COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2024/COM/com/00007

BETWEEN

IVY GROUP CO., LTD

Claimant

AND

OTTO PVT. LTD.

First Defendant

AND

SUDHIR PREM SRIVASTAVA

Second Defendant

AND

CARDIO VENTURES PVT. LTD.

Third Defendant

Before the Hon. Justice Simone I Fitzcharles

Appearances:	Mr. John F Wilson KC with Ms. Berchel Wilson for the Claimant
	Mr. Philip McKenzie KC with Ms. Lenthera Culmer for the First Defendant and the Second Defendant
Hearings:	31 July 2024, 06 September 2024, 15 January 2026

RULING

FITZCHARLES, J.

Introduction

1. This is a ruling on two applications before the Court. The first, filed on 17 July 2024, is an application by the Claimant, Ivy Group Co., Ltd. ("**Ivy** " or "**the Claimant**"), for an injunction and for disclosure of information ("**the Injunction Application**"). The second application, filed on 24 July 2024, is brought by the First Defendant, Otto PVT Ltd. ("**Otto**" or the **"First Defendant**") and Sudhir Prem Srivastava, the Second Defendant ("**Mr Srivastava**" or the "**Second Defendant**") for the dismissal or stay of the current action ("**the Stay Application**"), or alternatively, for continuation of the application using the Standard Claim Form procedure. The applications also involve the Third Defendant, Cardio Ventures Pvt. Ltd. ("**Cardio Ventures**" or the "**Third Defendant**") which was joined to the proceedings post the filing of the Injunction Application and the Stay Application. Collectively, the First Defendant and the Second Defendant shall be referred to as the "Defendants".

2. By the Injunction Application, pursuant to **section 21** of the **Supreme Court Act**, **Part 17.1(1)(b)**, **17.1(1)(j)** and **17.1(3)** of the **Supreme Court Civil Procedure Rules, 2022** ("**CPR**") and/or the inherent jurisdiction of the Court, Ivy seeks an Order (as modified by the agreement of the parties) against the Defendants and the Third Defendant to enjoin the transfer, encumbrance or disposal of:

(1) 9,000 shares (or 9% of the issued and outstanding shares) of Otto (the ***Shares***) claimed by Ivy;

(2) any of the shares held by Otto in SS Innovations International Inc ("**SSI India**") or any of the underlying assets of SSI India, save that this does not prevent the payment of ordinary business expenses or activities in the ordinary course of business;

(3) shares in Otto and SSI India held by Mr Srivastava, if any, whether owned directly or indirectly through holding companies ultimately owned or controlled by the Second Defendant.

(4) Further, to enjoin the Defendants and the Third Defendant from themselves causing or procuring or otherwise seeking to take any steps or exercise any power held by virtue of any ownership, control or shareholding in SSI India or any entity holding the intellectual property ("**IP**") or ownership interest in any IP for medical robotics development, the underlying asset into which the Claimant's investment was to be utilized, which contravene, circumvent or frustrate any of the prohibitions above.

(5) Further that Mr Srivastava must immediately disclose to the Claimants' attorney the name and incorporation jurisdiction of the entity which holds the IP rights for the medical robotics application, which was intended to be owned by SSI India, if different.

3. The Claimant brings its application on the following grounds:

(1) Ivy has a proprietary ownership interest in 9,000 shares of Otto (the "Shares"), and through that ownership interest, in the assets of Otto arising from a series of agreements and exchanges between Ivy and Otto and Mr Srivastava, and the part performance thereof on the part of Mr Srivastava, which the Defendants have failed and / or refused to fully perform.

(2) Unless the Defendants are restrained by an injunction, as prayed for, there is a real and substantial risk that they could or may seek to encumber or otherwise transfer the Shares or the underlying assets thereby frustrating or defeating any judgment or order the Court may make at the trial of this action.

4. In answer to Ivy's application, Otto and Mr Srivastava have brought the Stay Application by which they seek the following relief:

(1) That the Claimant's Originating Application filed herein on the 21st March, 2024 be dismissed pursuant to **CPR Part 9.7** and/or the inherent jurisdiction of the Court on the grounds that:

(a) The Court has no jurisdiction in respect of the claim;
(b) That The Bahamas is not a convenient forum for the hearing of this Application;

(2) Or in the alternative, a declaration that the claim be stayed pursuant to **CPR Part 9.8** and **CPR 26.1(2)(q)** on the ground that the Court should not exercise its jurisdiction in respect of these proceedings;

(3) Alternatively, for directions with reference to the Defendants' objection to the continuation of the claim under **CPR Part 8** pursuant to **CPR Part 8.27**, (including an order that the matter should proceed by way of Standard Claim); and

(4) Further application for leave to file a Defence out of time pursuant to **CPR Part 10.3(c)** and **CPR Part 26.1(2)(k)**.

5. In summary, the grounds for the application brought by Otto and Mr Srivastava are:

a. Pursuant to Article 6 of the Equity Redemption Agreement, the choice of law is the People's Republic of China.

b. There is a substantial dispute of facts which makes the use of **CPR Part 8** procedure improper.

Parties and Relevant Background

6. The applications in The Bahamas are brought within the context of a complex, multi-jurisdictional commercial dispute which involves the parties to this action and others.

7. On 31 July 2024 the parties agreed to the terms of an interim injunction pending the hearing and determination of the interlocutory applications now before the Court.

8. The main action in which the Injunction Application and the Stay Application are brought is a claim for declarations and orders of the Court pursuant to **section 30** of the Bahamian **International Business Companies Act 2000 Ch. 309** (the "**IBC Act**") (the "**main action**"). The main action was brought by way of an Originating Application filed on 21 March 2024 which became the Amended Originating Application on 31 July 2024. It is supported by the First Affidavit of Maoting Wang filed on 2 April 2024. By the relief sought in the main action, Ivy seeks: (1) to establish that the Claimant is entitled to the Shares, (2) the rectification of the share register of Otto to reflect Ivy's 9% shareholding, (3) the issuance of the Shares to Ivy by the proper officer of Otto and (4) an injunction compelling Mr Srivastava and Cardio Ventures to execute a share certificate and other documents as are necessary to transfer the Shares in Otto to Ivy.

9. Ivy is a limited liability company established and existing under the laws of the British Virgin Islands with registration number 1961305. Maoting Wang of Shanghai, People's Republic of China ("**Mr Wang**") is the sole shareholder and sole director of Ivy.

10. Otto is a company incorporated and existing under the IBC Act on 11 November 2019 with registration number 204407B. Mr Srivastava was a registered shareholder of Otto and is or was also a director of Otto. He states that is a Cardiac Surgeon with expertise in Robotic Cardiac Surgery who got involved in the development of a new surgical robotic system. Cardio Ventures is also incorporated under the IBC Act and as at 25 July 2022 became the sole owner of the shares of Otto.

11. Xinyu City Shangshi Investment Partnership LLP ("**Shangshi**") and Xinyu City Shanghong Investment Partnerhsip LLP ("**Shanghong**") are two limited partnership enterprises organized and existing under the laws of the People's Republic of China ("PRC"). NSR Wealth Investment Management Co ("**NSR**") is the Managing Partner of Shangshi and Shanghong. Mr Wang is the Chairman of NSR.

12. Ivy asserts that Shangshi and Shanghong made investments in a PRC company called SS Innovations China Co. Ltd ("**SSI China**"). SS Innovations Ltd India ("**SSI India**") is a company believed by Ivy to hold IP or ownership interests in IP for medical robotics development, the underlying asset in respect of which the investment of Ivy was to be utilized. Ivy also believes that Otto wholly or partially owns SSI India.

13. Ivy gives an account of the relevant background to this dispute as set out immediately below.

(1) Ivy is a member of a group of companies of which Mr Wang is the ultimate Chairman. In or around 27 September 2017, two members of the group, namely Shangshi and Shanghong invested US$8 million in SSI China. The stated value of the investment by Shangshi and Shanghong in SSI China was subsequently increased to over US$11 million.

(2) Through a series of commercial transaction agreements Shangshi and Shanghong's investments in SSI China were to be transferred and converted to shares in a designated offshore company, which became Otto, to be held by Ivy on behalf of Shangshi and Shanghong. SSI China is part of Mr Srivastava's group of companies (the "**SSI Group**"), which includes Otto and SSI India.

(3) There is a dispute amongst the parties as to what was the consideration for the allocation to Ivy of the Shares in Otto held by Mr Srivastava or entities owned or controlled by him. Two agreements in particular are referred to by the parties – the Investment Agreement and the Equity Redemption Agreement both dated 17 November 2021.

(4) The Defendants took all the corporate steps necessary to vest the Shares in the name of Ivy, which included:

(a) unanimous written consent of the board of directors approving the issue of the Shares to Ivy;
(b) issuing a certificate of incumbency which reflected Ivy's share ownership;
(c) production of a Register of Members of Otto which recorded Ivy as a shareholder; and
(d) issuing a fully executed share certificate to Ivy in respect of the Shares.

(5) Mr Wang explains that once he signed the Investment Agreement and Equity Redemption Agreement with Mr Srivastava and received the share certificate of Otto showing that Ivy owned the 9% shareholding of Otto, he agreed to assign his vote on the board of SSI China to one Daniel Wallace as requested by Mr Srivastava. The request is evidenced by an email produced by Mr Wang. He alleges also that Shangshi and Shanghong performed fully their obligations under the Equity Redemption Agreement.

(6) Ivy asserts that despite the above unequivocal acts which demonstrate that all parties accepted that Ivy was entitled to be registered as the legal owner of the Shares, Ivy's shares were unceremoniously cancelled without the consent or knowledge of Ivy.

(7) Ivy, by the evidence of Mr Wang, asserts that it has made numerous requests of the Defendants to confirm its share ownership but all its entreaties in this regard have been met with silence, save for the cryptic response on 25 November 2022 that Ivy's shares were cancelled.

(8) Mr Wang further stated in his Second Affidavit filed on 16 August 2024 that he became aware of the terms of a Merger Agreement dated 7 November 2022 and entered into between (1) a company called SS Innovations International Inc (formerly Avra Medical Robotics Inc) (which Mr Wang purports is wholly-owned by Mr Srivastava), (2) a company called Avra-SSI Merger Corporation, (3) Cardio Ventures Inc (a Delaware corporation), and (4) Mr Srivastava. Mr Wang alleges that in the Merger Agreement it is represented that Otto is wholly owned by Mr Srivastava and there is no mention of Ivy's 9% share ownership.

(9) Mr Wang is therefore of the view that it is the intention of Mr Srivastava to appropriate Ivy's shareholding in Otto and to possibly further compromise Ivy's position through moving around his (that is, Mr Srivastava's) ownership interest in various companies within his group, including Otto, unless the Defendants are restrained by the Court from doing so.

14. During the hearing of these applications Ivy and the Court received confirmation from Counsel for Otto and Mr Srivastava (by way of the Third Affidavit of Andrew Edward filed on 31 July 2024) that the Register of Members of Otto reflects that on 25 November 2021 91,000 shares in Otto were issued to Mr Srivastava by Certificate number 5, and 9,000 shares in Otto were issued to Ivy Group LLC (a typographical error in its name, according to Ivy) by Certificate number 6. The Register of Members also shows that on 25 July 2022 Mr Srivastava and Ivy ceased to be members as their share certificates were cancelled. Simultaneously, Certificate number 7 for 100,000 shares in Otto was issued to Cardio Ventures Pvt Ltd. Upon learning of the identity of the shareholder of Otto, Ivy then joined Cardio Ventures as the Third Defendant in this action.

15. The parties appear to agree that they entered into several commercial agreements. Principally, these agreements are as enumerated below.

(1) There is the Capital Increase Agreement dated 7 November 2019 (the "**CI Agreement**") in which is reflected the initial US$8 million investment of Shangshi and Shanghong in SSI China, the company which was to be used to develop a medical robot company, the idea into which Ivy was investing. By Article 10.1, the CI Agreement is governed by and construed under the laws of the PRC. The agreement specifies that any dispute between the parties in connection with the CI Agreement which is not within 30 days resolved by the parties through informal negotiations shall, by Article 10.2 (c) be referred to arbitration before China International Economic and Trade Arbitration Commission for arbitration in Shanghai, PRC.

(2) There is the Equity Redemption Agreement dated 17 November 2021 (the "**ERA**") which records that the total investment of Shangshi and Shanghong had increased from US$8 million to over US$11 million and provided for the redemption of Ivy's 8.4% shareholding in SSI China. The redemption was to be effected through the allocation to Shangshi and Shanghong of 9,000 shares in 'Reorganized Offshore Company'. This

document is also stated to be governed by PRC law and any dispute which is not otherwise resolved must be referred to arbitration before the China International Economic and Trade Arbitration Commission in Shanghai.

(3) There is the Investment Agreement dated 17 November 2021 (the "**IA**"), to which Otto and Mr Srivastava were parties, which agreement provided for the transfer by Mr Srivastava to Ivy of 9000 shares in Otto. Mr Wang avers that this transfer of shares to Ivy (of which he is sole director and shareholder) was the consideration for his assignment of his voting seat on the board of directors of SSI China to a person designated by Mr Srivastava. Mr Srivastava states that the consideration was the transfer of shares in SSI China held by Shangshi and Shanghong. According to the terms of the IA (Clause 8.1 and 8.2) this agreement is governed and must be construed by the laws of The Bahamas, and any dispute not sooner settled by the parties which arises out of or relates to the IA may be resolved by the courts of The Bahamas. By clause 8.2 of this agreement each of the parties consented to the jurisdiction of the Bahamian courts over them in any action involving a dispute arising out of the IA.

(4) There is the Proxy Agreement dated 17 November 2021 (the "**PA**") by which Ivy was designated as the entity to hold the shares in Otto on behalf of Shangshi and Shanghong. The Defendants are not a party to the PA, which is between Ivy, Shangshi and Shanghong.

16. Mr Srivastava has added that there is another commercial agreement which is relevant to these applications, namely a Joint Venture Agreement dated 11 November 2019 (the "**JVA**"). This is contested by Ivy and the assertion is made that the JVA is irrelevant to the issues before the Court in these applications. Mr Wang states that the JVA's were entered into to "record, amongst other things, the shareholding in SSI China and options to exit the arrangement.

17. There are two Joint Venture Agreements ("**JVA's**"), entered into in 2017 and 2019 respectively. In relation to the governing law and method of handling disputes, both JVA's contain similar provisions. By Clause 19.1 of both JVA's, the terms are stated to be "governed by the PRC law in all aspects." Further, for any matter arising out of the JVA's but not covered by PRC laws, it is stated that "international commercial practices shall apply." Any dispute, controversy or claim which arises out of the JVA's and cannot be resolved by "friendly consultations" must, by Clause 19.3 of both JVA's, be referred to arbitration "which shall be submitted to China International Economic and Trade Arbitration Commission for arbitration in Shanghai", PRC.

18. Otto and Mr Srivastava contend that the contract which governs the transfer and issuance of shares required Ivy to complete certain steps before the shares could be registered in its name. It is averred on behalf of the Defendants that pursuant to the ERA Shangshi and Shanghong had agreed with Sudhir Srivastava Innovations Pte Ltd ("**SSI SG**") to transfer equity in SSI China to SSI SG in exchange for 9% of the shares in Otto. Mr Srivastava alleges that certain other arrangements were made by Shangshi and Shanghong to avoid any difficulty they may have in

getting the permission of the PRC Government to exchange their Chinese investment for shares in an overseas company.

19. Mr Srivastava further alleges that 9,000 shares in Otto were issued to Ivy pursuant to the IA and the ERA. However, by certain clauses in the JVA all parties to the JVA were required to offer their shares first to all existing shareholders under the Right of Refusal provisions outlining the Terms for Transfer. Mr Srivastava states that the existing shareholders would then have 30 days to respond. He alleges that Shangshi and Shanghong "never followed through the steps required for their SSI China equity transfer and the consideration was never passed to SSI SG." The Defendants therefore contest the Claimant's position that Ivy owns or is entitled to the Shares in Otto.

20. It is further alleged on behalf of the Defendants that in 2022 Otto and Mr Srivastava became aware of a Circular issued by the Government of India that would require the Indian Government's approval for any investment coming from a country having land borders with India. It is argued that since Mr Wang is the sole beneficiary of Ivy, "although a BVI Company" it will fall under the category of being a Chinese national. Also since Otto was the parent of SSI India, any shareholding in Otto by a Chinese national as the ultimate beneficiary will be in violation of the Government of India's notice.

21. Mr Srivastava therefore avers that the failure of Ivy to transfer the agreed consideration "even after almost a year" and the Circular of the Government of India were discussed by the Board of Otto and the Board of Directors of SSI India. Mr Srivastava states that "the decision was taken to cancel the Ivy Group Shares in Otto Pvt Ltd." The Second Defendant further alleges that in late November 2022, one Ms He of Shangshi and Shanghong was notified of this decision by telephone. No resolution could be reached among the parties.

22. Mr Srivastava asserts that in any event, the agreements which were entered into between the parties, save for the IA, are governed by PRC laws and any disputes in relation to those agreements must be referred to arbitration in the PRC. The Bahamas is therefore not the appropriate forum for this dispute.

23. Mr Wang retorts that Shangshi and Shanghong took all necessary steps to effect the equity swap of their shareholding in SSI China to Mr Srivastava's company. As such, their obligations under the ERA were executed. Ivy is of the view that there is no dispute to be decided under the ERA or any agreement other than the IA, which explicitly adopts the laws of The Bahamas as its governing law and the courts of The Bahamas as its jurisdiction for resolution of disputes.

Dispute as to Facts

24. There is clearly a significant dispute as to the facts of this matter. The parties are at odds over, amongst other questions, whether the shares in SSI China held by Shangshi and Shanghong were ever effectively transferred by those companies under the ERA. They also appear to disagree

as to what constituted the 'consideration' for the transfer of a 9% shareholding in Otto to Ivy. Central to the dispute are the questions whether the terms of the IA were performed and whether the terms of the ERA were performed so as to facilitate the parties' performance of the IA. The relevance of one or more of the agreements mentioned is contested.

25. Merely furnished with affidavits, the Court is of the view that it would not be in harmony with the best approach, at this point in the proceedings, to try to resolve complex issues of fact or to opine on the merits. Such matters are best left for determination at trial. Indeed, in this regard, the following words of Lord Diplock in **American Cyanimid Co v Ethicon Ltd** [1975] AC 396 at 407 bear revisiting:

> "It is no part of the Court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial."

Proprietary Injunction

26. Counsel for the Claimant, Mr John F Wilson KC, contends that the Court should grant the Claimant (1) an interim proprietary injunction against the Defendants enjoining 9,000 shares in Otto which belongs to Ivy. Counsel traversed the law on the Court's jurisdiction to grant injunctions, referring **to Section 21** of the **Supreme Court Act, Ch. 53, 1997** and the **Supreme Court Civil Procedure Rules** ("**CPR**") **Part 17.1 (b)**.

27. In relation to the proprietary injunction sought over the Shares, Counsel submits that a court will grant such relief in instances where an asset to which a claimant asserts title may be dissipated with the result that the claim could thereby be rendered nugatory. See **Boreh v Republic of Djibouti and others** [2015] EWHC 769. Counsel also encourages the Court to adopt a less "mechanistic" approach than is traditional in applying the guidelines set out in **American Cyanimid Co. v Ethicon Ltd** [1975] AC 396. It is submitted that the Court should consider three elements, namely whether: (1) there is a serious issue to be tried on the merits; (2) the balance of convenience favours the grant of an injunction; and (3) it is just and convenient to grant the injunction. Unlike a freezing injunction, there is no need to show any risk of dissipation of assets to obtain a proprietary injunction. See **Rogachev v Goryainov** [2019] EWHC 1529.

28. Mr Wilson KC submits that the Defendants have put forth no arguable defence to Ivy's claims that the Shares in Otto belong to it. Further, in his Second Affidavit Mr Srivastava admits at paragraph 14 that the Board of Otto took a unilateral decision to cancel the Claimant's shares. Counsel contends that Ivy easily meets the threshold of putting forth a serious issue to be tried. Further, if the Court must consider the balance of convenience, Counsel states that the Court should consider that (1) Ivy is making a proprietary claim to the Shares and (2) damages would not be an adequate remedy for their loss. Counsel argues that it is also just and convenient that a proprietary injunction should be granted over the Shares.

29. Mr Philip McKenzie KC advances the argument for the Defendants on the facts that the Claimant has not shown that it passed consideration for the Shares. As such, the Defendants submit that Ivy is not the owner of the Shares and is not entitled to a proprietary injunction.

30. Both Counsel appropriately ground the Court's jurisdiction in this application in Section 21 of the Supreme Court Act, Ch. 53 which provides:

> "21. (1) The Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the Court to be just and convenient to do so.
>
> (2) Any such order may be made either unconditionally or on such terms and conditions as the Court thinks fit."

31. Further it is correctly submitted that the **Supreme Court Civil Procedure Rules** ("**CPR**") **Part 17.1 (b)** provides that the Court may grant interim remedies including an interim injunction.

32. The Court must consider whether Ivy has shown that there is a serious issue to be tried on the merits. The entitlement to ownership by Ivy of 9% of Otto's shares is the main question. In this regard, the Court must be satisfied that the claim is not frivolous and vexatious.

33. The parties are at odds concerning what the true consideration was for Ivy's acquisition of the Shares. The Court observes that in the Second Affidavit of Mr Srivastava at paragraph 5, he stated in particular that "the contract which governs the transfer and issuance of shares required Ivy to complete certain steps before the shares could be registered in its name." Based on the affidavit evidence produced, the Shares were indeed issued in Ivy's name. This is evidenced by the Share Register of Otto which reflected Ivy as a registered owner, and by an issued Share Certificate in the name of Ivy which also reflects it owned the Shares in Otto, and further by Mr Srivastava's email to Mr Wang which confirmed that the issuance and tendering of the Ivy Group Share Certificate for 9,000 Otto Shares "completes all terms of our agreements." In the Court's opinion, this constitutes at least prima facie evidence that Mr Srivastava and the Board of Directors of Otto were satisfied that Ivy had completed the steps it needed to take before the Shares of Otto could be registered in its name.

34. The second reason advanced by the Defendants for the cancellation of the Shares registered to Ivy was that, in summary, the effect of a purported Circular of the Government of India prohibited ownership by Ivy of an investment in India, as Ivy's ultimate beneficial owners (Mr Wang, Shangshi, Shanghong or NSR) are domiciled in the PRC, a country which shares a land border with India. The allegation is based on the fact of there being an investment in India. This aligns with the averment of Mr Wang that SSI India was or is connected with Otto. Mr Wang stated that the Circular could not be verified, and that in any event the version of the Circular shared by the Defendants bears a statement that the Circular is issued by reason of "the current COVID-19 pandemic", which abated some years ago. The Claimant therefore queried whether this regulation, if existing, remained in effect.

35. The issuance of the Shares to Ivy, and the subsequent cancellation of the ownership of those Shares one year after the Shares were transferred to Ivy, admittedly a unilateral act on the part of the Board of Directors of Otto, demonstrates that there is more than meets the eye in this case. In this regard, the allegation of the significance of written and unwritten agreements cannot be ignored and ought fully to be investigated. However, at this stage, I am satisfied there is a serious issue to be tried on the ownership of, or entitlement to 9% of Otto's shares as claimed by Ivy.

36. The Court must also consider the risks of doing an injustice in this case, namely weighing the balance of convenience. Immediately before this action was filed, Ivy, a minority shareholder in Otto, had lost its Shares (and ultimately its relatively large investment in SSI China as well as its vote on SSI China's Board of Directors) due to the unannounced cancellation of those Shares by one or more of the Defendants. Whether such cancellation was justified remains to be determined. Further, immediately before this action was taken out, Ivy had no reliable information from any of the Defendants as to the location or current ownership of the IP rights to the medical robotic invention, the development of which was pitched to convince Shangshi and Shanghong to invest more than US$11 million. Immediately before this action was taken out, in return for their investment the Claimant appears to have remained holding nothing. Without a suitable injunction, the Claimant will have lost before being heard.

37. Otto and Mr Srivastava were, immediately before the filing of this action, in the know as to whether there is indeed a robotic invention such as was proposed to Shangshi, Shanghong and the other investors in SSI China, and if existing, how and where the invention was held. They were aware that the Shares Ivy once had were cancelled and reissued to Cardio Ventures, another Bahamian IBC, but one to which Ivy had no connection. Vis-à-vis the robotic invention and the Shares and information as to the investment of Shangshi and Shanghong, Otto and Mr Srivastava, immediately before this action was brought, seemingly held all of the cards.

38. On that analysis, the balance of convenience weighs in favour of granting the proprietary injunction to Ivy. Further, having regard to what is fair to all parties and necessary to prevent potential injustice, it is clear that without such relief, Ivy's action would be rendered nugatory. In the Court's view there are no factors which weigh strongly enough to cause the Court to come to a different conclusion on the application for a proprietary injunction.

Freezing Injunction

39. In relation to the freezing injunction, Ivy seeks this relief to restrain the Defendants from dealing with the assets of Otto or the assets of SSI India which the Defendants control by virtue of their positions as shareholder and/or director. Mr Wilson KC argued that the Claimant has a legitimate interest in preserving Otto's assets and should therefore be granted a freezing injunction. See **Re Ravenhart Services Holdings Ltd** [2004] EWHC 76 (Ch). Further, a freezing injunction may be granted in a case where a defendant must be restrained from exercising his voting rights so as to dissipate his assets. See **Standard Chartered Bank v Walker** [1992] 1 WLR 561.

40. The requirements to obtain a freezing injunction are different from those of a proprietary injunction. The main differences are that a good arguable case must be shown by the applicant and a risk of dissipation of assets must be proven. Counsel contends that the good arguable case threshold is met by Ivy in that its case is far better than a minimal threshold set out in authorities. Further, Counsel contends that there is a real risk of dissipation of assets of Otto as Mr Srivastava is an international operator with a complex web of companies which he can use for that purpose.

41. Counsel also points out that Ivy became aware that Mr Srivastava sought to effect a merger between some of his companies, the effect of which would be to dilute or dissolve Ivy's share interest.

42. Counsel for the Defendants, Mr McKenzie KC, submits that in considering whether to grant an injunction at the interlocutory stage, the Court should consider the practical consequences of the actual injunction, and take whichever course seems likely to cause the least irremediable prejudice to one party or the other. See **National Commercial Bank Jamaica Ltd v Olint Corpn Ltd** [2009] UKPC 16.

43. Mr McKenzie KC urges the Court to consider, in deciding whether to grant a freezing injunction, four ingredients identified in the UK Court of Appeal case, **Les Ambassadeurs Club Ltd v Yu** [2021] EWCA Civ 1310 and submits that the Claimant has not established that it has a good arguable case on the merits.

44. Counsel for the Defendants further argues that it is insufficient, in seeking to establish a real risk of dissipation, simply to show the mere possibility that a defendant has the means to use his links to complex offshore corporate structures to dissipate assets without more. See **Candy and others v Holyoake and another** [2017] EWCA Civ 92. It is averred that the Defendants had notice of a dispute over the Shares for about 4 months before the application of Ivy for an injunction, and during that 4-month period the Defendants did not have any further dealings with the Shares. The Claimants, it is submitted, have not shown that there is any likelihood that the Defendants would unjustifiably dissipate any assets in the future, not having done so by this point in time.

45. Mr McKenzie KC contends that Otto PVT is no longer a shareholder of the Shares as they have been transferred to and are held by the Third Defendant, Cardio Ventures. Further, it is argued that Ivy has not demonstrated that it passed valuable consideration for the Shares (referred to as "Target Equity" in the ERA). As such it is not entitled to an injunction or a proprietary claim.

46. The test for granting a freezing order is as set out in **Les Ambassadeurs Club Ltd v Yu** [2021] EWCA Civ 1310. An applicant must satisfy four core elements, namely that:

(1) the applicant has a good arguable case on the merits;
(2) there is a real risk of dissipation;

(3) there are assets held by or on behalf of the respondent within the (geographical) scope of the proposed injunction; and
(4) in all the circumstances it is just and convenient to grant the order sought.

47. To start, the well-rehearsed test of a good arguable case was discussed by Mustill J in **Ninemia Maritime Corp v Trave Schiffahrstgesellschaft mbH & Co K G The Niedersachsen** [1984] 1 All ER 398 at 404 where the court stated:

> "…I consider that the right course is to adopt the test of a good arguable case, in the sense of a case which is more than barely capable of serious argument, and yet not necessarily one which the judge believes to have a better than 50% chance of success.".

48. For the same reasons stated above, on an analysis of the evidence before the Court, I am of the view that the Claimant meets, not only the serious issue to be tried threshold required for a proprietary injunction, but also the more stringent good arguable case test. This means that the Court is satisfied that Ivy has put forward a good arguable case that it is entitled to 9% of the shareholding of Otto of which it has been deprived by the Defendants. The observations of the Court as to Mr Srivastava's email message to Mr Wang confirming that all terms of their agreements had been completed and the apparent significance of the registration of the shares in Otto and issuance of a corresponding share certificate to record Ivy's ownership of the same are relevant to this point.

49. In relation to showing that there is a real risk of dissipation, Ivy argues that this is clear. Counsel submits that Mr Srivastava "*is an international operator with a complex web of companies in different countries. The court should readily infer that the purpose behind [Mr Srivastava's] ownership of such disparate corporate entities is to organize his ownership affairs to his advantage and thus defeat the claims of credible pursuers. At paragraph 11 of Mr Wang's Second Affidavit, he deposes to the Second Respondent's current plan to effect a merger between and amongst several of his group companies, the effect of which would be to diminish if not abrogate the Applicant's share interest.*"

50. In **Les Ambassadeurs Club Ltd v Yu** [2021] EWCA Civ 1310, Andrews LJ referred to the statement by Gloster LJ in **Candy and others v Holyoake and another** [2017] EWCA Civ 92 of the threshold to establish there was a real risk of dissipation as follows:

> "34. …However, the threshold in relation to conventional freezing orders is well established. There must be a real risk, judged objectively, that a future judgment would not be met because of unjustifiable dissipation of assets. But it is not every risk of a judgment being unsatisfied which can justify freezing order relief. Solid evidence will be required to support a conclusion that relief is justified, although precisely what this entails in any given case will necessarily vary according to the individual circumstances."

51. Mr McKenzie KC drew the Court's attention to the remarks of Gloster LJ in **Candy and others v Holyoake and another** [2017] EWCA Civ 92:

> "(i) I agree that – if the appellants had shown that there was a risk of the appellants dissipating their assets – the appellants' links to complex and offshore corporate structures and the potential to transfer value rapidly and invisibly through corporate reorganization could contribute to that risk. This is because a complex corporate structure or corporate reorganization could enable a party who is minded to dissipate assets to do so.
>
> "(ii) However, the mere possibility of a party using a complex corporate structure or corporate reorganization to dissipate assets, without more, does not equate to a risk of dissipation. Otherwise, the burden of proof would be reversed: parties subject to a freezing order application would be compelled to show that they would not dissipate assets in that way.
>
> "(iii) This emphasis is important. An applicant must show a risk of dissipation as opposed to it merely being possible (without more) that the respondent could dissipate in that way:
> …
> (b) Several cases have emphasized that there is nothing implicit in complex, offshore corporate structures which evidences an unjustifiable risk of dissipation. As Arnold J put it in *VTB v Nutritek* [2012] 2 BCLC 437 at [233] (approved by the Court of Appeal at [174] of its judgment):
>
> 'It is not uncommon for international businessmen, and indeed quoted UK companies, to use offshore vehicles for their operations, particularly for tax reasons. This may make it difficult to enforce a judgment. But in that respect claimants such as VTB have to take defendants such as Mr Malofeev as they find them. More is required before the court will conclude that there is a risk of dissipation.'"

52. In my view, the fact that Mr Srivastava is apparently a sophisticated businessman who utilizes multiple cross-border entities to organize his business affairs is no proof in itself that there is a real risk of dissipation. That factor is, however, a relevant consideration in the determination as to whether there is a real risk of dissipation.

53. There are other relevant factors which relate to the actions of one or more of the Defendants. The wooing by Mr Srivastava of an investment of more than $11 million from Shangshi and Shanghong in SSI China on the promise they would derive a direct or indirect benefit from a medical robotic invention. The failure of one or more of the Defendants to reliably confirm to the investors as to the existence of the robotic invention and how it or its IP rights are held. The registration of Otto's Shares in Ivy's name and the acquisition of Mr Wang's seat (with voting power) on the Board of SSI China. Following this, the precipitous cancellation (that is, without notice to Ivy) of the shareholding of Ivy. The issuance of Ivy's once-held shares in Otto to a new company – Cardio Ventures – without notification to Ivy. The failure of the Defendants to confirm

to Ivy the identity of the new shareholder of Otto until the Defendants were brought before this Court. These are all relevant factors.

54. Pertinent also is the discovery by the Claimant of an agreement which did not recognize its shareholding in Otto. In Mr Wang's Second Affidavit at paragraph 11 he refers to a Merger Agreement dated 7 November 2022 which stated that Otto is wholly owned by Mr Srivastava "with no mention" of Ivy's ownership of 9% of the shares in Otto. Mr Wang further states that Mr Srivastava intends to appropriate Ivy's shareholding and that it is possible Mr Srivastava is seeking to "further compromise the Claimant's position through moving around his ownership interest in various companies within his group, including [Otto], unless the respondents are restrained by the court from doing so."

55. The Court recognizes that at this stage of the proceedings, no trial of the issues has taken place. Further, the Defendants proffer their explanation for the cancellation of Ivy's shareholding, primarily on the basis that they contend Ivy did not provide consideration for the Shares and that the deal struck would have offended a policy or regulation circulated by the Government of India. It may well be that the Defendants have no nefarious intent and that at the end of the day they could prevail. However, taking all factors into consideration, the Claimant has shown more than the mere possibility that its assets and the underlying value in those assets could be dissipated before judgment. The Defendants' dealing with the 9% shareholding in Otto in such a way that it was put beyond the reach of Ivy, amongst other factors already enumerated, tends to show such a risk of dissipation as is required to grant a freezing injunction.

56. There are obviously assets held by or on behalf of the respondent within the (geographical) scope of the proposed injunction. No party has argued that this is not the case. Certainly assets in the form of shares of Otto and Cardio Ventures and voting rights in relation to these entities belong to such category. Further, any decision the Court makes must be supported by the twin pillars of justice and convenience. Considering all factors in this case and the conclusions I have arrived at, the Court is of the view that it is just and convenient to grant a freezing injunction as applied for to ensure no dissipation or dealing with the Shares or underlying assets which give the Shares their value and no exercise by the Respondents of their voting rights in such a way as would defeat the claim of the Claimant through dissipation or devaluation of the Shares or underlying assets upon which their value is dependent.

57. The prayer for a freezing injunction goes beyond a wish to freeze the 9% shareholding in Otto which Ivy claims to own. It is a bid to freeze assets controlled by Otto, Mr Srivastava and Cardio Ventures to which Ivy claims no direct proprietary right. Further or alternatively, Ivy seeks to prevent the Defendants from exercising their power as shareholders or directors in any entity for the purposes of diluting or devaluing the Shares claimed by Ivy or their underlying assets.

58. The purpose of the freezing of the assets is because they undergird the value of the Shares in Otto. Allegedly, those assets are held in SSI India (as purported holder of the IP rights to the medical robotic invention touted by Mr Srivastava and by which investors were persuaded to inject

their funds). As the Court understands it, Ivy's case is that unless the Defendants are restrained by an injunction, as prayed for, there is a real risk that the Defendants could encumber or otherwise transfer the Shares or deal with (through voting rights or otherwise) the underlying assets, which give those Shares value, in such a way as to defeat any judgment or order Ivy may successfully obtain. Simply put, by applying for the proprietary and freezing injunctions, Ivy seeks to protect the Shares and protect against the erosion of the underlying value of those Shares.

59. The law recognizes that a shareholding is itself a proprietary interest, and that the value of that interest may depend on the preservation of underlying company or subsidiary assets. As such, there are cases in which courts have granted freezing or proprietary injunctions to preserve not only shares themselves but also the underlying assets of companies and their subsidiaries, particularly where the applicant asserts a proprietary interest or where the value of shares is directly affected by the use or dissipation of those assets. In this regard, courts have developed a flexible approach, allowing such injunctions in circumstances where, for example, the assets are traceable to the claimant or where the structure of ownership and control justifies the extension of relief to subsidiary or related company assets.

60. In **Koza Ltd v Koza Altin Isletmeleri AS** [2020] EWCA Civ 1018, the English Court of Appeal held that a parent company's shareholding in its subsidiary is a proprietary interest, and that the court has jurisdiction to grant an injunction to preserve the value of that shareholding in restraining the use or dissipation of the subsidiary's assets. Further, in **Tarnjit Singh Gill and another v Jagjit Kaur and another** [2025] EWHC 156 (Comm) at paragraphs 40 and 41, *Bryan J* cited both ***Koza*** and **Re Ravenheart Service (Holdings) Ltd, Reiner v Gershinson and others** [2004] EWHC 76 (Ch), in confirmation of the principle that in order to obtain a proprietary injunction, it is not necessary for the applicant to have a direct proprietary claim to the assets themselves. Further, the court stated that equally, it is not necessary for the applicant to have any direct cause of action against the respondent.

61. Mr Wilson KC submits that while this relief is not based on a direct proprietary claim, given the direct correlation between the value of the underlying assets of Otto to the value of the Shares, what is being sought is so akin to a proprietary injunction that the principles applicable to proprietary injunctions should apply. The Court recognizes that the application of such an approach is permissible. In **Paul Allen (in his capacity as trustee in bankruptcy of John Sharpe) v Vuk Bulatovic** [2023] EWHC 612 (Ch), although later finding that there was a real risk of dissipation so as to support the grant of a freezing order, *Mr Justice Leech* found:

> "In my judgment, it is at the very least arguable that the American Cyanimid test applies and that the question whether it is necessary to demonstrate a real risk of dissipation is not required to be satisfied on this application. I therefore approach the application on the basis that it is what I will call an application for a quasi-proprietary injunction rather than a true freezing injunction and apply that test."

62. On the above analysis, even if the Court did not find, as it has, that a real risk of dissipation has been demonstrated by Ivy, a quasi-proprietary injunction (meeting the **American Cyanimid** test) rather than a true freezing injunction could have sufficed to protect the position of the Claimant pending trial. In these circumstances, both reliefs have been applied for and are granted.

Disclosure

63. Mr Wilson KC contends for his client that the Court has an inherent power to make ancillary disclosure orders to police an injunction to ensure its orders are effective. He cites **section 21** of the **Supreme Court Act** and **CPR 17.1(e)** as codification of that inherent power. Counsel asserts that it is necessary for the Claimant and this Court to know what has become of the value and assets of Otto to ensure that any injunction is made effective and Ivy's claim is not rendered nugatory. Specifically, the Claimant applies to know of the Defendants whether they own or whether any entity they control owns the IP for the robotics invention. The Claimant states that if there is no such robotics invention, the Defendants should say so under oath.

64. Mr McKenzie KC advances for the Defendants the argument that the disclosure application is tantamount to a fishing exercise. It is argued that the Court cannot act upon such application as it is too vague. Counsel contends that Ivy must show the Court that a party to these proceedings has such a robotic invention, and that there is a relationship between Mr Srivastava and SSI India by which the former could provide the information sought. A relationship must also be demonstrated to exist between the Defendants and the company that holds the IP for the robotics, and further, that Otto or Cardio Ventures has a proprietary interest in that company. Counsel further submits that Ivy has yet to demonstrate a nexus between its claim for shares in Otto by way of the IA and what entitled Ivy to the information in SSI India. This is perhaps a difficult submission to make given the Defendants' reliance upon the Circular of the Indian Government, which appears to suggest that the underlying value of Otto lies in SSI India.

65. It is also submitted that the Court should not give disclosure in relation to matters which are not pleaded. See **Juraj Vacval v Gordon Wayne Herman** 2014/CLE/gen/01795. Fishing expeditions are not supported. Counsel points out that there is no claim in the Statement of Claim of Ivy which relates specifically to SSI India.

66. **Part 17.1 (e)** of the **Supreme Court Civil Procedure Rules** ("**CPR**") provides that the Court may grant interim remedies including "an order directing a party to provide information about the location of relevant property or assets or to provide information about relevant property or assets which are or may be the subject of an application for a freezing order."

67. The Court has a discretion, anchored in the justice and convenience of the matter, to grant a disclosure order ancillary to injunctive relief it deems appropriate to be granted in any case. This power is conferred upon the Court because in appropriate circumstances, an injunction may be rendered useless without concomitant disclosure of relevant information by a respondent.

68. On the yet preliminary appraisal of this case which the Court has made, the disclosure order sought by the Claimant appears necessary to assist in supporting the injunctive relief for which the Claimant has applied. They seek, by the Notice of Application filed on 17 July 2024 to have the Defendants immediately disclose:

> "the name and incorporation jurisdiction of the entity which holds the intellectual property rights for the medical robotics application, which was intended to be owned by SSI India, if different."

69. The Defendants have called this application for disclosure a fishing expedition. It is somewhat remarkable that the Defendants object to disclosure on the basis that Ivy must show that the robotics invention exists, yet they have not denied that Mr Srivastava represented that he was developing the robotics invention and sought investors in the same, thereby convincing Shangshi and Shanghong to invest over $11 million in the project. It is within the knowledge of Mr Srivastava whether this invention therefore exists. This unique invention underlays the value of the Shares Mr Srivastava agreed (via the IA) to have registered in the name of Ivy.

70. Further, the Claimant alleges that the SSI Group is a group of Mr Srivastava's companies. Mr Srivastava represented to Shangshi and Shanghong that he would transfer the ownership of SSI India to Otto, the First Defendant. The Defendants argue that in order to obtain disclosure, the Claimant must prove the connection between SSI India and Mr Srivastava. If there is any connection between the Defendants and SSI India and/or the company which owns the IP in the robotics invention, this information is within the knowledge of Mr Srivastava as the developer of the same. Further, this asset and its IP rights undergird the value of the Shares which Ivy once held. The matters which the Defendants insist the Claimant should prove are based on information the Defendants should have furnished to investors in the medical robotics project. Ivy's inability to show the connections, save by reference to alleged representations Mr Srivastava made to Shangshi, Shanghong or NSR is based on the failure of the owner(s) and/or developer of the medical robotics project to disclose to their investors such essential information.

71. The Court is also mindful of the principle which applies to any applicant who seeks to assert a proprietary claim, such as is asserted by Ivy in this case. Such applicant has an equitable right to such disclosure as would ensure that it can identify and secure its property. In **A v C** [1981] 2 WLR 629, *Lord Robert Goff* referred to cases in which a proprietary claim was made and interlocutory injunctive relief as well as ancillary disclosure of information was sought. The court indicated that banks holding assets of the defendants (whether or not they are parties to the proceedings), the defendants themselves or their employees or directors were not exempt from having to comply with an order for disclosure. The court stated:

> "Now these cases provide ample authority that in an action in which the plaintiff seeks to trace property which in equity belongs to him, the court not only has jurisdiction to grant an injunction restraining the disposal of that property; it may in addition, at the

interlocutory stages of the action, make orders to ascertain the whereabouts of that property."

72. In the circumstances of this case, I am not of the view that the Defendants can successfully rely upon the objections they have raised to avoid disclosure. Instead, I am persuaded that the disclosure order sought is supported by the authorities and appropriate to be ordered. The desirability of granting the disclosure of information in these circumstances outweighs the objections advanced.

Forum Non Conveniens and/or Lack of Jurisdiction

73. Counsel for the Defendants makes the argument that while the courts of The Bahamas may have jurisdiction (as Otto and Cardio Ventures are companies registered under the laws of The Bahamas), this is not the proper forum given the contractual arrangement between the parties. Counsel asserts that the contractual arrangement consists of several interdependent agreements (the JVA, the CI Agreement, the ERA and the IA). One of them, the IA has chosen the governing law and jurisdiction for handling disputes as that of The Bahamas. All other agreements are governed by Chinese law and prescribe arbitration in the PRC as the appropriate mode of handling disputes amongst the parties to those agreements.

74. Counsel submits that the IA cannot stand on its own as it gets its existence and relevance from the other agreements. As such, it is contended that the IA is only one link in a series of agreements, and the ERA is actually the document which governs the terms and nature of the consideration that should have been paid for the 9% shareholding in Otto. Counsel submits that courts will usually give effect to an exclusive or governing jurisdiction clause in an agreement unless there is strong reason to depart from it. The submission is therefore made that the IA is subject to the laws of the PRC because it is tied to the other agreements.

75. Counsel for the Defendants relies upon Dicey, Morris and Collins on **The Conflict of Laws**, 14th Edition, **Donohue v Armco Inc** [2001] UKHL 64, **Jong v HSBC Private Bank (Monaco) SA** [2015] EWCA Civ 1057, **III Dune Capital Partners 7 Inc v Bay Spring International Ltd and others** [2017] 1 BHS J No 99, **VTB Capital plc v Nutritek International Corp and others** [2013] UKSC 5, **RLT v ALD and others** [2015] 1 BHS J No 82 and **Crociani and others v Crociani and others** [2014] UKPC 40.

76. In response, Counsel for the Claimant submits that the nature of the action is such that only a Bahamian court can grant the relief sought, that is, rectification of the register of a Bahamian company pursuant to **section 30** of the **IBC Act**.

77. Counsel further argues that the operative agreement by which the 9,000 shares in Otto were transferred to Ivy is the IA which is stated to be governed by Bahamian law. Any disputes under the IA by the agreement of the parties must be resolved in the courts of the Commonwealth of The

Bahamas. Comparing the IA to the other agreements – the JVA, ERA and the CI Agreement – the IA is the only one which has a jurisdiction clause. The JVA, ERA and CI Agreement do not exclude the airing of disputes in The Bahamas and do not prescribe the Courts of the PRC as having exclusive jurisdiction over the transactions pursuant to those agreements.

78. Mr Wilson KC contends that it is the express terms of any agreement which should be given priority. He invites the Court to find that the parties intended to link the proper law of the transactions with the law of the country whose courts were referred to in the only jurisdiction clause which has been agreed to amongst the parties, and which names the courts of The Bahamas as the forum for resolving disputes under the IA.

79. Counsel also references the *lex situs* principle to the effect that ownership of shares is to be determined by the law of the situs, the place of incorporation. It is contended that the Defendants appear to have confused the principles relating to the determination of the appropriate forum where several courts are vested with jurisdiction with the principles applicable to exclusive forum. The Court is urged to find that only the Bahamian court can determine the current dispute. Reliance is placed on **Turner v Grovit and others** [2001] UKHL 65, **Global Maritime Investments Cyprus Ltd v O W Supply & Trading A/S (under konkurs)** [2015] EWHC 2690 and **Macmillan Inc v Bishopsgate Investment Trust Plc and others** (No 3) [1996] 1 WLR 387.

80. Under the Supreme Court Civil Procedure Rules (the "CPR"), specifically CPR 26.1(2)(q), the Court has the power by way of case management to "stay the whole or part of any proceedings generally or until a specified date or event."

81. The application for a stay has been launched on the basis of the common law doctrine of *forum non conveniens*. The principles which apply to an application for a stay of proceedings on this basis were set out in the English House of Lords decision of ***Spiliada Marine Corp v Cansulex Ltd*** ("**The Spiliada**") [1986] 3 All ER 843 in the speech of *Lord Goff* of Chievely. There, *Lord Goff* stated:

> "[A] national court may decline to exercise jurisdiction on the ground that a court in another state, which also has jurisdiction, would objectively be a more appropriate forum for the trial of the action, that is to say, a forum in which the case may be tried more suitably for the interest of all the parties and the ends of justice."

82. In ***Bancroft Life & Casualty, ICC, Ltd v Telebrands Insurance Company IC, Limited***, Claim No SLUHCV 2015/0992 in the Commercial Division, Eastern Caribbean Supreme Court of St Lucia, *St Rose-Albertini J* (as she then was) summarized the principles of *forum non conveniens,* in part, in the following manner:

(1) "A stay of proceedings will only be granted on grounds of forum non conveniens where the court is satisfied that there is some other available forum having competent

jurisdiction, which is the appropriate forum for the trial of the action, i.e. a forum in which the case may be more suitably tried, in the interest of all the parties and the ends of justice.

(2) "The burden of proof rests on the defendant (applicant) seeking the stay to persuade the court to exercise its discretion to grant the stay. If the court is satisfied that there is another forum which is the prima facie more appropriate the burden will shift to the claimant (respondent) to show that there are special circumstances by reason of which justice requires that the trial should nevertheless take place in this jurisdiction.

(3) "Lord Goff noted the approach of the courts in the USA and Canada where these courts are hesitant to disburb a claimant's choice of forum unless the balance of factors weigh **strongly** in favour of the defendant. In contrast English law has no presumption or extra weight in favour of a claimant where the claimant has founded jurisdiction as of right. It is only in cases where no particular forum can be described as the natural forum and there are pointers to a number of different jurisdictions that the English court would refuse to grant a stay.

(4) "The burden on the defendant is to show that there is an alternative forum for the trial and that forum is clearly or distinctly more appropriate than the forum where the stay is sought.

(5) "In considering whether a stay should be granted the court must examine what is the "natural forum". A concept described by Lord Keith of Kinkel in **The Abidin Daver** [[1984] 1 Lloyd's Rep. 339] as "that with which the action has the most real and substantial connection". The court must look for connecting factors which will include matters affecting convenience or expense…

(6) "If after considering these factors the court concludes that there is no other available forum which is clearly more appropriate for trial of the action, it will ordinarily refuse a stay. Conversely if the court concludes that there is some other available and prima facie more appropriate forum it will ordinarily grant a stay. However, there may be occasions where justice requires that in the circumstances a stay should nevertheless not be granted. For instance if it can be shown that the claimant will not obtain justice in the foreign (appropriate) jurisdiction. This fact must be established objectively, on cogent evidence, which must be adduced by the claimant.

"[34] …The common thread in the leading cases in which a stay has been granted, is that there has always been another clearly more appropriate forum, where the interest of the parties and the ends of justice could best be served, without incurring any injustice or disadvantage to a claimant."

83. The emphasis is placed upon the availability of another forum. The Court takes into consideration that, apart from the jurisdiction clause and choice of governing law clause in the IA, the Commonwealth of The Bahamas is a uniquely available forum for granting the reliefs sought

by the Amended Originating Application in this matter, which contain prayers for orders as to the ownership of the 9,000 shares, the rectification of the share register, and issuance of a share certificate of Otto, a Bahamian IBC. Those shares are held by another Bahamian IBC, Cardio Ventures.

84. There is also significant force in the argument that because The Bahamas is the place of incorporation of Otto, and the place its shares are held, the laws of The Bahamas govern any issue as to entitlement to Otto's shares. In **Macmillan Inc v Bishopsgate Investment Trust Plc and others (No 3)** [1996] 1 WLR 387, Staughton LJ stated:

> "We were referred to a number of transatlantic cases. In some of them the question was decided by the law of the place where the certificates were, apparently on the ground that by the law of the place of incorporation the company was given power to issue certificates having that effect. Subject to that, the preponderance of authority is that the ownership of shares is to be determined by the law of the situs, which for this purpose is the place of incorporation… I conclude that an issue as to who has title to shares in a company should be decided by the law of the place where the shares are situated (lex situs). In the ordinary way, unless they are negotiable instruments under English law, and in this case, that is the law of the place where the company is incorporated."

85. Further in ***Bishopsgate***, Aldous LJ held:

> "In any case I have no doubt that the transferability of shares in a corporation, the formalities necessary to transfer them and the right of the transferee to be registered on the books of the corporation as the owner of the shares are all governed by the law of incorporation.
>
> "As a matter of principle I believe the appropriate law to decide questions of title to property, such as shares, is the lex situs, which is the same as the law of incorporation. No doubt contractual rights and obligations relating to such property fall to be determined by the proper law of the contract. However, it is not possible to decide whether a person is entitled to be included upon the register of the company as a shareholder without recourse to the company's documents of incorporation as interpreted according to the law of the place of incorporation. If that be right, then it is appropriate for the same law to govern issues to title including issues as to priority, thus avoiding recourse to different systems of law to essentially a single question. Further, it is to the courts of that place which a person is likely to have to turn to enforce his rights.
>
> "The conclusion that the appropriate law is the law of incorporation is, I believe, also consistent with the general rule relating to moveables and land. In both cases the courts look to the law of the place where the moveable or land is situated. Further, the conclusion that it is the law of incorporation which should be used to decide questions of title, including questions as to priority of title, does, I believe, lead to certainty as opposed to

applying the lex loci actus which can raise doubt as to what is the relevant transaction to be considered and where it takes place. That is particularly so in modern times with the explosion of communication technology. The conclusion is, I also believe, consistent with the trend of authority both in this country and abroad."

86. The Court is aware that there are cases in which, despite any agreement as to governing law and jurisdiction, courts have preferred to grant a stay so that a matter may be heard in another available court of competent jurisdiction. An example of this is seen in ***Bancroft Life & Casualty, ICC, Ltd v Telebrands Insurance Company IC, Limited***, Claim No SLUHCV 2015/0992, decided in the Commercial Court of St Lucia. Looking at the relief Ivy seeks from this Court in the main action, the rectification of the register and issuance of a share certificate to Ivy for 9,000 shares in Otto are clearly prayed for pursuant to **section 30** of the **IBC Act** and is a matter which falls squarely within the jurisdiction of the Court. It has not been demonstrated to this Court that the same or any compatible remedies to those sought in this action would be available to an applicant in the PRC. There has been no submission as to the justiciability of a claim in the PRC in the nature of the claim brought in this jurisdiction. Therefore, in relation to the statutory claim brought in The Bahamas, I am not satisfied that the PRC is an available forum.

87. By reason of the relief sought, the involvement of Bahamian companies and the subject matter, shares in a Bahamian company, as well as the clear choice of governing law and jurisdiction clauses in the IA, I do not find that the PRC is an available forum for the claim set out in the Amended Originating Application. This militates against exporting the claim to be dealt with in the PRC or another forum.

88. The Court further considers that the granting or refusal of these reliefs will be dependent upon whether Ivy is entitled to ownership of the Bahamian shares. Based upon the averments of the parties, what appears to underpin Ivy's entitlement to the Shares is whether Ivy, NSR or Shangshi and Shanghong passed any (agreed upon) consideration for the Shares to the Defendants (or any designee of the Defendants).

89. The Defendants contend that the Court cannot consider the IA on its own as it depends upon performance of the ERA, the latter of which addresses the consideration to be given for the IA. The Defendants argue in favour of disregarding the governing law and jurisdiction clause in the IA, and adopting instead the arbitration clauses in the ERA and other agreements.

90. Articles 2.1 of the ERA (an agreement between Shangshi, Shanghong and a company called Sudir Srivastava Innovations Pte. Ltd), contains references to a transfer of 9% equity of "Reorganized Offshore Company" as "full and sufficient consideration" for the transfer of "the Target Equity". Further, by Article 4.1, the parties to the ERA agreed that the agreement would not take force until the fulfillment of all conditions precedent, the only one of which appears to have been:

> "upon completion of transfer of 9% equity of Reorganized Offshore Company to the designated affiliate of the Transferor [Shangshi and Shanghong], and upon delivery of share certificate, register of member and other corporate documents to evidence such transfer."

91. It is observed that the ERA does not mention by name Ivy, Otto or Mr Srivastava, but it refers to consideration of 9% equity. The Claimant submits that the condition precedent was completed. Further, from the Second Affidavit of Maoting Wang, the Court observes that Mr Wang sttes that Ivy's case is that its entitlement to the Shares arise from a series of letters, emails ad Agreements, principally the CI Agremeent, the ERA, the IA and the PA. There could be no suggestion, therefore, that the agreements which are to be construed by the laws of the PRC and resolved by arbitration (failing amicable resolution) are irrelevant to the question whether Ivy is entitled to the Shares. Despite this, the Claimant argues that in any event the ERA is irrelevant as its terms have been fully performed and that the true consideration for the 9,000 shares in Otto was the assignment of Mr Wang's seat on the Board of Directors of SSI China.

92. Materially, the IA contains no reference to the ERA and purports no reliance upon the ERA or any other transactional document or arrangement between the parties as embodied in any of the JVA's, the ERA, the CI Agreement or any other such agreement. The IA contains no clause which states that SSI China's shares are the consideration for the transfer of 9,000 shares in Otto to Ivy. The Court notes, however, that the agreement references "other good and valuable consideration, the receipt and sufficiency" of which were acknowledged for the transfer of the Shares. Such consideration is not particularized in the IA.

93. It appears that the parties agreed across multiple agreements to arbitrate some disputes in the PRC and to submit other disputes to the jurisdiction of courts of The Bahamas. This Court does not accept that it ought to ignore the clear agreement of the parties to litigate disputes which arise in relation to the IA in the courts of The Bahamas and to construe the IA by applying the laws of The Bahamas. Equally, the Court cannot ignore the clear agreement of the parties to arbitrate disputes under the ERA and other agreements in the PRC. While a strong presumption exists that rational commercial parties intend disputes arising out of their relationship to be resolved in a single forum, this presumption does not override clear contractual language. The Court takes note of the guidance given in **Trust Risk Group SpA v AmTrust Europe Ltd** [2015] EWCA Civ 437. In that case, *Beaton LJ* in the English Court of Appeal stated:

> "This case concerns an overall agreement package which contains two express choice of law and jurisdiction clauses, one of English law and jurisdiction, the other of Italian law and arbitration. …[A]lthough the present case is not about the scope of a single arbitration clause, the Fiona Trust 'one stop / one jurisdiction' presumption remains a useful starting point….Where the overall contractual arrangements contain two or more differently expressed choices of jurisdiction and/or law in respect of different agreements, however, the position differs, in that one does not approach the construction of those arrangements with a presumption. 'There is no presumption that a jurisdiction (or arbitration) agreement

> in Contract A, even if expressed in wide language, was intended to capture disputes in Contract B; the question is entirely one of construction.'…Where a complex…transaction… is interlinked the point of departure will be that it is improbable that a jurisdiction clause in one contract, even expressed in ample terms, was intended to capture disputes more naturally seen as arising under a related contract. … Even if the effect is that there will be a risk of fragmentation…this is not by itself sufficient to override…the complex agreements for the resolution of disputes which the parties have made."

94. Having considered the terms of the IA, the Court finds no equivocation as to the choice of governing law and the jurisdiction of choice. These are clearly chosen by the parties to that agreement to be the laws and courts of the Commonwealth of The Bahamas. The ERA, which the Defendants propound as essential to the questions before the Bahamian courts in the main action, is also an agreement in which the parties have unequivocally stated that disputes which arise from that agreement and which are not resolved amicably shall be referred to arbitration in the PRC and such agreement shall be governed by the laws of the PRC.

95. Additionally, having found that The Bahamas is the available forum for the hearing of the main action based on the reliefs sought, and in light of the clarity of the parties' agreement on jurisdiction and governing law, I turn to look more closely at the disputes which would affect the action in The Bahamas. The observations of the Court are as set out below.

(1) The main issue is whether Ivy is entitled to be registered as a 9% shareholder in Otto. The parties agree that there was consideration for the transfer of the 9,000 Otto shares to Ivy (the "**consideration**"), although they differ as to what that consideration was and whether it was given.

(2) As correctly submitted by Mr McKenzie KC, the consideration is not detailed in the IA, but there is a reference to consideration in the ERA. The question as to whether the ERA was performed is a matter to be dealt with initially in arbitration in the PRC, as agreed by the parties. In this regard, the parties may present in evidence to the Bahamian court, any relevant arbitral determination or expert evidence of any relevant aspect of PRC law upon which they wish to rely in the main action before the Bahamian court to rectify the register of Otto.

(3) The parties appear not to dispute that Mr Wang transferred his voting power and place on SSI China's Board of Directors to Mr Srivastava's nominee (one Daniel Wallace). If this is disputed, the Court observes that the transaction appears to have a close connection to the PRC, as it involves SSI China, Shangshi, Shanghong, NSR and Mr Wang – all Chinese nationals or entities. In this regard, the parties may on this issue, if they choose, present any relevant arbitral determination or evidence of PRC law upon which they wish to rely in the case before the Bahamian court.

(4) Whether the consideration mentioned in the ERA was payment for the Otto Shares registered to Ivy is a fact which will have to be proven. Likewise, whether Mr Wang's assignment of his seat on SSI China's Board of Directors (and voting power) to Daniel Wallace (as Mr Srivastava's nominee) was the true consideration for the transfer of the Otto Shares to Ivy is a fact which will have to be proven. The question whether either of these is the consideration or otherwise relevant to the IA, a Bahamian agreement, must be proven to the Bahamian Court before it can determine whether Ivy is entitled to the Shares in Otto.

(5) If it is accepted that either or both of these acts constituted consideration for the transfer of the Otto Shares to Ivy, the fulfilment of the requirement to give consideration will have to be proven to the Bahamian Court, so as to persuade such Court that Ivy is entitled, or not entitled, to be placed on the register of Otto as the holder of 9,000 Shares.

(6) Overall, while the PRC is not an available forum for granting reliefs under section 30 of the IBC Act (in which, clearly, Bahamian law must be applied), based on an analysis of the contentions of the parties, there are aspects of the issue whether Ivy is entitled to the Shares in Otto which appear to be necessarily affected by PRC law and, by the agreement of the parties, arbitral findings in the PRC.

96. Considering all factors and the conclusions I have arrived at, while the Court will not grant a stay of this action on the grounds of *forum non conveniens* or for a lack of jurisdiction, when the Court hears the main action, it is prepared to take into consideration any relevant evidence of PRC law and/or arbitral tribunal decisions, which may be pleaded as fact and adduced in evidence to prove any party's case on issues concerning the terms and performance of acts of consideration for the Shares in Otto.

Conversion of the Action and Defence

97. I consider that the Defendants' application to convert this matter, commenced by Originating Application to continue as if it were by the standard claim form method pursuant to **CPR 8.19(1)** is appropriate. In accordance with CPR 8.15, the originating application method is suitable where there does not exist a substantial dispute of fact. Such is not the case in this matter. Therefore, it is best converted to allow for full pleadings on the issues.

98. Further, the Court finds it appropriate, having decided to hear this action in The Bahamas, to grant Otto and Mr Srivastava leave to file their respective Defences and counterclaim, if any, within 14 days, pursuant to **CPR 9.8 (5)(b).**

99. In the circumstances, the Court orders and directs:

(1) the application for a proprietary and freezing injunction and for discovery ancillary to the injunction is granted with costs to the Claimant;

(2) the application for a stay or dismissal of the action is dismissed with costs to the Claimant;

(3) the application for continuation of the action as if it were begun by the Standard Claim form method is granted with costs to the Defendants;

(4) the application for leave for the First Defendant and Second Defendant to file a defence is granted with no order as to costs;

(5) if the quantum of costs is not sooner agreed amongst the parties, they shall lay over, within 21 days, submissions and a quantification of their respective costs for a summary assessment by the Court, which shall be dealt with on the papers.

Dated 27 February 2026

Simone I Fitzcharles

Justice