IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH

[Through Physical hearing/ VC Mode (Hybrid)]

ITEM No.29
Contempt Application 06/2025
CA 109/2025, 118/2025, 138/2025,
141/2025, 173/2025, 38/2026
CP No. 64/BB/2025

IN THE MATTER OF:

AIR Works UK Engineering Ltd ... Applicant
Vs.
M/s Acumen Technical Advisory Pvt Ltd & Ors ... Respondent

Petition under Sec 213(B) of CA 2013

Order delivered on: 26.05.2026

CORAM:

SHRI SUNIL KUMAR AGGARWAL
HON'BLE MEMBER (JUDICIAL)

SHRI RADHAKRISHNA SREEPADA
HON'BLE MEMBER (TECHNICAL)

COUNSELS PRESENT:

For the Petitioner : Shri. Karan Kaul
For the Respondent : Shri. Manesh Kangovi

ORDER

1. Heard the Ld. Counsels appearing for the petitioner and the respondents.
2. CA 109/2025, CA 118/2025 and CA 138/2025 are dismissed, vide separate orders.
3. List the matter on **16.07.2026** for arguments on rest of the matter.

-Sd-
RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)

-Sd-
SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)

Jones

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Hearing conducted through Hybrid mode)

C.A No.118 OF 2025
IN
C.P. No.64/BB/2025

Under Section 45 of the Arbitration and Conciliation Act 1996
Read with Rule 11 of NCLT Rules, 2016

IN THE MATTER OF:

1. Ms. Vishrutha Dhruva
3485, 14th Main, HAL 2nd Stage,
Indiranagar,
Bengaluru - 560038 --- Applicant No.1

2. Mr. Amit Kumar Tyagi
D202, the Icon Apartment,
Thanisandra Main Road,
Next to Elements Mall,
Bengaluru, Karnataka - 560077 --- Applicant No.2

Versus

1. AIR WORKS UK ENGINEERING LIMITED
Registration no. 07096718
1st Floor Prospect House,
Rouen Road, Norwich,
NRl1RE England --- Respondent No.1

2. ACUMEN TECHNICAL ADVISORY PRIVATE LIMITED
1201, 2nd Floor, Divya Shakti Building,
100 Ft. Road, Indiranagar,
HAL 2nd Stage, Bengaluru,
Karnataka, India, 560038 --- Respondent No.2

3. Mr. Alok Anand
3485, 14th Main,
HAL 2nd Stage,
Indiranagar, Bengaluru - 560038. --- Respondent No.3

Order delivered on: 26.05.2026

CORAM: 1. Hon'ble Shri Sunil Kumar Aggarwal, Member (Judicial)
2. Hon'ble Shri Radhakrishna Sreepada, Member (Technical)

COUNSELS PRESENT:

For Applicants in C.A : Mr. Vegadarshi.K
For Respondents No.1 & 2 in C.A : Ms.Lisa Mishra

O R D E R

PER RADHAKRISHNA SREEPADA, MEMBER(TECHNICAL):

1. The Company Application bearing C.A No.118 of 2025 is filed by Vishrutha Dhruva and another (hereinafter referred as "Applicants") under Section 45 of the Arbitration and conciliation Act, 1996 read with Rule 11 of the National Company Law Tribunal, 2016 against **AIR Works UK Engineering Limited and another** (hereinafter referred as "Respondents").
2. Facts of the case as mentioned by the Applicants in this application are:
   a. The Respondent No.1 has filed a main petition under Section 213 of the Companies Act, 2013 seeking an investigation of affairs of Respondent No.2 i.e., M/s. Acumen Technical Advisory Private Limited (ATAPL). The Applicants are also arrayed as Respondents No.3 & 4 in the said petition. The Respondent No.3 is the Chief Executive Officer and Applicant No.1 & 2 are the parties to the SHA and are also holding employment at ATAPL. The Applicants are shareholders (directly or indirectly) of Acumen Aviation Europe Limited (AAEL) which is holding company of ATAPL. The Respondent No.1 is also shareholder of AAEL. The relationship inter-se the shareholders of AAEL is governed by the Shareholder's Agreement dated 05.03.2015.
   b. It is stated that the said petition has been filed on baseless allegations and conjectures. The maintainability of the said petition itself is seriously disputed not only because the Respondent is a defaulting debtor who is abusing the process of law to circumvent their obligations, but also in light of the arbitration agreement between the parties under the SHA.
   c. The Respondent No.1/Petitioner approached the then directors of Respondent No.2 as potential strategic investors. Being desirous of being part of the market boom in the aviation industry, Respondent No.1 between 2015 - 2017 invested around USD 6,200,000 in

Respondent No. 2 acquiring 50% of its equity. Consequently, on 10.02.2015, a Share Purchase Agreement was entered into for the purpose of sale of 50% of equity in Respondent No. 2 to Respondent No.1. On 05.03.2015, a Shareholders Agreement i.e. the SHA came to be executed amongst the Shareholders of Respondent No.2. Subsequently, the SHA dated 05.03.2015 was amended on several occasions between 2016 and 2019. The SHA interalia provides for the rights and obligations of the shareholders regarding the ownership, governance and management of Respondent No.2 and its subsidiaries which provides technical asset management, data management and aviation consultancy services.

d. It is submitted that as can be seen from a bare reading of the said Petition, the Respondent No. l's grievance is with its rights under the SHA and its alleged violation. The Respondent has made out not case for any violation of the Companies Act, 2013 before this Hon'ble Tribunal. The entire petition in its sum and substance is an allegation of breach of the said SHA and is an action arising out of and from the said allegations of the said SHA.

e. The said Petition makes repeated reference to the rights and obligations of the parties in the said SHA as can be seen below:

"A. Rights and obligations under the SHA

12. The SHA sets out the rights and obligations inter-se AW UK, Acumen and Respondent Nos. 2 to 4 not only in respect of Acumen, but also its subsidiaries - including with respect to board composition, management, affirmative voting actions, etc. The SHA states that any reference to Acumen (referred to as the 'Company' in the SHA) shall "unless repugnant to the meaning or context thereof be deemed to include its subsidiaries, Affiliates, joint ventures and their successors in interest and permitted assigns".

13. Clause 2.1 of the SHA states that the Acumen board shall comprise a maximum of 6 (six) directors, with equal representation between AW UK and Respondent Nos. 2 to 4. In terms of the SHA,

the equal representation on the board of directors is also applicable in respect of the subsidiaries of Acumen (including Respondent No.1).

14. Clause 2.6.1 of the SHA states that the AW UK nominees shall be non-executive directors and shall have no responsibility for the day-today management. This is supplemented by Clause 4.1.4 of the SHA which states that the managing director (i.e., Respondent No.2 as the CEO of Respondent No.1) shall have overall day-to-day management and control over the affairs of Acumen and its subsidiaries including marketing, budgetary and operations. Presently, the Petitioner has also two nominee directors on the board of Respondent No.1. These directors do not have any control over the affairs of the Respondent No 1 Company nor are they involved in the day-to-day affairs.

15. An extensive list of 'affirmative vote matters' is set out at Clause 3.2 of the SHA, which require the assent of AW UK nominee directors on the Acumen board to pass through. Importantly, the right of AW UK to exercise these powers under Clause 3.2 extends to the subsidiaries of Acumen as well. These include matters relating to management, accounts, budgets, accounting policies, annual accounts, share capital, borrowings, related party transactions, investments, settlements, compromises, and litigation. As per Clause 3.1 of the SHA, any other matters not requiring an affirmative vote of AW UK nominees can be passed by way of a simple majority. The affirmative voting rights set out in Clause 3.2 of the SHA are applicable to general meetings and board meetings conducted in Acumen and its subsidiaries.

16. Clause 6.1 of the SHA states that Acumen shall ensure that the accounts, records, and accounting information of Acumen and its subsidiaries are maintained properly. Under Clause 6.2.1 of the SHA, Acumen and its subsidiaries must provide representatives of the Petitioner access to their accounts, records, etc.

17. Clause 8.1 of the SHA sets out certain covenants that bind Acumen, Respondent Nos. 2 to 4. These include compliance with all laws and government authorisations, managing the business in an efficient and proper manner in accordance with business plans, adopting a professionally managed board structure and inter alia, reporting related party transactions to the Acumen board. Under

Clause 8.2 of the SHA, Respondent Nos. 2 to 4 have undertaken to use their best efforts, skills and endeavours to develop the Business and interest of the Company."

f. Further, the Respondent No. 1 makes repeated reference to alleged violations of obligations under the said SHA as can be illustratively seen below:

"47 . ... The Petitioner was surprised by this because, both the SHA and AoA of the Respondent No.1 state in no uncertain terms that there can be no modification of the terms of employment and/ or remuneration of the key management and directors, without the affirmative vote of the Petitioner's nominees on the board of Acumen ..."

"94 .... The Interim Report observed that bonuses were being paid to Respondent No.2 and 3 without proper performance evaluations and the requisite approval from the board. This is a clear violation of the SHA and AoA. ..

111. . .. The language used by Respondent No.3, demonstrates a complete disregard for the seriousness of the issues at hand, the decorum expected in such correspondence, and the legal obligations imposed under the SHA as well applicable law including but not limited to acting with integrity, upholding ethical standards and probity, etc. The tone and content of the response not only trivialize the Petitioner's genuine attempt to resolve matters amicably but also cast aspersions on the Petitioner's integrity and their reputation before an international audience of stakeholders. Such conduct is clearly in breach of the implied duties of good faith, fairness, and professionalism embedded within the SHA and governing law, and reflects a wilful intent to derail any meaningful discussion ... "

"124 .... It is submitted that these practices represent breaches of fiduciary duties and are in clear violation of statutory obligations under the Companies Act. Such conduct compromises the principles of corporate governance, threatens the financial integrity of the company, and prejudices the interests of its shareholders ... "

g. The payments allegedly wrongly made to certain persons who are shareholders / promoters of the AAEL cannot, by any stretch of imagination, be faulted under the Companies Act. The allegation of the Petitioner too is that these are breaches and violations under

the SHA. Needless to mention, all these contentions are denied by the Applicants as being entirely false and baseless. However, the Petitioner's attempts to file proceedings before this Hon'ble Court raising disputes regarding the SHA are deprecable.

h. The allegations made in the present Petition as to alleged agreed amounts to be paid to shareholders / promoters and their alleged violations, are all issues that are decided amongst the shareholders and all under the SHA. These aspects, with respect, cannot be summarily decided by a biased auditor in its draft interim internal audit report or by this Hon'ble Tribunal. These can only be referred to arbitration under the SHA.

i. It is further submitted that the disputes inter-se the Applicants and the Respondent is not limited to one forum or one country. Currently, AP.IM 5/2025 which is filed under Section 9 of the Arbitration and Conciliation Act, 1996 by AVDT Ventures LLP against the Respondent No. 1 and other is pending before the Hon'ble High Court of Karnataka. In the petition before the Hon'ble High Court, any actions proposed to be taken by the Respondent in a board meeting dated 28.05.2025 is made subject to the outcome of the petition therein.

j. It is further submitted that in Ireland, where the head office of the holding company of Respondent No.2 is based, several legal notices have been exchanged between the counsel for AAEL and the Respondent No.1 herein. In the letter dated 15.05.2025, issued by the Respondent No. l's counsel, there is specific reference to and acceptance of binding nature of the arbitration agreement under Clause 17.8.2 of the said SHA. The proposal to agree on terms of reference to arbitration vide letter dated 23.05.2025. The Respondent No.1 now cannot attempt to back track from their admissions in relation to arbitrability of the disputes.

k. The above-mentioned proceedings as also the legal notices exchanged, are all demonstrative that a serious concern and issue

raised is with respect to the Respondent No-l's actions pursuant to a biased draft internal audit report. This report is the basis for the proceedings initiated by the Petitioner before this Hon'ble Tribunal. Despite the express, valid and binding arbitration agreement in Clause 17.8.2 between them, the Respondent No. 1 has indulged in malicious prosecution by way of the said Petition only to embroil and harass the Applicants with litigation and coerce them into meeting its unjust demands under the threat of invasive interim reliefs that the Respondent No.1 is wrongly pursuing before this Hon'ble Tribunal. This clearly shows that the Petitioner is attempting to mischievously wrest control of the Respondent No.1 Company under the garb of shareholder activism. The matter in dispute, for which the Respondent No.1 has erroneously brought an action by way of the said Petition before this Hon'ble Tribunal, is also subject of the arbitration agreement between the Parties. In fact, any and all claims, disputes, differences and disagreements between the parties arising out of or in connection form subject of the arbitration agreement under Clause 17.8.2. The reliefs sought by the Respondent No. 1 are, also, admittedly arising from the alleged rights and obligations of the parties under the said SHA.

l. It is a settled position in law that once it is established prima facie that a valid arbitration agreement exists, a court shall refer the /parties to arbitration when a party to the arbitration agreement applies for such reference of the matter that forms subject of the arbitration agreement. In the instant case, the existence and validity of the arbitration agreement contained in the Clause 17.8.2 the said SHA is admitted. In fact, the Respondent No. 1 has referred to, asserted and accepted the arbitration agreement in their letter dated 15.05.2025. The question of arbitrability of allegations of fraud (albeit untrue) is also now well-settled. A party cannot seek to avoid arbitration unless they demonstrate that the alleged fraud goes to the root of the existence of the arbitration

agreement itself. There are in any event no pleadings to that effect in the said Petition. Moreover, the Petitioner does not allege violation of any right in *rem* anywhere in the Petition. A bare perusal of the averments contained in the Petition discloses in no uncertain terms that the Petitioner is at best alleging violation of its individual rights as a shareholder, which is indeed Arbitrable. Hence, this Hon'ble Tribunal ought to refer the parties to arbitration to have all their respective claims, counterclaims and disputes against each other adjudicated upon by a lawfully constituted arbitral tribunal.

m. The Applicants most humbly reserve their right to comprehensively contest the allegations and claims of the Respondent No.1 as well as raise its own claims against the Respondent No.1 before the lawfully constituted arbitral tribunal. Anything else would lead to multiplicity of proceedings and potentially contradictory findings. The Applicants most humbly further reserve their right to aver additional facts, raise additional claims, produce additional documents and urge additional grounds in support of its case on merits at a later point in time. The present Application is being filed without prejudice to the Applicant's claims, contentions, entitlement, interests, rights and remedies, in law and equity.

n. The Applicants have an excellent case on merits of its claims against the Respondent No.1 as well as this Application per se too. The balance of convenience, also, lies in favour of allowing this Application. If the application is allowed, no prejudice or harm or damage will be caused to the Respondent No.1 who will still have an opportunity to present its case before a duly constituted arbitral tribunal. Per contra, if this Application is refused, the Applicants will be unjustifiably denied recourse to arbitration for adjudication and determination of all claims and disputes between the Parties. Additionally, despite all claims and disputes inter-se arising out of or in connection with the said SHA itself, the Applicants will be

forced to inter-alia (a) invest lot of time, money, effort and resources into participating and proving its case on merits against the Respondent No.1 in multiple proceedings, (b) endure trial on more than one occasion, and (c) even risk possibility of conflicting decisions being arrived at. The Applicants would, thus, be exposed to suffering grave prejudice, severe losses and irreparable damage if this Application is not favourably considered.

3. Reply in Affidavit vide Dy.No.4192 dated 31.07.2025 is filed by the Respondent No.1 vide Dy.No.4192 dated 31.07.2025 contending as under:

   a. It is submitted that all the allegations, contentions, insinuations, and averments made in the Application are denied except for matters which form part of the record or expressly admitted herein below. None of the allegations, contentions, insinuations, and averments in the Application are admitted or should be deemed to have been admitted by the specific traverse or otherwise. The Respondent further reserves the right to add, amend, supplement, or modify this response if necessary and/ or so directed by this Hon'ble Tribunal.

   b. It is submitted that the Application fails to satisfy any of the ingredients which are *sine qua non* for reference to arbitration. The Application is a *malafide* attempt to abuse the process of law and part of the dilatory tactics deployed by Applicants to delay hearing of reliefs sought by the Respondent. The Respondent also seeks to rely on the contents of the filings made by it before this Hon'ble Tribunal, including but not limited to the captioned petition the contempt petition and the supplementary affidavits.

   c. The reliefs sought in the Petition are for direction of an investigation into the affairs of Acumen Technical Advisory Private Limited ("ATAPL/"Respondent No. 2/"Respondent No. 1 in the Petition") and the actions of the Chief Executive Officer of ATAPL, Mr. Alok Anand ("Respondent No.3/"Respondent No. 2 in the

Petition"/ "CEO") and the Applicants in connection with the operations and running of the Respondent No. 1 in terms of Section 213(b) of the Companies Act, 2013 ("Companies Act") and subsequent directions. By no stretch of imagination can an arbitral tribunal grant any semblance of the reliefs that are sought by the Answering Respondent by invoking the jurisdiction of this Hon'ble Tribunal under Section 213(b). This is a statutory remedy which cannot be granted by a private arbitral tribunal.

d. It is submitted that the Application appears to be an afterthought aimed at delaying the proceedings. On the first date of hearing of the Petition, the Applicants raised objections on maintainability of the Petition only on the grounds that the Petitioner did not purportedly meet the threshold under Section 213(b) of the Companies Act. However, the subsequent introduction of other objections and seeking for referral of the instant matter to arbitration are a dilatory tactic to protract the proceedings. It is submitted that this conduct undermines the principles of procedural fairness and is indicative of an attempt by the Applicants to impede the timely resolution of the matter.

e. The requirement of 213(b) is to show that there are *"circumstances suggesting that",* there has been fraud, misfeasance or misconduct towards a company. It is submitted that this has been shown in the Petition in copious detail and the Petitioner is not calling upon this Hon'ble Tribunal to adjudicate any 'dispute' between the parties. It is respectfully submitted that this Hon'ble Tribunal, though vested with adjudicatory powers under the Companies Act as a specialized guasz-judicial body and cannot be regarded as a *"judicial authority"* within the meaning of Section 45 of the Arbitration Act. As such, the instant application cannot lie before this Hon'ble Tribunal.

f. It is submitted that the reliefs sought in the petition are statutory reliefs under the Companies Act and are exclusively within the

domain of this Hon'ble Tribunal to grant. A bare perusal of the reliefs above unequivocally establishes that they can only be granted by this Hon'ble Tribunal. It is submitted that the Petition clearly shows that that there are circumstances that strongly suggest that the persons concerned in the management of ATAPL, being the CEO, Ms. Nitu Rani (company secretary of ATAPL), the Applicants and other unknown persons, are guilty of serious fraud, misfeasance, and misconduct towards the company and the Answering Respondent.

g. The interim audit report dated 27.02.2025 also reveals serious financial irregularities, including but not limited to misappropriation and misuse of company funds by availing reimbursements towards personal expenditures under the guise of Company operations. For instance, (a) hotel expenses in excess of INR 50,00,000 without submitting supporting documents over the years, and (b) alcohol, smoking, and cigar related expenses in excess of approx. INR 2,25,000, reimbursed by the company despite prohibition to this effect under company policy amongst others.

h. It is submitted that only an investigation can bring out the truth of actions undertaken by the CEO and Applicants, and that such an investigation is required to be conducted by the Central Government. This is given that the internal auditor is not a statutory authority and was limited by the impediments caused by the management. This is also necessary to get to the root of matter given that there are several other actors involved in the wrongdoing including the finance controller(s), company secretary and other employees/ executives. It is submitted that the statements of the internal auditor while submitting the Interim Audit Report show that *inter alia* there are malpractices including usage of company resources for personal gains by the management and that these findings are only the tip of the

iceberg. To uncover the true details, further investigation is required by the concerned authorities. It is submitted that a direction to the Central Government under Section 213(b) of the Companies Act can only be granted by this Hon'ble Tribunal.

i. It is submitted that the CEO and the Applicants have been arrayed not only in their capacity as direct and indirect shareholders of Acumen Ireland, but also as members of the board of directors, key managerial personnel of ATAPL, and holders of key employment roles with substantive decision-making authority. As such, both the CEO and the Applicants must be held legally accountable for their actions in these capacities. It is reiterated that the subject matter before this Hon'ble Tribunal extends far beyond the scope of any private arbitration clause. The violation of statutory and fiduciary duties are not encompassed within the terms of the shareholders' agreement dated 05.03.2015, and as such cannot be resolved or even partially adjudicated by a private arbitral tribunal given that *inter alia,* these are violations under law are not covered by the terms of the SHA.

j. The Applicants have also failed to take into account that the company secretary of ATAPL, Ms. Rani has been sought to be arrayed as a party as proposed Respondent No. 6 in the Petition. The impleadment application (bearing no. *IA (Companies Act) /6 /BEN /2025)* to implead Ms. Rani was filed on 05.06.2025. This application was registered and numbered on 25.06.2025. It is submitted that the captioned Application has only been filed and registered (on 04.07.2025) nearly one month after the impleadment application was filed. It is submitted that the Applicants have been well aware of the pendency of the said application and have deliberately excluded any mention of her in the present Application.

k. Ms. Rani has been serving as the company secretary of ATAPL since 05.02.2019. As the company secretary, she holds a

statutory and fiduciary responsibility to ensure compliance with the Companies Act, maintenance of statutory records, and adherence to applicable secretarial standards and governance practices, etc. However, her continued and consistent conduct demonstrates that she has acted not as an independent officer of the ATAPL, but at the behest of the CEO and Applicants, aiding and enabling the very mismanagement and misconduct that the Petitioner has brought before this Hon'ble Tribunal. Her conduct, detailed in the impleadment application is not reiterated for the sake of brevity. It is for this reason as well that the present application cannot be considered much less entertained and/ or allowed.

l. It is submitted that in addition to the actions of the Applicant No. 1 and the CEO which have been detailed in the Petition, there have been additional contemptuous and suspicious actions by the above during the pendency of the present Petition. One such action was the misrepresentation made before this Hon'ble Tribunal regarding an email from Grant Thornton Ireland (LLP) which allegedly faulted the Interim Audit Report. It is submitted that when the Answering Respondent questioned Grant Thornton Ireland (LLP), it came to light that the GT Email did not fault the Interim Audit Report. The Answering Respondent has already filed a contempt petition to highlight the misrepresentations by the CEO and Applicant No. 1 before this Hon'ble Tribunal in the Petition. This Hon'ble Tribunal was pleased to issue notice in the contempt petition, which is currently pending adjudication.

m. It is submitted that the Petition along with the associated applications and affidavits show a series of misconduct, serious breach of various laws, public interest concerns, etc., which require an investigation under the Companies Act and cannot be adjudicated on by an arbitral tribunal, let alone grant the reliefs sought in the Petition.

4. The Applicant has also filed the rejoinder to the reply reiterating the facts mentioned in the application. The same is taken on record.

5. **ANALYSIS**:

We have heard the Learned Counsel for the Applicant and gone through the material available on record. It is true that the SHA contains a clause dealing with Arbitration. Mere existence of such a clause does not make it Obligatory to make reference to Arbitration. The Issues relating to Corporate governance are issues in Rem and the relief contemplated under various provisions of the Companies Act, 2013 cannot be hoped to be provided or given under an Arbitration exercise.

6. The conceptual foundation for determining arbitrability in Indian law was articulated by the Supreme Court in ***Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd***. The same is reproduced below

> 22. Arbitral tribunals are private fora chosen voluntarily by the parties to the dispute, to adjudicate their disputes in place of courts and tribunals which are public fora constituted under the laws of the country. Every civil or commercial dispute, either contractual or non-contractual, which can be decided by a court, is in principle capable of being adjudicated and resolved by arbitration unless the jurisdiction of arbitral tribunals is excluded either expressly or by necessary implication. Adjudication of certain categories of proceedings are reserved by the Legislature exclusively for public fora as a matter of public policy. Certain other categories of cases, though not expressly reserved for adjudication by a public fora (courts and Tribunals), may by necessary implication stand excluded from the purview of private fora. Consequently, where the cause/dispute is inarbitrable, the court where a suit is pending, will refuse to refer the parties to arbitration, under section 8 of the Act, even if the parties might have agreed upon arbitration as the forum for settlement of such disputes. The well recognized examples of non-arbitrable disputes are : (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding up matters;(v) testamentary matters (grant of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory

protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes.

23. It may be noticed that the cases referred to above relate to actions in rem. A right in rem is a right exercisable against the world at large, as contrasted from a right in personam which is an interest protected solely against specific individuals. Actions in personam refer to actions determining the rights and interests of the parties themselves in the subject matter of the case, whereas actions in rem refer to actions determining the title to property and the rights of the parties, not merely among themselves but also against all persons at any time claiming an interest in that property.

Correspondingly, judgment in personam refers to a judgment against a person as distinguished from a judgment against a thing, right or status and Judgment in rem refers to a judgment that determines the status or condition of property which operates directly on the property itself. (Vide : Black's Law Dictionary). Generally and traditionally all disputes relating to rights in personam are considered to be amenable to arbitration; and all disputes relating to rights in rem are required to be adjudicated by courts and public tribunals, being unsuited for private arbitration. This is not however a rigid or inflexible rule. Disputes relating to sub-ordinate rights in personam arising from rights in rem have always been considered to be arbitrable.

7. In **NAGREEKA INDCON PRODUCTS PVT. LTD. Vs/ CARGOCARE LOGISTICS (INDIA) PVT. LTD** on **April 17, 2026** [2026 Live Law (SC) 388] Hon'ble SC held

"…the words used in the agreement should disclose a determination and obligation to go for arbitration and not only provide for the possibility of going to arbitration. When the word provides only a possibility, the same does not constitute a valid arbitration agreement.", the court endorsed the observation made in Jagdish Chander v. Ramesh Chander, 2007 (5) SCC 719. Reference may also be made to the recent judgment of Alchemist Hospitals Ltd. v. ICT Health Technology Services India (P) Ltd., 2025 LiveLaw (SC) 1070, where the Court tried to connect the analogy that "mere use of the word 'arbitration" is not sufficient to treat the clause as an arbitration agreement when the corresponding mandatory intent to refer the disputes to arbitration and the consequent intent to be bound by the decision of the arbitral tribunal is missing."

Sujata Manohar J., in K.K. Modi (supra) spelt out the requirements of such a clause in the following terms:

"17. Among the attributes which must be present for an agreement to be considered as an arbitration agreement are:
(1) The arbitration agreement must contemplate that the decision of the tribunal will be binding on the parties to the agreement,
(2) that the jurisdiction of the tribunal to decide the rights of parties must derive either from the consent of the parties or from an order of the court or from a statute, the terms of which make it clear that the process is to be an arbitration,
(3) the agreement must contemplate that substantive rights of parties will be determined by the agreed tribunal,
(4) that the tribunal will determine the rights of the parties in an impartial and judicial manner with the tribunal owing an equal obligation of fairness towards both sides,
(5) that the agreement of the parties to refer their disputes to the decision of the tribunal must be intended to be enforceable in law and lastly,
(6) the agreement must contemplate that the tribunal will make a decision upon a dispute which is already formulated at the time when a reference is made to the tribunal."

These requirements have been repeatedly restated. [See: Encon Builders (I) (P) Ltd (supra) ;Alchemist Hospitals Ltd. v. ICT Health Technology Services India (P) Ltd.22 and M.P. Rajya Tilhan Utpadak Sahakari Sangh Maryadit v. Modi Transport Service23]. In Jagdish Chander (supra), recently followed in BGM and M-RPL-JMCT(JV) (supra) the Court set out what constitutes an arbitration agreement. Raveendran J., writing for the Court, held that the words used in the agreement should disclose a determination and obligation to go for arbitration and not only provide for the possibility of going to arbitration. When the word provides only a possibility, the same does not constitute a valid arbitration agreement.
3. Turning to the words used in Clause 25, we find it to stipulate to the effect that if there is any dispute between the parties, they can settle the same by arbitration. In view of Jagdish Chander (supra) which holds as under: "(iv) But mere use of the word "arbitration" or "arbitrator" in a clause will not make it an arbitration agreement, if it requires or contemplates a further or fresh consent of the parties for reference to arbitration. For example, use of words such as "parties can, if they so desire, refer their disputes to arbitration" or "in the event of any dispute, the parties may also agree to refer the same to arbitration" or "if any disputes arise between the parties, they should consider settlement by

> arbitration" in a clause relating to settlement of disputes, indicate that the clause is not intended to be an arbitration agreement. Similarly, a clause which states that "if the parties so decide, the disputes shall be referred to arbitration" or "any disputes between parties, if they so agree, shall be referred to arbitration" is not an arbitration agreement. Such clauses merely indicate a desire or hope to have the disputes settled by arbitration, or a tentative arrangement to explore arbitration as a mode of settlement if and when a dispute arises. Such clauses require the parties to arrive at a further agreement to go to arbitration, as and when the disputes arise. Any agreement or clause in an agreement requiring or contemplating a further consent or consensus before a reference to arbitration, is not an arbitration agreement, but an agreement to enter into an arbitration agreement in future."

The copy of the Shareholder's Agreement dated 05.03.2015 is annexed and marked as Annexure-A (Page 11 to 108) of the application. In the light of the Hon'ble Supreme Court decision above, We examine the Clause 17.8.2 of the Share Holder Agreement**.**

The Clause is reproduced below

> **17.8.2 Arbitration**
>
> **Disputes that arise pursuant to this Agreement shall be resolved by arbitration under the provisions of the London Court of International Arbitration and any amendment or succeeding legislation thereto in accordance with Article 17.8.2 to Article 17.8.5 (inclusive). The arbitration shall be conducted by a panel of three arbitrators, with the two sides to the Dispute appointing one arbitrators each and the two arbitrators so appointed by each side to the Dispute shall appoint the third arbitrator.**

Clearly this clause does not satisfy the Criteria laid down to be attributes which must be present for an agreement to be considered as an arbitration agreement. Consequently, they cannot be considered to disclose a determination and obligation to go for arbitration and not only provide for the possibility of going to arbitration. When the word provides only a possibility, the same does not constitute a valid arbitration agreement

8. **DECISION**: Respectfully following the above decision and on detailed analysis, We hold that the Clause 17.8.2 in SHA does not satisfy the Criteria laid down by the Hon'ble Supreme Court to be interpreted as an agreement to decide the issues through Arbitration.

In view of this We decline to allow this application and reject the Prayer for making a reference of the matter to Arbitration.

9. In the Result the CA in 118/BB/2025 is **DISMISSED**, No Order as to Costs.

-Sd-
RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)

-Sd-
SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)