

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
(Commercial Division)
ORIGINAL SIDE

AP-COM/490/2024

Uphealth Holdings Inc
VS
Glocal Healthcare Systems Pvt Ltd And Ors.

BEFORE:
The Hon'ble JUSTICE RAVI KRISHAN KAPUR
Date : 12th April, 2024.

Appearance:

*Mr. S.N. Mookherjee, Sr. Adv.
Mr. Ratnanko Banerji, Sr. Adv.
Mr. Suddhasatva Banerjee, Adv.
Mr. Chayan Gupta, Adv.
Mr. Anand S. Pathak, Adv.
Mr. Vijay Purohit, Adv.
Mr. Shivam Pandey, Adv.
Mr. A. Mookherji, Adv.
Mr. Anirudhya Dutta, Adv.
Ms. S. Hoon, Adv.
Mr. S. Bajaj, Adv.
Mr. Nav Dhawan, Adv.
...for the petitioner*

*Mr. Anindya Kumar Mitra, Sr. Adv.
Mr. Debashis Karmakar, Adv.
Mr. Sarvapriya Mukherjee, Adv.
Mr. Piyush Agarwal, Adv.
Mr. A. Nandi, Adv.
Mr. Debojyoti Das, Adv.
Mr. Satyam Ojha, Adv.
Mr. Parikshit Lakhotia, Adv.
Ms. Ridhi Jain, Adv.
...for the respondent no. 1*

*Mr. Jishnu Saha, Sr. Adv.
Mr. Debashis Karmakar, Adv.
Mr. Pijush Agarwal, Adv.
Mr. A.Nandi, Adv.
Mr. Debojyoti Das, Adv.
Mr. Ishaan Saha, Adv.
Mr. S. Ojha, Adv.
Mr. Parikshit Lakhotia, Adv.
Mr. Riddhi Jain, Adv.
...for the respondent no.2*

Mr. Krishnaraj Thaker, Adv.
Mr. Debashis Karmakar, Adv.
Mr. Pijush Agarwal, Adv.
Mr. A.Nandi, Adv.
Mr. Debojyoti Das, Adv.
Mr. Ishaan Saha, Adv.
Mr. S. Ojha, Adv.
Mr. Parikshit Lakhota, Adv.
Mr. Riddhi Jain, Adv.
...for the respondent no.3

Mr. Dhruva Ghosh, Sr. Adv.
Mr. Debashish Karmakar, Adv.
Mr. Rajarshi Dutta, Adv.
Mr. Pijush Agarwal, Adv.
Mr. A.Nandi, Adv.
Mr. Debojyoti Das, Adv.
Mr. Ishaan Saha, Adv.
Mr. S. Ojha, Adv.
Mr. Parikshit Lakhota, Adv.
Mr. Riddhi Jain, Adv.
...for the respondent no.4

Mr. Sudipto Sarkar, Sr. Adv.
Mr. Siddhartha Datta, Adv.
Mr. Aditya Mukherjee, Adv.
Ms. Trisha Mukherjee, Adv.
Mr. Chetan Kumar Kabra, Adv.
...for the respondent no.5

Mr. Abhrajit Mitra, Sr. Adv.
Mr. Debashis Karmakar, Adv.
Mr. Sarvapriya Mukherjee, Adv.
Mr. Piyush Agarwal, Adv.
Mr. A. nandi, Adv.
Mr. Debojyoti Das, Adv.
Mr. Satyam Ojha, Adv.
Mr. Parikshit Lakhota, Adv.
Mr. Riddhi Jain, Adv.
...for the respondent no.6.

The Court: This is a post award application under Section 9 of the Arbitration and Conciliation Act, 1996.

Briefly, the petitioner Uphealth Holdings Inc. is a company incorporated under the relevant laws of USA and is engaged in providing affordable healthcare services. The respondent no. 1, Glocal Healthcare Systems Private

Limited is a private limited company incorporated under the Companies Act, 1956 engaged in the business of providing technology enabled healthcare services. The respondent nos. 2 and 3 are the initial promoter directors of the respondent no. 1. The respondent nos. 4, 5 and 6 are shareholders of the respondent no. 1.

In or about October, 2020, the parties entered into a Share Purchase Agreement dated 30 October, 2020 (SPA) which *inter-alia* contemplated that the petitioner would acquire the majority stake in the respondent no.1 and ultimately take over control and management of the respondent no. 1. The disputes between the parties arise out of breach of obligations under the SPA.

It is alleged that despite the petitioner having paid a substantial sum of money in terms of the SPA, both in the form of cash and shares, the respondents have failed to honour their obligations under the SPA and transfer control and management of the respondent no. 1.

In view of the aforesaid, the petitioner was compelled to invoke the arbitration clause contained in Clause 14 of the SPA and make a reference before the International Chamber of Commerce.

Pursuant to the request for arbitration, an Emergency Arbitrator had been appointed. The Emergency proceedings concluded on 16th November, 2022, wherein the Emergency Arbitrator published two orders dated 10th November, 2022 and 16th November, 2022 respectively. In terms of Clause 14.2 of the SPA, the seat of arbitration was at Chicago, Illinois.

Thereafter, issues (*non-exhaustive*) were framed and the Tribunal punctiliously made all efforts to ensure that each of the respondents had

adequate notice of the arbitral proceedings. Notwithstanding such notices, the respondents deliberately chose not to appropriately participate in the arbitral proceedings. Ultimately, the final award was passed on 15 March, 2024. The award is an exhaustive, detailed and an elaborately reasoned award.

By the award, the petitioner has been inter-alia been awarded the following amounts as primary damages and costs.

Sr No	Name of Award Debtor	Respondent Nos	Primary Damages	Costs	Total
1	Dr. Syed Sabahat Azim	Respondent No 2	USD 10,140,625.00 Equals to INR 84,76,54,844	For Emergency proceedings: USD 289,480 Equals to INR 2,41,97,633 For Arbitration Proceedings: USD 897,712 Equals to INR 7,50,39,746	USD 11,327,817 Equals to INR 94,68,92,223
2	Ms. Richa Sana Axim	Respondent No.3	USD 10,140,625.00 INR 84,76,54,844	For emergency proceedings: USD 289,480 Equals to INR 2,41,97,633 For Arbitration Proceedings: USD 897,712 Equals to INR 7,50,39,746	USD 11,327,817 Equals to INR 94,68,92,223
3	Mr. Gautam Chowdhury	Respondent No.4	USD 1,382,812.50 Equals to INR 11,55,89,297	For emergency proceedings: USD 289,480 Equals to INR 2,41,97,633 For Arbitration Proceedings: USD 897,712 Equals to INR 7,50,39,746	USD 2,570,004 Equals to INR 21,48,26,634
4	Mr. Meleveetil Damodaran	Respondent No.5	USD 6,650,669.64 Equals to INR	For Arbitration proceedings: USD 897.712	USD 7,548,382 Equals to INR 63,09,69,251

			55,59,29,475	Equals to INR 7,50,39,746	
5	Kimberlite Social Infra Private Limited	Respondent No.6	USD 1,185,267.86 Equals to INR 9,90,76,540	For Arbitration proceedings: USD 897,712 Equals to INR 7,50,39,746	USD 2,082,980 Equals to INR 17,41,16,298
6	Total				USD 34857000 Equals to INR 2,91,36,96,629
<p>* The exchange rate of 1 USD- 83.59 INR has been used as prevalent on 24 March 2024 in total (INR) the following sums are recoverable towards primary damages and costs:</p> <ol style="list-style-type: none"> 1) Mr. Sayed Sabahat Axim (Respondent No.2)- INR 94,68,92,223- Rupees Ninety-Four crores sixty-eight lakh ninety-two thousand two hundred and twenty-three only. 2) Ms. Richa Sana Axim (Respondent No.3)- INR 94,69,35,835- INR 94,68,92,223- Rupees Ninety-Four crores sixty-eight lakh ninety-two thousand two hundred and twenty-three only. 3) Mr. Gautam Chowdhury (Respondent No.4)- INR 63,09,69,251- Rupees Twenty-One crore forty-eight lakhs twenty-six thousand six hundred and thirty-four only. 4) Mr. Meleveetil Damodaran (Respondent No.5)- INR 63,09,69,251- Rupees Sixty-Three crore Nine lakh sixty-nine thousand two hundred and fifty-one only. 5) M/s Kimberlite Social Infra Private Limited (Respondent No.6)- INR 17,41,16,298- Rupees Seventeen crore forty-one lakhs sixteen thousand two hundred and ninety eight only. <p>** These amounts bear a simple interest on 9% p.a. from 15 March 2024 until recovery. *** A total principal amount of INR 291,36,96,629, Rupees Two hundred ninety one crore thirty six lakhs ninety six thousand six hundred and twenty nine only is recoverable under primary damages and costs along with simple interest of 9% per annum from 15 March 2024 from the above Respondents.</p>					

The petitioner reasonably apprehends that the respondents would not comply with their financial obligations under the award and would make a deliberate and calculated effort to render the award infructuous. It is further contended that, having appropriated a sum *inter-alia* in excess of approximately Rs.538 crores, in cash, the respondents with ulterior intent, would make all attempts to evade and circumvent their financial obligations to render the award nugatory. It is also contended that despite being the single largest holder of the respondent no. 1 and having shares aggregating to approximately 94.81 % of the respondent no. 1, the respondents have chosen

not to transfer control and management of the respondent no.1 to the petitioner. The petitioners have also been kept in complete darkness in respect of the working and financial position of the respondent no.1. Despite orders of this Court and the Emergency Arbitrator, the respondents have refused and procrastinated in divulging all relevant financial information pertaining to the respondent no. 1. The conduct of the respondents also creates justifiable apprehension that the respondents would indulge in transferring, alienating and encumbering their assets and properties in order to render the award a paper award. The defaults committed by the respondents from publicly available data reflects that the respondents have and continue to function in a non-transparent manner and have created a web of companies with ulterior and ill-motive. There is also a flight risk insofar as the respondent nos. 2 and 3 are concerned. Hence, the immediate need to secure the petitioner.

In such circumstances, the petitioner prays for the following reliefs:

a) Pending the hearing and final disposal of the instant petition and the enforcement and execution of the Award dated 15 March 2024 and reliefs therein, this Hon'ble Court be pleased to order and direct the following persons to deposit with the registrar of this Hon'ble Court, amounts viz., Mr. Syed Sabahat Azim (Respondent No. 2) - Rs. 94,68,92,223 (Rupees Ninety-Four crores Sixty-Eight lakhs Ninety-Two thousand Two Hundred and Twenty Three only); Ms. Richa Sana Azim (Respondent No.3) - Rs.94,68,92,223 (Rupees Ninety-Four crores Sixty-Eight lakhs Ninety-Two thousand Two Hundred and Twenty Three only); Mr. Gautam Chowdhury (Respondent No.4) - Rs.21,48,26,634 (Rupees Twenty-One crores forty-eight lakhs Twenty-Six Thousand Six Hundred and Thirty-Four only); Mr. Meleveetil Damodaran (Respondent No. 5) - Rs. 63,09,69,251 (Rupees Sixty-Three crores Nine lakhs Sixty Nine thousand Two Hundred and Fifty One only); M/s Kimberlite Social Infra Private Limited (Respondent No.6) - Rs.17,41,16,298 (Rupees Seventeen crores forty-one lakhs Sixteen Thousand Two Hundred and Ninety-Eight only);

b) In the alternative, pending the hearing and final disposal of the instant petition and the enforcement and execution of the Award dated 15 March 2024 and reliefs therein, this Hon'ble High Court be pleased to order and direct the following persons to provide bank guarantees of amounts viz., Mr.Syed Sabahat Azim (RespondentNo.2) Rs.94,68,92,223(Rupees Ninety-Four crores Sixty-ight lakhs Ninety-Two thousand Two Hundred and Twenty Three only); Ms. Richa Sana Azim (Respondent No. 3)-Rs. 94,68,92,223 (Rupees Ninety-Four

crores Sixty-Eight lakhs Ninety-Two thousand Two Hundred and Twenty Three only); Mr. Gautam Chowdhury (Respondent No.4) Rs.21,48,26,634 (Rupees Twenty-One crores forty-eight lakhs Twenty-Six Thousand Six Hundred and Thirty-Four only); Mr. Meleveetil Damodaran (Respondent No. 5)- Rs. 63,09,69,251 (Rupees Sixty-Three crores Nine lakhs Sixty Nine thousand Two Hundred and Fifty One only); M/s Kimberlite Social Infra Private Limited (Respondent No.6) - Rs.17,41,16,298 (Rupees Seventeen crores forty-one lakhs Sixteen Thousand Two Hundred and Ninety-Eight only).

c) Pending the hearing and final disposal of the instant petition and the enforcement and execution of the Award dated 15 March 2024 and reliefs therein, this Hon'ble High Court be pleased to order and direct each of the Respondents to forthwith file an affidavit of their assets relating to their fixed, movable, tangible, intangible and other assets, properties including intellectual properties, bank accounts and receivables;

d) Pending the hearing and final disposal of the instant petition and the enforcement and execution of the Award dated 15 March 2024 and reliefs therein, this Hon'ble High Court be pleased to order and direct each of the Respondents to forthwith file an affidavit declaring all the encumbrances on their assets, their loans, their liabilities, and a detailed list of all of the litigations against them (along with the amounts involved) which shall include (in each of the following cases) the date of creation of such loans, liabilities, encumbrances on the assets and litigations against them (along with the amounts involved) along with the supporting documents and shall further contain a statement on whether the Respondents are in a financial position to honour the obligations under Award dated 15 March 2024.

e) Pending the hearing and final disposal of the instant petition and the enforcement and execution of the Award dated 15 March 2024 and reliefs therein, this Hon'ble High Court be pleased to order and direct each of the Respondents to provide to this Hon'ble High Court a clear and complete description of each of the companies/ entities run, operated or controlled by the Respondents which shall mandatorily include the shareholdings/unit holding of such companies, the valuation of such shareholdings, the value of the assets underlying such valuation and the ultimate beneficiary of such shareholdings/unit holdings and a further description should also include the intercompany loans and security provided.

f) Pending the hearing and final disposal of the instant petition and the enforcement and execution of the Award dated 15 March 2024 and reliefs therein, this Hon'ble High Court be pleased to order and direct the Respondents strictly to not alienate, encumber or dispose off their assets, without prior approval from this Hon'ble Court, including prohibiting the Respondents from directly or indirectly dissipating, disposing off, encumbering or transferring outside the jurisdiction of India any of their assets granting further rights to existing lenders or creditors or extending the rights of existing lenders or creditors.

g) Pending the hearing and final disposal of the instant petition and the enforcement and execution of the Award dated 15 March 2024 and reliefs therein, this Hon'ble High Court be pleased to order and direct the Respondents strictly to not use the funds from Respondent No. 1 (except to satisfy solely and exclusively the ordinary course of business needs of Respondent No. 1 alone), including but not limited to paying for expenditure towards experts, counsel, professionals engaged for the benefit of other Respondents.

h) Pending the hearing and final disposal of the instant petition and the enforcement and execution of the Award dated 15 March 2024 and reliefs therein, this Hon'ble High Court be pleased to order and direct the Respondents to file with this Hon'ble High Court, monthly balance sheets of Respondent No. 1 since September, 2022 and until the final disposal of the instant petition and the enforcement and execution of the Award dated 15 March 2024 and reliefs therein.

i) Pending the hearing and final disposal of the instant petition and the enforcement and execution of the Award dated 15 March 2024 and reliefs therein, this Hon'ble High Court be pleased to order and direct the Respondents to not make any public/media statement either in writing or orally against the Award dated 15 March 2024 and reliefs therein.

j) Any other directions this Hon'ble Court may deem fit in the interest of justice, equity, and good conscience.

On behalf of the respondent no. 1, it is contended that this Court has no jurisdiction to entertain and try and determine this application and the same is not maintainable before this Court. It is contended that notwithstanding the mandate of Order 7 Rule 1(f) of the Code of Civil Procedure, 1908 there are no particulars pertaining to how the jurisdiction of this Court has been invoked. In any event, there can be no prayer directing Affidavit of Assets to be filed by any of the respondents and the same is only a measure which can be passed in execution or enforcement of the award. In support of such contentions, the respondent no. 1 relies on Order 21 Rule 41(2) of the Code of Civil Procedure, 1908 and the decisions reported in *Hindustan Petroleum Corporation Ltd. vs. Barun Sankar Chatterjee & Anr.* AIR 2012 Calcutta 255, *State of West Bengal & Ors. vs. Associated Contractors* AIR 2015(1) SCC 32, *Dominion of India vs. Jagadish Prosad Pannalal*, AIR 1949 Calcutta 632 and *Sri Athmanathaswami Devasthanam vs. K. Gopalaswami Ayyangar* AIR 1965 SC 338.

On behalf of the respondent no. 2, being the promoter director, it is contended that this application is not maintainable since the petitioner itself is undergoing liquidation proceedings under Chapter 11 of the Bankruptcy Code

of the relevant laws of the USA and has no authority to proceed with this application. It is also contended that, the terms of the reference do not contemplate with the passing of the award and the same is in any event contrary to public policy. Accordingly, the award is not enforceable under Section 48 of the Act and no order should be passed in this application. In support of such contentions, reliance has been placed on *Batliboi Environmental Engineers Ltd. vs. Hindustan Petroleum Corporation Ltd. & Anr. 2024 (2) SCC 375*.

On behalf of the respondent no. 3, wife of the respondent no. 2, it is submitted that no award for damages could have been passed against her. In any event, the nature of reliefs sought for in this application can only be passed while seeking enforcement of the award and not in an application under section 9 of the Act.

On behalf of the respondent no. 4, it is submitted that that there is no question of granting any security at this stage of the proceeding. It is further contended that the award has still not attained finality and the same is premature. In any event, there are no allegations against the respondent no. 4. It is also contended that in the absence of necessary averments, there is no case made out under Order 38 Rule 5 of the Code of Civil Procedure. In this connection, reliance is placed on the decision reported in *Sanghi Industries Ltd. vs Ravin Cables Ltd. & Anr. 2022 SCC OnLine 1329*.

On behalf of the respondent no.5, it is urged that the respondent no.5 is an individual of repute and standing. The respondent no.5 was not involved in the affairs of the respondent no 1 company and had not attended the

extraordinary general meeting held on 26 September 2022. In such circumstances, the respondent no.5 could not have been foisted with any liability under the award.

On behalf of the respondent no. 6, it is submitted on that the award is patently contrary to the terms of the SPA which limits the damages that can be awarded by the Arbitral Tribunal. In any event, the award has been passed beyond the prescribed mandatory period of 60 days and is without jurisdiction. In this connection, reliance has been placed on *Ssangyong Engineering & Construction Co. Ltd. vs. National Highways Authority of India (NHAI) 2019 (15) SCC 131* para 48, *PSA SICAL Terminals Pvt. Ltd. vs. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin & Ors. 2021 SCC Online 508* para 89, *NBCC Limited vs. J.G. Engineering Private limited, 2010 (2) SCC 385* para 23 and 24.

Arbitration is an autonomous and efficacious means of dispute resolution. The purpose and object of amending the Act, 2016, was to make arbitration law in India more responsive to contemporary requirements by facilitating quick and fair arbitration and minimizing the supervisory role of Courts in the arbitral process. This is obviously a consequence of globalization and the expansion of international trade in order to provide the parties with speedier and more efficacious disposal of cases which fall within the definition of “international commercial arbitration”.

Section 9 of the Act provides as follows:

9. Interim measures, etc., by Court.—[(1)] *A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—*

(i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely:—

(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the Court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

[(2) Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.

(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.]

It is well settled that the powers of the Court under Section 9 of the Act are wider than powers exercised under the Code of Civil Procedure, 1908. Such powers extend to securing an award whether before the commencement of the arbitral proceedings, during the arbitral proceedings or *at any time after making of the arbitral award*. There are no fetters upon the Court exercising jurisdiction under section 9 of the Act. In fact, keeping in mind the respect for party autonomy and the finality which is attached to the arbitral process, the Court must at least at the post award stage make a serious attempt to secure the petitioner. Any Court exercising jurisdiction in respect of interim measures has a wide latitude and discretion. The fruits of the award must be made real and realizable so that the award is not rendered illusory or meaningless. Technicalities of the Code of Civil Procedure cannot prevent a Court from securing an award for the ends of justice. (*Essar Huse Pvt. Ltd. vs. Arcellor*

Mittal Nippon Steel India Ltd. (2022) SCC OnLine SC 1219, Sepco Electric Power Construction Corporation vs. Power Mech Projects Ltd. (2022) SCC OnLine SC 1243 and Marie Gold Realtors Pvt. Ltd. vs. Regus South Mumbai Business Centre Pvt. Ltd. (2020) SCC OnLine Bom 2503).

There is no merit in the defence of jurisdiction. On a plain reading of Section 2(1)(e) of the Act, it would be evident that it is only the High Court which has jurisdiction to entertain this application. The amendment to the definition of “Court” in all international commercial arbitrations has made the High Courts, the exclusive forum for exercising jurisdiction irrespective of the fact whether the concerned High Court has or not Ordinary Original Civil Jurisdiction. The disputes between the parties are “international commercial disputes” which falls within the definition of Section 2(i) of the Commercial Courts Act, 2015. On a combined reading of Section 4 and Section 10 of the Commercial Courts Act, 2015 read with section 2(1)(e) of the Act, there is no doubt that it is only the Commercial Division of this Court which has jurisdiction to entertain this application. (*Report No.246, Law Commission of India 2014 @ Para 26, Statement of Objects and Reasons to the 2015 Amendment*).

Moreso, this is the second round of litigation before this Court. A prior application under section 9 of the Act being A.P. No 809 of 2022 had been filed before this Court. Significantly, in the prior application, as admitted by the Senior Advocate of the respondent no 1, the question of jurisdiction was not even raised before the Trial Court. Section 42 of the Act having been triggered, the question of jurisdiction stands rejected. In the absence of lack of inherent

jurisdiction, in the earlier round between the parties, once an application has been made to a Court, that Court alone shall have jurisdiction and subsequent applications shall be made to that Court and no other Court.

There is also no substance in the contention of the respondents that the rigours of Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908 have to be satisfied before passing of any order under section 9 of the Act. A petitioner who approaches the Court for relief in time sensitive matters cannot be quartered by being relegated to the rigours of Order 38 Rule 5 of the Code of Civil Procedure, 1908. On the contrary, section 9(i)(ii)(e) of the Act, is wide enough to grant of any relief which may be just and convenient. There is no bar of any kind whatsoever from seeking directions on the respondents to file their Affidavit of Assets. In fact, at this stage an order to obtain discovery is to avoid unnecessary trouble in obtaining the ultimate enforcement of the award. In this connection, all the decisions cited by the respondent are distinguishable.

There is also no merit in the contention that the petitioner is unable to initiate a proceeding under Section 9 of the Act since they are facing bankruptcy proceedings in the US. In view of the order dated 16 November 2023 passed by the Competent Court and the relevant provision pertaining to the rights, powers and duties of a *debtor in possession*, the petitioner has demonstrated sufficient authority to maintain this application.

The publishing of the award within the extended time period under the Arbitration Rules of the International Chamber of Commerce has also been duly complied with by the Tribunal and there is no substance in the objection that the award has been published beyond the prescribed time period.

Undoubtedly, the entire question of the enforceability of the award would be decided at the appropriate stage of enforcement and the petitioner shall have every opportunity to avail of the grounds under Section 48 of the Act. *Prima facie*, the losses and damages which have been awarded arise out of the *contract* entered into by and between the parties as recorded in the SPA and there is nothing at this stage to suggest that the Arbitral Tribunal has dealt with any dispute which falls outside the terms of submissions. The award for damages has been adequately reasoned insofar as apportionment is concerned. The aspect of '*lower bound*' of damages of USD 1.7 million has also been taken into consideration in passing the award.

There is no merit in the argument that the respondent no.5 must be absolved from any liability and no order should be passed against him at this stage of the proceeding. The respondent no.5 is like any other debtor or potential debtor and has an obligation to secure. The respondent no.5 had received approximately Rs.13 crores from the petitioner. Repeated notices were served on the respondent no.5 by the Arbitral Tribunal. There are obligations flowing from the SPA which are binding on the respondent no. 5. In such circumstances, there are no grounds warranting any special treatment being meted out to the respondent no.5 and the respondent no.5 must bear all the consequences.

It is true that an award must be in conformity with the public policy of the country. The concept of public policy is incapable of precise definition and is an elusive concept. The 2015 Amendment attempts to salvage party autonomy, the independence of arbitral process and enforceability of awards,

from the depth of widening judicial review under the head of public policy. In a contractual matter like this, there is nothing *ex facie* which is violative of public policy in the award. On the contrary, the *ease* of doing business in India with Indians is also a matter of public policy which in the facts of this case has *prima facie* been emasculated by the deliberate acts of the respondents.

An indisputable fact remains that pursuant to the SPA, the petitioner has inter-alia paid to the respondents, their directors and associates a sum of approximately Rs.538 crores in cash particulars whereof are set out herein below.

TABLE A					
Date	Amount remitted	Payor	Payee	Nature of payment	
24 March 2021	USD 3,000,000 ~ INR 21,79,38,000	UpHealth	Glocal	UpHealth made these payments as working capital and growth capital investment into Glocal in furtherance of the rights issue dated 20 March 2021.	
18 June 2021	USD 364,618.45 ~ INR 2,70,34,270	UpHealth	Mr. Chowdhury	Part of the series of payments made by UpHealth to Glocal's shareholders.	
18 June 2021	USD 1,599,179.46 ~ INR 11,85,69,564	UpHealth	Kimberlite	Part of the series of payments made by UpHealth to Glocal's shareholders.	
18 June 2021	USD 1,787,333.21 ~ INR 13,25,20,034	UpHealth	Mr. Damodaran	Part of the series of payments made by UpHealth to Glocal's shareholders.	
18 June 2021	USD 2,734,729.43 ~ INR 20,27,63,779	UpHealth	Ms. Azim	Part of the series of payments made by UpHealth to Glocal's shareholders.	
18 June 2021	USD 2,736,550.15 ~ INR 20,28,98,774	UpHealth	Mr. Azim	Part of the series of payments made by UpHealth to Glocal's shareholders.	
23 June 2021	USD 8,950,791.67 ~ INR 66,45,69,429	UpHealth	Glocal	Glocal made a call for additional capital contribution and UpHealth paid this	

					amount to Glocal as second installment to the rights issue dated 20 March 2021.
30 June 2021	USD 655,612.78 ~ INR 4,87,58,578	UpHealth	Elevar Equity Maritius, institutional investor in Glocal and a party to the SPA (" Elevar ").		Payment made by UpHealth in terms of the promissory notes issued to Elevar in November 2020, for purchasing part of Elevar's shares in Glocal.
30 June 2021	USD 4,961,294.41 ~ INR 36,89,76,427	UpHealth	Elevar		Payment made by UpHealth in terms of the promissory notes issued to Elevar in November 2020, for purchasing part of Elevar's shares in Glocal.
30 June 2021	USD 2,861,233.42 ~ INR 21,27,92,791	UpHealth	Sequoia Capital India Investment Holdings III, institutional investor in Glocal and a party to the SPA (" Sequoia ").		Payment made by UpHealth in terms of the promissory notes issued to Sequoia, for purchasing Sequoia's shares in Glocal.
18 August 2021	USD 5,000,000 ~ INR 37,13,50,000	UpHealth	Glocal		UpHealth made payment to Glocal in terms of the private placement of Glocal's shares in favour of UpHealth, dated 17 August 2021.
19 August 2021	USD 15,000,000 ~ INR 111,64,50,000	UpHealth	Glocal		UpHealth made payment to Glocal in terms of the private placement of Glocal's shares in favour of UpHealth, dated 17 August 2021.
10 November 2021	USD 5,800,000 ~ INR 43,15,49,000	UpHealth	Glocal		UpHealth made payment to Glocal as combined/working/growth capital and as payment for its debts.
15 November 2021	USD 6,071,711 ~ INR 45,19,23,521	UpHealth	Glocal		UpHealth transferred this amount into Glocal's bank account as a debt payment.
11 February 2022	USD 2,500,000 ~ INR 18,91,07,500	UpHealth	Glocal		UpHealth transferred this amount into Glocal's bank account as a debt payment
7 April 2022	USD 2,923,116.90 ~ INR 22,19,02,573	UpHealth	Elevar		UpHealth made payment to Elevar for buy back of Elevar shares.
15 August 2022	USD 5,100,000 ~ INR 40,57,20,300	UpHealth	Glocal		UpHealth paid Glocal an in furtherance of the Private Placement
Total	USD 72,046,171 ~ INR 538,48,24,540				

It is mystifying as to how individuals work in unison when it comes to receipt of money whereas divorce each other when it comes to payment. The petitioners have neither control nor access to management nor the working of the respondent no. 1. *Prima facie*, the shares transferred to the petitioners have been made useless and reduced only for ornamental purposes.

The orders of the Emergency Arbitrator had been violated. There had also been no compliance with the orders passed in the earlier application under section 9 of the Act being AP 809 of 2022. The financial information, books of accounts and other financial records of the respondent have deliberately not been made available to the petitioners. On the other hand, the prompt response furnished by the respondent no. 1 to the respondent no. 5 in producing its Minutes Books and the Attendance Register of the respondent no.1 company with regard to the EGM dated 26 September 2022 demonstrates lack of bonafides and ill motive in not providing similar information contemporaneously insofar as the petitioner is concerned.

The respondents have filed proceedings both civil and criminal, spanning from the District Court at Rajarhat, The National Company Law Tribunal, a criminal compliant dated 14 September, 2022 with the Commissioner of Bidhannagar Police, a separate compliant registered with the Technocity Police Station dated 15 October, 2022 and an application being CP/298/2022 before the National Company Law Tribunal Kolkata Bench, a Title Suit before the Learned Commercial Court at Rajarhat being Suit no. 19 of 2022 and another suit before the Learned Commercial Court at Rajarhat. It is fair to assume that

having received a sizeable portion of the funds in cash under the SPA, the respondents are determined to embroil the petitioner in a heap of litigation.

The conduct of the respondents to say the least is *prima facie* dishonest and fraudulent. In view of their past conduct and dealings, the respondents would make every attempt to dissipate their assets to render the award (*akin* to the 94.81% shares) absolutely worthless.

Prima facie, the unscrupulous conduct of the respondent no.1 is also evident from the contents of a Supplementary Affidavit filed by the petitioner, wherein the respondent no.1 has gone to the extent of even threatening the legal team of the petitioner in India as well as abroad. Though prejudicial, such conduct certainly does not help the case of the respondent no.1 but only makes their subversive and malevolent intent explicit.

Prima facie, the respondents have all the traits of a defaulter. In response to the allegation of a flight risk, on behalf of the respondent nos. 2 and 3, it was submitted that the respondent nos. 2 and 3 are permanent citizens and tax payers in India and have no intention to leave the country nor do they have any residential or tax status in any other country.

There is no bar in seeking directions on the respondents to file their respective Affidavit of Assets. In fact, keeping in mind the quantum of the awarded amount, a direction to file an Affidavit of Assets is of utmost necessity in order to give the petitioner at least an expectation of receiving the fruits of the award. Ordinarily, every debtor or potential debtor ought to be ready and willing to furnish such information at the post award stage. In such circumstances, it is imperative that protective orders be passed in favour of the

petitioners. In view of their past conduct and shenanigans, there is every risk of dissipation of assets by the respondents with the mischievous intent to render the award a paper award.

During the course of submissions the offer made by the respondent no. 2 to repay only an amount of only Rs.54.86 crores in full and final settlement, had been justifiably rejected by the petitioner.

An issue has also been raised by the petitioner that the respondents have suppressed the filing of an application before the National Company Law Tribunal, inter-alia seeking restraining orders on the petitioner from relying or giving any effect to the final award. Significantly, neither of the respondents had brought this fact to the attention of this Court. Mr. Saha, Senior Advocate appearing on behalf of the respondent no.2 expressed surprise on the filing of such an application and in his usual fairness conceded that the NCLT had no jurisdiction to pass any order in respect of or in connection with the award. The enthusiasm of the respondents to approach the NCLT on this aspect of the matter is fully understandable and is only worthy of castigation.

Prima facie, there is no ground either under section 48 of the Act or otherwise which would make the award unenforceable. On the other hand, the balance of convenience and irreparable injury is in favour of orders being passed even at this stage. In view of the aforesaid, at this *ad interim* stage unless orders are passed to secure the award, the petitioner would suffer irreparable loss prejudice and injury. The petitioner is now armed with an award and that is now at least a *prima facie* case in its favour. The balance of convenience and inconvenience is also overwhelmingly in favour of orders being

passed as prayed for herein until the grind of the formal enforcement and execution is concluded.

In such view of the matter, there shall be an *ad-interim* order in terms of prayers (c) and (d) of the Notice of Motion against each of the respondents. The parties are directed to exchange affidavits. Let Affidavit in Opposition be filed within two weeks from date, Reply, one week thereafter.

Let this matter appear on the 7 May, 2024 under the heading 'Specially Fixed Matter'.

After pronouncement of this order, the respondents and each of them pray for stay of operation of this order. The prayer for stay is considered and rejected.

(RAVI KRISHAN KAPUR, J.)