Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION (L) NO.14011 OF 2026

WITH

INTERIM APPLICATION (L) NO.17387 OF 2026

Shiv Keshrimal Agrawal,
Son of Sh. Keshrimal Agrawal
Age 49 years, PAN No. ABQPA7438K
Residing at A-1901, Chandak Stella
Goregaon (West), Mumbai 400 104 **… Petitioner**

Vs.

1. **Farma Hub Overseas Private Limited**,
A Company incorporated under the
Companies Act, 2013
CIN: U24299UR2021PTC011972
having its registered office at
Dwarika Majri B. Bad, Haridwar,
Uttarakhand 249 402

2. **Ashish Virmani**, Age 44 years,
Son of Sh. Avinash Virmani,
DIN: 01562520, PAN No.ADXPV1711F
Director and Member of Farma Hub
Overseas Private Limited, Residing at
House No.757, Model Colony,
Avas Vikas, Jwalapur, Haridwar,
Uttarakhand 249 407

3. **Mansi Virmani**, Age 40 years,
Daughter of Sh. Brij Mohan Sharma
DIN: 08184172, PAN: ADSPV4073F,
Director and Member of Farma Hub

Overseas Private Limited, R/at:
House No.757, Model Colony,
Avas Vikas, Jwalapur, Haridwar,
Uttarakhand 249 407 **... Respondents**

Mr. Vyom Shah with Ms. Bindu Parikh i/by Khare Legal Chambers for the petitioner.

Mr. Akash Shah with Mr. Dhanvanti Kharva for the respondents.

CORAM : AMIT BORKAR, J.

RESERVED ON : JULY 24, 2026.

PRONOUNCED ON : JULY 30, 2026

JUDGMENT:

1. The Petitioner has filed this Petition under Section 9 of the Arbitration and Conciliation Act, 1996, seeking urgent interim protection from this Court before the disputes between the parties are decided through arbitration. According to the Petitioner, the disputes arise out of the Shareholders' Agreement dated 15 February 2024 ("SHA.1") and the Additional Shareholders' Agreement dated 29 August 2024 ("SHA.2"), executed between the parties in relation to Farma Hub Overseas Private Limited. The Petitioner relies upon Clause 21 of SHA.1, which provides that any dispute relating to the rights, duties, obligations, or any matter arising out of the agreement shall be referred to arbitration in accordance with the Arbitration and Conciliation Act, 1996. The said clause further provides that the arbitration shall take place in Maharashtra and Uttarakhand unless otherwise agreed by the parties.

2. According to the Petitioner, the above clause is a valid and binding arbitration agreement within the meaning of Section 7 of the Arbitration and Conciliation Act, 1996. It is the Petitioner's case that the disputes raised in the present Petition are covered by the said arbitration clause and are therefore capable of being decided by the Arbitral Tribunal. The Petitioner submits that this Court has jurisdiction to entertain the present Petition because Clause 21 of SHA.1 provides that the seat of arbitration shall be in Maharashtra. It is also stated that the Petitioner resides and carries on business in Mumbai and that the financial loss and prejudice complained of have also arisen within the jurisdiction of this Court.

3. The Petitioner, Mr. Shiv Keshrimal Agrawal, is an Indian citizen aged about 49 years and resides at Goregaon, Mumbai. He was appointed as a Director of Respondent No. 1 Company with effect from 15 February 2024. He also holds 3,30,000 fully paid equity shares of Rs.10 each, which constitute 33% of the total shareholding of the Company. According to the Petitioner, he is one of the parties to the Shareholders' Agreements and all the rights and obligations under those agreements are binding upon him as well as the Respondents. Respondent No. 1, Farma Hub Overseas Private Limited, is a private limited company incorporated under the Companies Act, 2013. Its registered office is situated at Haridwar in the State of Uttarakhand. The Company is engaged in the business of manufacturing and selling medicines, cosmetics, nutraceuticals, chemicals, and pharmaceutical ingredients. The authorised as well as paid up share capital of the Company is Rs.1 Crore divided into 10 lakh equity shares of Rs.10 each. The Company has secured borrowings of about Rs.5.14 Crore from Bank of Baroda besides unsecured loans from related parties. Its manufacturing unit is situated on land bearing Khasra No. 882 at Village Salempur Mehdood II, Haridwar.

4. The first grievance of the Petitioner relates to the transfer of rights in the land on which the factory of Respondent No. 1 has been constructed. According to the Petitioner, Clause 6(c) of SHA.1 required Respondent No. 3, within two years from the date of the agreement, to include the Petitioner as a party to the original sale agreement or sale deed relating to the said land. The land presently stands in the name of Respondent No. 3, who has leased it to the Company without charging any rent. The agreement further provides that when the Company becomes financially capable, the land would be transferred to the Company. Until such transfer takes place, Respondent No. 3 was required to make the Petitioner and another Director parties to the original sale documents. The Petitioner alleges that this obligation has not been complied with. The Petitioner further alleges that Respondent Nos. 2 and 3 have violated Clause 7(b) of SHA.1. According to him, the agreement requires that the day to day management of the Company should be carried out jointly by all the three Directors and that important decisions relating to purchase of property, business expansion, diversification, or policy matters should be taken only with the prior consent of all the Directors. However, according to the Petitioner, from about June 2024 onwards

Respondent Nos. 2 and 3 have excluded him from the management of the Company. They are alleged to have independently managed the banking operations, financial transactions, purchase and sale activities, factory administration and all dealings with customers, suppliers, government authorities, and other third parties without informing or obtaining the consent of the Petitioner.

5. The Petitioner also alleges that Respondent Nos. 2 and 3 have violated Clauses 16(g) and 16(h) of SHA.1 by denying him access to the Company's official digital platforms. According to the Petitioner, these clauses require that all Directors should have access to the Company's login credentials, user IDs, passwords, ROC portal, official email accounts, social media accounts and other digital platforms, and that all official communications should be made only through Company email accounts accessible to every Director. The Petitioner states that despite his written requests dated 21 November 2025 and 20 December 2025, Respondent Nos. 2 and 3 did not restore his access. As a result, according to him, he has been prevented from monitoring the affairs of the Company or participating in its day to day functioning. The Petitioner further contends that Respondent Nos. 2 and 3 have acted in breach of the financial approval mechanism contained in SHA.1 and SHA.2. According to him, Clause 16(i) of SHA.1 requires that all expenditure and income of the Company should be known to and approved by all the three Directors, except in emergency situations involving expenditure up to Rs.2 lakh by a single Director. Clause 7(b) of SHA.1 also requires prior consent of all the Directors for major financial commitments. The Petitioner alleges that despite these provisions, Respondent Nos. 2 and 3 attempted to proceed with a solar project worth Rs.53.41 lakh and repayment of loans to Charan Labs without obtaining his approval. According to the Petitioner, the stand taken by Respondent Nos. 2 and 3 that decisions can be taken by a simple majority is contrary to the express terms and object of SHA.1 and SHA.2.

6. The Petitioner also alleges violation of the provisions governing related party transactions. According to him, Clause 16(m) of SHA.1 provides that purchases by companies related to any Director can be made only if Respondent No. 1 earns a minimum net profit of 10%. Clause 5 of SHA.2 further prohibits sale of raw materials, packing materials or other goods to Respondent No. 1 from Farma Hub, Zaneka Healthcare, Zaneka Pharma, S3K or any other sister concern belonging to any Director. According to the Petitioner, these conditions were intended to avoid conflict of interest and to protect the financial interests of the Company. According to the Petitioner, despite these restrictions, Respondent Nos. 2 and 3 permitted the sale of Respondent No. 1's products to Farma Hub, which is a proprietary concern owned and controlled by them. The total value of these transactions is stated to be Rs.1,67,88,145/-. The Petitioner alleges that these transactions were entered into without informing him or obtaining his prior approval and are therefore in breach of the Shareholders' Agreements.

7. The Petitioner has further alleged that Respondent Nos. 2 and 3 have manipulated the official records of the Company.

According to him, the Board Meetings held on 3 September 2025 and 12 November 2025 were abruptly brought to an end by Respondent Nos. 2 and 3 without any proper discussion. However, the minutes prepared thereafter allegedly recorded that the Petitioner had left the meetings midway. The Petitioner states that this statement is false. He further states that he immediately objected to the correctness of the minutes by addressing written communications to Respondent Nos. 2 and 3. According to the Petitioner, preparation of incorrect minutes amounts to falsification of the Company's records and is contrary to the obligations contained in the Shareholders' Agreements. The Petitioner further states that he has reliable information that a Board Meeting has been scheduled on 21 April 2026. According to him, Respondent Nos. 2 and 3, who together hold 67% of the shareholding, intend to use their majority to pass a resolution removing him from the office of Director. The Petitioner also apprehends that further resolutions may be passed approving financial decisions, continuing his exclusion from the management of the Company, and approving related party transactions contrary to SHA.1 and SHA.2. According to the Petitioner, if such resolutions are passed, his rights will suffer immediate and irreversible prejudice. In support of this apprehension, the Petitioner has relied upon the email dated 14 April 2026 issued by Respondent No. 1 through Respondent No. 2 along with the agenda of the meeting scheduled for 21 April 2026.

8. On the basis of the above facts and allegations, the Petitioner has approached this Court seeking interim protection pending commencement and conclusion of the arbitral proceedings. The Petitioner has prayed for several interim reliefs. He seeks an order staying the Board Meeting scheduled on 21 April 2026 to the extent it proposes to consider his removal as a Director. He also seeks an injunction restraining Respondent Nos. 2 and 3 from passing any resolution removing him from the Directorship in violation of the Shareholders' Agreements. The Petitioner further seeks maintenance of status quo regarding the management, shareholding, directorship and financial affairs of the Company. He has also prayed that Respondent Nos. 2 and 3 be restrained from operating the Company's bank accounts or carrying out financial transactions without his prior written approval. The Petitioner has further sought an injunction restraining the Respondents from creating any third party rights or otherwise dealing with the factory land situated at Khasra No. 882 and the adjoining Khasra No. 881 Kha during the pendency of the arbitral proceedings. In addition, he has prayed for ad interim reliefs, costs of the Petition and such further orders as this Court may consider just and proper in the facts of the case.

9. Mr. Vyom Shah learned counsel for the Petitioner submitted that the Petitioner invested a total amount of Rs.1,31,47,990/- in Respondent No.1 Company, as stated in paragraph 9 of the Petition. Respondent Nos.2 and 3 are husband and wife and, along with the Petitioner, are Directors of the Company. It is submitted that these three persons are the only shareholders of the Company and that the Petitioner holds 33% of the equity share capital. Learned counsel submitted that the Petitioner and Respondent

Nos.2 and 3 entered into two Shareholders' Agreements dated 15 February 2024 and 29 August 2024. According to the Petitioner, these agreements regulate the manner in which the Company is to be managed and the rights and obligations of each shareholder. The relevant terms of the agreements, according to the Petitioner, are as follows:

(a) There shall be no further issue of capital without the consent of all the parties.

(b) The Petitioner has contributed and paid his one third share towards the total value of, among other assets, the land belonging to the Company, and he was to be made a co owner of the said land.

(c) The Board of Directors shall consist of the Petitioner, Respondent No.2 and Respondent No.3. The day to day affairs of the Company are to be managed jointly by all the three Directors and all important decisions are to be taken only with the prior consent of all of them.

(d) The Directors are required to jointly exercise their voting rights and act in such a manner that the Board of Directors always remains constituted in accordance with the Shareholders' Agreements. They are also required to take all necessary steps to ensure that every provision of the agreements is implemented in its true letter and spirit.

(e) The Directors have also agreed that they shall exercise their voting rights at the meetings of shareholders in such a manner as to ensure complete compliance with the

Shareholders' Agreements and, if any resolution contrary to the agreements is proposed, they shall vote against the same.

10. Learned counsel submitted that because Respondent No.2 issued a notice dated 14 April 2026 proposing removal of the Petitioner from the office of Director, the Petitioner had no option but to file the present Petition under Section 9 of the Arbitration and Conciliation Act, 1996 seeking urgent interim protection.

11. Learned counsel further pointed out that after filing of the present Petition on 18 April 2026, this Court granted interim protection to the Petitioner from time to time. The orders passed by this Court are summarised as follows:

> “(i) By order dated 28 April 2026, this Court directed that the ad interim protection granted shall continue till the next date.
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> (ii) By order dated 7 May 2026, this Court clarified that there would be no restriction upon Respondent Nos.2 and 3 from holding meetings of the Board of Directors or the Extraordinary General Meeting of the Company. However, no decision regarding removal of the Petitioner as Director was permitted to be taken until the next date.
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> (iii) By order dated 19 May 2026 passed in Interim Application (L) No.17387 of 2026, this Court restrained the Respondents from conducting the Extraordinary General Meeting beyond 12 June 2026 and continued the interim protection granted earlier.
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> (iv) By order dated 10 July 2026, this Court directed continuation of the interim protection till 17 July 2026.
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> (v) By order dated 17 July 2026, this Court continued the interim protection granted earlier until further orders.”

12. Learned counsel further submitted that prayer clause (e) of the Petition also deserves to be granted. It was argued that the

Shareholders' Agreement dated 15 February 2024 clearly records that the Petitioner had paid his one third contribution towards the total value of the land belonging to the Company and that he was to be made a co owner of the said land along with Respondent Nos.2 and 3. However, despite this obligation, Respondent Nos.2 and 3 have not taken any steps to include the Petitioner as a co owner of the land. Learned counsel submitted that during the course of oral arguments the Respondents did not dispute the Petition on its factual merits. According to him, the Respondents confined their submissions mainly to technical and legal objections. Those objections and the Petitioner's response thereto are as follows.

13. The first objection raised by Mr. Akash Shah learned advocate for the Respondents is that this Court has no jurisdiction to entertain the present Petition because, according to them, Mumbai is not the seat of arbitration. In reply to this objection, learned counsel relied upon the arbitration clause contained in the Shareholders' Agreement, which reads as follows:

> "21. If any dispute or difference shall at any time arise between them as to any terms, provisions or matters contained herein on as to their respective rights, claims, duties or liabilities hereunder or otherwise, howsoever in relation to or arising out of or concerning this Agreement, such dispute or difference shall be referred to the arbitration. The venue of such arbitration shall be in Maharashtra and Uttarakhand unless otherwise agreed in writing. Such arbitration shall be held under and in accordance with the provisions of the Arbitration and Conciliation Act, 1996."

14. Learned counsel submitted that the Respondents have taken a stand that the parties never agreed upon any specific seat of arbitration because the above clause merely mentions two venues. According to the Petitioner, if there is no agreed seat of arbitration, the matter has to be decided in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

15. Learned counsel submitted that Section 2(1)(e)(i) of the Arbitration and Conciliation Act defines the expression "Court". According to him, this Court answers that definition and is therefore competent to entertain the present Petition under Section 9. He pointed out that Section 2(1)(e)(ii) has no application because the present dispute is not an international commercial arbitration. The relevant provision reads as follows:

> "(e) "Court" means
>
> (i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject matter of the arbitration if the same had been the subject matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;"

16. Learned counsel further submitted that a substantial part of the cause of action has arisen within the jurisdiction of this Court. The Petitioner resides in Mumbai. His investment in the Company was made from Mumbai. According to him, all financial communications, banking transactions and correspondence with Respondent No.2 were conducted from Mumbai and the financial loss suffered by the Petitioner has also occurred in Mumbai. On this basis, it was submitted that the dispute has a close and substantial connection with Mumbai.

17. Learned counsel further argued that once jurisdiction is conferred upon this Court by Section 2(1)(e) of the Arbitration Act, the Respondents cannot object to the jurisdiction of this Court merely because the seat of arbitration has not yet been determined. It was further submitted that since the Respondents contend that no seat of arbitration has been agreed between the parties, there is no necessity for the Petitioner to first approach another Court for determination of the seat. According to the Petitioner, accepting such a contention would render Section 2(1)(e) of the Arbitration Act meaningless.

18. Learned counsel also relied upon Section 42 of the Arbitration and Conciliation Act, which reads as follows:

> "42. Jurisdiction. Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court."

19. Learned counsel placed reliance upon the decision of this Court in *Gurumahima Heights Co operative Housing Society Limited v. Admirecon Infrastructure Pvt. Ltd., 2023 SCC OnLine Bom 2703*. It was submitted that this Court, after considering Sections 2(1)(e) and 42 of the Arbitration Act and relying upon the decision of the Supreme Court in *BGS SGS Soma JV v. NHPC Limited*, held that where no seat of arbitration has been agreed, the Court before which the first application under Section 9 is filed and where part of the cause of action has arisen would have exclusive jurisdiction under Section 42. Learned counsel relied upon the following observations of the Supreme Court:

> "59. ... Also, where it is found on the facts of a particular case that either no "seat" is designated by agreement, or the so called "seat" is only a convenient "venue", then there may be several Courts where a part of the cause of action arises that may have jurisdiction. Again, an application under Section 9 of the Arbitration Act, 1996 may be preferred before a court in which part of the cause of action arises in a case where parties have not agreed on the "seat" of arbitration, and before such "seat" may have been determined, on the facts of a particular case, by the Arbitral Tribunal under Section 20(2) of the Arbitration Act, 1996. In both these situations, the earliest application having been made to a Court in which a part of the cause of action arises would then be the exclusive Court under Section 42, which would have control over the arbitral proceedings."

20. Learned counsel submitted that under Section 20 of the Arbitration Act it is the Arbitral Tribunal which has the power to determine the seat of arbitration where the parties have not agreed upon it. According to him, requiring a Court to determine the seat even before commencement of arbitration would be contrary to Sections 5 and 20 of the Arbitration Act, which contemplate minimum judicial intervention and confer such authority upon the Arbitral Tribunal. Learned counsel further submitted that Courts would be required to determine the seat only in cases where there is no agreed seat, no determination by the Arbitral Tribunal and no earlier application has been filed under Section 9 so as to attract Section 42. According to him, the present case stands on a different footing because this Court has jurisdiction under Section 2(1)(e), no Arbitral Tribunal has yet been constituted and no seat has so far been determined.

21. Learned counsel submitted that the Respondents have placed strong reliance upon the judgment of the Supreme Court in *J&K Economic Reconstruction Agency v. Rash Builders India Private Limited, 2026 SCC OnLine SC 596*. According to him, that decision has no application to the facts of the present case because in that matter there was a specific agreement regarding the seat of arbitration and the dispute arose after the arbitral award while dealing with a petition under Section 34 of the Arbitration Act. It was submitted that the Supreme Court did not consider the effect of Sections 2(1)(e) and 42 in circumstances similar to the present case. Learned counsel further submitted that the observation regarding the "closest and most intimate connection" test would apply only where the Court is required to determine the seat in proceedings arising after the arbitral award and not in the facts of the present case.

22. Without prejudice to the above submissions, learned counsel further submitted that even if this Court comes to the conclusion that the parties had agreed upon the seat of arbitration, this Court would still have jurisdiction. In this regard, reliance was placed upon the order dated 20 April 2026 passed in the present proceedings, wherein this Court observed:

> "3) The disputes and differences between the parties have apparently arisen out of the Shareholders Agreements dated 15th February, 2024 and 29th August, 2024. Perusal of the Shareholders Agreements indicates presence of Arbitration Clause No. 21. The venue of arbitration is decided as Maharashtra and Uttarakhand. This is how the present

Petition is filed under section 9 of the Arbitration Act before this Court."

23. Learned counsel submitted that although the order dated 20 April 2026 was only an ad interim order, this Court had considered the issue of jurisdiction before granting interim relief. According to him, that order has never been challenged by the Respondents and therefore supports the Petitioner's contention regarding jurisdiction.

24. The second objection raised by the Respondents is that the Petitioner has filed Company Petition No.32 of 2026 before the National Company Law Tribunal, Allahabad, under Sections 241 and 242 of the Companies Act alleging oppression and mismanagement and that the reliefs claimed therein are substantially similar to the reliefs claimed in the present Petition. In reply, learned counsel submitted that this contention deserves to be rejected at the outset because no such plea has been taken in the Affidavit in Reply. According to him, the Respondents have for the first time sought to raise this contention through their written submissions without any supporting pleadings. It was submitted that no party can travel beyond its pleadings and therefore the Respondents cannot be permitted to rely upon facts which were never pleaded.

25. Learned counsel further submitted that, in any event, the reliefs claimed before the National Company Law Tribunal are entirely different. According to him, the Company Petition seeks reliefs arising from alleged oppression and mismanagement under the Companies Act, whereas the present Petition under Section 9 of the Arbitration Act seeks interim protection for enforcement of the Petitioner's rights flowing from the Shareholders' Agreements.

26. Learned counsel submitted that disputes relating to oppression and mismanagement are remedies under Sections 241 and 242 of the Companies Act and are disputes in rem. Such disputes are not capable of being referred to arbitration. Therefore, according to him, those issues have neither been raised nor can they be decided in the present proceedings under Section 9 of the Arbitration Act. Learned counsel further submitted that it is well settled that proceedings before an Arbitral Tribunal and proceedings before the National Company Law Tribunal can continue independently. In support of this submission, reliance was placed upon the decision of the National Company Law Appellate Tribunal in *Dhananjay Mishra v. Dynatron Services Private Limited*.

27. Learned counsel also submitted that the conduct of the Respondents is contradictory. Before the National Company Law Tribunal, the Respondents have sought dismissal of the Company Petition on the ground that the present Arbitration Petition is pending, whereas before this Court they contend that the present Petition should be dismissed because of the pendency of the Company Petition. According to the Petitioner, the Respondents have avoided dealing with the merits of the dispute and are only attempting to delay the proceedings.

28. The third objection raised by the Respondents is that no interim relief restraining the holding of Board Meetings can be granted in law. Learned counsel submitted that this objection is contrary to the record. He pointed out that by order dated 7 May 2026 this Court had clarified that there was no restriction upon Respondent Nos.2 and 3 from holding meetings of the Board of Directors or the Extraordinary General Meeting. The only restriction imposed was against taking any decision for removal of the Petitioner as Director. Learned counsel submitted that the interim reliefs sought in the present Petition are limited in nature. According to him, the Petitioner seeks only to restrain Respondent Nos.2 and 3 from removing him as Director, issuing additional share capital without his consent and creating third party rights in the Company's land, all of which, according to the Petitioner, are prohibited by the Shareholders' Agreements.

29. Learned counsel also referred to the decision of the *Delhi High Court in Drharors Aesthetics Private Ltd. v. Debulal Banerjee, 2025 SCC OnLine Del 5379*. He submitted that the Respondents have wrongly relied upon the said judgment because in that case the injunction against the meeting had been granted only on the ground of short notice. According to him, the present Petition does not seek relief on the ground of inadequate notice but on the basis of alleged breaches of the Shareholders' Agreements.

30. Learned counsel lastly submitted that the Delhi High Court in the above decision had specifically observed that the Trial Court had not recorded any finding regarding the existence of a prima facie case, balance of convenience or irreparable loss. According to the Petitioner, all these requirements stand satisfied in the present case in view of the several alleged breaches of the Shareholders' Agreements committed by Respondent Nos.2 and 3. Therefore, it was submitted that the interim protection granted by this Court deserves to be continued.

31. Learned Advocate appearing for Respondent Nos. 2 and 3 submitted that the present Petition is not maintainable in law and deserves to be dismissed. According to him, the Petitioner has wrongly invoked the jurisdiction of this Court and the present proceedings amount to misuse of the legal process. Learned Advocate submitted that even before issuing the notice dated 25 May 2026 invoking arbitration, the Petitioner had filed Company Petition No. 32 of 2026 before the National Company Law Tribunal, Allahabad Bench, seeking substantially the same reliefs. According to him, once the Petitioner had chosen to pursue his remedies before the National Company Law Tribunal, he could not thereafter invoke arbitration in respect of the same disputes. It was argued that if the disputes are not capable of being decided through arbitration, then no interim protection under Section 9 of the Arbitration and Conciliation Act, 1996 can be granted by this Court.

32. Learned Advocate further submitted that the reliefs sought in the present Petition, namely, stay of the Board Meeting, restraint against removal of the Petitioner as a Director, maintenance of status quo regarding the Company's management and shareholding, and other connected reliefs, are matters which fall exclusively within the jurisdiction of the National Company Law Tribunal under the Companies Act, 2013. He relied upon Section 430 of the Companies Act and contended that the jurisdiction of the Civil Court is specifically barred in respect of such matters and, therefore, this Court cannot entertain the present Petition.

33. On the question of territorial jurisdiction, learned Advocate submitted that the Petitioner has wrongly pleaded that Maharashtra is the seat of arbitration. According to him, the arbitration clause does not declare Maharashtra to be the juridical seat of arbitration. He submitted that, having regard to the facts of the case and the surrounding circumstances, Uttarakhand can be treated as the seat of arbitration. In support of this contention, reliance was placed upon the decision of the Supreme Court in *J & K Economic Reconstruction Agency v. Rash Builders India Pvt. Ltd., 2026 SCC OnLine SC 596*.

34. Elaborating the above submission, learned Advocate pointed out that both the Shareholders' Agreements were executed at Haridwar in the State of Uttarakhand. He further submitted that both agreements were executed on e stamp papers issued by the Government of Uttarakhand. According to him, Respondent No. 1 Company is incorporated in Uttarakhand and its registered office, factory and entire business operations are situated at Haridwar. Respondent Nos. 2 and 3 are also permanent residents of Haridwar. He further submitted that the immovable property bearing Khasra No. 882, in respect of which interim protection has been sought, is also situated at Haridwar. It was also pointed out that the Company's secured borrowings of about Rs.5.14 Crore are secured by the said property and by the personal guarantees furnished by Respondent Nos.2 and 3. According to the Respondents, the only connection with Maharashtra is that the Petitioner resides in Mumbai, and such fact by is not sufficient to confer jurisdiction upon this Court or to determine the seat of arbitration. It was, therefore, submitted that this Court does not possess territorial jurisdiction to entertain the present Petition.

35. Learned Advocate further submitted that the reliefs claimed before the National Company Law Tribunal and those sought in the present Petition are substantially the same. In this regard, he relied upon a comparative chart prepared by the Respondents to demonstrate that the reliefs relating to continuation of the Petitioner's directorship, challenge to his proposed removal, maintenance of status quo regarding management and shareholding, restraint on banking and financial transactions, protection of the Company's assets including land bearing Khasra Nos. 882 and 881 Kha, access to the Company's records and digital platforms, investigation into alleged related party transactions, enforcement of the Shareholders' Agreements and conduct of a forensic audit substantially overlap with the reliefs claimed in Company Petition No. 32 of 2026 pending before the National Company Law Tribunal.

36. Learned Advocate next submitted that the Shareholders' Agreements do not confer any permanent or absolute right upon the Petitioner to continue as a Director of the Company. In support of this submission, reliance was placed upon Clause 18 of SHA.1, which permits termination of the agreement where a breach remains unrectified for a period of sixty days after service of notice. He submitted that a Notice of Default dated 11 June 2026 had been issued to the Petitioner and that the alleged breaches pointed out therein still remain unremedied. It was argued that even if the Petitioner ceases to hold the office of Director, his shareholding of 33% in the Company would continue and he would still enjoy all rights available to a shareholder under law. According to the Respondents, the Petitioner has exercised those rights by filing proceedings under Sections 241 and 242 of the Companies Act before the National Company Law Tribunal. Learned Advocate further submitted that Respondent Nos.2 and 3 together hold 67% of the Company's share capital, are responsible for running the affairs of the Company and have furnished personal guarantees securing the Company's borrowings of approximately Rs.5.14 Crore.

37. On the basis of the above submissions, learned Advocate prayed that the present Commercial Arbitration Petition be dismissed with costs. He also prayed that the ad interim ex parte order granted earlier in favour of the Petitioner be vacated.

38. In support of his submissions, learned Advocate for Respondent Nos.2 and 3 relied upon the decisions in *J & K Economic Reconstruction Agency v. Rash Builders India Private Limited, 2026 SCC OnLine SC 596; Naviera Amazonica Peruana SA v. Compania Internacional De Seguros Del Peru, 1988 WL 622500; Invesco Developing Markets Fund and Others v. Zee Entertainment Enterprises Limited and Others, 2022(3) Bom CR 602; Satvik Rajiv Samani and Another v. Shardaben Prabhudas Samani and Another, 2026 SCC OnLine Bom 2457; and Drharors Aesthetics Private Ltd. v. Debulal Banerjee and Drharors Aesthetics Private Ltd. v. Rahul Shawel, 2025:DHC:6655 DB.*

<u>Reasons and Analysis</u>:

39. I have carefully gone through the Petition, Affidavit in Reply, Rejoinder, all papers placed on record, submissions made by learned advocates for both sides and the judgments relied by them. At this stage, this Court has to see whether the Petitioner has made out a case for grant of temporary protection under Section 9 of the Arbitration and Conciliation Act, 1996 till arbitral proceedings are commenced. While considering such application, the Court has to see whether there exists a valid arbitration agreement, whether the disputes are prima facie capable of being referred to arbitration, whether this Court has jurisdiction to entertain the Petition and whether the settled requirements for interim relief, namely prima facie case, balance of convenience and possibility of irreparable injury, are shown.

40. The first objection raised by Respondent Nos.2 and 3 is that the present Petition is not maintainable because even before invoking arbitration, the Petitioner had filed Company Petition No.32 of 2026 before the National Company Law Tribunal under Sections 241 and 242 of the Companies Act, 2013. According to the Respondents, same reliefs are claimed in both proceedings and therefore the Petitioner cannot continue arbitration proceedings also. The Petitioner, however, submitted that though some facts may be common, both proceedings arise from different rights. According to him, the proceedings before the National Company Law Tribunal are based on rights available under the Companies Act, whereas the present proceedings arise from alleged breach of obligations contained in the Shareholders' Agreements. Therefore, according to him, both proceedings operate in different fields and one does not exclude the other.

41. I have considered the above objection. Merely because some reliefs in both proceedings appear similar, it cannot mean that the present Petition is not maintainable. The Court cannot decide such issue only by comparing the wording of the prayers. The question is from where the rights claimed by the parties are flowing. If the right is created by the Companies Act, then such issue falls for consideration before the National Company Law Tribunal. However, where the right arises from agreement containing an arbitration clause, such disputes remain capable of being referred to arbitration unless there is a prohibition. Therefore, similarity in reliefs is not enough. The nature and source of the rights require examination.

42. In the present case, the Shareholders' Agreements contain several obligations accepted by the parties. These include requirement of unanimous approval for important matters, joint management of the Company, sharing of passwords and digital access, restrictions relating to related party transactions, approval of financial decisions and induction of the Petitioner in relation to land documents. These obligations are not created by the Companies Act. They came into existence only because parties entered into the Shareholders' Agreements. Therefore, enforcement of these obligations remains contractual in nature and not merely statutory.

43. On the other side, the Company Petition before the National Company Law Tribunal is founded upon allegations of oppression and mismanagement under Sections 241 and 242 of the Companies Act. While exercising jurisdiction under those provisions, the Tribunal examines whether the affairs of the Company are conducted in a manner oppressive to shareholders or prejudicial to the Company or public interest. For that purpose, the Tribunal exercises powers conferred by Parliament, including regulating affairs of the Company, removal of Directors, ordering investigation and granting several remedies. These powers arise from the statute and are different from rights flowing out of private agreements between parties.

44. Therefore, though certain facts pleaded in both proceedings may overlap, the foundation of both proceedings cannot be said to be same. One proceeding seeks enforcement of obligations accepted under the Shareholders' Agreements, whereas the other seeks remedies under the Companies Act. Merely because same background facts are referred in both proceedings, it cannot result in extinguishment of remedies. Overlapping facts by are not sufficient to deny parties the remedies which they agreed upon.

45. This view also finds support from the principles laid down by this Court in *Rakesh Malhotra v. Rajinder Kumar Malhotra*. In the said judgment, it has been observed that proceedings relating to oppression and mismanagement are proceedings in rem, and therefore they are not arbitrable. At the same time, the said principle cannot be read so widely as to mean that every dispute between shareholders becomes non-arbitrable merely because proceedings under Sections 241 and 242 are pending. disputes independently arising from a shareholders' agreement continue to retain their separate character unless there exists an express legal prohibition.

46. In view of the aforesaid discussion, I do not find any merit in the preliminary objection raised by the Respondents that mere filing of Company Petition before the National Company Law Tribunal creates a bar against the present proceedings under Section 9 of the Arbitration and Conciliation Act. The objection, therefore, deserves to be rejected.

47. The Respondents next relied upon Section 430 of the Companies Act and submitted that this Court has no jurisdiction to entertain the present Petition. I am unable to accept this submission in the broad manner in which it has been canvassed. Section 430 bars jurisdiction of Civil Courts only in respect of matters which the National Company Law Tribunal is empowered to determine under the Companies Act. The present Petition is not instituted under the Companies Act. It is instituted under Section 9 of the Arbitration and Conciliation Act seeking interim protection of rights arising from an arbitration agreement. Therefore, merely because some issues may arise before the Tribunal, it cannot follow that jurisdiction under Section 9 stands excluded. It also requires to be remembered that the Arbitration and Conciliation Act is a special enactment. Section 9 expressly empowers the Court to grant interim protection before commencement of arbitral proceedings. If every shareholder dispute is excluded from Section 9 only because proceedings under Sections 241 and 242 have also been filed, then in many situations the arbitration clause would become ineffective. Such interpretation cannot be accepted unless the statute mandates so. No such prohibition has been shown before this Court. At the same time, this Court cannot overlook the limits of its own jurisdiction. While exercising powers under Section 9, this Court cannot grant reliefs which fall within the jurisdiction of the National Company Law Tribunal under the Companies Act. Therefore, while protecting rights, this Court must also ensure that it does not enter into matters reserved for the Tribunal.

48. The next objection relates to territorial jurisdiction. According to the Respondents, Uttarakhand constitutes the seat of arbitration and therefore only Courts in Uttarakhand have jurisdiction to entertain proceedings under the Arbitration Act. The Petitioner disputes this contention and submits that the parties never agreed upon any fixed or exclusive seat of arbitration. Clause 21 of the Shareholders' Agreement assumes significance while deciding this issue. The clause provides that the venue of arbitration shall be "Maharashtra and Uttarakhand unless otherwise agreed in writing." On plain reading, the clause does not declare either Maharashtra or Uttarakhand to be the juridical seat of arbitration. It also does not prescribe any mechanism by which one place becomes the exclusive seat to the exclusion of the other.

49. It is now well settled that arbitration law recognises a distinction between the expressions "seat" and "venue". The seat determines supervisory jurisdiction of the Court over arbitral proceedings, whereas the venue denotes only the place where hearings are conducted. Whether a particular place becomes the juridical seat depends upon the language employed in the agreement, the agreement as a whole and surrounding circumstances. Therefore, one clause cannot be read in isolation.

50. The Respondents relied upon the recent judgment of the Supreme Court in *J & K Economic Reconstruction Agency* . However, on careful reading of the said judgment, it appears that the factual background therein was different. In that case, the dispute arose after conclusion of arbitral proceedings while considering a petition under Section 34 of the Arbitration Act and the seat had become ascertainable on the facts of that matter. The Supreme Court was not dealing with a situation where two venues were mentioned, no exclusive seat had been agreed upon, and even the arbitral tribunal had not yet been constituted. Therefore, the ratio of the said judgment cannot be mechanically applied to the facts of the present case.

51. On the other hand, the Petitioner relied upon the judgment of the Supreme Court in *BGS SGS Soma JV* . The Supreme Court observed that where no seat has been designated by agreement, or where the so-called seat is merely a convenient venue, more than one Court may initially possess jurisdiction if part of the cause of action arises within its territorial limits. It was further observed that where an application under Section 9 is first instituted before a competent Court prior to determination of the seat, Section 42 of the Arbitration and Conciliation Act may thereafter confer exclusive jurisdiction upon that Court. These principles appear relevant while examining the present controversy. In the present case also, the agreement does not expressly designate any exclusive seat. No arbitral tribunal has yet been constituted. No seat has yet been fixed under Section 20 of the Arbitration and Conciliation Act. It is also not disputed that the present Petition under Section 9 has been filed before this Court before commencement of arbitral proceedings. Therefore, at this stage, these circumstances cannot be ignored.

52. The Respondents have strongly emphasised that every important event took place at Haridwar. There is no dispute that the Company is incorporated in Uttarakhand, its factory is situated there, the land is situated there, Respondent Nos.2 and 3 are residents of Haridwar and the Shareholders' Agreements were also executed there. These facts undoubtedly establish a substantial connection between the disputes and the State of Uttarakhand. At the same time, the connecting factors with Mumbai also cannot be overlooked. The Petitioner admittedly resides at Mumbai. According to the pleadings, his investment originated from Mumbai. Certain financial communications and banking transactions involving the Petitioner are also stated to have taken place from Mumbai. The Petitioner has further pleaded that financial prejudice has been suffered by him at Mumbai. Whether these circumstances finally establish territorial jurisdiction is a matter which may require examination at an appropriate stage. However, for deciding an application under Section 9, these circumstances cannot altogether be ignored.

53. Therefore, I am unable to accept the submission of the Respondents that this Court has no jurisdiction even to entertain the present Petition. At the same time, I refrain from recording any final finding that Mumbai conclusively constitutes the juridical seat of arbitration. That question may be considered by the arbitral tribunal under Section 20 of the Arbitration and Conciliation Act or at any other appropriate stage. Presently, this Court is satisfied that it possesses jurisdiction under Section 2(1)(e) of the Arbitration and Conciliation Act to entertain the present Petition.

54. The Respondents next submitted that the Petitioner has no permanent or absolute right to continue as Director forever. As a general proposition, this submission appears to be correct. Neither the Companies Act nor the Shareholders' Agreements confer an unconditional or perpetual right upon any person to continue as Director irrespective of future developments. However, that is not the real issue before this Court. The controversy is not whether the Petitioner can never be removed. The real question is whether the proposed removal is sought to be effected in accordance with, or in breach of, the arrangement accepted by all parties under the Shareholders' Agreements. If the proposed action is alleged to violate obligations, this Court, while exercising powers under Section 9, is competent to preserve the existing arrangement until the arbitral tribunal examines the dispute. The Respondents relied upon Clause 18 of SHA-1 and the Notice of Default dated 11 June 2026. According to them, the Petitioner committed breaches and those breaches continued even after issuance of notice. The Petitioner disputes even existence of those breaches. Whether any breach was actually committed, whether it was substantial, whether sixty days expired after a valid notice and whether Clause

18 was properly invoked are all disputed questions of fact requiring evidence. Such issues cannot be conclusively determined in proceedings under Section 9. On the other hand, the Petitioner has alleged several breaches on the part of Respondent Nos.2 and 3 including denial of access to Company records, exclusion from management, unilateral financial decisions, related party transactions, non-compliance with the land clause and preparation of incorrect Board Minutes. The Respondents have denied all these allegations. At this stage, this Court is not expected to record final findings regarding correctness of those allegations. Nevertheless, the material placed on record discloses arguable and triable issues requiring adjudication by the arbitral tribunal. The Respondents also submitted that together they hold 67% shareholding, and they have furnished personal guarantees securing Company borrowings of approximately Rs.5.14 Crore. These facts undoubtedly possess commercial significance. Ordinarily, majority shareholders exercise greater control over management. However, where majority shareholders agree to restrict exercise of such majority powers through a Shareholders' Agreement, the Court cannot ignore those limitations merely because they possess numerical majority.

55. Indeed, one of the principal objects of a Shareholders' Agreement is to regulate exercise of majority powers through mutual consent. Prima facie, several clauses of the agreements indicate that important decisions required unanimous approval and not merely majority decision. Whether the disputed decisions actually fall within those clauses is a matter requiring detailed examination during arbitration. At this stage, however, existence of those provisions cannot be disputed.

56. The Respondents further relied upon the judgment of the Delhi High Court in *Drharors Aesthetics Private Ltd.* In my opinion, the said judgment does not support the Respondents. In that matter, injunction had been granted only because shorter notice had been issued for holding the meeting. The Delhi High Court held that such blanket restraint was not justified in those facts. In the present matter, however, the Petitioner's grievance is not confined merely to shorter notice. His complaint is founded upon alleged continuing breaches of several obligations contained in the Shareholders' Agreements. Therefore, the factual background of both matters is different. At the same time, the observations made by the Delhi High Court regarding the necessity of recording findings on prima facie case, balance of convenience and irreparable injury represent settled principles governing grant of interim relief. Those principles undoubtedly apply while deciding the present Petition.

57. Having considered the entire material placed on record, I am satisfied that the Petitioner has made out a prima facie dispute requiring adjudication through arbitration. The allegations regarding breach of the Shareholders' Agreements cannot presently be described as frivolous or wholly without substance. They disclose substantial questions requiring examination before the arbitral tribunal.

58. The balance of convenience also presently appears to favour preservation of the existing arrangement. If the Petitioner is removed as Director before commencement of arbitration and such removal is ultimately found contrary to the Shareholders' Agreements, restoration of the earlier position may become difficult. On the other hand, continuation of limited interim protection does not prevent Respondent Nos.2 and 3 from carrying on ordinary business of the Company, particularly when earlier orders of this Court have clarified that Board Meetings and General Meetings may continue.

59. I also find that possibility of irreparable injury is made out. Once management structure changes, resolutions are implemented, rights are altered or third-party interests are created, restoration of the original position may become difficult even if the Petitioner ultimately succeeds before the arbitral tribunal. In such circumstances, monetary compensation may not provide complete relief.

60. At the same time, interim protection cannot be permitted to assume the character of final relief. The Company cannot be prevented from carrying on its ordinary business merely because disputes have arisen between shareholders. Respondent Nos.2 and 3 must therefore be permitted to continue routine business operations. Accordingly, interim protection should remain confined to preservation of disputed rights and should not unnecessarily obstruct normal functioning of the Company.

61. Considering the entire material placed before this Court, I am of the opinion that the preliminary objections raised by the Respondents regarding maintainability, jurisdiction and arbitrability do not justify dismissal of the present Petition at this stage. The disputes raised between the parties disclose substantial issues requiring adjudication by the arbitral tribunal. Till such adjudication takes place, limited interim protection is necessary so that the subject matter of arbitration remains preserved and the arbitral proceedings do not become ineffective because of irreversible changes in the relationship between the parties. The Petition, therefore, deserves to be partly allowed to the aforesaid extent.

62. In view of the foregoing discussion and for the reasons recorded hereinabove, the following order is passed:

(i) The Commercial Arbitration Petition is partly allowed.

(ii) Pending commencement of the arbitral proceedings and until the Arbitral Tribunal considers the Petitioner's application for interim relief under Section 17 of the Arbitration and Conciliation Act, 1996, or for a period of ninety days from today, whichever is earlier, Respondent Nos. 2 and 3 shall not give effect to, act upon or implement any resolution removing the Petitioner from the office of Director of Respondent No. 1 Company.

(iii) Respondent Nos. 2 and 3 shall be at liberty to convene and conduct meetings of the Board of Directors and the shareholders of Respondent No. 1 Company in accordance with law. However, no resolution concerning removal of the Petitioner as Director shall be implemented during the subsistence of the protection granted under clause (ii).

(iv) Respondent Nos. 2 and 3 shall not create any third party rights, transfer, alienate, encumber, mortgage or otherwise deal with the immovable property bearing Khasra No. 882 and adjoining Khasra No. 881-Kha, situated at Village Salempur Mehdood II, Pargana Jwalapur, Tehsil and District Haridwar, Uttarakhand, so as to prejudice the Petitioner's rights under the Shareholders' Agreements, without prior leave of the Arbitral Tribunal or, till its constitution, of this Court.

(v) Respondent Nos. 2 and 3 shall maintain proper books of account and preserve all financial records, registers, digital records, electronic data, emails and documents relating to the affairs of Respondent No. 1 Company. No such record shall be destroyed, altered or deleted pending arbitral proceedings.

(vi) Respondent Nos. 2 and 3 shall furnish to the Petitioner, within two weeks from today, read only access to the records, financial statements and official digital platforms of Respondent No. 1 Company to the extent contemplated under the Shareholders' Agreements and permissible in law. This direction shall not prevent Respondent Nos. 2 and 3 from continuing the day to day business operations of the Company.

(vii) Save and except the directions contained hereinabove, the prayers seeking restraint on the day to day management of the Company, operation of its bank accounts and other wider interim reliefs are rejected.

(viii) The observations made in this order are prima facie in nature and confined only to adjudication of the present Petition under Section 9 of the Arbitration and Conciliation Act, 1996. The Arbitral Tribunal shall decide all issues independently on their own merits without being influenced by any observations contained in this order.

(ix) The Petitioner shall take effective steps for commencement of arbitral proceedings in accordance with Section 9(2) of the Arbitration and Conciliation Act, 1996, if not commenced.

(x) In the event an application under Section 17 of the Arbitration and Conciliation Act, 1996 is filed before the Arbitral Tribunal, the Tribunal shall consider the same on its own merits and may continue, modify, vary or vacate the interim protection granted by this Court.

(xi) There shall be no order as to costs.

(xii) Pending Interim Applications, if any, do not survive and stand disposed of.

(AMIT BORKAR, J.)