



## **Law and pandemics**

Themis Seminar 2023  
Freie Universität Berlin

Moot Court

Based on the case of the Association for the Organisation  
and Promotion of the Willem C. Vis International  
Commercial Arbitration Moot © - Prof. Dr. Stefan Kröll

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**Joseph Langweiler**

Advocate at the Court  
75 Court Street  
Capital City, Mediterraneo  
Tel (0) 146 9845; Telefax (0) 146 9850  
langweiler@lawyer.me

By email and courier

JAJA Clinic Group Corp.  
9601 Emil Behring Street  
Oceanside  
Equatoriana

14 July 2022

Dear Sirs and Mesdames,

Following our meeting on 15 June 2022 in which it has become clear that no settlement can be reached by mediation please find attached the Notice of Arbitration on behalf of my client, COV-Masks plc.

A copy of the Power of Attorney authorizing me to represent my client in this arbitration is also enclosed.

The Claimant requests a declaration that Respondent is required to perform its obligations under the contract concluded between Claimant and Respondent in April 2021.

We nominate Mr Rodrigo Prasad, Nickol Palais 14, Vindobona, Danubia as arbitrator. His declaration of impartiality and independence is attached.

Sincerely yours,



Joseph Langweiler

Attachments:

Notice of Arbitration with Exhibits

Power of Attorney (*not reproduced*)

Declaration of impartiality and independence

14 July 2022

**Notice of Arbitration**  
(pursuant to Article 3 UNCITRAL Arbitration Rules)

in the Arbitral Proceedings

**COV-Masks plc v. JAJA Clinic Group Corp.**

COV-Masks plc  
156 Dendé Avenue  
Capital City  
Mediterraneo

- CLAIMANT -

Represented by Joseph Langweiler

JAJA Clinic Group Corp.  
9601 Emil Behring Street  
Oceanside  
Equatoriana

- RESPONDENT -

**STATEMENT OF FACTS**

1. Claimant, *COV-Masks*, is a producer of medical masks based in Mediterraneo. Its annual production lies at around 900 million medical masks, including 400 million FFP2 masks. Respondent, *JAJA Clinic Group*, is a hospital group based in Equatoriana. It was acquired in late 2019 by MedCli Health, a global health care group with its headquarters in Ruritania.
2. Mr Chandra, Claimant's COO, used the Health Summit in Capital City in Mediterraneo on 28 March 2021 to approach Ms Bupati who had been appointed a year before as the Head of Purchasing for medical equipment for Respondent. Ms Bupati had for a long time been the main purchase manager for the medical equipment section of MedCli Health. In that function she had concluded numerous contracts with Claimant for medical masks.
3. Given the favorable price of USD 0,25 per CE-certified FFP2 mask offered by Claimant for a long-term commitment Ms Bupati showed great interest in purchasing the entire available production of CE-certified FFP2 masks from Claimant from 2022 onwards for five years. In principle, Mr Chandra and Ms Bupati managed to settle all commercial terms in their negotiations at the Health Summit. Ms Bupati wanted to get approval from Respondent's management first, before entering into such a long-term commitment of a considerable size. Thus, it was agreed that Ms Bupati would get back to Mr Chandra with a definitive offer within the next three days, who would then prepare the contractual documents. That was largely the mode of operation which Mr Chandra and Ms Bupati had

established for their numerous medical masks contracts concluded between Claimant and MedCli Health.

4. On 1 April 2021, Ms Bupati sent an email ordering 400 millions of CE certified FFP2 masks per annum for the years 2022 - 2026 to be delivered in up to six instalments per annum, delivery starting in January 2022 (**Claimant Exhibit C 1**). These were exactly the commercial terms agreed between the Parties at the Health Summit.
5. Mr Chandra had his assistant Mr Rain prepare the necessary contractual documents. In line with the practice established with Ms Bupati in previous transactions, the Contract was based on Claimant's contract template into which the details of the offer were incorporated. On 9 April 2021, Mr Rain sent the Contract signed by Mr Chandra to Ms Bupati's assistant, Ms Fauconnier. The accompanying letter explicitly mentioned that the purchase would be subject to the Claimant's General Conditions. The General Conditions were not included in the letter as they were known to Ms Bupati from her work for MedCli Health. In addition, the letter named Mr Rain as the relevant contact for all questions concerning the Contract and asked for the return of one of the signed versions for Claimant's "files and the necessary paperwork for shipment" (**Claimant Exhibit C 2**).
6. On 3 May 2021, Ms Fauconnier contacted Mr Rain to set up a meeting to discuss issues concerning the letter of credit which Respondent was required to open under the Contract. She asked for a list of acceptable banks and wanted to clarify the documents to be presented for payment. In the call finally agreed between them, Mr Rain pointed out that so far no signed copy of the Contract had been received and Ms Fauconnier promised that she would look into that. In light of that promise and the fact that in previous transactions conducted by Ms Bupati for MedCli Health she had not always returned the requested signed versions of the contract, Claimant was not worried.
7. That changed on 29 October 2021, when Claimant learned from an article that Respondent allegedly had stopped all further negotiations with Claimant concerning the delivery of medical masks. Mr Chandra immediately called Ms Bupati trying to clarify the issue. He was told that she was on holiday but would call him back immediately upon her return. The next day, on 30 October 2021, Claimant received a letter from Respondent's CEO, Ms Youni Lever. In that letter she declared the termination of any further negotiations on the delivery of medical masks.
8. Four days later, Ms Bupati finally returned Mr Chandra's phone call. She largely confirmed the content of the letter and offered Mr Chandra to discuss the issue with Respondent's COO, Mr Fotearth. Over the course of the next month there were several rounds of negotiation with Mr Fotearth to no avail. Equally a mediation effort between the Parties vastly failed.

## **LEGAL EVALUATION**

9. Contrary to Respondent's allegation and during the negotiations preceding this Arbitration, the Parties have entered into a binding contract including Claimant's General Conditions of Sale. The Parties were not still at the stage of contract negotiations.
10. Furthermore, Claimant is entitled to the requested declaration that the Contract was validly entered into and continues to exist. The Parties have entered into a valid Contract for the

delivery of 400 millions of medical masks per year over a period of 5 years. For the conclusion of the Contract, it is irrelevant that Respondent had not returned a signed version of the contractual document. There is no form requirement under the CISG and that Respondent considered itself bound is obvious from the discussions about suitable banks for the letter of credit.

11. That a conclusion of the Contract is not dependent on the return of a signed version of the contract documents is also evident from Claimant's dealings with MedCli Health, Respondent's parent company. There have been several instances where Ms Bupati, when acting for MedCli Health, did not return a signed version of the contractual documents as requested, but performed the respective contract as set out in the documents. Thus, there is a practice between the Parties that unless Respondent objects to the contractual documents within a reasonable period of time, a contract is concluded with the terms of the contractual documents.
12. That practice also extends to the inclusion of the General Conditions of Sale even if one would not consider the clear reference to the General Conditions of Sale to be sufficient in itself to make them part of the contract. In the present case, given that Ms Bupati had been provided with a copy of the General Conditions of Sale in her function as the main purchase manager of MedCli Health and should thus have been aware of their content, it would be a mere formality to require that such terms must be made available to her again.

#### **REQUEST**

13. In light of the above, Claimant asks the Arbitral Tribunal to declare that the Parties entered into a valid contract in 2021 and that Claimant's General Conditions of Sale were validly included into that Contract.



Joseph Langweiler



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**From:** Claire Bupati <c.bupati@jaja.clinicgroup.eq>  
**Sent:** 1 April 2021, 8:25 am  
**To:** James Chandra <james.chandra@covmasks.me>  
**Cc:** Adrienne Fauconnier <a.fauconnier@jaja.clinicgroup.eq>  
**Re:** Purchase offer

Dear James,

It was good to see you at the Health Summit last week, to catch up and to re-establish our longstanding and successful business relationship in my new function.

In light of our negotiations at the Health Summit, I would like to place the following order with you as agreed at the Summit:

400 millions CE-certified FFP2 masks per annum for the years 2022 - 2026, cif Oceanside – delivery in up to 6 instalments; at USD 0,15/piece for first year; thereafter market price – 5 %.

Could you please prepare the necessary contractual documents for signature and send them to my assistant, Adrienne Fauconnier, to whom I introduced you at the Health Summit and whom I put in cc. She will take care of the further discussions, if any, and the implementation of the Contract.

Following our discussion, I assume the documents for the sale of CE certified FFP2 masks are largely comparable to those for the sale of medical masks in general ?

Sincerely,  
Claire

**Head of Contracting / JAJA Clinic Group Corp.**

9601 Emil Behring Street / Oceanside / Equatoriana / Email:  
[c.bupati@jaja.clinicgroup.eq](mailto:c.bupati@jaja.clinicgroup.eq)

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**From:** Forrest Rain <forrest.rain@covmasks.me>  
**Sent:** 9 April 2021, 6:09 am  
**To:** Adrienne Fauconnier <a.fauconnier@jaja.clinicgroup.eq>  
**Cc:** Claire Bupati <c.bupati@jaja.clinicgroup.eq>  
**Re:** Contract documents

Dear Ms Fauconnier,

Please find attached a pdf of the contract documents which Mr Chandra asked me to prepare.

As Ms Bupati expected, the template used is the one also used in the medical masks trade in general, which also formed the basis of the previous 40 or so contracts concluded between Mr Chandra and Ms Bupati.

I have inserted the terms of your offer into the Contract, which we accept. In addition, our General Conditions of Sale apply to issues not regulated in the attached document.

The management of the Contract will be handled by Mr Chandra personally. Thus, if you have any questions, I will be your point of contact. Please do not hesitate to contact me.

I have sent you two signed versions of the contract documents. Could I kindly ask you to sign one copy and return it to me for my files and the necessary paperwork for shipments.

Kind regards,

Forrest

Attachments:  
Contract for Medical Masks (*not reproduced*)



Mr. Rodrigo Prasad  
PRASAD & PARTNERS  
Nickol Palais 14  
Vindobona, Danubia

I have been asked by COV-Masks plc, 156 Dendé Avenue, Capital City, Mediterraneo to act as a party appointed arbitrator in its arbitration with JAJA Clinic Group Corp, 9601 Emil Behring Street, Oceanside, Equatoriana. In line with Article 11 of the UNCITRAL Arbitration Rules and on the basis of the information available to me, I make the following

**Declaration of Impartiality and Independence and Availability**

I am impartial and independent of each of the Parties and intend to remain so.

Pursuant to Article 11 of the UNCITRAL Arbitration Rules I wish to disclose the below listed circumstances of (a) my past and present professional, business and other relationships with the parties and (b) any other relevant circumstances.

I have been appointed as arbitrator by the law firm of Mr. Langeweiler twice over the past two years. Both cases are completed by now and Mr. Langeweiler has, to my knowledge, not been involved in either of them.

I confirm that those circumstances do not affect my independence and impartiality. I shall promptly notify the parties and the other arbitrators of any such further relationships or circumstances that may subsequently come to my attention during this arbitration.

In case of my appointment as arbitrator, I personally will not act in matters involving any of the Parties or related companies until the termination of the arbitration proceedings. I would, however, have to make the reservation that my colleagues at Prasad & Partners may continue current matters and may also accept further instructions involving the Parties as well as related companies, provided that these matters are not related to the subject matter of present arbitration proceedings.

I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration diligently, efficiently and in accordance with the time limits.

Vindobona, 26 June 2022



Rodrigo Prasad

JULIA CLARA FASTTRACK  
Advocate at the Court  
14 Capital Boulevard  
Oceanside, Equatoriana  
Tel. (0) 214 77 32; Telefax (0) 214 77 33  
fasttrack@host.eq

By email and courier

COV-Masks plc  
156 Dendé Avenue  
Capital City  
Mediterraneo

14 August 2022

**COV-Masks plc v. JAJA Clinic Group Corp.**

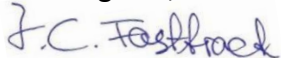
Dear Sir and Mesdames,

I hereby indicate that I represent Respondent in the above referenced arbitral proceedings. The power of attorney is attached.

Please find enclosed Respondent's Response to the Notice of Arbitration.

As arbitrator we nominate Mr Georges Chavanne, Rue Ester 37, Oceanside, Equatoriana. His declaration of impartiality and independence is attached.

Kind regards,



Julia Clara Fasttrack

Attachments:

Response to the Notice of Arbitration with Exhibits

Power of Attorney (*not reproduced*)

Declaration of impartiality and independence Mr Chavanne (*not reproduced*)

cc. Joseph Langweiler

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Advocate at the Court  
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Oceanside, Equatoriana  
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## **Response to the Notice of Arbitration**

in the Arbitral Proceedings

**COV-Masks plc (Claimant) v.  
JAJA Clinic Group Corp. (Respondent)**

14 August 2022

### **Introduction**

1. Claimant tries to create a case where there is none by turning obviously still ongoing contract negotiations into an already concluded contract and including standard conditions which were never made available to Respondent and clearly contradict the discussion of the Parties.

### **Facts**

2. Respondent is one of the biggest hospital groups in Equatoriana.
3. Given the limited availability of CE-certified FFP2 masks due to the COVID-19 pandemic, Ms Bupati was very happy when Mr Chandra approached her at the Health Summit at the end of March 2021 and offered a long-term supply of CE-certified FFP2 masks at a very good price. Ms Bupati had heard rumors that Claimant had just lost one of its major customers and was looking for new customers. Mr Chandra confirmed the loss of a major customer. However, it was apparent that he did not want to disclose further details about the ongoing dispute. As a consequence, Ms Bupati did not ask further about the reasons for the contract termination but focused on realizing the commercially attractive opportunities created by the termination for Respondent by discussing the terms of the contract.
4. Due to the exceptional circumstances, Claimant was not only willing to enter into a long-term supply contract guaranteeing a steady supply of CE-certified FFP2 masks, but also offered a very favorable price. It was fixed for the first year at USD 0,15/piece and then for the remaining four years at 5% below the “market price”, which fluctuates in Mediterraneo between USD 0,20/piece and 0,25/piece.
5. Given the size of the contract, Ms Bupati wanted to discuss the agreed commercial terms of the contract with Respondent’s management first before making a firm offer. Following the approval of the transaction and its commercial terms by Respondent’s CEO, on 1 April 2021,

Ms Bupati sent an email to Mr Chandra suggesting the commercial terms agreed and asked him to prepare the necessary contractual documents (**Claimant Exhibit C 1**).


6. During their discussion at the Health Summit Mr Chandra had informed Ms Bupati, that Claimant would use the same contract template for the FFP2 masks sales that it had used for the medical masks sales to MedCli Health. The General Conditions of Sale were supposed to be the same.
7. These General Conditions of Sale had been sent to MedCli Health in October 2012. Ms Bupati had a closer look at them in the context of an arbitration which had been initiated by Claimant against MedCli Health in 2015 concerning the payment for a delivery. While Ms Bupati cannot exclude that MedCli Health received a copy of the 2017 version of Claimant's General Conditions, it is uncontested that neither the current version nor any previous version of Claimant's General Conditions was ever sent to JAJA Clinic Group.

### **Legal Considerations**

8. Claimant is not entitled to any of the requested reliefs. The Parties never entered into a valid contract but were still at the stage of negotiations. Even if one were to interpret the email of Ms Bupati as an offer, though it is not, Claimant rejected such offer by insisting on the application of its General Conditions of Sale. This counteroffer in turn was never accepted by Respondent which did not sign the contract and returned it to Claimant as requested.
9. Furthermore, the General Conditions of Sale were not included into the alleged contract. Claimant cannot rely on an alleged practice established between the Parties. This was the first contract for the sale of FFP2 masks between the Parties. Any practice established in the around 40 contracts concluded between MedCli Health and Claimant for the sale of medical masks is irrelevant for the relationship between Claimant and Respondent.
10. On the basis of the aforementioned facts, Claimant is obviously neither entitled to the requested declarations nor to any of the other claims. Thus, the case should be dismissed outright.

### **Requests for Relief**

11. In light of the above, Respondent requests the Arbitral Tribunal to make the following orders:
  - To reject all claims made;
  - To order Claimant to bear the costs of this arbitration, including any legal costs.

  
Julia Clara Fasttrack

**Prof. Nikolaus von Jacquin**  
Botanical Gardens 1  
1011 Vindobona  
Danubia

**By email and courier**

Joseph Langweiler  
Advocate at the Court  
75 Court Street  
Capital City  
Mediterraneo

Julia Clara Fasttrack  
Advocate at the Court  
14 Capital Boulevard  
Oceanside  
Equatoriana

**Arbitral Proceedings**

**COV-Masks plc (Claimant) v.  
JAJA Clinic Group Corp (Respondent)**

8 September 2022

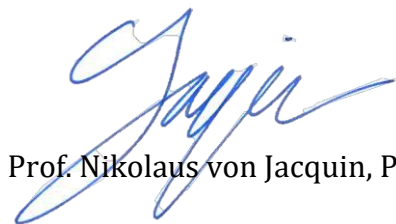
Dear Colleagues,

First of all, I would like to thank you and your clients for your consent to my appointment by Mr. Chavanne and Mr. Prasad. I look forward to working with you in solving the dispute between the Parties.

The Arbitral Tribunal invites the Parties to a Case Management Conference via telephone on 8 October 2022 to discuss the further conduct of the arbitral proceedings.

Kind regards,

For the Arbitral Tribunal



Prof. Nikolaus von Jacquin, Presiding Arbitrator

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By email and courier

Mr Rodrigo Prasad  
Prasad & Slowfood  
Nickol Palais 14  
Vindobona, Danubia

Joseph Langweiler  
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Tel. (0) 146-9845 Telefax (0) 146-9850  
langweiler@lawyer.me

CC: Members of the Arbitral Tribunal

12 September 2022

**COV-Masks plc v. JAJA Clinic Group Corp.**

Dear Mr. Prasad,  
Dear Colleagues,

RESPONDENT has obtained reliable information that CLAIMANT is financed by a third-party funder ("**Funding 12 Ltd.**") in this arbitration. The main shareholder of Funding 12 Ltd is Findfunds LP.

On 14 July 2022, CLAIMANT sent its Notice of Arbitration to RESPONDENT. Besides the hardcopy, electronic versions of the Notice of Arbitration were included in PDF and Word format. During a virus check of these two versions the relevant IT-Security officer of RESPONDENT managed to retrieve the Metadata of the Word file sent by CLAIMANT.

Attached to the document was the following comment, probably from Mr. Joseph Langweiler, judging by the initials.

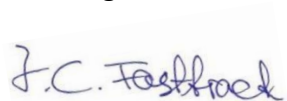
*"JL July 1, 2022*

*Verify with Findfunds LP whether there exist any contacts between Mr. Prasad and Findfunds LP. If contacts exist we should definitely do our best to keep the funding by Funding 12 Ltd. secret and*

*not disclose it to the Respondent, to avoid potential challenges of Mr. Prasad. Prasad, whom I know from two previous arbitrations with Findfunds LP, is the perfect arbitrator for our case given his view expressed in an article on concluding contracts by commercial customs.”*

We request to provide us with information regarding your involvement with Findfunds LP.

Kind regards,

A handwritten signature in blue ink that reads "J.C. Fasttrack". The signature is written in a cursive, slightly stylized font.

Julia Clara Fasttrack

Mr Rodrigo Prasad  
Prasad & Slowfood  
Nickol Palais 14  
Vindobona, Danubia

By email and courier

Joseph Langweiler  
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75 Court Street  
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langweiler@lawyer.me

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CC: Members of the Arbitral Tribunal

14 September 2022

**COV-Masks plc v. JAJA Clinic Group Corp.**

Dear Mr. Langweiler,  
Dear Ms. Fasttrack,  
Dear Colleagues,

In light of the information provided by Claimant upon the request of the Arbitral Tribunal in its letter of 12 September 2022, I would like to inform you that I have acted as arbitrator in two cases which were funded by other subsidiaries of Findfunds LP.

These two arbitrations involved none of the entities, persons or law firms which are participating in the present arbitration and the disputes related to completely different fields of law. Both arbitral proceedings were completed last month. In one of these proceedings Findfunds LP only entered into a funding agreement after the arbitral tribunal, including myself, had been appointed.

Furthermore, as you may have seen in the legal press and from the new letter head, with effect of 1 September 2022 my law firm has merged with Slowfood, a leading law firm from Ruritania to form Prasad & Slowfood. One of the former Slowfood partners is representing a client in an arbitration which has been funded by Findfunds LP. The oral hearing will be next week and the Parties will submit their post-hearing submissions by the end of November. All necessary precautions have been put in place to avoid any contact with that case.



I do not consider such funding to be of any relevance for the question of my impartiality or independence and such disclosure is only made for the utmost caution and in the interest of full transparency.

Kind regards,

A handwritten signature in blue ink, appearing to read 'Rodrigo Prasad', with a stylized, cursive script.

Rodrigo Prasad

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Mr Rodrigo Prasad  
Prasad & Slowfood  
Nickol Palais 14  
Vindobona, Danubia

CC: Members of the Arbitral Tribunal

24 September 2022

**COV-Masks plc v. JAJA Clinic Group Corp.**

Dear Mr. Langweiler,  
Dear Colleagues,

Please find enclosed our Notice of Challenge pursuant to Art. 13 UNCITRAL Arbitration Rules in the above referenced arbitral proceedings. We are confident that Mr. Prasad, after having become aware of Claimant's conduct underlying this challenge, will withdraw from his office.

Should Mr. Prasad, contrary to our expectations, not withdraw from his office we will ask a decision from the two other members of the Arbitral Tribunal.

Kind regards,



Julia Clara Fasttrack

JULIA CLARA FASTTRACK  
Advocate at the Court  
14 Capital Boulevard  
Oceanside, Equatoriana  
Tel. (0) 214 77 32; Telefax (0) 214 77 33  
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24 September 2022

*COV-Masks plc v. JAJA Clinic Group Corp.*

**Notice of Challenge of Mr. Prasad**  
(pursuant to Article 13 UNCITRAL Arbitration Rules)

Dear Colleagues,

1. We herewith challenge Mr. Prasad as arbitrator in the above referenced proceedings. There are serious and justifiable doubts as to his impartiality and independence resulting from his connections with the third-party funder Findfunds LP.
2. RESPONDENT is aware that this unfortunate situation giving rise to reasonable doubts as to Mr. Prasad's impartiality and independence is primarily due to CLAIMANT's unethical conduct of deliberately concealing the fact that it has received third-party funding from Findfunds LP. Given the egregious character of such conduct, RESPONDENT has little doubt that Mr. Prasad had no involvement in this plot and was probably unaware that CLAIMANT had received funding from a third-party funder.
3. Should Mr. Prasad not withdraw or CLAIMANT not agree to the challenge, we already hereby request the two other members of the Arbitral Tribunal to decide upon the challenge. RESPONDENT will definitively pursue the challenge. In light of the clear agreement of the Parties, that application of Article 13 (4) UNCITRAL Arbitration Rules should be excluded, the only body to decide the challenge is this Arbitral Tribunal, as is normal in ad hoc proceedings. That should be done without the participation of Mr. Prasad. If he were to decide on a challenge brought against him, he would be a judge in his own cause, something which should be avoided.
4. In deciding the challenge, the Arbitral Tribunal should take into account General Standard 7 (a) of the IBA-Guidelines on Conflict of Interest in International Arbitration, which evidences best practices in this regard. According to General Standard 7 (a) Party has to disclose that it is funded by a third party. CLAIMANT has deliberately not done so. Instead, CLAIMANT has tried to conceal such fact. Such unethical behavior must affect the standard to be applied for challenges against the arbitrator appointed by that party. Connections existing with such an unethically acting party gain a greater weight due to the complete annihilation of trust in the fair play by that party.

5. At least such conduct should be taken into account in determining whether, in the eyes of RESPONDENT, justifiable doubts exist as to Mr. Prasad's impartiality and independence. There can be no doubt about that. Already in "ordinary cases" the IBA-Guidelines consider repeat appointments by a party/law firm to be problematic. In the present case, Mr. Prasad had been appointed twice before by Mr. Langeweiler's law firm and two times by Findfunds LP. These appointments have to be added.
6. Furthermore, one of Mr. Prasad's partners is acting for a client in an arbitration which is funded by Findfunds LP. The IBA-Guidelines in para. 2.3.6. consider that to be an issue which disqualifies an arbitrator unless both Parties after having become aware of the case "expressly state their willingness to have such a person act as an arbitrator".
7. Lastly, RESPONDENT investigated the article referred to in the comment, which made Mr. Prasad such a "suitable" arbitrator in the eyes of CLAIMANT. In his article in the Vindobona Journal of International Commercial Arbitration and Sales Law Mr. Prasad positions himself very clearly in favor of the concept of concluding contracts through an established practice between the parties. It stands to reason that Mr. Prasad would consider the practice in former contractual relationships between the parties sufficient to affirm the claims as suggested by CLAIMANT.
8. In principle, each of these facts in itself is sufficient to justify a challenge, in particular taking into account that hardly any steps have been taken so far in the arbitral proceedings. Taken together they leave no doubt that in the eyes of a reasonable person in RESPONDENT's situation there are justifiable doubts as to Mr. Prasad's independence.
9. It follows from the above, that Mr. Prasad is not suitable to act as arbitrator in the present proceedings and should be replaced by a different arbitrator.

Kind regards,



Julia Clara Fasttrack

Mr Rodrigo Prasad  
Prasad & Slowfood  
Nickol Palais 14  
Vindobona, Danubia

By email and courier

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fasttrack@host.eq

CC: Members of the Arbitral Tribunal

26 September 2022

**COV-Masks plc v. JAJA Clinic Group Corp.**

Dear Mr. Langweiler,  
Dear Ms. Fasttrack,  
Dear Colleagues,

In its challenge of 14 September 2017 RESPONDENT raised doubts as to my impartiality and independence and therefore my suitability to continue to act as arbitrator in these arbitral proceedings. I naturally regret the unfortunate situation which has been created by the comment apparently made by CLAIMANT in its annotated version of the Notice of Arbitration. I have only become aware of the involvement of a third-party funder following RESPONDENT's message of 14 September 2022. At that stage, I immediately declared that I had acted in two arbitral proceedings as arbitrator appointed by parties which had been funded by entities which were 100% subsidiaries of Findfunds LP.

The two arbitrations with Findfunds LP involved none of the entities, persons or law firms which are participating in the present arbitration and the disputes related to completely different fields of law. Both arbitral proceedings were completed last month.

Furthermore, in one of these proceedings Findfunds LP only entered into a funding agreement after the arbitral tribunal, including myself, had been appointed.

In my view, these connections to Findfunds LP cannot lead to justifiable doubts as to my impartiality and independence. The IBA-Guidelines on Conflict of Interest, should they be applicable, include direct connections with third-party funders into those contacts which should be disclosed. In my case, there

are, however, already doubts whether I fall under the disclosure obligation since in both cases the funding was provided by a separate entity and not Findfunds LP directly.

In addition, the fact that circumstances should be disclosed does not mean automatically that they justify a challenge. Findfunds LP is known in the industry to take little influence on the actual conduct of the arbitration, in particular the appointment of the arbitrator. In one of the two cases, they only signed the funding agreement after I had been appointed. Consequently, my involvement in the other two cases would not give rise to justifiable doubts even if one were to equate Findfunds with its subsidiaries.

CLAIMANT's failure to disclose these circumstances does not justify a different conclusion. For the question of whether there are justifiable doubts as to my impartiality and independence, only my conduct and contacts can be relevant and not that of the party which appointed me.

Equally, I do not see why the remote connection to Findfunds LP which has been created through the merger of my previous law firm with Slowfood should create doubts as to my independence. Those connections clearly do not constitute a "significant commercial relationship with one of the parties, or an affiliate of one of the parties" (IBA-Guidelines on Conflict of Interest, para. 2.3.6).

Lastly, it is also generally recognized that publications, which treat a legal question in a general and abstract manner not connected to the case in question do not justify the challenge of an arbitrator. In my case the article was written and published in 2016, well before these arbitral proceedings were started and the opinion expressed in the article is not in any ways influenced by the case or will influence my decision in the case. In the publication, I have expressed my view that, in principle, the requirements for the conclusion of a contract may be lower due to an established practice between the parties beforehand. At the same time, I have, however, stated that this must be assessed on a case-by-case basis taking into account the circumstances of the individual case.

As a consequence of the above, and taking into account the importance of the right for each party to choose its own arbitrator, I will not withdraw from my office as arbitrator.

Kind regards,

A handwritten signature in blue ink, appearing to read 'Rodrigo Prasad', with a stylized flourish at the end.

Rodrigo Prasad

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CC: Members of the Arbitral Tribunal

29 September 2022

Dear Ms Fasttrack,  
Dear Colleagues,

We consider the challenge against Mr. Prasad to be devoid of any merits and therefore do not agree to it. It is an obvious attempt by RESPONDENT to derail these arbitral proceedings and to postpone the date when it will be ordered to pay the amount long overdue.

The facts submitted by RESPONDENT do not create any justifiable doubts as to Mr. Prasad's impartiality or independence.

First of all, there is no legal obligation for CLAIMANT to make any disclosure. Consequently, RESPONDENT – unsuccessfully – tries to deduce such an obligation from the IBA-Guidelines on Conflict of Interest. These are, however, not applicable to the present arbitration as Parties have never agreed upon their application.

Second, even if those rules were to be applicable, as is not the case, CLAIMANT had no obligation to disclose the funding let alone would a failure to make such a disclosure affect the standard relevant for a successful challenge. CLAIMANT had not been funded by Findfunds LP, but by Funding 12 Ltd. While Funding 12 has been set up by Findfunds, it is a completely separate legal entity and has never before appointed Mr. Prasad. Furthermore, RESPONDENT has not even alleged, let alone proven that the existing connections fulfill the requirement of materiality existing under the IBA-Rules.

The further factors invoked by RESPONDENT for its challenge are not only irrelevant but cannot be relied upon. They have been disclosed by Mr. Prasad in his Declaration of Impartiality and Independence and Availability as attached to CLAIMANT's Notice of Arbitration of 15 July 2022 either directly or, in case of the publications, were available on his website. As RESPONDENT did not invoke them at the time, it is barred to do so now.

The most obvious evidence for the purely dilatory character of the challenge is RESPONDENT's reliance on the connections allegedly created by the merger of the two law firms. RESPONDENT first

consented to Mr. Prasad's qualified declaration which allowed Mr. Prasad's existing partners to take on new work related to one of the parties in an arbitration. Now, however, RESPONDENT tries to fabricate a ground for challenge from the remote and previously existing contacts one of the new partners of Mr. Prasad has to Findfunds LP. Should RESPONDENT, as announced, nevertheless intend to pursue its challenge, the challenge must be decided by the full Arbitral Tribunal with the inclusion of Mr. Prasad and not a decision by the two remaining arbitrators. The only reason RESPONDENT alleges a deviation from the normal rule and insists on a decision by the two remaining arbitrators is, that Mr. Chavanne has articulated in an article a very critical view on third party funding, advocating inter alia extensive disclosure obligations.

CLAIMANT is happy to discuss this and/or other possible solutions in another telephone conference with the Arbitral Tribunal and RESPONDENT. CLAIMANT's counsel would make itself available at any time next week.

Sincerely yours,



Joseph Langweiler



**Prof. Nikolaus von Jacquin**  
Botanical Gardens 1  
1011 Vindobona  
Danubia

**By email and courier**

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Oceanside  
Equatoriana

**Arbitral Proceedings**

**COV-Masks plc (Claimant) v.  
JAJA Clinic Group Corp (Respondent)**

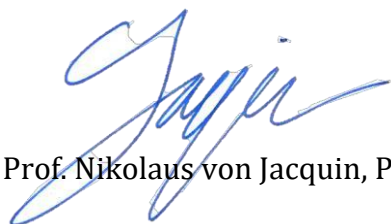
8 October 2022

Dear Colleagues,

Following yesterday's telephone conference, please find enclosed Procedural Order No. 1 in the above referenced arbitration proceedings.

Both Parties are requested to comply with the orders made and the Arbitral Tribunal reserves the right to draw negative inferences from any non-compliance with any part of Procedural Order No 1.

Kind regards,



Prof. Nikolaus von Jacquin, Presiding Arbitrator

Enclosed: Procedural Order No. 1

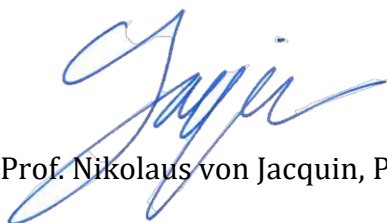
## **Procedural Order No 1**

of 8 October 2022  
in the Arbitral Proceedings

*COV-Masks plc v. JAJA Clinic Group Corp.*

1. The Arbitral Tribunal takes note of the fact that in the telephone conference of 7 October 2022 both Parties agreed:
  - Neither Party challenges the jurisdiction of this Arbitral Tribunal in principle but Respondent holds the view that the challenge of Mr. Prasad may only be decided upon by the other members of the Arbitral Tribunal without the participation of Mr. Prasad himself.
  - Both Parties agree that the arbitration agreement is subject to the CISG.
  - Both Parties agree that to speed up proceedings in case the challenge of Mr. Prasad should be successful, Claimant appoints already now Ms. Chian Ducasse as a potential replacement of Mr. Prasad. All submissions will be made available to her and she will be present at the oral hearing to be able to replace Mr. Prasad should the challenge be successful.
2. In the light of these agreements and considerations the Arbitral Tribunal hereby makes the following orders:
  - (1) In the Oral Hearing in Berlin the Parties are required to address the following issues:
    - a. Should the Arbitral Tribunal decide on the challenge of Mr. Prasad with or without his participation?
    - b. Should Mr. Prasad be removed from the Arbitral Tribunal?
    - c. Was a contract concluded between the Parties in 2021?
    - d. If a contract was concluded, were Claimant's General Conditions of Sale validly included into the alleged contract?
  - (2) It is undisputed between the Parties that Equatoriana, Mediterraneo, Ruritania and Danubia are Contracting States of the CISG. The general contract law of all four states is a verbatim adoption of the UNIDROIT Principles on International Commercial Contracts. All four countries are Member States of the New York Convention and their national arbitration law is a verbatim adoption of the UNCITRAL Model Law on International Commercial Arbitration with the 2006 amendments.
3. Both Parties are invited to attend the Oral Hearing scheduled for 17 March 2023 in Berlin. The details concerning the timing and the venue will be provided in due course.

Berlin, 8 October 2022



Prof. Nikolaus von Jacquin, Presiding Arbitrator