a trademark would take place in brick-and-mortar stores where the identity of the infringing party is easily determinable. The growth of the internet and the rise of digital commerce have significantly transformed the promotion and sale of branded products, creating both opportunities and challenges for IP owners. As with all technological advancements, the internet has facilitated both legitimate trade and unauthorized exploitation of IP rights. The emergence of e-commerce intermediaries, who claim to be distinct from traditional retailers on ecommerce platforms, has introduced legal complexities for IP owners in their efforts to enforce their rights and seek redress for trademark infringement. This distinction has complicated IP enforcement, as such entities often claim intermediary status to mitigate liability for the sale of infringing goods. Unlike conventional retail models, where accountability for infringement was clearly attributable, e-commerce platforms operate within a multi-tiered ecosystem, often making it difficult to identify and hold liable those responsible for violations.

43. E-commerce platforms, while making products and services more easily available and accessible have also posed significant challenges for IP owners seeking to protect their brands and marks being infringed through online platforms. The proliferation of e-commerce is now here to stay and is an irreversible reality, giving rise to a new species of infringement which can be termed as ‘e-infringement’. In this species of infringement, unlike traditional forms of trademark violations, there are multiple parties who could be involved in the violation of rights:

- a) The owner of the infringing brand which is being used on the product.
- b) The retailer or seller who is selling the infringing product.
- c) The e-commerce platform which is enabling the retailer to sell the product or the aggregator who may be collecting similar products and making them available for sale.
- d) The party/entity who is warehousing, raising invoices, packaging, delivering and receiving payments for the product.
- e) The party who supplies the product, i.e. the infringing goods.



f) Finally, the brand being used on the infringing products

In the present suit the brand ‘Symbol’ is owned by Defendant No.1- Amazon Technologies, Inc. The retailer, Defendant No.2- Cloutail India Pvt. Ltd., sells the products on the e-commerce platform www.amazon.in which is operated by Defendant No.3, Amazon Sellers Services Pvt. Ltd.

44. In e-infringement, the biggest challenge would first be in fixing responsibility on each of the parties. There are complex questions which arise including issues relating to intermediary liability, entitlement to safe harbour protection, as also jurisdictional issues. Clearly, the multi-layered nature of ecommerce has made it increasingly difficult to identify, attribute liability, and effectively enforce IP rights, necessitating clear legal frameworks to address the evolving challenges posed by online trademark infringement.

45. The present case would be one such case which could qualify as an e-infringement case. The brand ‘Symbol’ being used by Defendant No. 2- Cloutail India Private Limited is admittedly owned by Defendant No.1. During the proceedings, ld. Counsel appearing for Defendant No.2 had appeared for Defendant No.1 on 5th September, 2022 and submitted that Defendant No.1 would be willing to suffer a decree of permanent injunction and also pay the reasonable damages. The said order is of significance and is extracted below:

“IA 14249/2022

The learned senior counsel for the defendant no.2/applicant herein submits that the said defendant, including for and on behalf of the defendant no.1, is willing to suffer a decree of injunction and also for paying reasonable damages to the plaintiff. He prays that the parties be referred to the Delhi High Court Mediation and Conciliation Centre for exploring the possibility of arriving at an amicable settlement.

The learned counsel for the plaintiffs prays for time to seek instructions. List on 15th September, 2022.”

46. As per the above order, the matter was referred to mediation, however, the same did not fructify into a settlement. It is at that stage that Defendant No.2 and Defendant No.3 sought to delineate and distinguish their role from that of Defendant No.1



leading to a decree being passed against Defendant No.2 for a sum of Rs.4,78,484/-. This amount constituted 20% of the sales made by Defendant No.2. Defendant No.3 claimed that it is merely an intermediary and undertook that whenever there are future listing/s bearing the infringing device mark, the same shall be removed, as and when directed by the Court.

47. It clearly appears to this Court that, all three companies which are closely related to or interlinked with each other have sought to project that they are independent of each other, clearly with an intent to avoid fastening of liability. The intention of the said Defendants has clearly been to somehow diffuse and dissipate the consequences of infringement.”

D. Absence of Amazon Tech deliberate

92. Mr. Pachnanda further relies on the observations and finding, in para 50 of the impugned judgment, to the effect that, as learned Counsel who appeared on behalf of Cloudtail on 5 September 2022 also claimed to be appearing on behalf of Amazon Tech, Amazon Tech was suitably represented. Keeping in mind that the suit already stood decreed against Cloudtail, the learned Single Judge had correctly regarded the complete absence of any defence by Amazon Tech as deliberate and conscious.

E. Liability of Amazon Tech for infringement

93. Mr. Pachnanda also commends, for acceptance, the finding of the learned Single Judge, in the same paragraph of the impugned judgment, to the effect that the infringement, by Amazon Tech, of

Lifestyle’s registered  trademark by “use of a slavishly



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imitative logo under the brand SYMBOL has also been established”. He has drawn our attention to the images of T-shirts bearing the

SYMBOL logo and the allegedly infringing  logo, as contained in para 50 of the impugned judgment, and we deem it appropriate to reproduce the said images:

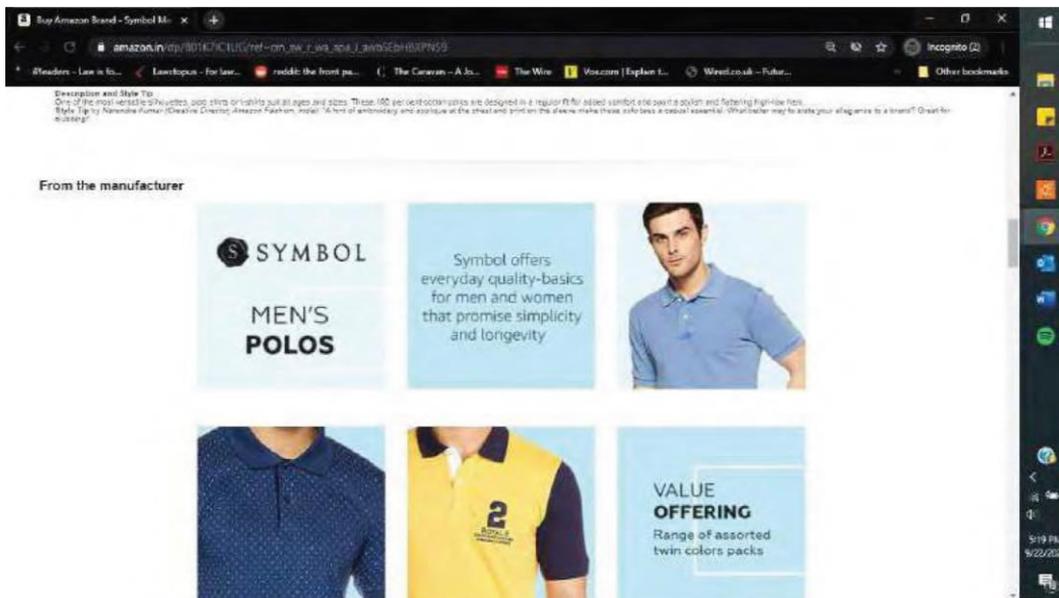
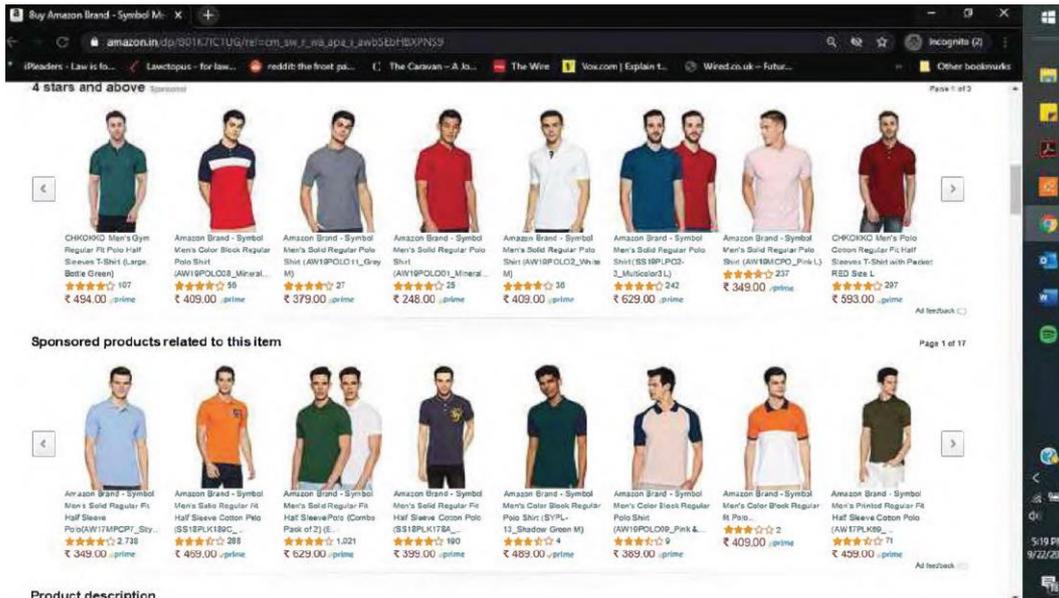


**94.** In the backdrop of these facts, Mr. Pachnanda submits that the findings in paras 79 and 99 of the impugned judgment, to which Mr. Nigam had taken exception, were also perfectly justified.

**95.** Mr. Pachnanda also places reliance on the following screen shots filed with the plaint:



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The brand “SYMBOL”, figuring in the second screen shot, he submits, is the brand of Amazon Tech. Inasmuch as the infringing



logo also figured on the same t-shirts, he submits that Amazon Tech could not distance itself from liability in the matter.



96. In order to link the appellant Amazon Tech to the allegedly infringing  logo, Mr. Pachnanda has, by reference to the screen shots provided with the plaint, submitted that the manufacturer of the product bearing the infringing mark was identified as “SYMBOL” with the same ASIN number as was reflected in invoice dated 10 May 2020 whereunder the t-shirt was sold by Cloutail. He submits that, in the affidavit of admission/denial filed by Cloutail, it had specifically stated that the screenshots reflecting the products to have been manufactured by “SYMBOL”, bearing the aforesaid ASIN number, did not pertain to it.

97. In this context, Mr. Pachnanda has also placed reliance on paras 60 to 61 and 100 of the affidavit in evidence of PW-1 Eli Haddad, which reads thus:

“60. I state that Defendant No. 1, under its brand ‘Symbol’, was manufacturing, offering for sale and/or selling products which bear



the Infringing Logo Mark  . I state that Defendant No. 2, Cloutail India Pvt Ltd, in accordance with the information available with the Plaintiff, is conducting its business through Defendant No. 3’s website [www.amazon.in](http://www.amazon.in). In accordance with the information available with the Plaintiff, Defendant No. 3 is engaged in business of managing and operating the website, [www.amazon.in](http://www.amazon.in) for the purpose of selling and/or offering for sale products of persons/entities with which it executes contracts, including Defendant No. 2, in India and other jurisdictions. Defendant No. 3, Amazon Seller Service Private Ltd, is selling and offering for sale products of Defendant No. 1 under the trademark ‘Symbol’ bearing the Infringing Logo Mark. To the best of my knowledge, Defendant No. 1 else products on the website of Defendant No. 3 through Defendant No. 2.



61. After acquiring knowledge of the Infringing product on the website of Defendant No. 3, the Plaintiff purchased some products of Defendant No. 1 from the website of Defendant No. 3. The Plaintiff upon receipt of these products immediately identified these products to be containing the Infringing Mark, which is a blatant imitation of the Plaintiff Logo Mark. The invoice issued by the Defendant No. 3 towards the purchase of these Infringing Products only disclose the name and details of Defendant No. 2.

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100. The trademark ‘Symbol’ is a private label of Defendant No. 1, which was introduced to compete with brands sold on Defendant No. 3’s website. Defendant No. 1’s products primarily replicates popular designs and trademarks, like that of the BHPC Logo Mark. Being the private label of Defendant No. 1, the products of Defendant No. 1 are perpetually promoted on the website of Defendant No. 3 and as a consequence, the chances of confusing Defendants’ product bearing the Infringing Mark with BHPC Logo Mark are exponentially magnified.”

In support of these submissions, Mr. Pachnanda relies on the judgment of the Supreme Court in *Khenyei v New India Assurance Co. Ltd*<sup>18</sup>, para 33 of *Ramesh Chand v Anil Panjwani*<sup>19</sup>, and paras 7 and 8 of *Government of Goa v Maria Julieta D’Souza*<sup>20</sup>. For the proposition that mesne profits do not require specifically to have been pleaded in quantified terms, Mr. Pachnanda cites judgment of a Division Bench of this Court in *Santosh Arora v M L Arora*<sup>21</sup>.

F. Re. allegation of awarding of damages in excess of pleadings

98. Mr. Pachnanda next addresses Mr. Nigam’s submissions that the damages decreed in favour of Lifestyle were not supported by

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<sup>18</sup> (2015) 9 SCC 273

<sup>19</sup> (2003) 7 SCC 350

<sup>20</sup> (2024) 3 SCC 523

<sup>21</sup> 2014 SCC OnLine Del 3005



pleadings and were far in excess of the damages claimed in the suit which were approximately ₹ 2 crores. He relies on Order VII Rule 2<sup>22</sup> of the CPC to submit that the plaint was only required to state the approximate value for which it was instituted. The Court was well within its jurisdiction in awarding damages in excess of the amount claimed in the plaint, the only requirement in law being that the plaintiff would, in such an eventuality, have to pay court fees on the enhanced damages. The impugned order specifically directs Lifestyle to do so and, he submits, on instructions, the court fees have, in fact, been paid by Lifestyle. In this context, Mr. Pachnanda places reliance on Section 7(i) and 11 of the Court Fees Act, 1870, and the judgment of the High Court of Patna in *Girja Kuer v Shiva Prasad Singh*<sup>23</sup>. Mr. Pachnanda also relies, in this context, on Order VII Rule 7 of the CPC.

**99.** In conjunction with Order VII Rule 2 of the CPC, Mr. Pachnanda also cites Rule 20<sup>24</sup> of the Delhi High Court Intellectual Property Division Rules, 2022<sup>25</sup>, which requires the plaintiff in an IP

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<sup>22</sup> **2. In money suits.** – Where the plaintiff seeks the recovery of money, the plaint shall state the precise amount claimed:

But where the plaintiff sues for mesne profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, or for movables in the possession of the defendant, or for debts of which the value he cannot, after the exercise of reasonable diligence, estimate, the plaint shall state approximately the amount or value sued for.

<sup>23</sup> AIR 1935 Pat 160

<sup>24</sup> **20. Damages/Account of profits** – A party seeking damages/account of profits, shall give a reasonable estimate of the amounts claimed and the foundational facts/account statements in respect thereof along with any evidence, documentary and/or oral led by the parties to support such a claim. In addition, the Court shall consider the following factors while determining the quantum of damages:

- (i) Lost profits suffered by the injured party;
- (ii) Profits earned by the infringing party;
- (iii) Quantum of income which the injured party may have earned through royalties/license fees, had the use of the subject IPR been duly authorized;
- (iv) The duration of the infringement;
- (v) Degree of intention/neglect underlying the infringement;
- (vi) Conduct of the infringing party to mitigate the damages being incurred by the injured party;

In the computation of damages, the Court may take the assistance of an expert as provided for under Rule 31 of these Rules.

<sup>25</sup> “IPD Rules”, hereinafter



suit to merely provide a reasonable estimate of the amounts claimed. He has drawn our attention to paras 54, 57 and 62 as well as the prayer clause in para 64 of the plaint to the following extent:

“54. Notwithstanding the level of gain made by the Defendants from its Infringing Activities, the Plaintiffs will suffer direct and indirect monetary loss and damage. It is submitted that by engaging in the Infringing Activities, the Defendants are able to make sales and get a foothold in the market, and thereby, learn more money and profit, at the expense of the Plaintiff. Customers searching for the Plaintiffs’ apparel products, and seeing the Defendants’ apparel products, and mistakenly believe that the Defendants are in some way related/associated with the Claim tips and purchasing the Defendants’ apparel products. This increases the revenue of the Defendants, while causing financial loss to the Plaintiffs.

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57. The Plaintiffs estimate that it has and/or is likely to have suffered damages of over ₹ 2,00,00,000/- (Indian Rupees Two Crores). In addition to the damages that the Plaintiff. Due to the above illegal and impugned acts of the Defendants, all classes of consumers and the society at large will face negative consequences of such Infringing Activities being carried out by the Defendants herein.

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62. The value of the Suit for the purposes of court fees and jurisdiction in respect of the reliefs as prayed for is as follows:

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e) For a decree of damages as prayed for in prayer (e) of paragraph 63 below, the relief is collectively valued for the purposes of court fees and jurisdiction at ₹ 2,00,05,000/- and court fees of ₹ 2,00,050/- is affixed thereon ;

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64. In the circumstances aforesaid, the Plaintiff most respectfully prays that this Court may be pleased to pass:



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e) Decree for damages amounting to ₹ 2,00,05,000/- or any such amount as found due in favour of the Plaintiffs. There Plaintiffs submits that the valuation of damages is an approximate figure only, and the Plaintiffs undertakes to pay further Court fees as may be determined by this Hon'ble Court upon the damages that the Plaintiffs is able to prove in the course of trial;"

Mr. Pachnanda relies, in this context, on the judgment of a learned Single Judge of this Court in *Prakash Roadline Ltd v Prakash Parcel Service (P) Ltd*<sup>26</sup>.

100. To a pointed query from the Court as to the stage at which Lifestyle enhanced its claim to approximately ₹ 3780 crores, Mr. Pachnanda acknowledges that there are no pleadings in this regard, outside paras 54, 57 and 62 (e) and 64 of the plaint, already reproduced *supra*. He also acknowledges that these paragraphs were never amended. He, however, submits that in view of the proviso to Order VII Rule 2 of the CPC, there was no need for such amendment, where the claim related to mesne profits or damages. Nor was there any requirement of the damages of ₹ 3780 crores, as worked out by Lifestyle in its written submissions to be ever pleaded in a quantified fashion. He submits that the entitlement of Lifestyle to damages of ₹ 3780 crores had been proved by the evidence of PW-1 and PW-3 and that, when the said evidence was seen in the light of averments contained in paras 54, 57, 62 and 64 of the plaint, there was no requirement of any separate pleading before finally awarding damages

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<sup>26</sup> (1992) 48 DLT 390



as quantified by the learned Single Judge. Damages of ₹ 293 crores, he submits, had also been proved by PW-3. In support of these submissions, Mr. Pachnanda places reliance on

- (i) para 14 of the judgment of the Supreme Court in *Mahadeo Savlaram Shelke v Pune Municipal Corporation*<sup>27</sup>,
- (ii) paras 32 and 33 of the judgment of the judgment of a learned Single Judge of the High Court of Bombay in *ONGC v Oil Country Tubular Ltd*<sup>28</sup> and
- (iii) paras 96 to 100 of the judgment of the Supreme Court in *McDermott International Inc. v Burn Standard Co. Ltd*<sup>29</sup>.

G. Re. service on Amazon Tech

**101.** Apropos the aspect of service of the suit on Amazon Tech, Mr. Pachnanda drew our attention to affidavit of service dated 23 December 2020, filed by Lifestyle, which deposed that a complete set of the paper book in the suit, which included the plaint, applications, documents and the order dated 12 December 2020, had been served on Amazon Tech by courier and speed post. He submits that Amazon Tech was not denying receipt of the courier or speed post, in its appeal. Relying on Section 27<sup>30</sup> of the General Clauses Act, Mr. Pachnanda submits that Amazon Tech had to be treated as having been duly served. He further draws attention to the proofs of delivery of the

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<sup>27</sup> (1995) 3 SCC 33

<sup>28</sup> 2011 SCC OnLine Bom 426

<sup>29</sup> (2006) 11 SCC 181

<sup>30</sup> 27. **Meaning of service by post.** – Where any Central Act or Regulation made after the commencement of this Act authorises or requires any document to be served by post, whether the expression “serve” or either of the expression “give” or “send” or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.



documents, pursuant to which Amazon Tech actually appeared before the learned Single Judge, which assertions stand denied by Amazon Tech.

**102.** Mr. Pachnanda also placed reliance on Order V Rule 25<sup>31</sup> of the CPC in this context, as well as on para 13 of the present appeal, which reads thus:

“13. On 1<sup>st</sup> March 2021, the Ld. Joint Registrar noted that while the Respondents' affidavit of service dated 23<sup>rd</sup> December 2020 reflected that the entire paper book was delivered to the Appellant through speed post and courier, the report of the registry reflects that PF was not filed for service of summons on the Appellant. Accordingly, the Respondents were directed to take appropriate steps in this regard. The record of the Suit reveals that the PF eventually came to be filed on 16<sup>th</sup> March 2021. On 7<sup>th</sup> July 2021, the Ld. Joint Registrar noted that there is no report regarding service on the Appellant and directed the Respondent to file an affidavit of service. This affidavit of service dated 25<sup>th</sup> March 2021, as per the records of the Suit, seems to have been filed on 07<sup>th</sup> July 2021. Pertinently, while the said affidavit states that summons along with Suit papers were served on the Appellant by email, the copy of the email attached to the affidavit does not mention any service or attachment of summons at all. Moreover, even assuming arguendo that service was attempted on a proper e-mail address, from the records of the Suit, it appears that the Respondents have not filed any document evidencing that this email was successfully delivered to the Appellant (such as "read receipt", an undertaking on affidavit that the email did not bounce back, etc.). Copies of the orders of the Ld. Joint Registrar dated 1<sup>st</sup> March 2021 and 7<sup>th</sup> July 2021 are filed herewith as Annexures A4 and A5, respectively.”

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<sup>31</sup> 25. **Service where defendant resides out of India and has no agent.** – Where the defendant resides out of India and has no agent in India empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him or by post or by such courier service as may be approved by the High Court, by fax message or by electronic mail service or by any other means as may be provided by the rules made by the High Court, if there is postal communication between such place and the place where the Court is situate:



Mr. Pachnanda submits that the speed post and courier had been forwarded to the appellant Amazon Tech at the same address as has been provided in the memo of parties in the present appeal. It could not, therefore, be said that there was no proper service of the suit papers on Amazon Tech. In support of his submissions, Mr. Pachnanda places reliance on paras 29 to 31 of the judgment of one of us (C. Hari Shankar J.) in *LT Foods Ltd v Saraswati Trading Company*<sup>32</sup> and paras 11 and 12 of the Division Bench of this Court in *Sweety Gupta v Neety Gupta*<sup>33</sup>.

H. Re. Prayer for unconditional stay

**103.** With respect to Mr. Nigam's prayer for grant of unconditional stay of operation of the impugned judgment, Mr. Pachnanda submits that Amazon Tech is located in the US, which is not a reciprocating country with India and that, therefore, it would be formidably difficult for Lifestyle to have the impugned decree executed, for which it would have to file a separate suit. Grant of unconditional stay would, therefore, effectively render the decree unexecutable.

**104.** Mr. Pachnanda further submits that, while examining the merits of the appellant Amazon Tech's prayer for unconditional stay, the conduct of Amazon Tech has to be borne in mind. Despite having been served with the papers in the suit, Amazon Tech did not deem it necessary to appear and contest the matter. He submits that, even in

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<sup>32</sup> 2023 SCC OnLine Del 503

<sup>33</sup> 2016 SCC OnLine Del 5668



ground (g) of the present appeal, Amazon Tech has, in a studied fashion, stated that it had no “lawful knowledge of the suit proceedings”. Amazon Tech does not, therefore, dispute its having actual knowledge of the suit and its pendency. In fact, Amazon Tech has as much as acknowledged the existence of actual knowledge of the suit on its part by its further submissions, in the same paragraph, to the effect that “even assuming (Amazon Tech) had knowledge of suit as originally framed and at that stage was not interested in defending/contesting the suit with a claim of ₹ 2 crores, the same cannot be used as a ground to divest (Amazon Tech) of its substantive right to be put to notice of a material enhancement of the nature of relief claimed, given the distinct consequence of such material enhancement.”

**105.** For the legal proposition that money decrees ordinarily not to be stayed, Mr. Pachnanda placed reliance on

- (i) paras 3, 4, and 7 to 9 of the judgment of the Supreme Court in *Atma Ram Properties (P) Ltd v Federal Motors (P) Ltd*<sup>34</sup>,
- (ii) paras 1 to 8 of *Sihor Nagar Palika Bureau v Bhabhlabhai Virabhai & Co.*<sup>35</sup> and
- (iii) paras 15 to 21 and 147 of the judgment of one of us (C. Hari Shankar, J.) in *NHAI v Yedeshi Aurangabad Toll Way Ltd*<sup>36</sup>.

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<sup>34</sup> (2005) 1 SCC 705

<sup>35</sup> (2005) 4 SCC 1

<sup>36</sup> 2025 SCC OnLine Del 323



Mr. Pachnanda also relies on the IPD Rules of this Court read with Section 129<sup>37</sup> of the CPC and Section 7 of the Delhi High Court Act, along with paras 37, 39, 44 and 48 of the judgment of the Supreme Court in *Iridium India Telecom Ltd v Motorola Inc*<sup>38</sup>.

**106.** In that view of the matter, Mr. Pachnanda submits that no case for grant of stay of the impugned judgment is made out.

### **Submissions in rejoinder**

**107.** Responding to Mr. Pachnanda's submissions in rejoinder, Mr. Kaul, learned Senior Counsel reiterates many of the submissions already advanced at the first instance. He submits that, admittedly, no liability or involvement of Amazon Tech, in the affixation of the



allegedly infringing mark on the apparel sold by Cloudbtail on the platform of ASSPL was proved. No evidence by way of affidavit was led with respect to any such liability of Amazon Tech. Amazon Tech, he submits, was merely a repository of the trade marks of Amazon Inc, and nothing else. It only allowed others to use the trade marks. Amazon Tech did not manufacture any apparel, including shirts or t-shirts. Even in the Licensing Agreement dated 23 December 2015, Cloudbtail was specifically put on guard that it would not violate any intellectual property or trade mark of any other person, and had

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<sup>37</sup> 129. **Power of High Courts to make rules as to their original civil procedure.** – Notwithstanding anything in this Code, any High Court not being the Court of a Judicial Commissioner may make such rules not inconsistent with the Letters Patent or order or other law establishing it to regulate its own procedure in the exercise of its original civil jurisdiction as it shall think fit, and nothing herein contained shall affect the validity of any such rules in force at the commencement of this Code.

<sup>38</sup> (2005) 2 SCC 145



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indemnified Amazon Tech in that regard. Before this Court, on 2 March 2023, Cloudbtail categorically acknowledged its liability and

stated that the decision to affix the allegedly infringing  mark on the apparel sold by it on ASSPL platform was entirely its own and that Amazon Tech had nothing to do with the said decision.

**108.** Mr. Kaul has specifically drawn our attention once again to the said order. In the same order, he points out that learned Counsel for Lifestyle had specifically stated that, on the aspect of damages, he was satisfied with the damages of ₹ 4,78,484/- awarded against Cloudbtail *and that no further evidence was required in that regard.* Despite having made this statement, in written submissions filed after recording of evidence had been concluded, Lifestyle claimed ₹ 3780 crores against Amazon Tech and was finally awarded over ₹ 336 crores by the impugned judgment. This decree, he submits, is based on the very same pleadings, data and evidence on the basis of which the initial claim of approximately ₹ 2 crores had been made.

**109.** Even if it were to be presumed that Amazon Tech had correctly been proceeded *ex parte* by the learned Single Judge, Mr. Kaul submits that, before enhancing the claim as quantified in the plaint, from ₹ 2 crores to ₹ 3780 crores, Lifestyle was required to amend the plaint and serve a copy of the amended plaint on all defendants, including Amazon Tech. Leading of evidence, he submits, was no substitute, as evidence cannot travel beyond the pleadings.



110. Even if the defendant was proceeded *ex parte*, Mr. Kaul submits that the plaintiff was required to stand on its own legs. There was, in fact, no factual basis in the pleadings of Lifestyle for the damages claimed by it in its written submissions or even for the damages of ₹ 336 crores which were finally awarded by the learned Single Judge.

111. Mr. Kaul reiterates that there was no evidence whatsoever to indicate that Amazon Tech in any way concerned with the affixation



of the allegedly infringing logo on the apparel sold by Cloutail over the platform of ASSPL. The onus of proof, in this regard, was never discharged by Lifestyle.

112. Apropos the final direction of the learned Single Judge to Lifestyle to pay the court fees on the amount finally decreed in its favour, Mr. Kaul submits that the said direction is contrary to law. He relies on paras 5, 22 and 31 of the judgment of the Supreme Court in *State of Punjab v Dev Brat Sharma*<sup>39</sup>, to contend that court fees are payable on the amount claimed, not the amount awarded or decreed.

113. Mr. Kaul reiterates that enhancement of original claim of approximately ₹ 2 crores to ₹ 3780 crores could not be justified merely on the basis of written submissions and evidence of PWs.

114. Mr. Kaul further submits that, mere reference to “SYMBOL” has the manufacturer in the listing of the apparel which bore the

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<sup>39</sup> (2022) 13 SCC 221



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allegedly infringing  mark, on the website of ASSPL, could not make Amazon Tech responsible. He further submits that the enhancement of claim from ₹ 2 crores to ₹ 3780 crores could not be justified on the basis of Order VII Rule 2 or Order VII Rule 7 of the CPC or Rule 20 of the IPD Rules of this Court.

**115.** Supplementing the submissions advanced by Mr. Kaul in rejoinder, Mr. Arvind Nigam submits, by referring to the prayer clause in the plaint, that the plaint has incorporated separate prayers for damages and rendition of accounts. A claim for damages, he submits, is a legal remedy and not equitable remedy like mesne profits. Damages have, therefore, to be specifically quantified and not left for future expansion.

**116.** Without prejudice to this other submissions, Mr. Nigam points out that, though the evidence of PW-1 quantified the alleged losses of Lifestyle in US dollars, the judgment had been rendered in Indian Rupees. The rate of exchange adopted by the learned Single Judge was not disclosed. Inasmuch as the damages were over an extended period, during which the rate of exchange was continuously fluctuating, the impugned judgment could not be sustained even on that ground.

**117.** Mr. Nigam has specifically drawn attention to para 101 of the impugned judgment, already reproduced *supra*. He submits that the Licensing Agreement dated 23 December 2015 between Amazon Tech



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and Cloutail was a distinct agreement under which Amazon Tech was having control over the mark ‘SYMBOL’, and not over the infringing



mark, as was patently incorrectly observed by the learned Single Judge in para 101. This constitutes, he submits, a patent error and illegality in the impugned judgment, which completely vitiates it. He further submits, apropos the observation contained in para 101, that Amazon Tech has never pleaded that it was an intermediary.

**118.** Mr. Nigam, therefore, reiterates his prayer for grant of complete stay of operation of the impugned judgment.

### **Analysis**

#### **The law relating to Order XLI Rule 5 of the CPC**

**119.** Order XLI Rule 1(3)<sup>40</sup> of the CPC requires the appellant, in an appeal against a money decree, to deposit the decretal amount, or furnish security as directed by the appellate Court, within the time granted thereof. Though the provision uses the word “shall”, the Supreme Court, in *Malwa Strips*, held the provision to be directory, apparently so that it would not conflict with the power to grant stay, as conferred by Order XLI Rule 5.

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<sup>40</sup> (3) Where the appeal is against a decree for payment of money, the appellant shall, within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit.



**120.** Order XLI Rule 5(1) empowers an appellate Court, for sufficient cause, to stay execution of the decree or order under appeal.

**121.** However, this power is subjected, by Order XLI Rule 5(3), to

- (i) the appellate Court being satisfied that, unless stay is granted, the appellant would suffer substantial loss,
- (ii) the application being made without unreasonable delay, and
- (iii) furnishing of security, by the appellant, for due performance of the decree or order under appeal, as may ultimately be binding on the appellant.

**122.** The normal principle is that an appellate Court should not stay the execution of a money decree. In fact, the Supreme Court has gone to the extent of holding that the *entire decretal amount* should be ordinarily directed to be deposited, for the appeal to be heard on merits.

**123.** Learned Senior Counsel for the appellants submit, correctly, that the principle of complete deposit is neither inexorable nor absolute. In an appropriate, though exceptional case, the Court can stay the execution of a money decree.

**124.** To be fair, learned Senior Counsel for the respondents, too, do not dispute this position. They, however, submit that the present case does not fall within that rare and select category of appeals in which stay, of *any part* of the impugned judgment and decree, should be



granted. They stress on the fact that the normal rule is of deposit, and grant of stay, even in part, is the exception.

**125.** Learned Senior Counsel for the appellants contend, *per contra*, that, if this is not an exceptional case in which absolute stay should be granted, there can never be one.

**126.** The scope of Order XLI Rule 5 has been explained by the Supreme Court on more than one occasion.

**127.** In *Malwa Strips*, it was held, with respect to Order XLI Rule 1(3) and Rule 5, and the task of the Court while dealing with these provisions, thus:

“12. The High Court in this case failed to notice the provisions of sub-rule (3) of Rule 1 of Order 41. The appellate court, indisputably, has the discretion to direct deposit of such amount, as it may think fit, although the decretal amount has not been deposited in its entirety by the judgment-debtor at the time of filing of the appeal. But *while granting stay of the execution of the decree, it must take into consideration the facts and circumstances of the case before it. It is not to act arbitrarily either way. If a stay is granted, sufficient cause must be shown, which means that the materials on record were required to be perused and reasons are to be assigned. Such reasons should be cogent and adequate.*

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14. Even if the said provision is not mandatory, the purpose for which such a provision has been inserted should be taken into consideration. *An exceptional case has to be made out for stay of execution of a money decree.* The parliamentary intent should have been given effect to. The High Court has not said that any exceptional case has been made out. *It did not arrive at the conclusion that it would cause undue hardship to the respondent if the ordinary rule to direct payment of the decretal amount or a part of it and/or directly through the judgment-debtor to secure the*



*payment of the decretal amount is granted. A strong case should be made out for passing an order of stay of execution of the decree in its entirety.”*

(Emphasis supplied)

***Sihor Nagar Palika Bureau v Bhabhlubhai Virabhai & Co.***<sup>41</sup>

**128.** *Sihor Nagar Palika Bureau* was a case in which the appellant Sihor Nagar Palika Bureau<sup>42</sup> awarded a contract to the respondent Bhabhlubhai Virabhai & Co.<sup>43</sup> for collection of octroi on SNPB’s behalf. SNPB terminated the contract. BVC challenged the termination by way of a civil suit. The suit was decreed, and damages awarded in favour of BVC and against SNPB. SNPB appealed to the High Court, with an application under Order XLI Rule 5(1) of the CPC. The High Court granted stay subject to deposit, by SNPB, of an amount of ₹ 8,78,925/- with interest @ 8% p.a. SNPB appealed to the Supreme Court.

**129.** The judgment of the Supreme Court notes only two pleas as having been raised by SNPB by way of challenge to the decision in the suit. The first, noted in para 4 of the report, was that SNPB “was facing financial difficulty on account of abolition of octroi and was badly in need of money for carrying out its multifarious public utility services and activities”. The second, noted in para 7, was that “the decree (had) been passed by the trial court without availability of any legal evidence amounting to proof in favour of the respondent and hence the decree (was) *ex facie* erroneous”. The Supreme Court

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<sup>41</sup> (2005) 4 SCC 1

<sup>42</sup> “SNPB” hereinafter

<sup>43</sup> “BVC” hereinafter



deemed it appropriate to modify the order of the High Court, thus, in para 8:

“In the facts and circumstances of the present case and having taken into consideration the respective submissions made by the learned counsel for the parties in very many details, we are satisfied to hold that the High Court ought to have permitted furnishing of security instead of insisting on deposit in cash of the amount as directed by the High Court. It is not the case of the respondent that in the event of the appeal being dismissed the decretal amount may not be recovered from the appellant. On the other hand, the appellant has made out a prima facie strong case for the hearing of the appeal on its merits and further a case that public interest would be better served by the amount being retained by the appellant during the pendency of the appeal.”

**130.** At the end of the day, therefore, while the power of the appellate Court to stay the execution of a money decree in its entirety is not eroded in any manner, that power is required to be exercised with great care and circumspection, especially in view of the parallel existence, in the statute, of Order XLI Rule 1(3).

**131.** *It is required to be borne in mind, however, that nearly all cases in which the Court has directed deposit of the decretal amount under Order XLI Rule 5 are cases in which the defendant has suffered a trial and an adverse outcome. In the present case, the entire trial took place in the absence of Amazon Tech, Lifestyle's evidence was also led in Amazon Tech's absence and was never subjected, therefore, to cross-examination, and no arguments of Amazon Tech were heard. Undeniably, it is the plaintiff alone who participated in the entire proceedings, whose evidence was led, and whose arguments were heard. The proceedings were, therefore, one-sided throughout.*



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Indeed, after 2 March 2023, there was no defendant before the learned Single Judge at all.

**132.** We are required, therefore, to examine whether the appellant Amazon Tech has been able to make out so exceptional a case as to justify its prayer for grant of an absolute stay of operation of the impugned judgment and decree.

**133.** Though, given the magnitude of the decree, and the fact that we are, in the present case, veering from the oft-trodden path and granting a complete stay of operation of the impugned judgment and decree, insofar as it awards damages against Amazon Tech and in favour of Lifestyle, we have set out the facts, the trajectory of the proceedings before the learned Single Judge, and the rival submissions advanced before us in detail, we are, in the present order, only adjudicating an application under Order XLI Rule 5 of the CPC. Our observations in the present judgment/order are, therefore, purely prima facie, and intended to convey the justification for our decision to dispense with the deposit, by Amazon Tech, of any part of the amount decreed by the learned single Judge against it.

### **Reasons for our decision**

**134.** For the following reasons, we are of the view that the present appeal deserves to be heard without requiring the Appellant Amazon Tech to secure any part of the decretal amount.



A. No pleadings claiming ₹ 336,02,87,000/-

**135.** The Learned Single Judge has awarded, to Lifestyle and against Amazon Tech, humongous damages of ₹ 336,02,87,000/- without even the whisper of a pleading, claiming the said amount. The only damages claimed, in the pleadings of Lifestyle, were of ₹ 2,00,05,000/-. For the first time, in the written submissions filed before the learned Single Judge after conclusion of arguments, Lifestyle hiked the damages to ₹ 3780 crores. This was entirely unsupported by pleadings. The learned Single Judge has, in the impugned judgment, awarded ₹ 336,02,87,000/-, which were also never claimed in any pleading of Lifestyle.

**136.** Leave alone the fact that there were no pleadings, claiming ₹ 336,02,87,000/-, there were also no pleadings on the basis of which is claim could be supported or sustained. The learned Single Judge has herself ventured into an exercise of computing the awardable damages as ₹ 336,02,87,000/-, without the said exercise being supported by any pleadings of Lifestyle. The position that has resulted is, therefore, that

- (i) the pleadings of Lifestyle only justified damages of ₹ 2,00,05,000/-,
- (ii) without amending its pleadings, Lifestyle, in its written submissions before the learned Single Judge, worked out the damages to which it was allegedly entitled as approximately ₹ 3780 crores, and
- (iii) the impugned judgment decrees in favour of Lifestyle and against Amazon Tech, ₹ 336,02,87,000/-, again on the basis



of a computation solely devised by the learned Single Judge, not pleaded by the parties and unsupported by any pleading on record.

**137.** Mr. Pachnanda sought to submit that the damages to which the Plaintiff is entitled need not be specifically computed and claimed in the pleadings. The submission, in our view, begs the issue. This is not merely a case where there are no pleadings, supporting the damages of ₹ 3780 crores, claimed by Lifestyle in its written submissions, or the damages of ₹ 336,02,87,000/-which ultimately came to be awarded by the learned Single Judge. *Even the basis for the claim of ₹ 3780 crores, all for the amount of ₹ 336,02,87,000/-which was ultimately awarded, is not to be found anywhere in the pleadings of Lifestyle.*

**138.** The basis for the claim for damages are, at all costs, to be contained in the pleadings of the Plaintiff. It cannot be reserved for evidence. It is a legal truism that evidence cannot traverse the pleadings.

**B. No finding of any role of Amazon Tech in the alleged infringement – Existing “findings” vitiated by patent factual errors – Misreading of Licence Agreement dated 23 December 2015**

**139.** Having read the impugned judgment of the learned Single Judge in its entirety, we do not find, therein, any specific finding against Amazon Tech, identifying its role in the affixation of the



mark on the apparel sold by Cloudtail on ASSPL's online



platform. The findings are, we feel, largely generalized in nature, concentrating on the phenomenon of e-infringement and reflect a view that, if Amazon Tech desired, it *could* infringe, rather than that it *did* infringe.

**140.** The findings against Amazon Tech, to the extent they figure in the impugned judgment are, moreover, based on various factual presumptions which, *prima facie*, are incorrect.

**141.** This can be easily gleaned by a para-by-para reading of the impugned judgment.

**142.** With greatest respect, it appears to us that the impugned judgement is more concerned with the fact that e-infringement is a new phenomenon, and that it is very difficult to identify the actual players in the act. Paras 42 to 44 of the impugned judgment deal with the menace of e-infringement, and the difficulty in localising liability in such cases. Para 44, in fact, refers to intermediary liability, which is of no particular relevance, as Amazon Tech does not claim itself to be an intermediary. We may note, even at this juncture, that the learned Single Judge has, in para 99 of the impugned judgment, observed that Amazon Tech was identifying itself as an intermediary. This is a *prima facie* erroneous finding. At no point of time has Amazon Tech claimed to be an intermediary. In fact, in earlier orders passed in the suit, particularly in the orders dated 2 March 2023 and 7 August 2023 – which the latter was passed by the learned Single Judge herself – it has been correctly noted that Defendant 3 ASSPL was claiming to be



an intermediary and was, in fact, one. In the impugned judgment, therefore, the learned Single Judge has proceeded on an apparently mistaken assumption that Amazon Tech was also claiming to be an intermediary.

**143.** Returning to the findings in the impugned judgment, following the adverse observations regarding the menace of e-infringement is a new species of trademark infringement, which poses significant challenges in localising of liability, the learned Single Judge proceeds, in para 45, to characterise the present case as a case of e-infringement – with which there can be no serious cavil. Following this, however, the learned Single Judge was on to note that the brand ‘Symbol’, being used by Cloudtail, was owned by Amazon Tech. This is also; however, is difficult to understand how the ownership, by Amazon Tech, of the brand ‘Symbol’ is of any relevance. The mark ‘Symbol’ is, quite clearly, not infringing in nature.

**144.** In fact, even the plaint in the suit does not so assert. The case that Lifestyle has sought to build up, in the plaint, is that, as the

infringing  mark figured on the same apparel, which bore the ‘SYMBOL’ mark of Amazon Tech, Amazon Tech could not escape

liability from the tort of infringement by use of the  mark. In our considered view, the said plea, which has apparently found favour with the learned Single Judge in the impugned judgment, has no basis in law.



**145.** The learned Single Judge proceeds to lay considerable stress on order dated 5 September 2022, passed in the suit, particularly on the opening sentence of the order, which reads:

“The learned senior counsel for the defendant no. 2/applicant herein submits that the said defendant, including for and on behalf of the defendant no. 1 is willing to suffer a decree of injunction and also for paying reasonable damages to the plaintiff.”

The learned Single Judge has treated this sentence, from the order dated 5 September 2022, as recording some kind of a concession, on behalf of Amazon Tech, admitting its liability for infringement and agreeing to pay damages. Significantly, prior to the passing of this order, Amazon Tech had already been proceeded ex parte on 20 April 2022. Even if it were to be assumed that Amazon Tech had agreed, through learned Counsel who appeared on behalf of Cludtail, to suffer reasonable damages, that statement, if at all, was made at the stage when the damages claimed by Lifestyle were of ₹ 2,00,05,000/-. In the face of this claim, it would be preposterous to hold that the order dated 5 September 2022 amounts to an admission, by Amazon Tech, to suffer damages of ₹ 336,02,87,000/-. Before awarding such damages, therefore, it was incumbent on the learned Single Judge to render specific findings of infringement, or at least of complicity in the infringing activities, by Amazon Tech. With greatest respect, we do not find this to have been done.

**146.** Para 47 of the impugned judgment observed that Amazon Tech, Cludtail and ASSPL were “closely related to or interlinked with each



other”. Para 48 records that “it is a matter of public knowledge that the www.amazon.in platform is closely linked with Defendant No. 1”, i.e. the present appellant Amazon Tech. To a large extent, it is clear that the impugned judgement proceeds on the premise that Amazon Tech, Cloutail and ASSPL, i.e., all the defendants, were acting in concert and were one commercial entity.

**147.** We also find, *prima facie*, that the learned Single Judge has, in para 52 of the impugned judgment, completely misread the Licensing Agreement dated 23 December 2015 as fastening liability on Amazon Tech for infringement whereas, in fact, it does nothing of the kind. The learned Single Judge observes that the License Agreement dated 23 December 2015, between Amazon Tech and Cloutail indicated “that Amazon retains significant control over Cloutail’s branding and distribution activities”. Following this, the learned Single Judge returns an opinion that “the clauses in the Agreement clearly diminish Amazon’s liability to distance itself from the alleged infringement committed by Cloutail”, that “the contractual restrictions on unauthorised trademark use, coupled with indemnification obligations, provide strong legal grounds for (Lifestyle) to argue Amazon’s direct involvement in trademark infringement”, “the agreement being a license agreement, Defendant No. 1 being a licensor and Defendant No. 2 being a licensee, any infringement or unlawful use by the licensee would also affix liability about the licensor”, “while licensing the word mark SYMBOL” Amazon would be unable to distance itself from the use of the accompanying horse logo device mark” and that



“thus, the consequences of infringement squarely fall upon Defendant No. 1”.

**148.** We are, *prima facie*, unaware of any law which supports these observations and findings. The Licensing Agreement dated 23 December 2015 was restricted to the ‘SYMBOL’ mark, owned by Amazon Tech. Amazon Tech had, by the agreement, licensed, to Cloudtail, the right to use the mark ‘SYMBOL’. The agreement does nothing beyond this. By no stretch of imagination could be Licensing Agreement be read as authorising Cloudtail to affix, on the apparel

sold by it, the allegedly infringing  mark. In fact, the Licensing Agreement makes no reference to the said mark at all, obviously because Amazon Tech had no concern with the said mark. If,

therefore, Cloudtail did affix the  mark on the apparel sold by it, it certainly did not do so by virtue of any authorisation or permission granted by the Licensing Agreement dated 23 December 2015. In fact, the Licensing Agreement contained a specific clause proscribing any infringement, by Cloudtail, of the trademark of any third party, and indemnified Amazon Tech in that regard.

**149.** The observations contained in para 52 of the impugned judgment, extracted by us earlier in paragraph 139, are unsupported by law. In a Licensing Agreement, whereby and whereunder Amazon Tech had only licensed, to Cloudtail, the right to use the ‘SYMBOL’ mark, we are unable to understand how Amazon Tech could be



fastened with liability for use, by Cloutail, of the  mark, with which the Licensing Agreement – and, indeed, Amazon Tech itself – had no concern.

**150.** Needless to say, a licence by one party to another, to do a particular act, cannot render the first party liable for every infringing or illegal act committed by the second, in the absence of any material to indicate that the commission of the illegal infringing act was also authorised by the license. The findings in para 52 of the impugned judgment, in our prima facie view, are contrary to this principle which, according to us, is practically fossilized in the law. They, therefore, suffer from patent illegality.

**151.** In para 98, the learned Single Judge observes that the judgment would proceed to examine, inter alia, “the degree of culpability of the Defendants”. Paras 98 to 99 proceed, apparently, to record certain observations regarding Amazon Tech which, in our view, are not incriminating in any manner. Before, however, adverting thereto, the learned Single Judge observes, in para 98 and in the opening part of para 99 of the impugned judgment, that the mark ‘SYMBOL’, of which the right to use had been licensed by Amazon Tech to Cloutail,



was used “along with” the infringing  mark, on the apparel sold by Cloutail. Even if it was, we are unable to understand how any liability or responsibility for infringement, on the ground, be fastened on Amazon Tech. Amazon Tech was not the manufacturer of the



apparel on which the infringing mark was used. It had never licensed, to Cloutail, the right to use the infringing mark, with which, in fact, it had no concern. In fact, Cloutail itself conceded, before this Court on

2 March 2023, that the decision to use the infringing  mark on the apparel sold by was not of Amazon, but of Cloutail itself. Unfortunately, the learned Single Judge has entirely overlooked this concession, regarding which no objection or reservation was ever expressed by Lifestyle, either before this Court on 2 March 2023 or at any point thereafter. In view thereof, it is plainly obvious that the

affixation, on the apparel sold by Cloutail, of the infringing  logo, could not incriminate Amazon Tech in any manner, merely because the same apparel also happened to carry the ‘SYMBOL’ mark, the use of which had been licensed by Amazon Tech to Cloutail.

**152.** Para 99 of the impugned judgment proceeds to observe that Amazon Tech was “one of the most dominant players in the e-commerce space”, that it “possesses ways and means to utilise its dominant presence in the e-commerce space to promote its own products as also products which it might otherwise wish to promote”, and that it had “the leverage through its own platforms to dilute Plaintiff’s brand/logo by indulging in deep-discounting of its own products which compete with the Plaintiff by using a similar mark/logo”. These findings are, prima facie, entirely in the realm of presumption and conjecture. They reflect an impression, by the



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learned Single Judge, that Amazon Tech was in a position to indulge in infringing activities by means such as deep discounting – with respect to which there is not even a whisper of an allegation against Amazon Tech in the entire plaint of Lifestyle – and that, therefore, it must have done so. On the face of it, we are of the view that these findings suffer from perversity in law, and cannot, therefore, sustain.

**153.** Para 99 goes on further to observe that “it is well known reality that all 3 Defendants belong to the Amazon Group of Companies and operate as a cohesive commercial entity”. This finding has nothing forthcoming, available on the record, to support it. There is certainly no pleading to that effect. The plaint, filed by Lifestyle, does not allege, even indirectly, that Amazon Tech, Cloudbail and ASSPL constituted a “cohesive commercial entity”. A finding that 3 companies, which are independent corporate ventures, constitute a cohesive commercial entity, cannot be returned without any pleading to that effect. We are constrained to observe that the learned Single Judge has, in so holding, made out a case in favour of Lifestyle which it itself did not plead.

**154.** There are no other findings, in the impugned judgment, against Amazon Tech. Of course, the learned Single Judge has adversely commented on what she perceives as Amazon Tech’s deliberate absence from the proceedings in the suit. Even if it were to be presumed, merely for the sake of argument, that Amazon Tech took a conscious decision not to participate in the suit proceedings, that cannot justify mulcting it with damages of ₹ 336,02,87,000/-.



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155. The case, therefore, is one of awarding, against Amazon Tech and in favour of Lifestyle, of damages of ₹ 336,02,87,000/-, without any sustainable finding of infringement, or of complicity in infringement, against Amazon Tech.

C. No pleading of infringement against Amazon Tech, worth the name

156. Mr. Sai Deepak, appearing on behalf of Lifestyle and supplementing the submissions advanced by Mr. Pachnanda, sought earnestly to convince us that the requisite factual basis or alleging involvement of Amazon Tech in the infringement of Lifestyle's



registered trademark, is forthcoming in the plaint. We are unable to agree.

157. We have already set out, from para 29 of the present judgment on words, the relevant averments contained in the plaint. We do not find, therein, any prima facie sustainable allegation of involvement, by Amazon Tech, in any infringement of Lifestyle's registered trademark.

158. Para 41 of the plaint alleges that Amazon Tech is, under its brand 'SYMBOL', "manufacturing, offering for sale and/or selling



products which bear the infringing logo mark . These allegations are completely defeated by the assertions in the replication



filed by Lifestyle, to the written statement of Cloutail – also reproduced supra – that it was Cloutail manufacturing and selling the

apparel bearing the  mark, and, thereby, infringing Lifestyle’s registered trademark.

**159.** Para 41 goes on to state that ASSPL was selling products of Amazon Tech on its platform under the trademark ‘SYMBOL’,

bearing the infringing  mark. This allegation, again, is incorrect. The products sold by ASSPL were not of Amazon Tech, but of Cloutail. The only connection of Amazon Tech, with the said products, was the ‘SYMBOL’ mark, which Cloutail affixed on the said apparel under license from Amazon Tech. This does not, in any

way, connect Amazon Tech with the infringing  mark.

**160.** In fact, after making such bald and unsubstantiated allegations, Lifestyle, in the same para 41 of the plaint, acknowledges that it was not certain about the actual relation between Amazon Tech, Cloutail and ASSPL. Obviously, the allegations against Amazon Tech,

regarding its complicity in the affixation of the  mark on the apparel sold by Cloutail on the ASSPL platform, were merely shots in the dark, without any knowledge of the actual state of affairs. In fact, para 46 of the plaint acknowledges the fact that the invoice, raised by ASSPL, with respect to the apparel purchased by Lifestyle,



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only contained the name and details of Cloudtail. Despite this, para 48 of the plaint alleges that it was an “admitted case of Defendant No 3 (ASSPL) that orders for the infringing product of the Defendant No 1 (Amazon Tech) are being fulfilled by Defendant No 2 (Cloudtail)”, without any such “admitted case” being available on record. The plaint does not disclose where this “admission” is to be found.

**161.** At this juncture, we may also refer to the affidavits dated 21 July 2022 and 1 September 2022 of ASSPL, on which Mr. Pachnanda sought to place reliance as supporting the finding of the learned Single Judge, in the impugned judgment, that Amazon Tech, Cloudtail and ASSPL constitute a “cohesive commercial entity”. We find no such inference being forthcoming from the affidavits. In any case, we are not concerned, here, with the interlink, as commercial entities, between Amazon Tech, Cloudtail and ASSPL. They are, admittedly, independent commercial entities, as was, in fact, noted by the learned Single Judge in the order dated 12 October 2020, reproduced in para 19 of the impugned judgement. What is to be seen is whether there was any material to indicate involvement of Amazon Tech in the allegedly infringing activities of Cloudtail. There is, in fact, none.

**162.** Apart from this, the plaint only refers, repeatedly, to the infringing  mark as belonging to Amazon Tech and has having been adopted by it. No factual basis for these allegations is forthcoming.



163. We have already explained, in para 18 to 26 supra, why it cannot be said that any substantial allegation of involvement, by Amazon Tech, in the allegedly infringing activities of Cloutail, by



affixation of the mark on the apparel sold by it, can be said to exist.

164. This, therefore, is not merely a case in which damages have been awarded against Amazon Tech without any finding, by the learned Single Judge, of involvement, in the alleged infringing activities, but is, in fact, a case where no such pleadings exist.

D. Damages of ₹ 4,78,484/- already having been awarded against Cloutail, no separate damages of ₹ 336,02,87,000/- could have been awarded against Amazon Tech

165. The order dated 2 March 2023, in our view, is of pivotal importance, of which the impugned judgment does not take necessary stock. In the plaint, damages were not separately sought from Amazon Tech and the other defendants, including Cloutail. Consolidated damages of ₹ 2,00,05,000/- were claimed against all the defendants. Once, therefore, by order dated 2 March 2023, the suit stood decreed against Cloutail ₹ 4,78,484/-, no separate decree for damages could have been passed against Amazon Tech, inasmuch as no independent act of infringement has been alleged, against Amazon Tech, apart from the infringement alleged to have been committed by Cloutail.



166. That apart, on 2 March 2023, Cloudtail specifically asserted sole and individual responsibility for damages as well as infringement. It was specifically argued, by learned Counsel for Cloudtail, before

this Court, that the decision to use the allegedly infringing  mark was of Cloudtail, and of Cloudtail alone, and that Amazon Tech had no role to play in the said decision. In response, learned Counsel for Lifestyle acknowledged the fact that the Licensing Agreement dated 23 December 2015 was only dealing with the ‘SYMBOL’ mark, and

did not deal with the allegedly infringing  mark at all. In the absence, therefore, of any evidence to indicate commission of independent infringing activities by Amazon Tech, apart from the

affixation of the  mark on the apparel sold by Cloudtail over the online platform of ASSPL, there could be no question of any separate damages being awarded against Amazon Tech.

167. Learned Counsel for Lifestyle, in fact, specifically stated, before this Court on 2 March 2023, that, “for award of damages, aforementioned data is sufficient and no further evidence is required”. In proceeding to award separate damages, against Amazon Tech, of ₹ 336,02,87,000/-, without taking note of the order dated 2 March 2023, and its import and effect, we are of the *prima facie* view that the learned Single Judge, in passing the impugned judgment, has erred in law.



E. Unilateral proceedings, conducted in the absence of the defendants, without proper justification

**168.** We also find prima facie substance in the contentions of Mr. Nigam and Mr. Kaul that the manner in which, after excluding all defendants from the proceedings, the entire trial of the suit, arguments and rendition of judgment took place solely in the presence of the plaintiff Lifestyle, may not sustain legal scrutiny.

**169.** The learned Single Judge has repeatedly observed, in the impugned judgment, that Amazon Tech was deliberately staying away from the proceedings despite being aware of their pendency, and has relied, for the said purpose, on the order dated 5 September 2022 passed in the suit. A reading of the order discloses that the appearance of Counsels are noted only for Defendant 2 Cloudbtail and Defendant 3 ASSPL. The mere fact that learned Senior Counsel appearing for Cloudbtail advanced a submission, on behalf of his client as well as on behalf of Amazon Tech, that they were willing to suffer reasonable damages, cannot be seen as proof of Amazon Tech being aware of the proceedings or deliberately refraining from participating therein. Even prior to this date, Amazon Tech had been proceeded ex parte on 20 April 2022. As a matter of fact, therefore, Amazon Tech was never present before the learned Single Judge on any date of hearing.

**170.** When one peruses the orders passed in the suit, *vis-à-vis* the notings of the Registry, it becomes apparent that, in fact, no summons in the suit were ever served on Amazon Tech. This, to our mind, is a serious infirmity, which may plague all other proceedings. Amazon



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Tech was proceeded ex parte, by the learned Single Judge, on 20 April 2022. In the order passed by the learned Joint Registrar on 7 July 2021, which was the immediately preceding effective date, it was specifically noted that there was no report regarding service of the suit on Amazon Tech. In the circumstances, Lifestyle was directed to file an affidavit of service. No affidavit of service was filed by Lifestyle, between 7 July 2021 and 20 April 2022. The only affidavit of service which was filed by Lifestyle was of 25 March 2021. That affidavit enclosed, by it, an email dated 8 March 2021. No email, after 8 March 2021, was sent by Lifestyle to Amazon Tech. There is no question of the summons having been served by the email dated 8 March 2021, as the delay in filing process fee was condoned only on 16 April 2021. After 16 April 2021, the summons have never been sent to Amazon Tech, by any means of communication including email. It was for this reason that the order dated 7 July 2021 of the learned Joint Registrar required Lifestyle to file an affidavit of service. This was never done. As such, it is apparent that the learned Single Judge was in error in proceeding ex parte against Amazon Tech by order dated 20 April 2022.

**171.** In fact, even before us, Mr. Pachnanda, with characteristic candour and forthrightness, did not seek to contend that formal service of summons on Amazon Tech, as directed by the Court while issuing summons on 12 October 2020, ever took place. His submission is, however, that, prior to issuance of summons by the Court on 12 October 2020, as well as by way of attachment to the email dated 8 March 2021, all the documents relating to the suit, as well as



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applications filed therewith, were forwarded to Amazon Tech. Besides, due compliance with the requirements of the proviso to Order XXXIX Rule 13 of the CPC was also ensured. In these circumstances, Mr. Pachnanda's submission is that the learned Single Judge was correct in holding that Amazon Tech deliberately absented itself from the proceedings and cannot, now, therefore, seek to raise a grievance that it was proceeded ex parte.

**172.** We cannot, in law, accept the submission.

**173.** The law does not require a defendant to enter appearance in a suit, unless summons in the suit are served on it. The Commercial Courts Act, 2015 contains strict provisions in that regard. No amount of service, on the defendant, of the papers relating to the suit, by the plaintiff, absent actual summons issued by the suit, can compel a defendant, in law, to enter appearance. The law does not permit a defendant to be proceeded ex parte, even before summons in the suit are served on it. This is plain, and elementary. The learned Single Judge could not, therefore, have proceeded against Amazon Tech ex parte on 20 April 2022, even before formal summons in the suit had been served on it. In doing so, it appears that the learned Single Judge was not made aware of the order passed by the learned Joint Registrar on the immediately preceding date, i.e. 7 July 2021, in which it was specifically noted that there was no report regarding service of the suit on Amazon Tech. In holding that Amazon Tech had not appeared despite service and, therefore, proceeding against Amazon Tech ex



parte, therefore, we are of the opinion that the learned Single Judge materially erred in law and on facts.

**174.** This, by itself, is a lapse serious enough to vitiate all proceedings in the suit after 20 April 2022, at least insofar as the appellant Amazon Tech is concerned. It also, therefore, suffices, even by itself and independent of all other considerations, as enough to justify entertainment of the present appeal without requiring any deposit of the decretal amount to be made by Amazon Tech.

**175.** We also find considerable substance in the submission of learned Senior Counsel for the appellant Amazon Tech that, in any event, all these developments took place at a time when the damage claimed by Lifestyle were only to the tune of ₹ 2,00,05,000/-. Enhancement of these damages are necessarily to be proceeded by an amendment of the plaint, of which Amazon Tech had to be put on due notice. This was never done. In fact, the written submissions filed by Lifestyle, which enhanced the damages, earlier computed at ₹ 20,005,000/- to ₹ 3780 crores, were also not served on the Appellant Amazon Tech. In accepting the enhancement of the claim for damages, therefore, we agree with learned Senior Counsel for the appellant Amazon Tech that the learned Single Judge has not acted strictly in accordance with the law.

**176.** In some circumstances, we are also of the opinion that lifestyle cannot seek sanctuary behind Order VII Rule 2 or Order VII rule 7 of the CPC, or even Rule 120 of the IPD Rules. Order VII Rule 2, in fact,



requires a plaint, seeking recovery of money, to state the precise claimed amount. The proviso to Order VII Rule 2 applies only in cases of suits for mesne profits, or for an amount which would be found on rendition of accounts between the Plaintiff and the Defendant, or for movables in the possession of the defendant or debts of which the value cannot be reasonably estimated at that stage. The present suit does not fall within any of these categories. The suit does not claim mesne profits, or value of movables in the possession of the defendants, or any debt of which the value was not ascertainable. Moreover, para 86 of the impugned judgment records the submission of Lifestyle that it was not pressing for its prayer for rendition of accounts. In that view of the matter, the proviso to Order VII Rule 2 of the CPC would not apply, and the main provision, which requires the precise claim to be quantified in the suit, would apply with all force. The precise amount quantified in the suit was only ₹ 2,00,05,000/-. There is, therefore, substance in the contention of learned Senior Counsel for Amazon Tech that, without an amendment of the plaint, the damages could not have been enhanced, much less to ₹ 3780 crores.

**177.** Order VII Rule 7, plainly, does not apply, as it exempts a plaintiff from requiring to claim “general or other relief”, apart from the specific relief sought in the plaint.

**178.** In any event, what lies at stake, here, is something far more empirical. The question that is required to be addressed is whether (i) a claim for damages, assessed in the plaint at ₹ 2,00,05,000/–, could



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be inflated to ₹ 3780 crores merely in written submissions filed by the plaintiff after conclusion of arguments, without amending the plaint and without even serving a copy of the written submissions on a defendant against whom the enhanced damages were claimed and (ii) the Court would, in such circumstances, have awarded damages in excess of ₹ 336 crores, without any prior opportunity to the concerned defendant to contest the proposed judgment.

**179.** We, prima facie, are of the opinion that both these questions are required to be answered in the negative.

### **Conclusion**

**180.** The considerations outlined herein above make out, in our considered opinion, an exceptional case, in which it would be a complete travesty of justice to require the Appellant Amazon Tech to deposit, or secure, any part of the amount decreed by the impugned judgment, in order to maintain its appeal.

**181.** We, therefore, dispose of the present application by staying the operation of the impugned judgment dated 25 February 2025, passed by the learned Single Judge, insofar as it awards damages of ₹ 336,02,87,000/-, and costs of ₹ 3,23,10,966.60/-.

**182.** This shall, however, be subject to an undertaking being furnished by the appellant Amazon Tech to comply with the impugned judgment, in the event of its failing in the present appeal, to be



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furnished with the Registry of this Court within a period of two weeks from pronouncement of the present judgment.

**183.** CM Appl 26455/2025 stands allowed to the aforesaid extent.

**184.** Observations and findings contained in the present judgment, we clarify, are only intended to be *prima facie* and for the purposes of disposing of the present application. They shall not be binding on the Court while deciding the present appeal.

**C. HARI SHANKAR, J.**

**AJAY DIGPAUL, J.**

**JULY 1, 2025**

ar/dsn

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