

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 13301 of 2015**

IN THE MATTER OF:

Subrata Bhattacharya ... Petitioner

Versus

Securities and Exchange Board of India ... Respondent

And

In the matter of :

INDO UK INSTITUTE OF HEALTH (IUIH) Applicant

FOR INDO UK INSTITUTE OF HEALTH (IUIH)

GIST:

As per the report of the Committee in monetary terms the offer of IUIH is more attractive than Prudent or ARCIL. However, the committee has given a go ahead for the proposal of Prudent and ARCIL and the Committee has not recommended the proposal of IUIH (Pg 43-45).

As mentioned in the report by the Justice (RETD.) R.M. Lodha Committee IUIH Programme is being implemented by UK Global Healthcare Ltd., a UK Based company. UK Global Healthcare Ltd has a fully owned subsidiary in India, Indo UK Healthcare Pvt. Ltd. **The Enterprise Value of Indo UK Healthcare Pvt. Ltd is Rs.138.46 crore** and the consolidated price offered by them is higher than the circle rate. Further, the consolidated offer price of IUIH is higher than that submitted by any other bidder. Hence, the proposal of IUIH was shortlisted for further examination. **UK Global Healthcare Limited has a valuation of \$600 Million USD as shown in the document submitted to SEBI.**

28.1.2019 The Indo UK Institute of Health Medicines -IUIH Programme in India is a part of Joint Statement between the Prime Minister of India, Mr Narendra Modi and Prime Minister of United Kingdom. The Programme will develop 11,000 NHS quality beds across India and train 25,000 doctors to deliver healthcare to 400 Million Indians.

Since the Programme was announced by the 2 governments of India and the UK, we have found it difficult to find large land parcels in cities where Medicines have to be developed. However in January 2019, IUIH with support of Ministry of Health and family Welfare, Govt of India has made representation/ offer to RM Lodha Committee appointed by SC for PACL for purchase of 11 land parcels belonging to PACL group.

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The 5th Indo UK Task Force meeting held at the Ministry of Health and family Welfare in Delhi on the 8th of May 2019 chaired by Secretary Health was attended by representative of SEBI – RM Lodha Committee. At the meeting the importance of getting large land parcels close to Cities was discussed to develop the Medicities. It was also discussed that in the absence of these land parcels, it would be difficult for the implementation of the World Largest Healthcare Project in India over the next 15 Years. UK Government was represented by team from British High Commission and NHS at the meeting. Lands shortlisted are in states of Delhi, Maharashtra, Karantaka, Haryana, Gujarat, Goa, UP, Kerala, Punjab, Tamilnadu, Mumbai.

Following the Joint Task Force meeting, series of meeting was held in Mumbai with members of RM Lodha Committee to discuss the various land parcel under the PACL group. The UK and Indian Government have been kept informed of the meetings and minutes of the meetings are available if needed.

**December
2019**

3 companies have been shortlisted by the Justice (RETD.) R.M. Lodha Committee (In the matter of PACL Ltd.) -

- 1) **PRUDENT ARC/TELECARE NETWORK INDIA PVT. LTD. ("Prudent" or "PRUDENT-ARC)**
- 2) **ASSETS RECONSTRUCTION COMPANY (INDIA) LTD. ("ARCIL")**
- 3) **INDO UK INSTITUTE OF HEALTH (UIIH)**

There are certain observations we would like to bring to the notice of Hon'ble Supreme Court.

- 1) **PRUDENT ARC/TELECARE NETWORK INDIA PVT. LTD. ("Prudent" or "PRUDENT-ARC)**

The relation between the committee and the prospective buyers shall be seller and purchaser and Prudent ARC shall be acting as an agent of buyer as well seller.

- A) **Prudent ARC Limited in the letter dated 16th September 2019 confirm the following-**
 1. *We had detailed discussion through several meetings with several prospective buyers interested to submit EOI. After prolonged interaction/discussions, we shortlisted M/S Telecare Network India Pvt Ltd who is interested to submit EOI for purchase of 1409 no of properties.*
 2. *The relation between the committee and the prospective buyers shall be seller and purchaser and Prudent ARC shall be acting as an agent of buyer as well seller.*
 3. *The Prudent ARC will not be responsible for any statutory compliance in relation to the process.*

- B) **Prudent ARC Limited in the letter dated 25th September 2019 confirm the following -**
 1. *We wish to state that Prudent ARC limited is acting as a facilitator and/or Service Provider only to undertake the work relating to sale of Properties of PACL limited on behalf of the 'Justice (Retd) RM Lodha Committee (in the matter of PACL limited) and would not invite any*

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pecuniary liability in the process.

2. *Needless to mention that Prudent ARC Limited does not incur any liability on its part on account of failure on the part of prospective buyer to honor any and /or all their commitments in the said process prospectively or retrospectively.*

The following are the concerns regarding this proposal -

- a) R.M. Lodha Committee has added the Net Worth Statements of Prudent ARC and Telecare Network India Limited to select them amongst the final 3. However, Prudent ARC has no liability and therefore its net worth cannot be added to Telecare to for purpose of being shortlisted amongst 3 companies.
- b) Telecare Network India Private Limited is a Private incorporated on 08 April 2003. It is classified as Non-govt company and is registered at Registrar of Companies, Delhi. Its authorized share capital is Rs. 45 Crore and its paid up capital is Rs. 34.4 Crore. It is involved in Telecommunications [Production of radio and television programmes, whether or not combined with broadcasting, is classified under class 9213) and not real estate.
- c) It's Articles of Association and Memorandum of Association confirm that it's not a real estate company and cannot be involved in real estate business. The company's business activity gets reflected in its name.
- d) The Income Tax Return 2018-2019 (page 207) confirm Gross Income of 2.32 Crore Rs and Tax Payable of Rs 77.85 Lac
- e) Independent Auditors Report for March 2018 confirm majority shareholding by Optimus Infracon Ltd of 54% (Page 240) which is a public listed company on NSE and BSE. The Company offers smart phones, tempered glass, wireless charging pads, and other related accessories
- f) The PAT of the Telecare, the investor on whose behalf bid is being made is Rs 0.57 crores for 2017-18 respectively. It appears that Telecare has not prepared its account after 2017-18 or has not preferred to submit these for the reasons best known to them. Instead they have submitted CA certificate, whose authenticity can be judged by the Hon'ble court in such a situation.
- g) It is preposterous to bid for Rs 1112.34 crores properties and it be accepted by the committee with the kind of turnover, Net Worth and PAT of the investor. The bid amount is 100s of times more than the investor's PAT and several times more than its Net Worth/valuation.

2) ASSETS RECONSTRUCTION COMPANY (INDIA) LTD. ("ARCIL")

- A) **ARCIL in the letter dated 16th September 2019 confirm the following-**

As directed by the Committee in the Public Notice dated August 23, 2019, Arcil is hereby submitting its expression of interest (EOI) for facilitating sale of properties for aggregate value of Rs. 1216.55 Crore based on the counter EOI received by Arcil from various investors subject to following broader terms:

1. Once the EOI is accepted by the Committee, Arcil within 3 months from the date of such acceptance, will co-ordinate with the prospective investors & the Committee for payment of sale

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consideration, execution & registration of sale certificate along with possession letters/instructions to local authority for ensuring possessions of the respective properties to be issued either by SEBI or by any competent authority.

2. As directed by RBI, Arcil's role would be limited to that of a facilitator and Arcil would not be held liable for the failure on the part of the prospective investor to consummate the sale transaction for that particular asset. In effect no pecuniary liability/obligation shall lie with Arcil for failure on behalf of the prospective investor to complete the sale formalities as directed by the committee.
3. It is assumed that the properties under sale are not government lands/ assigned lands or not hit by litigation or under any dispute (including but not limited to any 3rd party claims/ disputes/ encumbrances. Further, in the event any adverse rights have been created over the said lands, the same would be superseded by the order of the Committee/ Court).
4. As per the understanding given by SEBI, in the event of any dispute with regard to the sale of any properties for which EOI has been submitted, Arcil would not be made party to such dispute.
5. In the meeting called by the Committee dated August 23, 2019, it was illuminated by the Committee that, ARCs are also expected to verify the background (KYC) of investors and circle rate of the properties. Though the process for the same has started but due to paucity of time, we request the committee to provide us with 2 months of time for verification of KYC documents of prospective investors and circle rate attached to the respective property, in case our EOI is accepted.

B) ARCIL in the letter dated 24th September 2019 confirm the following-

1. The terms of payment and performance guarantee you are willing to offer: Terms of Payment have been stated in our EOI dated September 16, 2019.
2. With regards to the Performance Guarantee, we would like to bring to your kind attention that, Arcil is acting merely as a Facilitator between the Committee and various investors who have evinced interest in purchase of the assets of PACL Ltd.
3. Though sincere efforts will be made on Arcil's part to realize money at the earliest, we would like to reiterate that, Arcil shall not be liable for any failure on the part of the prospective investor/(s) to consummate the sale transaction for that particular asset/(s) since, it has been directed by the Reserve Bank of India ("RBI") vide its letter dated February 5, 2019 addressed to the Committee and letter dated February 8, 2019 addressed to ARCs, that, ARCs should neither take any properties into their books nor invite any pecuniary liability in the process.
4. In view of the above you will appreciate that since the role of Arcil being an Asset Reconstruction Company will be limited to act as the facilitator, we are not in a position to provide any performance guarantee as requested by you vide your abovementioned email.

The following are the concerns regarding this proposal -

- A) As mentioned in the report by the Justice (RETD.) R.M. Lodha Committee (page 46), ARCIL has not disclosed ultimate purchaser with financials. Even after 6 months, ARCIL has not provided verification of KYC documents of prospective investors as promised to the Committee on 23rd August 2019.
- B) The time frame for completion of sale is 4 months (page 46). However, as mentioned in the EOI submitted by ARCIL - It will take 3 months for ARCIL to coordinate with perspective investors for consideration of sale etc. *"Once the EOI is accepted by the Committee, Arcil within 3 months from the date of such acceptance, will co-ordinate with the prospective investors & the Committee for payment of sale consideration, execution & registration of sale certificate along with possession letters/instructions to local authority for ensuring possessions of the respective properties to be issued either by SEBI or by any competent authority."* As a result, it is unlikely that ARCIL will be able to pay SEBI Rs 1283.12 Crores in 4 months.
- C) As mentioned in the EOI letter dated 16th September 2019, *"Arcil's role would be limited to that of a facilitator and Arcil would not be held liable for the failure on the part of the prospective investor to consummate the sale transaction for that particular asset. In effect no pecuniary liability/obligation shall lie with Arcil for failure on behalf of the prospective investor to complete the sale formalities as directed by the committee."* As a result, when ARCIL is unable to sell the land and unable to pay SEBI in 4 months as suggested by it, there is no liability or obligations for ARCIL to pay promised Rs 1283.12 Crores. This would open up the time period for disposal of the properties by ARCIL to multiple years (could be 7-8 Years) and SEBI would not be able to control or take back possession of the properties
- D) ARCIL has not disclosed its investor and its financial strength without which it is not possible for anyone to assess the viability of the bid. In essence, it is a proposal of selling the properties on commission bases on best effort basis, like earlier proposals from five other ARCs and SBI Cap

INDO UK INSTITUTE OF HEALTH- IUIH

Committee report had considered the proposal of IUIH at para 5.4 pg 41 of report and rejected the same on following two counts:

@42-43:

(i) Not recommended keeping in view time frame. Time given by IUIH - 33 months, whereas ARCIL has given 4 months time period
Submission:

Period of 33 months was submitted keeping in mind a realistic possibility of paying large sum of money for the properties. However, this will be substantially reduced as the number of properties has reduced. We have now been informed through the RM Lodha Committee report that 497 properties (347 + 140+12 MR Nos mentioned below) are either part of

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properties where objections by third parties have been received and therefore not available for sale or are not included in the PACL auction website.

As mentioned in the report -

- a) "IUIH is sole bidder for 1286 properties. This contains 347 properties (Rs 519.08 crore) which are part of properties where objections by third parties have been received and therefore not available for sale."
- b) "Further, 140 properties (excluding 347) bid for by IUIH with offer value of Rs 562.22 crore are not part of the database of properties (www.auctionpacl.com) in respect of which EOI was sought by the Committee."
- c) "The properties identified (10 MR No' for offer value as per excel sheet Rs.12.55 crore) against payment of 1'st Tranche are part of properties where objections by third parties have been received and therefore not available for sale."
- d) "Therefore, effective offer size of IUIH offer is Rs 2528. 51 crore for 1120 properties."

As a result of this, IUIH can now pay the amount for properties in which its a sole bidder in a much shorter time of 9 months. Following the court order next week, IUIH can work with the Committee on this.

(ii) Certain properties sorted/ bid by IUIH are not for sale at present by Committee

Submission:

- (a) All properties of PACL have ultimately to be put to satisfy the dues of the creditors/ investors.
- (b) Properties selected and shortlisted by IUIH are also part of one land bank of PACL group and have to be sold.
- (c) IUIH is developing medicentres/ research centre/ hospital and need the land at places easily accessible and suitable for the purpose of hospital.
- (d) The proposal of IUIH is much better than ARCIL or ARC and is twice higher than that of ARCIL/ Prudent
- (e) IUIH is using the lands for developing a Medical research centre and hospital in association with the Govt. of India which will serve the community at large in future.

Properties short listed by IUIH can be considered separately than that from ARCIL, considering the welfare of community at large and better the offer of IUIH in terms of money, which will be helping to clear dues of creditors/ investors for whom the entire exercise is undertaken.

(iii) Objections of third parties in respect of some properties short listed by IUIH (Pg 38)

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- (a) In discussion with Committee for last 12 months, since 28.1.2019, IUIH team met the Committee 5-7 times. In none of meetings it was ever disclosed that properties identified as per offer of IUIH (Ludhiana Land Parcel) was under objection of 3rd party.
 - (b) The objections can be decided and properties put for sale.
 - (c) Alternatively the same can be deleted from the list of properties and IUIH can proceed to acquire other properties.
 - (d) The Committee can allot IUIH the properties for which it is sole bidder and with the revised timelines.

Date: 13.12.2019

Place : Delhi

**VACHER & AGRUD
PARTNERS**

ADVOCATE FOR APPLICANT

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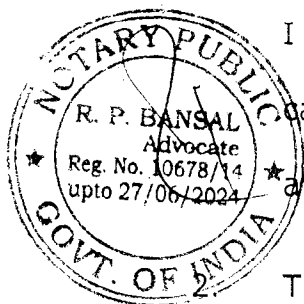
In the matter of :

INDO UK INSTITUTE OF HEALTH (IUIH) Applicant

AFFIDAVIT

I, Nancy Jain , D/o Shri Praveen Jain, Aged about 29 years, Office at BAPUG7, Badarpur Metro Station, Badarpur New Delhi -110044 do hereby state on solemn affirmation as under:

1. That I am the authorised representative on behalf of Director of the applicant company in the above noted case and as such I am fully conversant with the facts and circumstances of the case and duly competent to swear and affirm the present affidavit.



That I have read and understood the contents of Para 1 to and pages 1 to 2 of the accompanying objections at pages 1 to 9. The objections has been drafted by my counsel at my instructions and I admit the contents thereof as true and correct to my knowledge and belief.

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3. That the Annexures filed with the objections are true and correct copies of the originals.

INDO UK HEALTHCARE PVT. LTD.

Kamraj Jaiswal
Director / Authorized Representative
DEPONENT

VERIFICATION:

Verified at New Delhi on this 13 day of December 2019 that the contents of the above affidavit are true and correct to my knowledge and belief. No part of it is false and nothing has been concealed therefrom.

INDO UK HEALTHCARE PVT. LTD.

[Signature]
IDENTIFIED BY

Kamraj Jaiswal
Authorized Representative
DEPONENT

ATTESTED

Notary Public, Delhi
(As Presented)



13/12/19