The provisions in the SIAC Rules for emergency arbitration do not violate Indian laws (Delhi High Court)

Update by Editor

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Future Retail Limited v. Amazon.com Investment Holdings LLC and others

Court: Delhi High Court | **Case Number**: CS (Comm) 493 of 2020 | **Citation**: 2020 SCC OnLine Del 1636 | **Bench**: Mukta Gupta J | **Date**: 21 December 2020 | **Final or interim decision**: Interim | **Appellate proceedings**: Appeal filed by Amazon pending as FAO (OS) (COMM) 7 of 2021

A. The context and the dispute

A1. The Future & the Reliance group versus Amazon; multi-brand retailing

On the one side in the dispute are two Indian business houses–the Future group and the Reliance group–and on the other side is Amazon, the Unites States conglomerate.

The Future group has been a prominent player in India in the multi-brand retail business. The group "operates through five publicly-listed entities"[1] and Future Retail Limited ("Future" or "FCL"), the plaintiff in this case, is one of them. It operates well-known retail chains in India like Big Bazaar.

To invest in Future Retail, Amazon would require several permissions. Because foreign investment in multi-brand retail in India is subject to several approvals and conditions (restrictions). So far, extremely few foreign entities have been given approval.

Amazon's investment (49%) is in another Future group company, that is, Future Coupons Private Limited ("Future Coupons" or "FCPL").[2] Future Coupons has 9.82% shareholding in Future Retail.

Amazon has several rights in the shareholders' agreement with Future Coupons ("the FCPL SHA"). What is the nature of these rights, and do they amount to "control" over Future Retail? This is one of the other central issues in this case.

A2. Amazon's agreement with FCPL provides for a New Delhi seated arbitration under the arbitration rules of SIAC

The FCPL SHA was governed by the laws of India. It had a dispute resolution clause for "arbitration in accordance with the arbitration rules of the Singapore International Arbitration Centre" with New Delhi as the seat of the arbitration in New Delhi.

A3. The dispute began when the Reliance group came into the picture proposing rescue of the debt-hit Future group

[1] See https://www.futuregroup.in/investors.

[2] The other shareholder of Future Coupons is Future Corporate Resources Private Limited (also, "FCRPL"). FCRPL holds investments in several Future-group companies. It was one of the promoter entities of Future Retail and holds over twenty percent shares in Future Retail. The company through which the Amazon group invested in FCPL is Amazon.Com Investment Holdings LLC, which is the first defendant in the dispute.

The Future group faced trouble in its business and acquired massive debts. The COVID pandemic seems to have made it worse.

The Reliance group entered the scene and proposed to acquire Future group's retail, wholesale, logistics, and warehousing business via a slump sale.[3]In August 2020, the Future group announced a reorganization of its business. The board of directors of Future Retail passed a resolution on 29 August 2020 authorizing the transaction with Reliance.

A4. Amazon initiated arbitration under the FCPL SHA and obtained an order from the EmergencyArbitrator

Amazon objected to the proposed deal of the Future group with the Reliance group. Paragraph 10.7 of the judgment probably contains the best articulation of Amazon's grievances against the Future-Reliance deal. Amazon's case was that the several agreements constituted a single integrated bargain and it had been given rights to protect its investment in FCPL. The rights included stipulations that the retail assets of Future Retail would not be alienated without Amazon's consent, and certainly not to some specific entities; Future Retail would be kept as the sole vehicle to conduct the groups retail business *et cetera*.

Amazon invoked the arbitration clause of its agreement with FCPL. Future was impleaded in the arbitration. Amazon also applied for the appointment of an Emergency Arbitrator under the SIAC Rules ("EA").[4] The EA[5] passed an award on 25 October 2020 injuncting the Future group from taking any steps in relation to the transaction.[6]

A5. Amazon's representations to the various Indian authorities and Future Retails' suit for injunction; hearing on the temporary injunction, and Amazon's arguments resisting injunction

[3] The exact structure for this reorganization is not clear from the judgment. It appears from a combined reading that several of the companies of the Future group running various businesses are to be merged into one entity. The merged entity then is to sell some part of the business to the Reliance group, while retaining some. Reliance will make investments as well in the merged entity.

[4] See Vivekananda N, *The SIAC Emergency Arbitrator Experience*, https://www.siac.org.sg/2013-09-18-01-57-20/2013-09-22-00-27-02/articles/338-the-siac-emergency-arbitrator-experience ("In July 2010, SIAC became the first international arbitral institution based in Asia to introduce provisions that permitted a party to seek the appointment of an arbitrator specifically to deal with requests for urgent interim relief. That arbitrator was designated an 'emergency arbitrator'. The ICC and Swiss Chamber of Commerce followed suit in 2012. The provisions are contained in Schedule 1 of the SIAC Rules and are complemented by an earlier rule that provides that a request for interim relief from a judicial authority is not incompatible with the rules. The SIAC rules require a party to make an application for the appointment of an emergency arbitrator either concurrent with or following the filing of a notice of arbitration. The President of the SIAC Court of Arbitration decides shortly thereafter, typically in a matter of hours, if the application is to be accepted, and if so, proceeds to appoint an emergency arbitrator from the SIAC panel of arbitrators. The Rules require that this appointment be made within one business day, and further that, once appointed, the emergency arbitrator set out a schedule for consideration of the application within two business days. Parties are generally in a scurry and timelines are tight. These appointments are not for the laidback. An (*sic* A) SIAC emergency arbitrator enjoys the same powers as a normal arbitral tribunal; including the power to determine his own jurisdiction, to award interim relief in his discretion and to apportion costs (subject to review by a tribunal). Unless parties agree, an emergency arbitrator cannot form part of the main tribunal. The order or award of an emergency arbitrator ceases to have effect if a tribunal is not constituted within 90 days").

[5] VK Rajah SC, former Attorney General of Singapore and a former Judge of Appeal of the Supreme Court of Singapore acted was the EA.

[6] The Emergency Award is referred to as 'order' by the court. The operative portion is set out at para 1.7 of the decision.

Amazon wrote to several regulatory authorities asserting that the proposed Future-Reliance transaction is in breach of its contractual rights, as well as the EA's order.

In early November, Future filed a suit for injunction in the Delhi High Court. The court issued summons in the suit and first heard arguments on Future Retail's application for a temporary injunction (on five dates between 10-20 November 2020).

Future limited its prayer during the oral hearing for an injunction not to interfere with the transaction (by communicating to the authorities). (*See* para 1.3) Its main challenge was that:

(a) Amazon could not rely on the EA order since that order had no legal validity under the Indian laws.

(b) It was wrong for Amazon to interpret the various agreements as a single integrated transaction because the "conflation" of the agreements would mean that Amazon controls Future Retail, but that was against the foreign exchange laws.

(c) Amazon wrongly considered the board resolution by Future Retail as invalid.

(d) Therefore, Amazon's communication to the authorities opposing the Future-Reliance deal on the basis of such arguments constituted a tortious interference.

B. The court's decision

B1. Six issues for consideration

Given the arguments made by the parties, at paragraph 6.1, Mukta Gupta J identified six issues for her consideration and answered them one by one going back and forth to the arguments advanced.

B2. Future's suit is *prima facie* maintainable—rejecting Amazon's argument that it is not

Amazon argued that the suit was not maintainable because:

(a) It was abuse of the court's process since arbitration had already commenced.

(b) In effect, the EA's order was under a collateral challenge, though it could be challenged only under the SIAC Rules or Part I ACA.

(c) All issues raised in the suit had been considered by the Emergency Arbitrator.

Gupta J rejected these arguments:

(a) First, she referred to Section 9 of the Code of Civil Procedure, 1908 ("CPC") and noted the principle that "every right has a remedy and every civil suit is cognizable unless it is barred." [citing *Most Rev. P.M.A. Metropolitan Moran Mar Marthoma*, 1995 Supp (4) SCC 286[7]].

[7] A 3-judge bench judgment of the Supreme Court by RM Sahai, BP Jeevan Reddy and Suhas C Sen JJ. In her decision Gupta J reproduced a few lines from paragraph 28 of that judgment. The full passage is as follows "28. One of the basic principles of law is that every right has a remedy. *Ubi jus ibi remediem* is the well-known maxim. Every civil suit is cognizable unless it is barred, "there is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous the claim, that the law confers no such right to sue" *Ganga Bai* v. *Vijay Kumar* [(1974) 2 SCC 393: AIR 1974 SC 1126]. The expansive nature of the section is demonstrated by use of

(b) Second, in continuation, she said that the cause of action in the two proceedings was different. Here, in the court, it was based on tortious interference with the Reliance-transaction, and there in arbitration, based on breach of agreements.

(c) Third, she found that the argument that all points made in the suit were made before the arbitrator was flawed for the same reason (of distinct cause of action). She also added that since the factual foundations were different for separate causes of action, some factual and legal issues may overlap but would not impact maintainability.

(d) Fourth, merely because Amazon impleaded FRL as a party in the Emergency Arbitration did not imply that Future was barred from taking any civil action against Amazon because "there is no arbitration agreement between FRL and Amazon as such."

(e) Fifth, she said Future was entitled to challenge the legal status of the Emergency Arbitrator, to the extent required for making out the ingredients of 'unlawful means'[8].

(f) Sixth, Gupta J noted that the issue was not whether the EA order was binding but if the court could consider its legal status in a suit. In answer, she relied on three cases and distinguished one saying as follows:

(i) Where there is lack of inherent lack of jurisdiction, the decree can be challenged even in collateral proceedings. [citing *Hira Lal Patni* v. *Sri Kali Nath* AIR 1962 SC 199[9]]

(ii) When there is jurisdiction, decision of all question arising in the case is an exercise of jurisdiction. [citing to *Hriday Nath Roy & others* v. *Ram Chandra Barna Sarma& others*[10]]

(iii) A decree passed by such a court is a nullity and is *non est*. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even

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phraseology both positive and negative. The earlier part opens the door widely and latter debars entry to only those which are expressly or impliedly barred. The two explanations, one existing from inception and latter added in 1976 bring out clearly the legislative intention of extending operation of the section to such religious matters where right to property or office is involved irrespective of whether any fee is attached to the office or not. The language used is simple but explicit and clear. It is structured on the basic principle of a civilised jurisprudence that absence of machinery for enforcement of right renders it nugatory. The heading which is normally key to the section brings out unequivocally that all civil suits are cognizable unless barred. What is meant by it is explained further by widening the ambit of the section by use of the word 'shall' and the expression "all suits of a civil nature" unless "expressly or impliedly barred".

[8] Gupta J noted Future Retail's case that sending representations to the authorities based on the EA order amounted to a tortious interreference by unlawful means.

[9] A decision by a 4-judge bench of the Supreme Court of Bhubaneshwar Prasad Sinha CJ, K Subba Rao, Raghubar Dayal and JR Mudholkar JJ. The Supreme Court of India unlike, for example, the Supreme Court of the United States sits in division. Since, there were less judges in the fifties and the sixties, it is not unusual to find a judgment by a division bench of 4 judges.

In *Hira Lal*, the court made a distinction between a defect of jurisdiction and an inherent lack of jurisdiction. It said that the validity of a decree can be challenged at the execution stage only on the ground that the court which passed the decree lacked inherent jurisdiction. The case was in fact cited by Amazon in the context of the jurisdiction of the Emergency Arbitrator. The exact argument based on this case is not clear from the judgment. The overall argument appears to have been that since the parties agreed to arbitrate under the SIAC rules, the Emergency Arbitrator got his jurisdiction from the agreement jurisdiction, and he exercised it by deciding on all issues presented to him [see para 5.11].

[10] A Calcutta High Court decision published in Calcutta Weekly Notes 723, noting the distinction between existence of jurisdiction and exercise of jurisdiction. Again, this was a case cited by Amazon.

at the stage of execution or in collateral proceedings. [citing *Sushil Kumar Mehta* v. *Gobind Ram Bohra* (1990) 1 SCC 193[11]]

(iv) *Krishnadevi Malchand Kamathia* v. *Bombay Environmental Action Group* (2011) 3 SCC 363[12] cited by Amazon is not applicable because the Supreme Court was not dealing with the issue of the competence of a court to decide the inherent lack of jurisdiction of the forum which passed the order, in a collateral proceeding.

(g) Seventh, she again reiterated that Future's cause of action was tortious interference by Amazon by unlawful means. And, to determine if the means (that is, EA's order) was lawful the court was required to return a finding on the validity of that order to that extent.

Therefore, Gupta J ruled that "in view of the discussion aforesaid" the suit was maintainable.

B3. Validity of emergency arbitration

Gupta J clarified that the court was examining only the legal status of an EA and not going into its merits.

She posed the question: "in light of the law settled by the Supreme Court" in *Singer* and *Sumitomo* (both cited below), "while it is perfectly legal for the parties to choose a different procedural law, the issue which is required to be considered is whether the provisions of Emergency Arbitration of such procedural law (in this case the SIAC rules) are in any manner contrary to/repugnant with the public policy of India, or with the mandatory requirements of the procedural law under the [ACA]."

To identify this question, Gupta J carried out a background discussion:

(a) Referred and reproduced various sections of the ACA—Sections 2(1)(d), 2(2), 2(6), 2(8), 9(1)(ii), 9(2) & (3), 17(1) (ii) and 17(2)—as well as the SIAC Rules.[13]

(b) Observed that the "courts of India have for long recognized the legal position that in an International Commercial Arbitration, there are three sets of law that may apply, i.e. proper law of the contract; proper law of the arbitration agreement/lex arbitri; and proper law of the conduct of arbitration/lex fori/curial law".[14]

[11] A 3-judge bench decision of the Supreme Court of Ranganath Misra, PB Sawant and K Ramaswamy JJ. It was cited by Future. At para 26, the court discussed the effect a decree passed by a court without jurisdiction over the subject matter. ("It is a coram non judice … a decree passed by such a court is a nullity and is non est. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the authority of the court to pass a decree which cannot be cured by consent or waiver of the party. If the court has jurisdiction but there is defect in its exercise which does not go to the root of its authority, such a defect like pecuniary or territorial could be waived by the party.")

[12] A 2-judge bench of the Supreme Court of PS Sathasivam, and BS Chauhan JJ ("It is a settled legal proposition that even if an order is void, it requires to be so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void.")

[13] Rule 1.1 Scope of Application and Interpretation; Rule 1.3 defining an Award as including an award of an Emergency Arbitrator, and defining Emergency Arbitrator; Rule 30 providing for Interim and Emergency Interim Relief; the Schedule providing for the procedure before the Emergency Arbitrator and his powers.

[14] Mukta Gupta J said the same thing in *Dholi Spintex Pvt. Limited* v. *Louis Dreyfus Company India Pvt. Ltd.*, 2020 SCC OnLine Del 1476. The reader will also note that in the same discussion Gupta J also said that the parties chose rules of SIAC as "curial law". It is submitted that observations like these are confusing and

(c) Referred to *National Thermal Power Corporation* v. *Singer Company & others* (1992) 3 SCC 551 and extracted six passages from it to say that "thus the finding [in *Singer*] is that in case the parties have not chosen the procedural law, the procedure for conduct of arbitration will be determined by the law of the seat of arbitration. However, if the parties have expressly chosen the Rules or the procedure to be applicable on the conduct of the arbitration, the said Rules will apply so long as the same are not in conflict to the public policy or the mandatory requirements of the law of the country in which the arbitration is seated".

(d) Referred to *Sumitomo Heavy Industries Limited* v. *ONGC Ltd.* (1998) 1 SCC 305[15] and reproduced two paragraphs from it to say that the Supreme Court "defined the area of operation of curial law …"

Gupta J then analysed the question and concluded for the following reasons that the Emergency Arbitration provisions of the SIAC Rules did not violate Indian law:

(a) One, it is now well settled that party autonomy is the backbone of arbitration. The courts in Indian have "given full effect to the choice of the parties with respect to all three laws involved in an arbitration agreement subject to the public policy of Indian and the mandatory provisions of the [ACA]". [citing to *Centrotrade Minerals & Metal Inc.* v. *Hindustan Copper Ltd.* (2017) 2 SCC 228 in the importance of party autonomy]. In *Centrotrade*, a 3-judge bench of the Supreme Court found that the there was nothing in the ACA that prohibited a double-tier arbitration agreement which the parties chose to agree upon.

(b) Two, in this case, the parties have expressly chosen the SIAC Rules as the curial law.[16] As observed in *Singer*, it would be unlikely for the Courts to interfere with such arbitral proceedings except in cases which shock the judicial conscience.

(c) Rule 30 of the SIAC Rules recognizes the right of a party to avail interim relief under Section 9 the rules however provide an option to either approach the emergency arbitrator or a judicial authority prior to the constitution of the Tribunal. Therefore, the SIAC Rules do not take away the substantive right of the parties to approach the Courts in India for interim relief.

(d) Both parties made the choice, and Amazon exercised the choice. Nothing in ACA prohibits the parties from doing so.

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erroneous. In countries whose arbitration law is built and understood around the territorial theory, and the concept of the seat of arbitration, the above-noted terms signify specific things. But there are several judgments, including those of the Supreme Court, and several publications on the web that use terms like the ones above-noted in an imprecise or incorrect way. A comprehensive discussion will be made in one of our research projects that will be published later this year. In summary, lex arbitri must not be equated with the law governing the arbitration agreement, the rules of any institution must not be equated with curial law, and when terming *lex fori* as the curial law, one must be alive also to a compelling argument that, in direct contradiction of what FA Mann—who is said to have propounded the seat theory and the 'coined' the term lex arbitri—an arbitrator has no *lex fori*.

[15] 3-judge bench of the Supreme Court of JS Verma CJ, SP Bharucha, SC Sen JJ.

[16] See *foot note* 14 above.

(e) Indian law allows the parties to choose a procedural law different from the proper law, and there is nothing in the ACA that prohibits the contracting parties from obtaining emergency relief from an emergency arbitrator.

(f) The authority of the said emergency arbitrator cannot be invalidated merely because it does not strictly fall within the definition under Section 2(1)(d) ACA. The Law Commission of India recommended that an Emergency Arbitrator should be included in the definition of "arbitral tribunal" in Section 2(1)(d) ACA. The legislature did not accept this but that does not mean that an Emergency Arbitrator is outside the scope of that provision. [citing *Avitel Post Studioz Ltd. & ors.* v. *HSBC PI Holdings (Mauritius) Ltd.* 2020 SCC OnLine 656[17]]

(g) FRL's argument based on Section 2 (6) and 2(8) ACA also have no merit because:

(i) Under Section 2(2) ACA, even in an international commercial arbitration seated outside India Section 9 ACA applies subject to an agreement to the contrary. Thus, parties by agreement can decide on the inapplicability of Section 9 ACA.

(ii) The *BALCO* judgment[18] had clarified the position and held that if an arbitration is seated outside India but parties chose the ACA to govern the arbitration proceedings, it would not make Part I ACA applicable. Instead, only those provisions in the ACA relating to the internal conduct of arbitration would be applicable to the extent they are not inconsistent with the mandatory provisions of the curial law of the seat of arbitration.

(iii) Thus, the fact that applicability of Section 9 can be excluded in an international commercial arbitration conducted as per ACA indicates that it is not a mandatory provision.

Gupta J thus concluded that the provision of Emergency Arbitration under the SIAC rules is not invalid because:

(a) Firstly, the parties in an international commercial arbitration seated in India can by agreement derogate from Section 9 ACA.

(b) Secondly, where parties have expressly chosen a curial law which is different from the law governing the arbitration, the court would look at the curial law for conduct of the arbitration to the extent that the same is not contrary to the public policy or the mandatory requirements of the law of the country in which arbitration is held.

(c) Thirdly, Section 9 ACA [and Sections 27, 37(1)(a) and 37(2)] are derogable by virtue of the proviso to Section 2(2) in an international arbitration seated in India upon an agreement between the parties.

B4. The validity of the board resolution of Future Retail and the issue of control by Amazon

[17] The Law Commission recommended that the allegations of fraud be specifically made arbitrable. It was not accepted. The *Avitel* court said it does not matter because there could be many reasons for not including it.
[18] *Bharat Aluminum Co.* v. *Kaiser Aluminum Technical Services Inc.* (2012) 9 SCC 522.

For several reasons Gupta J also made prima facie finding that the resolution of 29 August 2020 of the Board of Directors of Future Retail was neither void, nor contrary to statute, nor the Articles of Association of FRL.

The next issue was whether the several agreements gave Amazon "control" on Future Retail. She found on a prima facie basis that the several agreements which formed part of the underlying transactions besides creating protective rights in favour of Amazon for its investments also transgress to "control" over Future Retailrequiring government approvals in the absence of which, are contrary to the foreign exchange laws.

B5. Does Amazon control Future Retail?

As noted in the beginning when discussing the context, we noted that one of the main issues in the case is whether the agreements in question give control to Amazon over Future Retail.

Gupta J examined the foreign exchange laws regime and the meaning of "control". She prima facie concluded that the rights created under the various agreements "transgress to 'control' over FRL requiring government approvals and in the absence thereof are contrary to FEMA FDI Rules. This finding is also the subject matter in Amazon's appeal before an appellate bench of the Delhi High Court.

B6. Tortuous interference by Amazon?

Next, the court examined if the actions of Amazon amounted to tortious interference. She referred to a judgment of the Calcutta High Court in *Lindsay International* v. *LN Mittal* 2017 SCC OnLine Cal. 14920 and said that the ingredients of tortious unlawful interference were succinctly laid down in the decision following a House of Lords decision in *OBG Limited* v. *Allan* [007] UKHL 21. The ingredients per Gupta J are:

(a) use by the defendant of unlawful means.

(b) interfering with the action of a third party in relation to the claimant.

(c) intention to cause loss to the complainant.

(d) damages (*sic* damage).

As to the use of unlawful means, Gupta J found that on two of the three counts[19], Future had shown a *prima facie* case of tortuous interference.

B7. Is Future Retail entitled to grant of an interim injunction?

Lastly, Gupta J tested if Future was entitled to an interim injunction (that is an injunction restraining Amazon from interfering with Future's deals with Reliance by writing to the statutory authorities). She declined the injunction but directed that the authorities should take a decision on the applications and objections in accordance with the law.

[19] According to Gupta J, Future had asserted three grounds: one, Amazon illegally relied upon the EA order; two, Amazon's characterization of the board resolution as void was illegal; and, three, Amazon made false assertions as to the legality of its rights by conflating the various agreements. Per Gupta J, the latter two grounds were *prima facie* made out.

She first discussed the conditions for grant of interim injunction and referred to three cases of the Supreme Court: *Dalpat Kumar & another* v. *Prahlad Singh & others* (1992) 1 SCC 719, *Gujarat Bottling Co. Ltd.* v. *Coca Cola Co. and others* (1995) 5 SCC 545 and *Wander Ltd.* v. *Antox Indian (P) Ltd.* 1990 Supp SCC 727.

Dalpat was referred for the principles that:

(a) A party must show a prima facie case[20], but this alone is not sufficient.

(b) It must also be shown that there will be irreparable injury[21] if the injunction is not granted.

(c) The third condition is that "the balance of convenience"[22]must be in favour of granting injunction.

Gujarat Bottling was referred for similar principles[23] including that "the need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated".

Wander too was referred for the principle that "in order to protect the defendant while granting an interlocutory injunction in his favour the court can require the plaintiff to furnish an undertaking so that the defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial".

Gupta J found that Future Retail had prima facie, but the main tests in this case "are in respect of "balance of convenience" and "irreparable loss"". She found that the balance of convenience lies both in favour of FRL and Amazon because Amazon's representations were also based on the allegation of breach of the agreements as well as the directions of the Emergency Arbitrator.

She noted that it would be a matter of trial whether Amazon's assertion of breach would outweigh the plea of FRL. Further, in case Amazon is not permitted to represent its case before the statutory authorities/Regulators, it will suffer an irreparable loss as Amazon also claims to have created pre-emptive rights in its favour in case the Indian law permitted in future.

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[20] "There is a serious disputed question to be tried in the suit and that on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant."

[21] "The court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial." "Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages."

[22] "The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit."

[23] "The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial."

Furthermore, there may not be an irreparable loss to FRL for the reason even if Amazon makes a representation based on incorrect facts thereby using unlawful means, it will be for the statutory authorities/Regulators to apply their mind to the facts and legal issues therein and come to the right conclusion.

Gupta J also noted that the injunction could not be granted because both FRL and Amazon had already made their representations and counter representations to the statutory authorities/regulators and now it was for the authorities and regulators to take a decision.

The matter was then kept for final hearing.

[**Note:** It has appeared in the news on 21 January 2021 that SEBI has given its nod to the Future-Reliance transaction subject to the court proceedings]