IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT
OF THE REPUBLIC OF SINGAPORE

[2025] SGHC(I) 3

Originating Application No 3 of 2025 and Summons 11 of 2025

Between

Novo Nordisk A/S

… *Claimant*

And

(1) KBP Biosciences Pte. Ltd.
(2) Huang Zhenhua

… *Defendants*

EX TEMPORE JUDGMENT

[Civil Procedure — Mareva injunctions — Claimant making *ex parte* application for worldwide Mareva injunction in support of New York-seated arbitration — Whether appropriate to grant worldwide Mareva injunction – Section 12A International Arbitration Act 1994]

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Novo Nordisk A/S
v
KBP Biosciences Pte Ltd and another and another matter

[2025] SGHC(I) 3

Singapore International Commercial Court — Originating Application No 3 of 2025 and Summons No 11 of 2025
Philip Jeyaretnam J
14 February 2025

14 February 2025

Philip Jeyaretnam J:

1 This is an *ex parte* application by the claimant, Novo Nordisk A/S ("Novo") for a worldwide freezing order (also known as a worldwide *Mareva* injunction) against the defendants, KBP Biosciences Pte. Ltd. ("KBP") and Huang Zhenhua ("Dr Huang"). The application is made pursuant to O 18 r 1 of the Singapore International Commercial Court Rules 2021, with the injunction to be in Form 31. Novo also seeks ancillary disclosure orders and confidentiality orders. These orders are sought in support of a New York-seated arbitration Novo intends to commence against both defendants for damages of US$830m, of which US$100m is secured by escrow. Novo claims it was misled into believing the defendants had developed a new and effective drug to treat hypertension and kidney disease, Ocedurenone, which it then acquired under an Asset Purchase Agreement dated 11 October 2023 ("APA"). The application is supported by the affidavit evidence of Peter Billeskov Schelde, who is the

Corporate Project Vice President of Novo. This was provided under cover of a solicitor's affidavit subject to an undertaking for it to be sworn and filed shortly. Mr Schelde was directly involved in the acquisition.

2 The arbitration is to be administered by the International Chamber of Commerce ("ICC") pursuant to the ICC Rules. While reference is also made in the arbitration clause to the ICC's Emergency Arbitrator Rules, recourse to an Emergency Arbitrator thereunder is not available *ex parte* or without notice. The arbitration clause expressly extends to officers and directors of the parties, and thus includes Dr Huang. Dr Huang executed the APA on KBP's behalf. Novo's position is that Dr Huang is bound by the arbitration agreement.

3 Under s 12A(2) of the International Arbitration Act 1994 ("IAA"), read with s 18I of the Supreme Court of Judicature Act 1969, this court has the same power to make an order in respect of certain matters for the purpose of and in relation to an arbitration, as the court has for the purpose of and in relation to an action or a matter in the court. This is so regardless of whether the place of arbitration is Singapore. Such power includes making orders for ensuring that any award which may be made in the arbitral proceedings is not rendered ineffectual by the dissipation of assets by a party: s 12(1)(*h*) of the IAA.

4 To obtain a worldwide *Mareva* injunction, the claimant must satisfy the court that (a) it has a good arguable case on the merits of its claim, and (b) there is a real risk that the defendants will dissipate their assets to frustrate the enforcement of an anticipated arbitral award: *Bouvier, Yves Charles Edgar and another v Accent Delight Internation Ltd and another and another appeal* [2015] 5 SLR 558 at [36]. Additionally, the claimant must show that (a) the fact that the place of arbitration is outside Singapore does not make it inappropriate to make the order (s 12A(3) IAA), and (b) the case is one of urgency and the

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arbitral tribunal has no power or is unable for the time being to act effectively (ss 12A(4) and 12A(6) IAA).

5 I am satisfied that Novo has shown that it has a good arguable case against KBP for fraud under New York law, which governs the dispute. On the face of the APA, Novo obtained representations and warranties from KBP that it had "made available to [Novo] true, complete and accurate copies of … all material information … concerning the safety, efficacy, … or manufacturing quality and controls of any Compound or Product".[1] Arguably, KBP knowingly failed to disclose material information, including interim analyses of Phase 2 clinical trial results showing Ocedurenone's inefficacy, and information concerning quality and compliance issues at a single test site that produced anomalous positive results. Likewise, Dr Huang arguably knew and participated in these misrepresentations. He was the founder, Executive Chairman and a 40% shareholder of KBP. There is a good arguable case that when Dr Huang executed the APA he did so conscious of the unfavourable data. There is evidence that he had seen that data, including internal analyses from March 2022. While the claim against Dr Huang would be tortious, Novo's position is that it comes within the arbitration clause.

6 I am also satisfied that there is a real risk of dissipation. The expert analysis tendered by Novo identifies transfers totalling US$339.1m from KBP to its holding company around the time of closing, as well as a declaration of US$578.5m in dividends. Novo submits that the steps taken show an intention on Dr Huang's part to remove assets from Novo's reach in anticipation of a claim by Novo. There is no clear commercial rationale for these actions. A seller of assets is ordinarily free to do as it pleases with the proceeds of sale from such

[1] APA, s 4.8(h).

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assets. However, evidence that the seller knowingly misrepresented the value of those assets and anticipates a claim by the buyer will call into question its motives in its dealings with those proceeds, where the effect of those dealings is such as to put the proceeds beyond the reach of the buyer. That is what the evidence here points to.

7 I now turn to the question of whether the fact that the place of arbitration is New York makes it inappropriate for this court to grant the order sought. In my opinion, the fact that the place of arbitration is New York does not make a worldwide *Mareva* injunction inappropriate. First, there is a sufficient link between the foreign arbitration and Singapore, given that the defendants have significant assets in Singapore. This includes KBP's fixed deposit account with DBS Bank Ltd that holds US$218m as of 31 December 2023, and Dr Huang's Sennett Estate house worth US$7m at the time of purchase. Additionally, KBP is a Singapore-incorporated company, and Dr Huang is a Singapore citizen. The presence of assets within Singapore means that orders made by this court will be immediately effective and enforceable.

8 Secondly, granting the order sought would not interfere with the management of the case by the arbitral tribunal once appointed nor with the supervision of the arbitration by the courts at the place of arbitration, namely the New York courts. On this point, the claimants highlight that it is unlikely that the arbitral tribunal or the New York courts would grant the injunction sought, because New York law does not permit worldwide *Mareva* injunctions.[2] I accept that in such cases it is not inappropriate. I also consider that it is desirable in cases of potential international fraud, to be supportive of the processes of the primary adjudicator: see *Motorola Credit Corpn v Uzan and*

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2 Claimant's Written Submissions ("CWS") at paras 99, 120–121.

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others (No 2) [2003] EWCA Civ 752 at [119]. That decision of the English Court of Appeal concerned New York court proceedings, but I am of the view that the same point applies in relation to a foreign arbitration.

9 In addition, as the claimants rightly point out, no arbitral tribunal has been constituted yet. Further, under the ICC's Emergency Arbitrator rules, an emergency arbitrator could not hear the application *ex parte*. Thus, any arbitral tribunal has no power or is unable for the time being to act effectively. It is precisely where such a gap in protections exists that the IAA's grant of powers to the courts of Singapore is of use and relevance.

10 Further, I agree that the case is one of urgency and that the risk of dissipation is such as to justify the application being made without notice to the defendants. The order sought includes the usual provision that the defendants or anyone notified of this order may apply to this court at any time to vary or discharge this order or so much of it as affects that person, upon notice to Novo's solicitors.

11 Novo has given to the court the usual undertakings, including an undertaking as to damages. I am satisfied that Novo is in a position to meet the undertaking as to damages, should it become necessary to enforce it.

12 For these reasons, I grant the worldwide freezing order, with a revision to paragraph 7 of Novo's undertakings to the court set out in Schedule 1, namely to permit proceedings to be commenced in the Cayman Islands to give effect to or for the enforcement of the freezing order. I also grant the ancillary orders

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concerning disclosure of assets sought by the claimant. I make no order on the application for the confidentiality orders. Costs reserved.

Philip Jeyaretnam
Judge of the High Court

Ong Tun Wei Danny, Teo Jason and Zhang Haowei Elvis (Setia Law LLC) for the claimant.

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