

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

AP-COM/490/2024

IA NO: GA-COM/2/2024,
GA-COM/3/2024, GA-COM/4/2024,
GA-COM/5/2024, GA-COM/6/2024, GA-COM/7/2024

Uphealth Holdings Inc
VS
Glocal Healthcare Systems Pvt Ltd And Ors

BEFORE:
The Hon'ble JUSTICE RAVI KRISHAN KAPUR
Date : 21st May, 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. 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 Lakhotia, 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 Lakhotia, Adv.
Mr. Riddhi Jain, Adv.
...for the respondent no.4

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 Lakhotia, Adv.
Mr. Riddhi Jain, Adv.
...for the respondent no.6.

The Court: By consent of the parties, all these applications were heard together. The common prayer in all these applications is that the petitioners be permitted to file their respective Affidavit of Assets in terms of an *ad interim* order dated 12 April, 2024 in a sealed cover without handing over a copy thereof to any third party.

Briefly, in a post award application under section 9 of the Arbitration and Conciliation Act, 1996, by an *ad interim* order dated 12 April, 2024 this Court had *inter alia* directed the petitioners 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.”

Being aggrieved by the above order, several appeals had been filed by the petitioners. By orders dated 22 April 2024 and 24 April 2024 respectively, two of the appeals against the order dated 12 April, 2024 were disposed of *inter alia* refusing to interfere with the order dated 12 April, 2024 and directing the petitioners to comply with the directions contained in terms of the above prayers except producing the supporting documents mentioned therein.

In this background, the present application has been filed by the petitioners primarily on the apprehension that the exact details of their respective assets should not be made available since the same may be prone to misuse by third parties. It is also alleged that Affidavit of Assets contain

confidential financial information and the petitioners may be ultimately prejudiced.

The matter has appeared post filing of affidavits. There are other issues in respect of the jurisdiction of this Court and the fact that the respondent is undergoing liquidation proceedings which are sought to be re-agitated without complying with the directions contained in the order dated 12 April 2024.

Significantly, the order dated 12 April, 2024 was passed in a post award application under section 9 of the Act where in view of the significant awarded amount and the *prima facie* dishonest conduct of the petitioners, as a protective measure, the petitioners were directed to file their respective Affidavit of Assets so that the award would not be rendered nugatory nor infructuous.

It is contended on behalf of the respondent that there was no direction for filing of the Affidavit of Assets in sealed covers. Hence, any such permission would tantamount to variation or modification of the order dated 12 April 2024. It is also alleged that despite appeals having been preferred against the order dated 12 April, 2024, the Hon'ble Division Bench had only exempted the petitioner from filing any documents in support of the Affidavit of Assets. Thus, having availed of an opportunity of challenging the said order, the petitioners have no right whatsoever to seek modification thereof in such a circuitous manner. It is also contended that in an adversarial system and in a commercial matter of this nature, the concept of the filing of Affidavit of Assets in a sealed cover is alien and contrary to all notions of

justice. In support of such contention, the respondent relies on *Sonali Ashok Tandle vs. Ranka Lifestyle Ventures, Through sole proprietor, Bhavesh Jayantilal Jain* 2023 SCC Online Bom 1918.

At the outset, the procedure of filing information in sealed covers is ordinarily contrary to the basic process of justice. It is elementary that in an adversarial proceeding anything that the Court can see, the opposite party must be allowed to see. The concept of sealed covers also makes serious inroads into the principle of natural justice and fairness. If the respondent was in the dark about the financial affairs of the petitioner prior to the filing of the application under section 9 of the Act, it is now sought to be kept in anxiety and suspense if the filing of sealed covers is permitted. There is no element of public interest nor national security involved in these proceedings. The parties are commercial men. The disputes raised between the parties are purely contractual. The underlying interests of both the parties is pure and simple money. In these commercial matters, there is no place for confidentiality nor privacy nor sealed covers. Such matters count for little in these cold Commercial Courts. The respondent having obtained an award for a sizable amount seeks protective measures in the form of real security. Disclosure by way of sealed covers is antithetical to a transparent and accountable system. (*Madhyamam Broadcasting Limited vs. Union of India & Ors.* 2023 SCC OnLine SC 366).

The remedy of disclosure by way of filing of an Affidavit of Assets is only for protection of the respondent's interest post award. By directing the filing of Affidavit of Assets, the object of the Court was to ascertain from the petitioners, particulars of their properties and assets on which execution or

enforcement could thereafter be levied. The filing of Affidavit of Assets is ordinarily a mode of discovery from a reluctant judgment debtor as to what debts are owing to him and the assets or properties they have, if any to satisfy the decree. Simply put, the entire object behind the filing of the Affidavit of Assets is to ascertain whether the petitioners have the money or assets to satisfy the awarded amount. (*Shew Kumar Nopany vs. Grindlays Bank Limited AIR 1986 Cal 328* and *Mathiyam Bivi Ammal Vs. The Union Bank Ltd., Kumbakonam AIR 1938 Mad 771*).

There is also no merit in the objections raised on behalf of the petitioners. Each of the objections raised by the petitioners including the pendency of the liquidation proceedings filed in the USA have been dealt with *prima facie* in the order dated 12 April, 2024. The award debtors cannot have repeated bites at the cherry when in defiance of orders of Court. In such circumstances, the entire notion of attempting to file the Affidavit of Assets in sealed covers is ill advised and borders on being contemptuous. There is no case which the petitioners have been able to make out warranting them to file the Affidavit of Assets in sealed covers.

The petitioners are all debtors or potential debtors. The entire rationale behind filing the Affidavit of Assets would be rendered nugatory and meaningless if the affidavits were kept in sealed covers. In such circumstances, the prayers sought for are misconceived and untenable. To grant the prayers sought for, would not only nullify the order dated 12 April, 2024 but also render meaningless the orders passed by the Hon'ble Division Bench. This also nullifies the entire purpose and object behind passing the

ad interim order dated 12 April 2024 [*Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd.*, AIR 1997 SC 1240].

In such circumstances, all the above applications being GA 2, 3, 4, 5, 6 and 7 of 2024 respectively in AP (COM) 490 of 2024 are dismissed. In compliance with the order dated 12 April 2024, the sealed covers are directed to be opened and the contents thereof first handed over to the Advocates appearing on behalf of the respondent for inspection before the same are taken on record. Liberty is also granted to the respondent to forthwith obtain copies of the same.

After pronouncement of the order, the Advocates appearing on behalf of petitioners pray for stay of operation of the order. The prayer for stay is considered and rejected.

(RAVI KRISHAN KAPUR, J.)

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