

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

ORIGINAL SIDE

IA NO: GA-COM/1/2024

AO-COM/10/2024

WITH

AP-COM/490/2024

GLOCAL HEALTHCARE SYSTEMS PVT LTD

VS

UPHEALTH HOLDINGS INC AND ORS

(Commercial Division)

Before:

The Hon’ble Justice I. P. MUKERJI

And

The Hon’ble Justice BISWAROOP CHOWDHURY

Date: 22nd April, 2024

Mr. Anindya Kr. Mitra, Sr. Adv.

with Mr. Piyush Agarwal,

Ms. Shrivalli Kajaria &

Mr. Debojyoti Das, Adv.

..for the appellant.

Mr. S.N. Mookherjee &

Mr. Ratnanko Banerjee, Sr. Adv.

with Mr. Suddhasatva Banerjee,

Mr. Chayan Gupta,

Mr. Anand S. Pathak,

Mr. Vijay Purohit,

Mr. Shivam Pandey,

Mr. A. Dutta,

Mr. S. Hoon,

Mr. S. Bajaj,

Mr. Nav Dhawan,

Mr. Naman Chowdhury &

Mr. Sankit Jain, Adv.

...for the respondent no.1.

Mr. Jayanta Kr. Mitra, Sr. Adv.

...for respondent no.2.

Mr. Krishnaraj Thaker with

Mr. Dhruv Chadha, Adv.

...for respondent no.3.

Mr. Dhruba Ghosh, Sr. Adv.

with Ms. Rajarshi Dutta,

Mr. Debashis Karmakar,

Mr. Ishan Saha,

Mr. Satyam Ojha &

Mr. Parikshit Lakhotia, Adv.

... for respondent no.4.

Mr. Siddhartha Datta with

Mr. Aditya Mukherjee,

Ms. Trisha Mukherjee,

Mr. Chetan Kabra &

Mr. Aditya Thyagarajan, Adv.

...for respondent no.5.

Order in terms of prayer (a) of the stay petition.

We are in a position to dispose of this appeal at this stage, dispensing with all formalities.

This is an appeal from a judgement and order passed by a learned single judge on 12th April, 2024 in an application under Section 9 of the Arbitration and Conciliation Act, 1996, connected with an international commercial arbitration.

The order complained of, is “in terms of prayers (c) and (d) of the application” which are as follows :

“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.”

The most substantial contention of Mr. Anindya Kumar Mitra, learned senior counsel for the appellant/petitioner is that this court had no jurisdiction under section 9 of the said Act to pass such an order. He also submitted that this order was in the nature of execution, which the court under section 9, ought not to have passed.

We find from the said judgement and order that the question of jurisdiction, raised before his lordship, was gone into by him at the prima facie stage. After considering the contentions, his lordship held that the court had jurisdiction. Prima facie, we endorse that view.

We are also of the view that by the impugned order, the court has neither levied execution nor taken any coercive step against the appellant. Only some information and data have been sought from them. No valuable right of the appellant has so far been affected.

We find from the impugned judgement and order that after exchange of affidavits, the application would appear before the learned trial judge on 7th May, 2024.

In those circumstances, it would be more appropriate for us not to entertain this appeal, but to keep the point of jurisdiction open to be argued with other issues after exchange of affidavits before the learned single judge. The point of jurisdiction should be decided before other issues are decided.

However, the appellant has to comply with the impugned order in terms of prayers (c) and (d) above except producing the supporting documents mentioned therein which may be called for by the learned single judge after deciding the point of jurisdiction without prejudice to their rights and contentions.

Appeal (AO-COM/10/2024) and the application (GA-COM/1/2024) are disposed of.

The prayer for stay of operation of this order made on behalf of the appellant is considered and refused.

(I. P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)