Shephali

REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION (L) NO. 25579 OF 2024

1. Ashok Kumar Goel,
Top Floor, Times Tower, Kamla Mills Compound, Senapati Bapat Marg,
Lower Parel,
Mumbai 400 013

2. Vyoman India Private Limited,
(Formerly Vyoman Tradelink India Private Limited)
A company within the meaning of the Companies Act, 2013 and having its registered office at New Prakash Cinema, N. M. Joshi Marg,
Lower Parel,
Mumbai - 400 013. ...Petitioners

~ versus ~

1. EbixCash Limited & Ors,

(Formerly EbixCash Private Limited))
A company within the meaning of the Companies Act, 2013 and having registered office at l0l, First Floor, 4832124, Ansari Road, Darya Ganj, New Delhi - 110 002 and its corporate office at Plot No. 122 & 123, NSEZ, Phase – II, Noida Gautam Buddha Nagar, Uttar Pradesh 201 305

2. **EbixCash World Money Limited,**
A company within the meaning of the Companies Act, 2013 and having its office at 8th Floor, Manek Plaza, Kalina CST Road, Kolekalyan, Santacruz (East), Mumbai 400 098.

3. **Ebix Singapore Pte. Limited,**
A company registered under the laws of Singapore and having its address at 1 Harbourfront Avenue, #14-07 Keppel Bay Tower, Singapore (098632).

4. **Ebix Payment Services Private Limited,**
A company within the meaning of the Companies Act, 2013 and having its registered office at 2nd Floor, Manek Plaza, Kalina CST Road, Kolekalyan, Santacruz (East), Mumbai - 400 098.

…Respondents

APPEARANCES

For the Petitioners	Mr Sharan Jagtiani, Senior Advocate, *with Nitesh Jain, Juhi Mathur, Sonia Dasgupta Ananyaa Jagirdar Surbhi Agarwa & Atul Jain, i/b Trilegal.*
For Respondents Nos 1, 2 & 4	Mr Mayur Khandeparkar, *with Chetan Yadav, Allen Mathew & Pratibha Tiwari, i/b VJ Juris Advocates.*

CORAM : ARIF S. DOCTOR, J.

DATED : 8th October 2024.

ORAL JUDGMENT (*Per Arif S. Doctor, J*):-

1. The captioned Commercial Arbitration Petition is filed under Section 9 of the Arbitration and Conciliation Act 1996 (Arbitration Act) in which the Petitioner seeks the following reliefs:

> *" A. Direct Respondents Nos.1-3 to deposit the sum of INR 145 crore being 80% of the Enhanced Call Price determined by the Valuation Report dated 22 January 2024 issued by PwC, with this Hon'ble Court as security, pending the hearing and final disposal of the arbitral proceedings and enforcement of the arbitral award that may be passed therein;*

B. In the alternative, direct Respondents Nos. 1-3 to furnish an irrevocable bank guarantee of a nationalized bank, or such other security, in favour of the Prothonotary, Hon'ble Bombay High Court for the sum of INR 145 crore, being 80% the Enhanced Call Price redeemable by the Petitioners upon the issuance of the final award by the arbitral tribunal in SIAC Arbitration No. 80 of 2024 and up to the total sum of any amounts which the tribunal orders the Respondents to pay to the Petitioners;

C. In furtherance of Relief A and B, Order appointment of a Court Receiver or such other person as this Hon'ble Court deems appropriate as Court Receiver, to do all such things including to take possession and control of all the immovable and movable properties, present and future (including general fees, income, rent, revenues, interest, other income, receivables, profits, etc.) of the Respondents including their equity interests in Schedule A and other properties disclosed by the Respondents with full powers under Section 94 and Order XL Rule I of the Code including the power to call for / demand, recover, take possession thereof and to sell the same by public auction or by private treaty and to deposit all receivables / sale proceeds in a separate account to be opened and operated by the Court Receiver to be utilized as a deposit or used as a collateral to procure a bank guarantee to the extent of INR 145 in terms of the directors passed by this Hon'ble Court;

D. In the further alternative, attach all saleable and unsecured assets owned by Respondents Nos. 1-3 or over which Respondents Nos. 1-3 exercise a disposing power, whether such assets are movable, immovable, tangible, intangible, including but not limited to securities, bank accounts, investments, valuables etc. upto the value of INR 145 crore;

E. Pass an Order of injunction restraining Respondents Nos. 1-3 from, in any manner dealing with, and / or

encumbering and / or disposing off, dissipating, and / or creating third party rights and/or alienating any of the moveable or immoveable properties or assets owned or belonging to Respondents Nos. 1 -3, including the assets listed in Schedule A hereto, standing in the name of Respondents Nos.1-3 or over which Respondents Nos. 1-3 exercise any disposing power;

F. Direct the Respondents to disclose all their assets on oath, including providing further and better particulars as to the movable and immovable properties, along with details of all the Respondents' bank accounts and the monies lying therein, receivables, shares held in any companies and any other interests in any other entity including financial statements and list of all assets of such entities, government securities, bonds, mutual funds or other securities for money, lands, houses or other buildings, goods, money, bank notes, cheques, bills of exchange, properties, valuables, whether tangible or intangible or all other saleable moveable and immovable properties belonging to the Respondents or over the profits of which the Respondents have a disposing power which they may exercise for their own benefit whether the same may be held in the name of the Respondents or held by another person in trust for them or on their behalf;

G. Grant ex-parte ad interim reliefs in terms of prayers (E) and (F) above."

2. Before, however, adverting to the rival contentions it is necessary to set out the following facts to give context to the rival contentions, viz.

i. The disputes between the Parties arises out of a Shareholders Agreement **("SHA")** dated 12th May 2017 by

and under which the Respondents were to purchase the shareholding of the Petitioner in Respondent No. 4 company in the manner more particularly set out in Clause 15.6 and 15.7 of the SHA. The SHA also contains an arbitration clause that provides for arbitration in accordance with the Singapore International Arbitration Chamber **("SIAC")** Rules in the event of any disputes and differences arising between the Parties under the SHA.

ii. *Admittedly,* disputes and differences between the Parties arose since the Petitioner terminated the SHA and the Respondent did not comply with its obligations under Clause 15.6 and 15.7 of the SHA. It was thus that an Arbitral Tribunal came to be constituted as per the SIAC Rules.

iii. The Arbitral Tribunal by an Award dated 1st June 2023 **("First Award")** *inter alia* upheld the termination of the SHA and the obligation of Respondent Nos. 1 to 3 to purchase the shares of the Petitioner, the Tribunal however rejected the valuation report submitted by Deloitte on the ground that it lacked independence and

directed another Independent Valuer to carry out a fresh valuation. The Arbitral Tribunal also vide an Order dated 1st September 2023 **("Cost Award")** awarded the Petitioners a sum of Rs 9 crores approximately as costs. The Petitioners thereafter filed two Petitions under Section 49 of the Arbitration Act before the Delhi High Court for enforcement of the First Award and the Cost Award.

iv. Thereafter, on 30th November 2023, the Petitioner appointed Price Waterhouse & Co LLP **("PwC")** as the eligible valuer under the SHA to determine the enhanced call price in respect of the Respondents' liability which had already been determined by the First Award.

v. PwC on 2nd January 2024, issued a valuation report determining the enhanced call price at Rs. 181 crores. The Petitioners thus called upon the Respondents to make payment of the said amount towards the Petitioners' shareholding in Respondent No. 4. The Respondents, however, refused to make payment of the enhanced call price on various grounds including disputing the independence of the valuer, i.e. PwC.

vi. On 19th January, 2024 the Delhi High Court in the enforcement Petitions filed by the Petitioners to enforce the First Award and the Cost Award, passed an Order of status quo qua the assets of the Respondents as more particularly set out in the said Petitions.

vii. Since the Respondents refused to make payment to the Petitioners at the enhanced call price the Petitioners on 20th February 2024, did the following, (i) invoked arbitration under SIAC Rules in terms of Clause 20 of the SHA and (ii) applied for emergency interim relief under Schedule-I of the SIAC Rules.

viii. By two separate Orders dated 13th March 2024, the Delhi High Court allowed both the Petitions filed by the Petitioners under Section 49 of the Arbitration Act i.e. for enforcement of the First Award as also the Cost award. Thus, both the First Award and the Cost Award have attained finality and have been recognised as being valid under Indian Law in accordance with Part- II of the Arbitration Act. These orders have not been challenged by the Respondents.

ix. On 14th March 2024 the Emergency Arbitrator vide its order (EA Decision) decided the application filed by the Petitioner and ordered and directed the Respondent Nos. 1 to 3 to furnish an irrevocable bank guarantee in the sum of INR 145 crores in favour of the Petitioners within a period of 14 days. This time expired on 28th March 2023

x. The Respondents thereafter made various representations/assurances to the Petitioners indicating that they were making efforts to comply with the EA Decision. The Respondents however represented to the Petitioners that they were unable to furnish a bank guarantee as directed, in view of the Order dated 19th January 2024 passed by the Delhi High Court by which the assets of the Respondents were injuncted from dealing with their assets. The Respondents thus on 16th April 2024 made an application before the Delhi High Court for modification of the Order dated 19th January 2024 which came to be allowed in terms of the Order dated 1st May 2024.

xi. Thereafter, on 31st May 2024, the Respondents filed an application to modify the Emergency Arbitrator's decision before the regular Arbitral Tribunal by seeking substitution of the bank guarantee with some other form of security. The reason for seeking such substitution *inter alia* was that the banks in India were not accepting the assets of the Respondents as collateral security because of the pending bankruptcy proceedings against Respondent No. 4 in the United States.

xii. Thereafter, a detailed hearing was held before the Arbitral Tribunal and the Arbitral Tribunal on 24th July 2024 issued an Order **("Tribunal's Order")** reviewing the Emergency Arbitrators' decision, by which the Arbitral Tribunal rejected the Respondents' request for modification of the EA Decision and directed the Respondents to provide security to the Petitioners security in the form of bank guarantee in the amount of Rs. 145 crores within a period of 14 days.

xiii. Since the Respondents did not comply even with the Tribunal's Order , the Petitioners on 13th August 2024

filed the present Petition under the provisions of Section 9 of the Arbitration and Conciliation Act 1996 seeking the reliefs extracted above.

3. Mr. Jagtiani, Learned Senior Counsel appearing on behalf of the Petitioners, at the outset, submitted that though the EA Decision was termed an "*Emergency Interim Award*" the same was in fact only an interim Order and was not a final award as contemplated under Part II of the Act. He then in support of his contention invited my attention to paragraph 8 of Schedule 1 of the SIAC Rules and pointed out that the same made specific and distinct use of the words "*award*" and "*order*". He pointed out that the Hon'ble Supreme Court in the case of ***Amazon.com NV Investment Holdings LLC Vs. Future Retail Limited and Ors.***[1] recognising this fact had specifically noted that an Emergency Arbitrator's "*award*" was in fact an order. It was thus his submission that the EA Decision would not be one which was enforceable under Part II of the Arbitration Act and hence, the Petitioner would always have recourse to Section 9 of the Arbitration Act by virtue of the proviso to Section 2(2) of Arbitration Act.

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1 (2022) 1 SCC 209

4. Mr. Jagtiani then fairly submitted that recourse to Section 9 of the Arbitration Act was not available for the purpose of enforcing the orders of an emergency arbitrator and/or an arbitral tribunal, but this did not mean that the Court could not in an application filed under Section 9 independently assess the facts and grant interim relief if a case for the grant of such reliefs was otherwise made out. In support of his contention, he placed reliance upon the decision of the Delhi High Court in the case of ***Raffles Design International India Private Limited & Anr. vs Educomp Professional Education Ltd & Ors.***.[2]

5. Mr. Jagtiani did not dispute that the grant of interim reliefs was entirely within the discretion of the Court but submitted that given the fact that party autonomy was the bedrock of arbitration, and the parties having agreed to a procedure which contemplated the appointment of an Emergency Arbitrator, the parties must then necessarily be bound by the decision of the Emergency Arbitrator. In support of his contention, that due deference must be given to the EA Decision, he placed strong reliance upon the judgement of the Hon'ble Supreme Court in the case of ***Amazon.com NV Investment Holdings LLC*** (supra) which in the context of an Emergency Arbitrators Award, held as follows, viz.

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2 (2016) SSC OnLine Del 5521

> *"40. An Emergency Arbitrator's "award" i.e. order, would undoubtedly be an Order which furthers these very objectives i.e. to decongest the Court system and to give the parties urgent interim relief in cases which deserve such relief. Given the fact that party autonomy is respected by the Act and that there is otherwise no interdict against an Emergency Arbitrator being appointed, as has been held by us hereinabove, it is clear that an Emergency Arbitrator's order, which is exactly like an Order of an Arbitral Tribunal once properly constituted, in that parties have to be heard and reasons are to be given, would fall within the institutional rules to which the parties have agreed, and would consequently be covered by Section 17(1), when read with the other provisions of the Act, as delineated above.*
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> *41. A party cannot be heard to say, after it participates in an emergency award proceeding, having agreed to institutional rules made in that regard, that thereafter it will not be bound by an Emergency Arbitrator's ruling. As we have seen hereinabove, having agreed to para 12 of Schedule 1 to the SIAC Rules, it cannot lie in the mouth of a party to ignore an Emergency Arbitrator's award by stating that it is a nullity when such party expressly agrees to the binding nature of such award from the date it is made and further undertakes to carry out the said interim Order immediately and without delay."*

Basis the above, Mr. Jagtiani submitted that the Parties having vested jurisdiction in the Emergency Arbitrator, the Respondents ought not to be permitted to renege from the EA Decision. He additionally pointed out that the EA Decision was rendered after following due process and in respect of which, no grievance was even raised by the Respondents. It

was thus his submission that this Court could and must in the facts of the present case, give strong weightage to the EA Decision.

6. Mr Jagtiani then submitted that it was well settled that Section 9 of the Arbitration Act was intended to structurally support arbitration. He further pointed out that in the facts of the present case, both the Emergency Arbitrator and the Arbitral Tribunal had reached their respective conclusions after detailed hearings and had only thereafter directed the Respondents to furnish the Petitioners security in the form of a bank guarantee. He submitted that due deference must therefore be given to these decisions by this Court. Mr. Jagtiani then placed reliance upon the judgement of this Court in the case of ***Plus Holdings Lts Xeitgiest Vs. Entertainment Group Ltd.***[3] and pointed out that this Court had in that case granted ad interim relief based entirely upon the view taken by the Emergency Arbitrator. It was this approach which he submitted must be adopted and encouraged to structurally support arbitration.

7. Mr. Jagtiani then, from the EA Decision pointed out that the justification for directing the Respondents to furnish a bank guarantee

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3 2019 SCC OnLine Bom 13069

and no other form of security, even though offered by the Respondents was expressly dealt with by the Emergency Arbitrator as follows, viz.

> *"126 (d). PWC is one of the named independent valuers prescribed in the SHA. Furthermore, the contractual definition does not expressly require the independent valuer to be independent from the Parties (which has been the focus of the Respondents' objection). Rather, the parties may have merely intended to record their agreement that the valuation should not be done internally but by one of the Big Four consultancy companies. In any event, the Respondents have not established (or even expressly asserted in writing) any links between the claimants and PWC, but only between pwc and themselves (which arguably should have made them more rather than less comfortable with PWC's appointment).*
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> *e. The Claimants have the express right under Article 15.6 of the SHA to make the appointment of the Independent Valuer" This is not a right shared with the Respondents which have already lost the first arbitration and which have been ordered to purchase their shares.*
>
> *f. The Sole Arbitrator's decision not to issue an Additional Award confirming the appointment of PWC does not preclude the claimants from appointing PWC themselves as they are expressly entitled to do under Article 15.6.*
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> *h. In reality, the Respondents did nothing. They neither challenged the appointment formally through Article 20.1, nor cooperated with PWC as it sought to discharge its function. It even asked to be excluded from the communications with PWC, thereby frustrating the effort of the Claimants and PWC to conduct the valuation transparently, independently of either side, and based on all available information.*
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> *134. Having waited nearly four and a half years since first discovering the Respondents' breach of the SHA and triggering their*

right to sell their shares to the Respondents, the Claimants should be put into a position in which they cannot suffer irreparable harm should one or more of the Respondents collapse. This appears distinctly possible following the demise of Ebix Inc; Ebix Singapore not being a going concern without a letter of undertaking from the bankrupt Ebix Inc (while Ebix Singapore completes the circle by serving as a guarantor of Ebix Inc's credit facilities from its lenders that amount to US$ 650 million and also continues to be a guarantor under its Restructuring Support Agreement executed with its lenders); Ebix World not being a going concern without a letter of assurance from Ebix India; and Ebix India having its IPO shelved and two directors resigning recently (see the flow chart at paragraph 2 above).

142. The balance of interests and relative hardships militates in favour of the granting of relief in circumstances where the Respondents have admitted they are liable to purchase the shares; they have already delayed completing the share purchase by over four years; the Respondents have not complied with Lord Neuberger's decisions on costs and nominal damages nor their undertaking to cooperate with the Independent Valuer; there is a significant risk the Respondents may not be able to honour any award rendered in the Claimants' favour given their delays in paying the more modest sums ordered by Lord Neuberger (and broader financial challenges); and the Respondents obfuscation has compelled the Claimants to pursue actions in multiple fora in Singapore and India."

8. He then submitted that the Respondents in the Affidavit in Reply to the present Petition has taken only the ground of maintainability and did not raise a single grievance re the aforesaid findings as also did not dispute that EA Decision was after the Parties were given a full and fair opportunity of hearing. It was thus his submission that there was no reason for this Court to not rely upon/adopt the reasoning, basis which

the EA Decision was passed, instead of considering the matter *de novo,* since no new factual basis was even asserted by the Respondents which this Court was required to consider..

9. Mr. Jagtiani then without prejudice to the above, submitted that even if the observations in the EA Decision and the Tribunal's Order were not taken into consideration, and this Court was to consider the matter *de novo*, an overwhelming case for the grant of interim relief as prayed for had been made out by the Petitioner, given the conduct of the Respondents. In support of this contention, he highlighted the following, viz.

i. That the Respondents' obligation and liability to purchase the shares of the Petitioners was now final and established by the First Award and that the Respondents had in various statutory filings as also in their financial statements admitted their liability to purchase the Petitioners' shares in Respondent No.4.

ii. That the Respondents had consistently failed to comply with as also unreasonably delayed compliance with the obligation to make payment of nominal damages and/or costs which

had been awarded in favour of the Petitioner as also failure to make payment of the Respondents' share of arbitral fees.

iii. That the Respondents had made several assurances to the Petitioner that they would be complying with the EA Decision, despite which fact, they did not do so.

iv. The Respondents represented that they were unable to furnish the bank guarantee since the Respondents had been injuncted from dealing with their assets by the Delhi High Court

v. That the Respondents had infact even sought a modification of the EA Decision by seeking liberty to furnish other securities in place of having to furnish a Bank Guarantee.

vi. That before the Arbitral Tribunal the Respondents had relied upon the bankruptcy proceedings which were then pending against the ultimate holding company of the Respondents i.e., one Ebix Inc. to use that as a ground for not being able to comply with the EA Decision.

It was basis the above that Mr. Jagtiani submitted that the Petitioners had made out a case for the grant of urgent ad interim and interim relief as prayed for and that the same was essential as an interim measure of protection to secure the amount in dispute in the arbitration proceedings.

10. Mr. Khandeparkar, Learned Counsel Appearing on behalf of Respondent Nos.1, 2 and 4 at the outset raised a preliminary objection to the very maintainability of the Petition. He submitted that the Petition was not maintainable since what the Petitioners were effectively seeking was enforcement of the EA Decision and Tribunal's Order without filing an enforcement Petition under Section 49 of the Arbitration Act.

11. Mr. Khandeparkar submitted that the EA Decision was not a decision as contended by the Petitioners but was in fact an Award which was required to be enforced under the provisions of Section 49 of the Arbitration Act. In support of his contention, he placed reliance upon Clause 1.3 of the SIAC rules which he pointed out defined an Award to include "*a partial interim or final Award and an Award of an*

Emergency Arbitrator". It was thus his submission that the EA Decision was to be enforced in the manner contemplated under Part II of the Arbitration Act and that a Petition under Section 9 of the Arbitration Act was thus not maintainable.

12. Mr. Khandeparkar then placed reliance upon the judgment of this Court in the case of ***Hyundai Heavy Industries Company Limited vs. Del Seatek India Private Limited*** [4] to submit that this Court had held that an Interim Foreign Arbitration Award and an Interim Cost Award which were passed in an arbitration held in London (England) under the rules of the London Court of International Arbitration (LCIA) were foreign awards within the meaning of Section 44 of the Arbitration Act. He submitted that in the present case, the Petitioners had admittedly not filed any petition under Section 49 of the Arbitration Act seeking recognition and/or enforcement of the EA Decision or Tribunal's Order.

13. Mr. Khandeparkar then from the decision of the Delhi High Court in the case of ***Raffles Design International India Private Limited & Anr.*** (supra) pointed out that the same in fact held that recourse to Section 9 was not available for the purpose of enforcing the orders of the Arbitral Tribunal. It was basis this he submitted that the present

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4 2022 SCC Online Bom 11571

Petition filed under Section 9 was not maintainable, since what the same sought was an enforcement of the Emergency Award.

14. Mr. Khandeparkar then without prejudice to the aforesaid submitted that the present Petition was also not maintainable, since the application of Part I of the Arbitration Act had been excluded by the parties. In support of his contention, he invited my attention to Clause 20.1 of the SHA and pointed out that the same expressly provided that the arbitration was to be in accordance with the SIAC Rules basis which he submitted that the Parties had excluded the application of Part I of the Arbitration Act. In support of his contention, he placed reliance upon the judgement of the Hon'ble Supreme Court in the case of ***BGS SGS Soma Vs. NHPC Limited***[5] and ***Imax Corporation V/s E-City Entertainment (India) Pvt. Ltd.***[6] in support of his contention that once parties had consciously agreed that the juridical seat of the arbitration was to be Singapore, then it was no longer open to them to contend that the provisions of Part I of the Arbitration Act would be applicable. It was on this basis that he reiterated that in the present case Article 20 of the SHA specifically stipulated that the seat and venue of arbitration

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5 (2020) 4 SCC 234

6 (2017) 5 SCC 331

would be Singapore and the SIAC Rules would apply, the Parties had excluded the applicability of Part I of the Arbitration Act.

15. He then without prejudice to the above, fairly pointed out that Rule 30.3 of the SIAC Rules provided for a request for interim relief to be made by party prior to the constitution of the tribunal or in exceptional circumstances .He then submitted that in the facts of the present case, it was not open to the Petitioners to content that the present Petition was maintainable under Rule 30.3 since (a) Rule 30.3 provided for recourse to the judicial authority only in exceptional circumstances (b) the Petition did not make out a case of exceptional circumstances and (c) that the Petitioners had admittedly not approached this Court taking recourse to Article 30.3 of the SIAC Rules but had done so under Clause 19.1 of the SHA. He, then pointed from Clause 19.1 that the same specifically provided that the jurisdiction of the Courts in Mumbai was "*subject to Article 20 of SHA*" It was thus his submission that once the parties had elected to invoke Article 20 of the SHA the jurisdiction of this Court under Part I of the Arbitration Act was clearly ousted.

16. Mr. Khandeparkar then placed reliance upon a judgment passed by Learned Single Judge of the Delhi High Court in the case of ***Ashwani***

Minda and Anr. vs. U Shin Limited & Anr.[7] to submit that the Delhi High Court had in the said case held that a Section 9 Petition was not maintainable in respect of an international seated arbitration if parties by an agreement expressly or impliedly excluded the applicability of Section 9. He also pointed out from the said judgement that the same held that the legislative intent of Arbitration Act was to provide an efficacious alternate relief in the Indian Court where the tribunal is either not constituted or is otherwise unable to grant efficacious relief. He submitted that the Parties having chosen the Tribunal, the seat and the applicable rules and the forum to seek interim reliefs cannot now revise their choice in the manner that the Petitioners were now attempting to do. He pointed out that the decision of Single Judge in the case of ***Ashwani Minda and Anr.*** (supra) was upheld by the Division Bench and was subsequently confirmed by the Hon'ble Supreme Court.

17. It was basis the above that he submitted that the Petition under Section 9 could not be filed, and the proper recourse would have been for the Petitioner to have filed a Petition for enforcement of the EA Award under Part II of the Arbitration Act. He submitted that the enforcement Petition being an efficacious remedy, there was no exceptional circumstances which necessitated the filing of the present

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7 2020 SCC Online Del 1648

Petition. He further submitted that there was no provision in the SIAC to challenge the Award of the Emergency Arbitrator and that final arguments in the arbitration between the parties were concluded and the Final Award was expected on or before 29th October 2024. It was thus that he submitted the Petition be dismissed.

18. Mr. Khandeparkar then *in the alternative* and without prejudice to the above submitted that even in the event that this Court finds that the Petition is maintainable, the same would have to be considered afresh in view of the provisions of Indian Law and dehors the findings rendered by the Emergency Arbitrator as also Arbitral Tribunal in the Tribunal's Order . He submitted that the entire basis on which relief had been sought for in the present Petition was the EA Decision and the Tribunal's Order. He submitted that it was not open to this Court to place reliance upon the same since the very issue of valuation was one which was pending consideration before the Arbitral Tribunal. He then submitted that Respondents had refused to accept the sum of INR 145 crore being 80% of the Enhanced Call Price determined by the Valuation Report dated 22nd January 2024 fixed by PwC, since he submitted that PwC was not an independent valuer. He then submitted that the arbitration proceedings pending between the Parties was to be concluded on or before 29th October 2024 and thus it was his

submission that the valuation of the shares was not having been finally determined, no Order could be presently passed basis the valuation of the shares done by PwC.

19. He then submitted that the Order dated 13th January 2024 passed by the Delhi High Court in the Execution Application filed by the Petitioner would show that the Petitioners had only sought enforcement of the Cost Award and the First Award was not yet recognized. It was thus his submission that the Respondents obligation to purchase the Petitioners' shares in Respondent No.4 had not yet been crystallized nor quantified as a debt and thus there was no existing debt due as on date. He also then submitted that the shares were still held by the Petitioners, however the valuation of the shares was yet to be adjudicated and determined finally. He thus submitted that no Order in the nature of an attachment before judgment or to secure the value of the said shares could be presently passed, especially since the shares were held by the Petitioners. He submitted that if this Court were to grant relief on the basis of the valuation of PwC, it would mean that this Court had accepted the valuation report which was specifically under challenge.

20. Mr. Khandeparkar then also submitted that the very ground on which the EA Award was passed did not subsist today. He pointed out

that the application filed before the Emergency Arbitrator was on the basis that Ebix Inc. i.e. the ultimate holding company of the Respondents was undergoing liquidation/bankruptcy proceedings in the United States. He, however, submitted that the Chapter 11 Bankruptcy proceedings against Ebix Inc. had since come to an end in the month of August, which fact was made known to the Petitioner by the Respondents' Advocates vide their email 1 dated 1st July 2024. He submitted that the Petitioners had deliberately suppressed the fact that the bankruptcy proceedings against Ebix Inc. no longer subsisted on the date when the Petition was filed. He then also submitted that the Petitioners' submissions regarding the Petitioners' conduct was also highly exaggerated and distorted since it was based on mere *ipse dixit* of the Petitioners *inter alia* that the Respondents were in financial distress.

21. Mr. Khandeparkar then also pointed out that the list of assets of the Respondents set out in Schedule A was more than 10 times the value of the claim of the Petitioners and that the said assets were not encumbered. He submitted that the Petitioners' claim to seek a deposit of the amount and/or in the alternative, a bank guarantee was nothing more than an attachment before judgment as contemplated under Order 38 Rule 5 of the CPC. He then placed reliance upon the judgment

of a Division Bench of the Delhi High Court in the case of ***Skypower Solar India Private Limited vs. Sterling and Wilson International FZE***[8] to point out that the Order directing a party to furnish a bank guarantee would fall under Order 38 Rule 5 of the CPC and therefore the tests applicable to the grant of reliefs under Order 38 Rule 5 of the CPC would have to be met before such Order can be passed.

22. Mr. Jagtiani dealing with the preliminary objections raised by Mr. Khandeparkar submitted that the same were entirely misconceived. He first invited my attention to Section 2(2) of the Arbitration Act and point out that a plain reading of the same made expressly clear that Section 9 would apply to international commercial arbitrations, even if the arbitration was outside India. He thus submitted to accept the Respondents contention that Section 9 would be excluded simply because the place of arbitration was Singapore, was not only contrary to a plain reading of proviso to Section 2(2) of the Arbitration Act but would also result in rendering the 2015 amendment to the Arbitration Act nugatory.

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8 2023 SCC Online Del 7240

23. He pointed out that the preliminary objection as raised by the Respondent had been considered and rejected in a catena of judgements[9] including of this Court. He then from the judgement of this Court in the case of ***Ultra Deep Subsea Pvt. Ltd.*** (supra) pointed out that this Court had expressly held as follows, viz.:

> *"20. As can be seen from these decisions, to oust the jurisdiction of this Court under Section 9, there must be a specific Agreement between the parties which would indicate a clear intention to oust the jurisdiction of this Court to grant relief under Section 9 of the Indian Arbitration Act. In the facts of the present case, I have already opined that merely because the parties agreed that the arbitration would be conducted in London and would be governed by the English Law, would not amount to an "agreement to the contrary" as contemplated in the proviso to Section 2(2) of the Indian Arbitration Act. In this view of the matter, I find no substance in the first argument canvassed by Mr. Andhyarujina and the same is accordingly rejected."*

Basis the above he submitted that Clause 20.2 of the SHA could by no stretch of imagination mean that the Parties had agreed to exclude Part I of the Arbitration Act, since the same admittedly did not contain any such agreement to specifically oust Part I of the Arbitration Act.

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9 *Shanghai Electric Group Co. Ltd. vs. Reliance Infrastructure Ltd.*, 2022 SCC OnLine Del 2112
Chemex Oil (P) Ltd. vs. Seastarr International (P) Ltd., 2022 SCC OnLine Cal 4034
Heligo Charters Private Ltd. vs. Aircon Feibars FZE . 2017 SCC Online Bom 631
PASL Wind Solutions Pvt. Ltd. (2021) 7 SCC 1

24. He then submitted that in the facts of the present case, there was admittedly no express agreement to exclude the applicability of Part I of the Arbitration Act between the parties either in Clause 20 of the SHA or elsewhere in the SHA. He submitted that the Respondents' reliance upon the decision of the Hon'ble Supreme Court in the case of ***BGS SGS Soma*** (Supra) was entirely misplaced, since the issue before the Hon'ble Supreme Court was not the applicability the proviso to Section 2(2) of Arbitration Act but was in respect of the seat of arbitration in case of domestic arbitration to determine as to which Court the challenge to the award would lie. He submitted that similarly the judgment of ***Imax Corporation*** (supra) on which reliance was placed by the Respondents was also equally misplaced since the issue pertained to the challenge of foreign award under Section 34 of Arbitration Act and was not in context of the applicability of Section 9 to foreign seated arbitrations in view of the proviso to Section 2(2) of the Arbitration Act.

25. He then submitted that even the second preliminary objection raised by the Petitioners that the EA Decision was required to be enforced under Part II was also equally untenable. He reiterated that the EA Decision was not a final award but was only in the nature of interim relief to protect and/or secure the Petitioner's claim pending the final Arbitral Award. He pointed out that the decision of this Court in the

case of ***Hyundai Heavy Industries Company Limited*** (supra) upon which reliance was placed by the Respondents, though the same pertained to an interim foreign arbitration award was of no avail, since it finally determined a part of the dispute in that case.

26. He then pointed out that the Respondents' contention that the Petitioners had suppressed documents in respect of US Bankruptcy proceedings was not only baseless but was also reckless and malafide. He first pointed out that as per the Respondents' own pleaded case, the email dated 1st July 2024 only indicated that the lenders of Ebix Inc. had approved a Chapter 11 Plan (First Amended Plan) for the purchase of the shares and assets of Ebix Inc. by a consortium of Eraaya Lifespaces Limited, Vikas Lifecare Limited and Vitasta Software India Private Limited and that the transaction was stated to be completed at the end of July 2024. He took pains to point out that the email did not in any manner indicate that the plan was submitted to the Bankruptcy Court, or that it was accepted by the Bankruptcy Court or that Ebix Inc. was out of bankruptcy.

27. He then pointed out that it was the email dated 1st July 2024, that the Respondents had alleged that the Petitioners had been informed that Ebix Inc. had exited bankruptcy proceedings and therefore the

Respondents' contention in this regard was demonstrably at odds with their own pleaded case. He then submitted that the Order dated 2nd August 2024 passed by the US Bankruptcy Court, by which the Chapter 11 Plan was approved was infact annexed to the Petition. It was thus that he reiterated that the Respondents' contention of suppression was *malafide* and reckless and was only to mislead the Court.

28. Mr. Jagtiani then also pointed out that the Respondent's offer to furnish other forms of security had not only been considered and rejected by the Arbitral Tribunal but was also a complete red herring. He submitted that a bank guarantee was the most appropriate form of security since (i) the Respondents had admitted their liability to purchase the Petitioners' shareholding in Respondent No. 4 at the Enhanced Call Price before various regulators and the Court as also that (ii) two different proceedings vested with jurisdiction by the parties (i.e., the Emergency Arbitrator and the Arbitral Tribunal) had found it appropriate to grant the Petitioners liquid security, and (iii) the Respondents had despite various assurances and representations failed to furnish the bank guarantee as also make payment of the amounts awarded as costs.

29. After having heard Learned Counsel at great length and having

considered their rival contentions as also the case law upon which reliance was placed, I find that the Petitioner has made out a case for the grant of interim reliefs. I say so for the following reasons, viz.

A. *First*, I find that the first preliminary objection of the Respondents i.e. that the EA Decision was an Award and therefore was required to be enforced under the provisions of Part II of the Arbitration Act is entirely devoid of any merit. In my view, to determine whether such decision/award is a final decision or award, what is crucial is the substance of the decision/award and not merely its nomenclature. In other words, one has to see whether such a decision/award has finally determined and/or disposed of the *lis* or any part of the *lis* between the parties. In the present, it was not even the Respondents' case that the EA Decision has finally determined any part of the lis between the Parties which is pending adjudication in the Arbitration Proceedings. Hence, by no stretch of imagination and/or ingenuity can it be said that the EA Decision is an Arbitral Award as contemplated under Part II, which would have to be or is in fact even capable of being enforced under Part II of the Arbitration Act.

B. *Additionally*, I must note that the SIAC Rules as pointed out by Mr. Jagtiani make specific and distinct use of the words "*award*" and "*order*". I am also fortified in my view that the decision of an Emergency Arbitrator and Tribunal's Order were orders and not awards, despite its nomenclature, in view of the observation made by the Hon'ble Supreme Court in the case of ***Amazon.com NV Investment Holdings LLC*** (supra). *Second*, I find the Respondents' next contention, i.e. that Parties had by virtue of Clause 20 of the SHA excluded the applicability of Part I i.e. Section 9 of the Arbitration Act is equally untenable and devoid of merit. Clause 20 of the SHA merely provides for arbitration under the provisions of SIAC in the event of any dispute and/or claim arising between the parties in connection with or in relation to the SHA. *Admittedly*, there is no express exclusion of Part I of the Arbitration Act either in clause 20 or for that matter any other clause of the SHA. Proviso to Section 2(2) in plain terms specifically provide for the applicability of Section 9 to International Commercial Arbitrations subject to an agreement to the contrary. *Hence,* absent any express agreement in writing entered into between the Parties to exclude Part I of the Arbitration Act, to accept the contention of Re-

spondents would be in the teeth of proviso to Section 2(2) and effectively render the same nugatory.

C. I am fortified by my view from the findings of this Court in the case of ***Ultra Deep Subsea Pvt Ltd.*** (supra) wherein it was expressly held in the context of exclusion of Section 9 to foreign seated arbitrations, that, *"there must be a specific Agreement between the parties which would indicate a clear intention to oust the jurisdiction of this Court to grant relief under Section 9 of the Indian Arbitration Act"* clear, unequivocal and unambiguous. This is plainly lacking in the present case. Clause 20 of the SHA does not contain any such agreement to exclude Part I, much less any clear, unequivocal and unambiguous intention. Also, this contention has been taken and negated in a catena of judgements[10] of the Hon'ble Supreme Court, Delhi High Court, Calcutta High Court and of this Court as I have also noted above.

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10 *Shanghai Electric Group Co. Ltd. vs. Reliance Infrastructure Ltd.*, 2022 SCC OnLine Del 2112
Chemex Oil (P) Ltd. vs. Seastarr International (P) Ltd., 2022 SCC OnLine Cal 4034
Heligo Charters Private Ltd. vs. Aircon Feibars FZE . 2017 SCC Online Bom 631
PASL Wind Solutions Pvt. Ltd. (2021) 7 SCC 1

D. *Third,* the Respondent's reliance upon the judgements of the Hon'ble Supreme Court in the case of ***BGS SGS Soma*** and ***Imax Corporation*** are plainly misconceived since the said judgements do not deal with the issue of the applicability of Section 9 to international commercial arbitration in context of the proviso of Section 2(2) of Arbitration Act. The issues which fell for consideration in both the said judgements were in respect of Section 34 of the Arbitration Act and the question of the applicability of the proviso to Section 2(2) of the Arbitration Act did not fall for determination in either of the said cases. *Equally,* the judgment of Division Bench of Delhi High Court in ***Ashwani Minda*** (supra) would also not be applicable to the present case, since the said judgment infact did not examine the correctness of finding of judgment of Single Judge of Delhi High Court qua the applicability of Part- I of Arbitration Act to foreign seated arbitration, on the contrary the said judgment kept the issue of applicability of Part-I of Arbitration Act in cases of foreign seated arbitration, expressly open.

E. *Fourth,* there can be no dispute that the grant of relief under Section 9 of the Arbitration Act is a discretionary relief and is to be exercised keeping in mind the well settled principles for the

grant of such interim relief. However, equally, the object and intention of Section 9 of the Arbitration Act is to support Arbitration and not defeat and/or permit parties to detract from the very process of arbitration. Therefore, party autonomy being the bedrock of arbitration, this would necessarily apply from the agreement to the rendering of the final arbitral award. In the present case, the Parties having agreed to arbitration under the SIAC Rules, and procedure contemplated thereunder would therefore be bound by the EA Decision. *Crucially* no dispute and/or grievance has been raised by the Respondent in the Reply filed qua either the EA Decision and/or the fairness of procedure of the Emergency Arbitrator. The only ground taken in the Affidavit in Reply to oppose the present Petition is maintainability .

F. *Fifth,* I have perused the EA Decision, which is well reasoned, detailed and rendered after an extensive hearing given to Parties. The Respondents have not so much has attempted raise any grievance qua the merits of the EA Decision before me. Hence, I find no reason not to accept the findings as recorded in the EA Decision. I find that it is such an approach that will support arbitration and ensure its effectiveness. I am fortified

in my view by the judgement of the Hon'ble Supreme Court in the case of ***Amazon.com NV Investment Holdings LLC*** (supra) wherein the Hon'ble Supreme Court specifically held that once a party agrees to institutional rules, such as the SIAC Rules, and participates in an emergency arbitration proceeding, it cannot later claim that the Emergency Arbitrator's ruling is non-binding or invalid. The party is bound by the Emergency Arbitrator's award and must comply with it immediately, as they have explicitly agreed to its binding nature and the obligation to carry out the interim Order without delay.

G. *Sixth,* I find that in the facts of the present case, even without placing reliance upon the EA Decision the Petitioners have made out a very strong case for the grant of interim reliefs given the obstructionist stand/conduct of the Respondents which is clearly only to defeat and/or delay the enforcement of the orders passed in the arbitration. I say so because, viz.:

i) Both the First Award and the Cost Award have attained finality. The Respondents liability and/or obligation to purchase the Petitioner's shares in Respondent No.4 at the Enhanced Call price, is thus today final and binding

upon the Respondents. *Crucially*, the Respondents did not oppose the Petitions for enforcement of the First Award and the Cost Award filed in the Delhi High Court.

ii) It is not in dispute that PwC is infact one of the Independent Valuer prescribed under Clause 1.1 of the SHA to determine the Enhanced Call Price, thus even on merits I find that the opposition to the valuation by PwC on the ground of independence or otherwise is plainly untenable and is clearly an argument of desperation.

iii) Further, the Respondents have even post the EA Decision represented that they intended to abide and/or comply with the same.

iv) That the Respondents infact informed the Petitioners vide email dated 6th April 2024 that they were precluded from furnishing a bank guarantee, since their assets were attached by the Orders passed by the Delhi High Court in the enforcement Petitions filed by

the Petitioner for enforcement of the First Award and the Costs Award.

v) The Respondents have by their conduct accepted the EA Decision to secure the Petitioners' claim since the Respondents infact moved the Arbitral Tribunal not against any finding and/or observation of the Emergency Arbitrator in the EA Decision but only sought substitution of the bank guarantee with other means which would cause less prejudice to the Respondents. The request for substituting bank guarantee were rejected as shares offered instead of bank guarantee would not have been easily marketable and were susceptible to diminution in value.

vi) The Respondents then filed the application for modification of Status Quo Order before the Delhi High Court to vacate the interim Order dated 19th January, 2024 by which the Respondents were restrained from dealing with their assets.

Though the Respondents have placed reliance upon the judgment of the

Delhi High Court in the case of ***Skypower Solar India Pvt. Ltd.*** I find that the same would have no application in the facts of the present case for two reasons (i) since the Hon'ble Supreme Court has in the case of ***Essar House Private Limited Vs. Arcellor Mittal Nippon Steel India Ltd.***.[11] has expressly held that in exercise of the powers to grant interim relief under Section 9 of the Arbitration Act, a Court was not strictly bound by the provisions of the Code of Civil Procedure Code, 1908 and (ii) this Court has also in the case of ***J.P. Parekh And Another vs. Naseem Qureshi and Others***[12] after placing reliance upon the judgement of the Hon'ble Supreme Court in the case of ***Essar House Private Limited*** (supra) held that obstructionist conduct of the party would be material fact to consider while granting interim relief. It is thus that I find that a fit case, for the grant of interim reliefs has been made out given the Respondents' obstructionist conduct.

30. Hence for the aforesaid reasons I find that the Petitioners have made out a case for the grant of interim reliefs in terms of prayer clauses (b), (e) and (f).

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11 2022 SCC OnLine SC 1219

12 2022 SCC OnLine Bom 6716

31. The Commercial Arbitration Petition is thus disposed of. List the matter for compliance on 22nd October 2024.

(ARIF S. DOCTOR, J)