IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH
[Through Physical hearing/ VC Mode (Hybrid)]

ITEM No.08
C.A.Nos.72, 91/2022, 43/2024 in
C.P. No.88/BB/2021

IN THE MATTER OF:

Mr. Tono Thomas	…	Petitioner
Vs.		
M/s. Nowon Technologies Pvt Ltd	…	Respondent

Petition under Section 241-242 of Companies Act, 2013

Order delivered on: 04.09.2026

CORAM:

SHRI SUNIL KUMAR AGGARWAL
HON'BLE MEMBER (JUDICIAL)

SHRI RADHAKRISHNA SREEPADA
HON'BLE MEMBER (TECHNICAL)

COUNSELS PRESENT:

For the Petitioner	:	Ms. Shivani P. Murthy
For the Respondent Nos.4 & 5	:	Shri Saji P. John

ORDER

1. Heard Ld. Counsels for the parties.
2. **C.A.No.43/2024:** The **Application has been dismissed** vide separate order.
3. List the matter for final hearing on **22.10.2026**. **Interim Order to continue**.

-Sd-	**-Sd-**
RADHAKRISHNA SREEPADA **MEMBER (TECHNICAL)**	**SUNIL KUMAR AGGARWAL** **MEMBER (JUDICIAL)**

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IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH
(Hybrid mode)

C.A No. 43 of 2024
In
C.P No. 88/BB/2021
Under Section 8 of the Arbitration and Conciliation Act, 1996
read with
Rule 11 of the National Company Law Tribunal, 2016

IN THE MATTER OF:

NOWON TECHNOLOGIES PRIVATE LIMITED,
Flat No.C1, Block I, Rama Residency,
Rama Temple Street, New Thippasandra,
Bengaluru -560075 --- Applicant

Versus

Mr.Tono Thomas,
12A Express Estates,
Kaloor,
Cochin-682016 --- Respondent

Order delivered on: 04.09.2026

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

COUNSELS PRESENT:

For the Applicant	:	Shri A Murali & Shri Vishak Nag
For Respondent	:	Mrs. Maitreyi Bhat

O R D E R

Per RADHAKRISHNA SREEPADA, Member(Technical):

1. This Company application is filed on 21.03.2024 by Nowon Technologies Private Limited (hereinafter referred as "Applicant") under Section 8 of the Arbitration and Conciliation Act, 1996 read with Rule 11 of the NCLT Rules, 2016 against **Mr.Tono Thomas** (hereinafter referred as "Respondent") inter-alia seeking the following reliefs:

a. *Dismiss the instant petition as the subject matter of dispute is beyond the jurisdiction of this Tribunal in light of clause 23 of the Share Subscription Agreement at Annexure-A and not in the nature of oppression and mismanagement.*
b. *Grant any other reliefs that this Hon'ble Tribunal deems fit in the interest of justice and equity.*

2. <u>Facts of the case in the application are as under:</u>

a. The present application is filed by the Applicant seeking reference of the dispute in the present petition to Arbitration in terms of Clause 23 of the Share Subscription Agreement produced at Annexure-F of the petition filed the Respondent. A bare perusal of the averments made in the petition shows that the Petitioner has very cleverly and carefully disguised the petition as a petition under Section 241 & 242 with speculative and baseless allegations or oppression and mismanagement. The relief sought for by the Respondent in the petition is that he be paid dividend from the years 2009-10 upto 2020-21 along with direction to redeem his shares. He also sought for alternate prayer to direct the Respondents in petition to purchase his shares along with an interest @ 18% per annum. This shows the intention of Respondent in some form or manner exit from the Company.

b. The allegations of oppression and mismanagement is only to create a façade to this Tribunal. The question of dispute that the Respondent is placing before this Tribunal is that in relation to the redemption and payment of dividend on shares allotted to him. The Respondent himself has produced the agreement relied upon by him to seek redemption of shares.

c. The Respondent has relied on the Share Subscription Agreement executed on 30.10.2009. It is submitted that clause 23 of the Agreement provides for the Governing Law and Arbitration in relation to any dispute between the Company and the Respondent herein. In this regard, the instant dispute raised by the Respondent is in relation to the Agreement and more specifically the redemption and payment of dividend as prescribed under the agreement. Hence the same is to be adjudicated before an arbitral tribunal as prescribed under the agreement. As admitted by the Respondent the shares subscribed by him are cumulative convertible preference shares wherein the Respondent has an option to convert the preference shares into equity sarees. The Respondent initially issued a notice dated 06.03.2019 under clause 8.2 of the Agreement seeking conversion of preference shares to equity shares, the notice has been produced along with the petition at Annexure-S.

d. Subsequently, the Respondent issued another letter dated 24.04.2019 to withdraw the notice of conversion and exercised the put option under the Agreement at clause 10.2, the letter dated 24.4.2019 has been produced along with petition at Annexure-V. In the said letter, the Respondent has specifically asked the Managing Director of the Company to arrange for payments within the period of 15 days. It is clear that the Respondent at various occasions was looking for an exit and seeking redemption of his shares. This establishes that the instant petition has been dressed up as a petition under Section 241 & 242 of the Companies Act, 2013. However, a detailed reading of the averments and documents produced by the Respondent himself establishes that the dispute in question is in relation to the redemption of shares which is to be adjudicated by an arbitral tribunal as prescribed under the Agreement.

e. The Respondent has never a part of the day-to-day operations of the Company. From the documents produced by the Respondent himself, it is clear that the Respondent was not inclined towards the benefit of the Company and has filed the instant petition under false, frivolous, speculative grounds and apprehensions. The

Applicant has filed a similar application before this Tribunal on 15.02.2022 bearing Dy.No. 00161, however, the said application was not numbered and put up due to certain technical issue with the registry and the Vakalathnama was filed by the Applicant herein in original along with application. The Applicant had revised and filed another application on 23.01.2023 bearing Dy.No. 00425. However, the said application too was not numbered by the registry due to non-compliance of the office objections by the Petitioner due to bonafide reasons and the same cannot be complied with at this stage.

f. The subject and relief contained in this application have not been heard on merits till date and as such there is no bar for the Hon'ble Tribunal to adjudicate on the instant application.

3. The Respondents have filed the objection/reply to the application vide Dy. No. 512 on 28.01.2025 contending as under.

   a. The Share Subscription Agreement dated 30.10.2009 is an agreement between the Applicant Company and the Petitioner. Clause 23 of the Agreement provide for arbitration for disputes between the parties of the agreement. The remaining Respondent against whom allegations are made and reliefs are sought in the petition are not parties to the Agreement. Clearly, the Agreement envisages arbitration only between the parties to the agreement which is the Petitioner and the Respondent No.1 Company. Section 8 gives the power to any judicial authority before which an action is brought in the matter which is the subject of an arbitration agreement to refer the parties of such agreement to arbitration if a party so applies not later than when submitting his first statement on the substances of the dispute. The requirements are therefore that the matter be the subject of an arbitration agreement and that the party to the agreement must apply.

b. Section 2 (1) (h) of the Arbitration Act defines party as party to an arbitration agreement. The purported arbitration agreement as per the Applicant is the Share Subscription Agreement. However, in light of the fact that the Agreement is only between the Applicant and the Petitioner, the "parties to the arbitration agreement" as conceived by Section 8 of the Arbitration Act would only be the Applicant and Respondent. The dispute being between the Petitioner and other Respondents as well who are not parties to the Agreement, cannot be referred to arbitration. The Petition alleges actions of oppression of all the Respondents, which includes the other shareholders of the Company, who are not a party to the Agreement.

c. The case of the Petitioner is that the majority shareholders have conducted the affairs of the Company in a manner prejudicial to their interest. In *Shanti Prasad Jain v. Kalinga Tubes, AIR 1965 SC 1535,* the threshold for determining oppression is discussed as follows:

"It is not enough to show that there is just and equitable cause for winding up the company, though that must be shown as preliminary to the application of S. 397. It must further be shown that the conduct of the majority shareholders was oppressive to the minority as members and this requires that events have to be considered not in isolation but as a part of a consecutive story. There must be continuous acts on the part of the majority shareholders, continuing up to the date of petition, showing that the affairs of the company were being conducted in a manner oppressive to some part of the members. The conduct must be burdensome, harsh and wrongful and mere lack of confidence between the majority shareholders and the minority shareholders would not be enough unless the lack of confidence springs from oppression of a minority by a majority in the management of the

company's affairs, and such oppression must involve at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder.

d. The Petition is read as a whole along with the reliefs sought, it is submitted that the Petitioners have made out a case for oppression and mismanagement and there has been no 'dressing up.' The prayers sought are also clearly within the scope of Sections 241–242 of the Companies Act, 2013 ("Act"). Even leaving aside the fact that the other Respondents are not a party to the Agreement, none of the reliefs sought by the Petitioner can be granted by an arbitral tribunal inter alia because they are subject to the exclusive jurisdiction of this Hon'ble Tribunal. It is submitted that allegations regarding redemption and payment of dividend are only one of the many allegations in the Petition and the acts of the other Respondents to the Petition must be looked at in the context of the rampant oppression and mismanagement suffered by the Respondent to this application at their hands.

e. The Petition is bona fide and for the redress of grievances that the Petitioner has had with regards to the prejudicial manner in which the majority has run the Company, managed the finances and kept the Petitioner in the dark about the affairs of the Company. The Petitioner, naturally, has no intention to evade the arbitration clause, which is in any case inapplicable since the Agreement is only with the Respondent Company and the other Respondents against whom reliefs are sought are not party to the Agreement.

f. It is submitted that the dispute being a dispute covered under Sections 241–242 of the Act for oppression and mismanagement, being a special and exceptional remedy granted to shareholders under the Act, is not arbitrable. Section 242 grants this Hon'ble Tribunal powers to grant any orders in the interest of justice and equity. Certainly, an arbitrator being bound by the four corners of an agreement has no such powers. The intention of the legislature in granting such wide powers to this Hon'ble Tribunal is to provide a special remedy to aggrieved shareholders. The mere existence of an arbitration clause (and in this case inapplicable) cannot oust the jurisdiction of this Hon'ble Tribunal.

g. The exceptional nature of the remedy granted under these sections is recognised by the Courts which have held that there is power to grant relief even in cases where no oppression or mismanagement is made out. The Hon'ble Supreme Court in *Vidya Drolia v. Durga Trading Corporation (2021) 2 SCC 1* finds that intra-company disputes are actions in rem and therefore not arbitrable. The Supreme Court states that the special forum (the Hon'ble Tribunal in this case) would be more efficient and has complete jurisdiction to dispose of the entire matter efficaciously and fully.

h. Section 430 of the Act grants this Hon'ble Tribunal exclusive jurisdiction and the jurisdiction of this Hon'ble Tribunal cannot be ousted even by Civil Courts. It is submitted that the Petitioner has made out a case of oppression and mismanagement warranting the exercise of powers of the Hon'ble Tribunal under Section 242 of the Act and it cannot be referred to arbitration.

i. The Petitioner has a cause of action that has been clearly stated in the Petition against all the Respondents. It is clear that the arbitration clause that the Applicant wants to enforce is contained in an agreement only between the Petitioner and the Applicant and the remaining Respondents are not covered by the clause. Further, the reliefs claimed in the petition are not covered by the arbitration clause. The cause of action cannot be split so as to refer certain disputes to arbitration and the dispute that cannot be, to remain before this Hon'ble Tribunal.

j. The Hon'ble Supreme Court in *Sukanya Holdings Pvt. Ltd. v. Jayesh H. Pandya & Ors. (2003) 5 SCC 531* has held very clearly that it would be difficult to give an interpretation to Section 8 under which bifurcation of the cause of action, that is to say the subject matter of the suit or in some cases bifurcation of the suit between parties who are parties to the arbitration agreement and others is possible. This would be laying down a totally new procedure not contemplated under the Act. The Apex Court has also held that such bifurcation of suit in two parts, one to be decided by the arbitral tribunal and the other to be decided by the civil court would inevitably delay the proceedings. The whole purpose of speedy disposal of dispute and decreasing the cost of litigation would be frustrated by such procedure. It would also increase the cost of litigation and harassment to the parties and on occasions there is possibility of conflicting judgments and orders by two different forums.

k. Therefore, since the arbitration clause sought to be relied upon by the Applicant is contained in an agreement only between the Applicant and Petitioner, and not the remaining Respondents, it is not possible for the entire dispute to be referred to arbitration, and it is not possible to split the causes of action such that some are to be decided by an arbitral tribunal and some to remain before this Hon'ble Tribunal since that would result in bifurcation of claims.

4. Memo along with Citations is filed by the Applicant vide Dy.No. 6398 dated 13.11.2024.
5. The Respondents have also filed List of Authorities on 16.09.2025. The same are taken on record.

6. **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.

6.1. 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.

6.2. 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."

6.3. Copy of the Shareholder's Agreement dated 30.10.2009 is annexed and marked as Annexure-A (Page 14 to 37) of the application. In the light of the Hon'ble Supreme Court decision above, We examine the Clause 23 of the Share Holder Agreement.

The Clause is reproduced below

23. **GOVERNING LAW AND ARBITRATION**

23.1. The interpretation and construction of this Agreement shall be governed by the laws of India. Both parties shall ensure that the operation of this Agreement is made in manner that no disputes shall arise. If any differences arise with regard to the terms and conditions of this Agreement, the parties shall attempt to resolve them through mutual discussions either directly or through authorized personnel. If it is not possible to settle the differences, the dispute shall be resolved through arbitration as provided under the Indian Arbitration and Conciliation Act of 1996. The Investor and Promoters shall be entitled to appoint one arbitration each and the arbitrators so appointed shall appoint the third arbitrator. The seat of such arbitration shall be Bangalore and the language of such arbitration shall be English. The decisions of the arbitrators shall be final and binding on the parties.

23.2 Subject to Sub-Clause 23.1 above, the parties hereby irrevocably and unconditionally consent to the exclusive jurisdiction of the courts of Bangalore in the State of Karnataka, for any action, suit or proceeding arising out of or relating to this Agreement, and agree not to commence any action suit or proceeding related thereto except in such courts.

23.3 When any dispute is referred to arbitration, except for the matters under dispute the parties shall continue to exercise their remaining respective rights and fulfill their remaining respective obligations under this Agreement. The arbitrator (s) shall have the authority to issue interlocutory and final awards relating to specific performance of or refraining from certain action.

23.4 The provisions of this Clause 23 shall survive the termination of this Agreement.

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.

6. **DECISION**: Respectfully following the above decision and on detailed analysis, We hold that the Clause 23 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.

In the Result the **CA in 43/BB/2024** is **DISMISSED**.

No Order as to Costs.

-Sd-	-Sd-
RADHAKRISHNA SREEPADA **MEMBER (TECHNICAL)**	**SUNIL KUMAR AGGARWAL** **MEMBER (JUDICIAL)**