

*Shabnoor*

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN IT'S COMMERCIAL DIVISION**

COMM ARBITRATION PETITION (L) NO.30600 OF 2026

Sky One Airways Private Limited

... Petitioner

V/s.

Nayan Arun Jagjivan & Ors.

... Respondents

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Mr. Abhinav Chandrachud a/w Mr. Pranit Kulkarni, Mr. Nihar P. Mankad, Mr. Anirudh Sharma i/b Mr. Pravin D Kadam, for the Petitioner.

Mr. Venkatesh Dhond, Senior Advocate, Ms. Karishma Rao i/b Mr. Amey Hadwale, Ms. Nikita Lundwani, Ms. Anjali Yadav, for Respondent Nos.1 to 4.

CORAM : AMIT BORKAR, J.

RESERVED ON : SEPTEMBER 30, 2026.

PRONOUNCED ON : OCTOBER 5, 2026.

JUDGMENT:

1. By the present Petition, the Petitioner has approached this Court under Section 9 of the Arbitration and Conciliation Act, 1996, seeking ad-interim and interim protection in connection with the proposed arbitral proceedings.

2. The facts which have led to the filing of the present Petition are, in substance, as follows. On 4 April 2026, a Binding Term

Sheet was entered into between the Petitioner, Respondent Nos. 1 and 2 and Respondent No. 4. The Term Sheet recorded the proposed transaction at an enterprise value of ₹25.00 Crores. The transaction was made effective from 6 April 2026, with 1 April 2026 being fixed as the cut-off date. On the same day, namely, 4 April 2026, the Board of Directors of Respondent No. 4 unanimously approved the sale of the Company as a going concern to the Petitioner and its investors. The approval contemplated that complete ownership and control of the Company would vest in the Acquirer. Thereafter, on 9 April 2026, an Inter-Corporate Loan Agreement was entered into between the Petitioner and Respondent No. 4. The rights and obligations under that Agreement are from the transaction which is the subject matter of the present Petition and do not arise for consideration in these proceedings. On 10 April 2026, the Petitioner made its first payment of ₹5.67 Crores. This payment is recorded in paragraph 10 of the impugned notice.

3. On 9 May 2026, the Binding Term Sheet was restructured and executed afresh. Under the restructured Term Sheet, the purchase price was fixed at ₹5.00 Crores for acquisition of 100% of the paid-up capital of Respondent No. 4. In addition, the Petitioner agreed to infuse ₹20 Crores towards the liabilities identified in the Addendum. The said amount was to be paid in three stages. ₹2 Crores were payable upon signing of the documents, another ₹2 Crores upon completion of due diligence and the remaining ₹16 Crores upon receipt of approval from the DGCA and the MoCA. Clause 3(e) sets out certain conditions

which were required to be complied with by the Respondents before completion of the transaction. Clause 3(m) provides for termination only upon execution of the Definitive Agreements or by mutual written consent. Clauses 3(i) and 3(j) provide for Mumbai as the jurisdiction and for arbitration seated at Mumbai. On the same day, namely, 9 May 2026, an Addendum to the Binding Term Sheet was executed. Clause 2.1 of the Addendum sets out the liabilities of Respondent No. 4 which were accepted by the parties. These liabilities were stated to aggregate to ₹197.07 Crores and included trade payables of ₹88.82 Crores. Clause 2.3 made the creditor ledger and balance confirmations a mandatory requirement. Clause 3.3 provided that the Indemnity Bond was to be furnished as a condition precedent to completion of the transaction.

4. In May 2026, a Share Transfer Agreement dated 7 May 2026 was executed. Under that Agreement, Respondent No. 1 transferred 58,81,051 equity shares, representing 9.50% of the paid-up equity capital, to the Petitioner for a consideration of ₹47,50,000. The said consideration was paid by the Petitioner. Clause 8.3 of the Agreement contains the arbitration agreement, while Clause 8.2 gives exclusive jurisdiction to the Courts at Mumbai. In the same month, a Share Escrow Agreement was entered into between the Petitioner, SA YU Broking LLP, Respondent No. 4, the Selling Shareholders, Respondent No. 5 as the Escrow Agent and Respondent No. 6 as the Advisor. Under the Share Escrow Agreement, the Escrow Agent was authorised to act only on the written instructions of the Advisor. Such authority was

stated to operate to the exclusion of all other persons, including the other parties to the Agreement. The Share Escrow Agreement was to remain in force until 31 March 2027. Pursuant to the said arrangement, Respondent No. 1 deposited 4,00,12,182 equity shares into the Share Escrow Account. However, the 1,52,30,000 preference shares of Respondent No. 1, the 7,82,466 equity shares of Respondent No. 3 and the 100 equity shares of Respondent No. 2 were not deposited in the escrow account. On 21 May 2026, the Petitioner made a payment of ₹10.00 Crores. Thereafter, on 5 June 2026, the Petitioner made another payment of ₹2.92 Crores. On 20 July 2026, the Petitioner addressed a letter to the Respondents calling upon them to deposit the remaining shares forming part of the transaction into the Share Escrow Account. The Petitioner called upon the Respondents to comply with Clause 3(e) of the Binding Term Sheet. Thereafter, on 21 July 2026, the Petitioner made two payments amounting in aggregate to ₹4.86 Crores. According to the Petitioner, with these payments, the total amount advanced by it came to ₹23,45,28,000/-.

5. In August 2026, Respondent No. 4 circulated an unexecuted draft of the Share Purchase-cum-Company Acquisition Agreement. The draft recorded, amongst other things, that ₹2 Crores had been disbursed upon execution of the Term Sheet. It recorded the infusion of ₹23,45,28,000/- by the Petitioner. The draft recorded that operational control of the Company had been handed over to the executives of the Petitioner. The Petitioner returned the draft after making its comments. However, the Definitive Agreement was never executed between the parties. On 10 August 2026, the

Petitioner furnished a revised list of its proposed directors for obtaining security clearance from the MoCA and the DGCA. This fact is recorded in paragraph 18 of the impugned notice. On 16 August 2026, Respondent No. 4 issued the impugned notice titled “Notice of Material Breach, Repudiatory Non-Performance and Termination”. By the said notice, Respondent No. 4 purported to accept the alleged repudiation by the Petitioner, bring the transaction to an end and, in paragraph 26 thereof, demanded immediate release of the shares lying in the Share Escrow Account. Thereafter, on 20 August 2026, Respondent No. 4 addressed a notice to Respondent No. 5 titled “Dispute Notice and Request to Maintain Status Quo”. In that notice, Respondent No. 4 recorded that a dispute had arisen between the parties and requested that the shares lying in escrow should not be released, transferred or otherwise dealt with. Respondent No. 4 stated that it was not seeking any unwinding of the transaction. The said notice was accompanied by an email of the same date. This was followed by an email sent by Respondent No. 5 on 21 August 2026.

6. On 25 August 2026, the Petitioner sent its reply to the Respondents. By the said reply, the Petitioner refused to accept the purported termination of the transaction. The Petitioner affirmed the transaction documents and stated that it continued to be ready and willing to perform its obligations. The Petitioner made it clear that it did not consent to the release of the shares from the Share Escrow Account. Copies of the said reply were forwarded to the Selling Shareholders, the Escrow Agent and the Advisor. In these circumstances, the Petitioner apprehends that the shares lying in

the Share Escrow Account, as well as the other shares which form part of the transaction, may be released, transferred, pledged, encumbered or otherwise dealt with. According to the Petitioner, such action would affect the subject matter of the proposed arbitral proceedings and may make the relief which it proposes to seek in arbitration difficult to protect. It is for this reason that the Petitioner has approached this Court under Section 9 of the Arbitration and Conciliation Act, 1996.

7. Mr. Chandrachud, learned Advocate appearing for the Petitioner, submitted that the arrangement agreed between the parties is set out in Clause 2 of the Binding Term Sheet and Clauses 2.1 and 2.3 of the Addendum. According to him, the terms of payment have been stated in these documents. He submitted that it was necessary to place the arrangement before the Court in its proper form because the impugned notice proceeds on an incorrect understanding of the same. According to the learned Advocate, the purchase price for acquiring 100% of the paid-up capital of the Company was fixed at ₹5.00 Crores. The payment was to be made in three stages. First, ₹47,50,000/- was payable upon signing of the Term Sheet against transfer of 9.50% of the paid-up capital. Second, ₹52,50,000/- was payable upon completion of due diligence or on the thirtieth day, whichever was earlier, against transfer of another 10.50% of the paid-up capital. This transfer was to be made from the Share Escrow Account only after receipt of the approval of the Ministry of Civil Aviation. The remaining ₹4.00 Crores was payable within seven working days after completion of the transaction and compliance with all the

pre-conditions mentioned in Clause 3(e). He submitted that, apart from the purchase price, the transaction contemplated an agreed infusion of ₹20.00 Crores towards the liabilities identified in the Addendum. This amount was to be paid in three parts. ₹2.00 Crores was payable upon signing, another ₹2.00 Crores upon completion of due diligence and ₹16.00 Crores after receipt of the approval of the DGCA and MoCA. He submitted that the Addendum makes the position clear by providing that the “balance amount of INR 16.98 Crores along with any infusions after Mar-26, will be paid off by Heligo from its own Internal Accruals”.

8. He submitted that Clause 2.3 of the Addendum makes it clear that the payment of ₹20.00 Crores was not an unconditional obligation of the Petitioner. The said amount was payable “subject to compliance of pre-conditions as mentioned in Clause 3(e)”. There was a specific requirement that the Promoter Selling Shareholder should furnish, “as a mandatory condition” and within 10 business days, ledger confirmations and balance confirmations from each creditor. Thus, according to the learned Advocate, the payment obligation had to be considered along with the conditions which the Respondents were required to satisfy. He submitted that Clause 3(d) of the Term Sheet puts a limit on the liabilities which were to be dealt with under the transaction. The clause provides that “liabilities appearing in the payable list as on April 06, 2026 shall be processed by the Acquirer”. It provides that “any additional expenses beyond this list shall not be entertained and will remain the responsibility of the Selling shareholders”. According to the learned Advocate, the Petitioner could not be

made responsible for liabilities or expenses which were outside the agreed list. The learned Advocate referred to Clause 3(a) of the Term Sheet, which provides that “The Acquirer will infuse reasonable fund from the effective date”. He submitted that there is no other provision in the transaction documents which creates any funding obligation upon the Petitioner. In particular, there is no provision requiring the Petitioner to infuse ₹88 Crores, or any amount even remotely close to ₹88 Crores. According to him, the allegation in the impugned notice that the Petitioner was required to provide such amount is contrary to the documents executed between the parties.

9. Mr. Chandrachud submitted that the Petitioner has performed a substantial part of its obligations. The Petitioner has paid the entire consideration of ₹47,50,000/- which was payable for acquisition of the initial 9.50% shareholding. The Petitioner has advanced an aggregate amount of ₹23,45,28,000/- to and for Respondent No. 4. According to the learned Advocate, these amounts were used for paying the liabilities of Respondent No. 4 towards aircraft lessors, original equipment manufacturers, power-by-the-hour vendors and other creditors. He referred, in particular, to Vertical Aviation, Portrane Aviation, Safran Helicopter Engines, Pratt & Whitney, Leonardo, Airbus, Bell Textron, Rotor XM Leasing and Textron Financial. He submitted that the fact that these amounts were utilised for the liabilities of Respondent No. 4 is admitted in paragraphs 10 and 12 of the impugned notice. The Petitioner nominated its executives and proposed directors. It sought the operational transition contemplated under Clause 3(c).

The Petitioner called upon Respondent No. 4 to add its authorised person as a signatory to all the bank accounts of Respondent No. 4. According to the learned Advocate, this was contemplated by Clause 3(c) and was required to be done within seven days. He submitted that the obligation of the Petitioner to pay the balance purchase consideration of ₹4.00 Crores and the remaining ₹16.00 Crores towards the agreed infusion could not be treated as an immediate and unconditional obligation. Under Clause 2(d)(iii) of the Term Sheet and Clauses 2.1 and 2.3 of the Addendum, these payments were dependent upon the Respondents first complying with the pre-conditions mentioned in Clause 3(e). The remaining amount was connected with receipt of the necessary approvals from the Directorate General of Civil Aviation and the Ministry of Civil Aviation.

10. According to the learned Advocate, these obligations were reciprocal promises within the meaning of Sections 51 to 54 of the Indian Contract Act, 1872. In simple terms, the Petitioner was required to perform its part only when the Respondents had performed, or were ready and willing to perform, their corresponding obligations. He submitted that the Respondents could not accuse the Petitioner of breach because a condition was not fulfilled when that condition had not been fulfilled by the Respondents. According to him, the Respondents had prevented the required conditions from being fulfilled. The learned Advocate submitted that the impugned notice proceeds on an incorrect basis. According to him, the Respondents have treated their own failure to perform the agreed obligations as a breach committed by the

Petitioner. He submitted that the notice, in substance, seeks to attribute to the Petitioner a default which arose from the Respondents' own conduct.

11. Mr. Chandrachud then referred to the notice of termination dated 16 August 2026. He submitted that the principal reason given in the said notice for terminating the transaction was the alleged failure of the Petitioner to provide sufficient funds to meet the liabilities and operational requirements of the Respondents. According to the notice, this alleged failure had affected the operations of the Company. The notice stated that the Respondents had informed the Petitioner about the critical position of their cash flows and the urgent need for funds to meet their creditor liabilities and continue their operations. He submitted that paragraph 2 of the notice of termination proceeds on the basis that the parties had agreed that ₹88 Crores would be infused under the transaction documents. According to him, this statement is not supported by the Binding Term Sheet or the Addendum. He submitted that neither document contains any agreement under which the Petitioner was required to infuse ₹88 Crores. He pointed out that there was a Inter-Corporate Loan Agreement dated 9 April 2026 between the parties. Under that Agreement, the Petitioner had agreed to provide a loan facility to the Respondent up to a maximum limit of ₹50 Crores, subject to the terms and conditions contained in that Agreement. According to him, the loan facility under that Agreement could not be treated as obligation to infuse ₹88 Crores under the transaction documents. He submitted that the manner in which the purchase consideration was to be paid is

provided in Clause 2(d) of the Binding Term Sheet. He referred to Clause 2(e), which provides that until the shares were deposited in the Share Escrow Account, the Selling Shareholders were required to continue to ensure that their shares were not sold, transferred, alienated or otherwise disposed of. They were not permitted to create any pledge or encumbrance over those shares. According to the learned Advocate, this restriction applied to the shareholding reflected in the Shareholding Pattern of the Company as on the date of the Term Sheet. He submitted that any transfer or alienation made in breach of this provision would, under the said clause, be treated as null and void ab initio. The learned Advocate referred to Clause 3(d) of the Term Sheet. He submitted that, for determining the assets, liabilities, claims, and expenses of the Target Company which had been accepted by the parties, the Addendum to the Term Sheet was required to be considered. The Addendum contained an arbitration clause. According to him, the Addendum contemplated that the Petitioner was required to infuse only ₹20 Crores. He submitted that the balance amount of ₹16.98 Crores, together with any infusion after March 2026, was to be paid by the Respondents from their own internal accruals.

12. He submitted that the Respondents have taken a different position in the notice of termination and in their subsequent reply. According to him, the Respondents have attempted to rely upon obligations which do not find support in the transaction documents. He submitted that the alleged failure to comply with Clause 2(d)(ii), namely, the alleged failure to pay the additional ₹52.50 lakhs within 30 days, was not relied upon by the

Respondents as a ground for termination of the Agreement. According to him, the Respondents cannot now treat that alleged non-payment as the basis for supporting the termination.

13. Mr. Chandrachud submitted that the Petitioner has throughout remained ready and willing to perform its obligations. In order to demonstrate such readiness and willingness, he stated that the Petitioner was prepared to deposit the amount of ₹52.50 lakhs before this Court. According to him, this would demonstrate that there was no unwillingness on the part of the Petitioner to comply with its obligations. He submitted that the Inter-Corporate Loan Agreement and the Term Sheet formed part of the same overall arrangement between the parties. According to him, the two documents could not be looked at in complete isolation from each other because they were entered into in the context of the same overall transaction. He submitted that the Court should read the documents together while considering the rights and obligations of the parties. The learned Advocate submitted that there is an apparent need to read Clause 2(d)(ii) and Clause 2(e) together. Clause 2(d)(ii) required payment of ₹52.50 lakhs upon completion of due diligence or on the thirtieth day from the date of the Term Sheet, whichever was earlier, against transfer of 10.50% of the then paid-up capital of the Target Company to the Acquirer. On the other hand, Clause 2(e) contemplated that, after transfer of 9.50% of the shareholding to the Acquirer, the Acquirer and the Target Company would place the entire shareholding of the Selling Shareholders in the Share Escrow Account. The shares were to remain there as security for the obligations of the Selling

Shareholders under the proposed transaction. According to the learned Advocate, these provisions have to be read together so that the transaction documents are given a consistent meaning.

14. He submitted that even if some difficulty is found in reading Clause 2(d)(ii) together with Clause 2(e), neither clause can be considered by without examining the complete arrangement. According to him, Clause 2(d)(ii) should not be read separately from Clause 2(e). Clause 2(e) deals with the manner in which the shares were to be placed in escrow and protected as security. The transfer of shares was contemplated to take place from the Share Escrow Account to the Acquirer. Therefore, according to the learned Advocate, all the relevant provisions have to be read together so as to give effect to the transaction contemplated by the parties as a whole.

15. Mr. Dhond, learned Senior Advocate appearing for the Respondents, submitted that the Binding Term Sheet dated 9 May 2026, read with the Addendum of the same date, cannot be treated as an unconditional agreement under which the Petitioner was entitled to seek specific performance of the sale of 100% of the shares of Respondent No. 4. According to him, the Term Sheet shows that its terms were indicative and were intended to facilitate the due diligence process. The final terms were to be incorporated in the Definitive Agreements. He referred to Clause 3(h), which provided for exclusivity only for a period of 180 days. According to the learned Advocate, the Term Sheet was only a framework setting out the proposed transaction and was not an unconditional promise by the Respondents to complete the sale. The learned

Senior Advocate submitted that the Petitioner's claim that it had performed its obligations is not correct. It is true that the Petitioner holds 9.50% of the shareholding of Respondent No. 4 and that it has advanced an aggregate amount of ₹23,45,28,000/- to and for Respondent No. 4. However, according to him, a substantial part of this amount was paid under the Inter-Corporate Loan Agreement dated 9 April 2026. Such payments cannot be treated as performance of the obligations of the Petitioner under the Binding Term Sheet.

16. Mr. Dhond submitted that the Petitioner's contention that its agreed contribution was limited to ₹20 Crores is incorrect. According to him, the transaction documents contemplated two different structures. Under the first structure, the Petitioner was required to pay ₹25 Crores to the Selling Shareholders and infuse ₹20 Crores into the Company. Under the second structure, the Petitioner was required to pay ₹5 Crores under Clause 2(c), provide ₹20 Crores towards working capital and NBFC loans under Clause 2.1 of the Addendum, and provide another ₹20 Crores within 30 business days from the Term Sheet towards payments due to creditors under Clause 2.3. He submitted that the Acquirer was required to process the payables appearing in the list under Clause 3(d). The learned Senior Advocate submitted that the Petitioner's Chief Officer had himself confirmed on 7 April 2026 that the Petitioner had agreed to infuse ₹20 Crores in April 2026 against creditor liabilities of approximately ₹788.81 Crores. According to him, Respondent No. 4 had called upon the Petitioner to provide the balance amount of ₹40 Crores. Despite this, the

Petitioner did not provide the funding which it had committed to provide. He submitted that the amount of ₹23.45 Crores relied upon by the Petitioner does not represent consideration paid under the Term Sheet. According to him, these amounts were loan drawdowns under the Inter-Corporate Loan Agreement. He referred to the communication dated 20 July 2026 in which the Petitioner's Director had expressly stated that an amount of ₹5 Crores would be treated as another tranche under the Inter-Corporate Loan Agreement dated 9 April 2026 and would be governed by the same terms and conditions. According to the learned Advocate, this contemporaneous communication shows the nature of the amount paid. The learned Senior Advocate submitted that the first amount of ₹5.67 Crores was paid on 10 April 2026. This was the very next day after the Inter-Corporate Loan Agreement was executed and nearly one month before the Binding Term Sheet dated 9 May 2026 which is relied upon by the Petitioner in the present proceedings. He submitted that even the Petitioner's own draft agreement describes this amount as a loan. According to him, the Petitioner has pleaded that the rights and obligations under the Loan Agreement are and independent from the rights and obligations under the Term Sheet. Having taken that position, the Petitioner cannot now contend that the same money constituted performance of its obligations under the Term Sheet.

17. Mr. Dhond submitted that the Petitioner was not ready and willing to perform its obligations under the transaction. He pointed out that even the share purchase consideration remained unpaid. The amount of ₹47.50 lakhs, which was payable upon signing of

the Term Sheet on 9 May 2026, was paid only on 10 June 2026. He submitted that another amount of ₹52.50 lakhs became payable by 8 June 2026 as a obligation and remains unpaid even as on date. According to him, the Petition does not even disclose this outstanding amount. According to the learned Senior Advocate the only amount paid towards the purchase price as on date is ₹47.50 lakhs. He submitted that this position is inconsistent with the Petitioner's claim that it had performed its obligations under the transaction. According to him, the admitted fact that a amount of ₹52.50 lakhs remained unpaid is sufficient to show that the Petitioner had not completed its payment obligations. The learned Senior Advocate submitted that the Petitioner had admitted its funding default even before 20 July 2026. According to him, Respondent No. 4 had been asking the Petitioner to provide funds since April 2026. He referred to the meeting held on 14 July 2026, in which the representative of the Petitioner admitted that there had been a delay. The reason given was a "mismatch of funds". The Petitioner's representative had then undertaken to pay ₹10 Crores by 24 July 2026 and the balance by 4 or 5 August 2026. However, according to the learned Advocate, only ₹5 Crores was subsequently paid. He submitted that the undertaking to infuse the committed funds was never signed. According to him, the reply dated 24 July 2026 to the letter dated 20 July 2026 was an attempt made after the default had occurred. It could not cure the earlier failure of the Petitioner to provide the committed funding.

18. Mr. Dhond submitted that the allegation of the Petitioner that the Respondents had failed to comply with the requirements relating to regulatory approvals and operational transition is incorrect. According to him, Respondent No. 4 had prepared the application required for security clearance. However, the Petitioner orally instructed Respondent No. 4 not to proceed with the application because it intended to change its nominees. The Petitioner changed its nominees on 10 August 2026. The learned Senior Advocate submitted that the regulatory approvals and operational transition were, in any event, dependent upon the Petitioner first demonstrating its capability. According to him, the MoCA and DGCA require the proposed acquirer to demonstrate that it has the capacity to undertake the transaction. Therefore, the Petitioner's failure to provide the committed funding affected the regulatory process as well as the proposed operational transition. He submitted that Respondent No. 4 had taken substantial steps towards the proposed transaction. According to him, Respondent No. 4 had commenced due diligence as early as January 2026 and had introduced the Petitioner to the lessors of Respondent No. 4, including Milestone. He submitted that the Respondents had taken substantial steps in furtherance of the proposed acquisition. According to the learned Senior Advocate, a party which failed to provide the funds on which the proposed operational transition depended cannot subsequently complain that the transition did not take place. He submitted that the failure of the operational transition was a result of the Petitioner's own failure to provide the committed funding.

19. Mr. Dhond submitted that the draft Definitive Agreement relied upon by the Petitioner cannot be treated as an admission by Respondent No. 4. According to him, the draft was prepared and circulated by the Petitioner. The Petitioner's representative had forwarded the draft Share Purchase Agreement on 8 August 2026. Therefore, the Petitioner cannot rely upon statements or recitals contained in its own draft and treat them as admissions made by Respondent No. 4. He submitted that, in any event, the recitals contained in the Petitioner's own draft agreement expressly record that the amount of ₹23.45 Crores had been advanced as a loan under the Inter-Corporate Loan Agreement. According to the learned Advocate, the Petitioner cannot rely upon its own draft whenever it supports its case and, at the same time, dispute the description of the very same amounts as loans when that description does not support its case. The learned Senior Advocate submitted that the Petitioner's allegation that the Respondents had failed to deposit the balance shares in the Share Escrow Account is incorrect. According to him, the balance shares were deposited in the Share Escrow Account on 3 July 2026. They were not deposited in May 2026, as alleged by the Petitioner. According to him there was no immediate danger to the escrow shares of the nature alleged by the Petitioner. He pointed out that Respondent No. 4 addressed a communication to the Escrow Agent on 20 August 2026 requesting that the shares be maintained in status quo. The apprehension expressed by the Petitioner regarding an immediate release or transfer of the shares was therefore, according to the Respondents, without basis.

20. Mr. Dhond submitted that the Petitioner's contention that the notice dated 16 August 2026 was illegal or ineffective is denied. According to him, the proposed transaction failed because the Petitioner did not provide the funding which it had undertaken to provide. He submitted that the Term Sheet was not an unconditional commitment to complete the transaction. Respondent No. 4 was entitled to bring the proposed transaction to an end when the Petitioner failed to perform its material funding obligations. The learned Senior Advocate submitted that the Petitioner's reliance upon Clause 3(m) as giving it an absolute right to compel completion of the transaction is misplaced. According to him, the arrangement contemplated execution of Definitive Agreements and completion of the transaction only after compliance with the agreed terms, conditions, and obligations. The Petitioner cannot, according to him, seek to compel completion of a transaction which remained subject to that framework and which failed because of the Petitioner's own non-performance. He submitted that the Petitioner's contention that there was no repudiation or default on its part is contrary to the material on record. According to him, the fact that the Petitioner may have made a payment shortly before the notice dated 16 August 2026 does not change the position. Substantial amounts had fallen due and remained unpaid. The Petitioner had failed to provide the funding which, according to the Respondents, it had committed to provide.

21. Mr. Dhond submitted that the Petitioner's reliance upon its alleged exclusion from management does not assist its case.

According to him, the proposed operational transition was dependent upon regulatory approvals, security clearances, proof of capability and completion of the necessary steps by the Petitioner. He submitted that the Petitioner cannot rely upon the fact that the transition did not take place when, according to the Respondents, the transition was affected by the Petitioner's failure to provide the required funding and by its subsequent change of nominees. The learned Advocate submitted that the letter dated 20 July 2026 relied upon by the Petitioner does not support its case. According to him, the letter was issued only after the Petitioner had failed to meet its funding commitments. It cannot turn the Petitioner's own default into a default committed by Respondent No. 4. He submitted that the Petitioner's claim that the amounts paid by it constituted consideration under the Term Sheet is contrary both to the transaction documents and to the Petitioner's own contemporaneous correspondence. According to him, the amounts aggregating to ₹23.45 Crores were advanced under the Inter-Corporate Loan Agreement and must be treated as loan amounts.

22. Mr. Dhond submitted that the rights and obligations of the parties under the Inter-Corporate Loan Agreement dated 9 April 2026 are and independent. According to him, the said Agreement does not contain an arbitration clause and provides for exclusive jurisdiction of the Courts at Delhi. He submitted that almost the entire amount relied upon by the Petitioner was paid under that Loan Agreement. Respondent No. 4, being the borrower under that Agreement, cannot be deprived of the forum which the parties had expressly agreed upon. According to the learned Senior Advocate,

the question of jurisdiction arises in the present matter. The Petitioner cannot, according to him, rely upon the arbitration clause contained in the Term Sheet and thereby bring within the arbitration disputes which arise under, and are governed by, the Inter-Corporate Loan Agreement. He submitted that the Petitioner's reliance upon the arbitration clauses contained in the Term Sheet, the Share Escrow Agreement and the Share Transfer Agreement does not answer this objection. According to him, the mere existence of arbitration clauses in some of the transaction documents does not mean that disputes relating to amounts advanced under a Loan Agreement become subject to arbitration under those clauses. The Respondents submitted that the Petitioner's contention that the notice dated 16 August 2026 was contrary to the arrangement is untenable. According to them, the notice was issued in the background of the Petitioner's failure to fulfil its funding obligations and the consequent failure of the proposed transaction to proceed.

23. Mr. Dhond submitted that the Petitioner's argument that "loss of confidence" could not be a ground for termination does not meet the Respondents' case. According to him, the Respondents are not relying merely upon the expression "loss of confidence". Their case is that the Petitioner failed to fulfil material funding obligations and failed to complete the necessary steps contemplated under the transaction documents. He submitted that the contention that Respondent No. 4 alone could not bring the transaction to an end is incorrect. According to him, the proposed acquisition remained dependent upon performance of reciprocal

obligations and execution of the Definitive Agreements. Once, according to the Respondents, the Petitioner failed to provide the committed funding, it could not insist upon continuation of a transaction which had failed because of its own non-performance. The learned Senior Advocate submitted that the allegation that Respondent No. 4 was approbating and reprobating by seeking return of the shares while retaining the amounts advanced is incorrect. According to him, Respondent No. 4 is ready and willing to return the amount of ₹23.45 Crores. Respondent No. 1 is ready and willing to return ₹47.50 lakhs against re-transfer of the 9.5% shareholding to Respondent No. 1. He submitted that the injury alleged by the Petitioner can be compensated in monetary terms. According to him, the parties had themselves contemplated the consequences of non-completion of the transaction and Clause 3(f) provides for the agreed remedy. He submitted that the Petitioner cannot establish any irreparable injury which would justify the interim protection sought in the Petition.

24. Mr. Dhond submitted that the communication dated 20 August 2026 sent by Respondent No. 4 to the Escrow Agent shows that there was no immediate threat to the Petitioner's alleged rights in the escrow shares. By that communication, Respondent No. 4 had requested that the shares be maintained in status quo. According to him, Respondent No. 4 had taken steps to preserve the existing position until the dispute could be resolved. According to the Respondents, the allegation that their conduct created an immediate risk of transfer of the escrow shares is incorrect. The status quo had been requested by Respondent No. 4 and the

Escrow Agent had been asked not to deal with the shares. The Respondents denied that the Petitioner had established any case of irreparable injury. According to them, the amounts involved are identifiable and can be returned if found payable. Respondent No. 4 had expressly stated its readiness and willingness to return ₹23.45 Crores. Respondent No. 1 had stated its readiness and willingness to return ₹47.50 lakhs against re-transfer of the 9.5% shareholding. The learned Senior Advocate submitted that the Petitioner's contention that the notice was invalid merely because it did not refer to a specific clause giving Respondent No. 4 an independent right to terminate is misplaced. According to him, the Respondents' case is that the transaction failed because the Petitioner did not perform its material funding obligations and because the conditions necessary for completion were not fulfilled. The Petitioner, according to him, cannot rely upon the absence of an express unilateral termination clause to compel completion of a transaction which, according to the Respondents, the Petitioner failed to perform.

25. In the aforesaid circumstances, Mr. Dhond submitted that the present Petition is misconceived and is liable to be rejected. According to the Respondents, the Petitioner has failed to show that it was ready and willing to perform its obligations. It has incorrectly treated the loan amounts as consideration paid under the transaction documents. It has not disclosed the outstanding amount of ₹52.50 lakhs payable towards the purchase price. The Respondents submit that the Petitioner failed to provide the funding which, according to them, was necessary for the proposed

acquisition and operational transition. They contend that the Term Sheet did not create an unconditional obligation to complete the transaction. They submit that disputes arising under the Inter-Corporate Loan Agreement are disputes and are subject to the exclusive jurisdiction of the Courts at Delhi.

REASONS AND FINDINGS:

26. I have considered the submissions made for the Petitioner, the submissions of Respondent Nos.1 to 4. The dispute is about what was agreed between the parties, what amount the Petitioner was required to pay, what amount was paid for the acquisition and what amount was paid as loan. It is about whether both sides performed their obligations and whether the Petitioner has shown prima facie case for the Court to protect the transaction until the arbitration takes place.

27. The first question is whether the Binding Term Sheet dated 09 May 2026 can be treated as a binding arrangement between the parties. The Respondents submit that it was only an indicative document for due diligence and that the final transaction was to be completed by Definitive Agreements. This submission cannot be accepted. The Term Sheet contains words which show that it was more than only a preliminary document. The Petitioner has rightly relied upon Clause 3(l), which states:

“This Term Sheet shall constitute the final, complete, and binding understanding between the Parties in respect of the subject matter hereof. Any prior or contemporaneous understanding, arrangement, representation, or agreement, whether oral or written and whether executed or not, shall

be deemed superseded, null and void, and shall carry no legal force or effect.”

28. The words used in this clause show that the parties intended the Term Sheet to have binding effect in respect of its subject matter. At the same time, the above clause cannot be read to mean that every part of the future transaction was completed. The same Term Sheet contains provisions regarding due diligence, regulatory permissions, escrow of shares, completion of pre-conditions and execution of Definitive Agreements. The document says that after completion of due diligence, “The parties shall enter into the Definitive Agreements upon successful completion of the Due diligence.” It says that if there are deviations in the figures, “requisite adjustments shall be made while executing the Definitive Agreements.” Therefore, the Term Sheet is binding, but the transaction which was contemplated by it was still depending upon steps and conditions. The proper reading is that the Term Sheet created binding obligations between the parties, but completion of the acquisition was still dependent upon the agreed pre-conditions, due diligence, approvals and other steps mentioned in the document.

29. This position becomes more clear from the payment arrangement in the Term Sheet. The Term Sheet says that the Acquirer shall purchase the entire paid-up share capital for total consideration of Rs.5 crores. It first provides for “INR 47.50 Lakhs (9.50% of Purchase price)” on signing. It then provides for an “Additional amount of INR 52.50 Lacs (10.50% of the Purchase price)” upon completion of due diligence or on the 30th day from

the date of the Term Sheet, whichever is earlier. The balance “INR 4.00 Crores” is to be paid for the remaining 80% within seven working days after completion and compliance of all the pre-conditions. Thus, the contract divides the consideration for the shares into different stages. The first payment was connected with 9.5% shares. The second payment of Rs.52.50 lakhs was connected with another 10.5% shares. The remaining Rs.4 crores was connected with the balance 80% shares and was made dependent upon completion and compliance of the pre-conditions. The Petitioner submits that its obligation under the Term Sheet was only Rs.20 crores and since it had advanced Rs.23.45 crores, there was no failure on its part. However, when the Addendum is read as a whole, this submission is not supported. Clause 2.1 of the Addendum provides that for the specified working capital and NBFC liabilities, “acquirer will infuse fund in Heligo Charters of INR 20 Crores” and that the balance amount of INR 16.98 crores, along with infusions after March 2026, would be paid by Heligo from its own internal accruals. Thereafter, Clause 2.3 separately requires the Acquirer to make another payment of Rs.20 crores within 30 business days towards payments due to creditors, but this was subject to compliance of the pre-conditions mentioned in Clause 3(e) of the Term Sheet. Therefore, the Petitioner’s submission that the agreed contribution was only Rs.20 crores does not fit with the plain wording of the Addendum. There is a obligation of Rs.20 crores under Clause 2.3. However, I cannot accept the Respondents’ submission that the entire Rs.40 crores was unconditionally payable without considering the obligations of

the Respondents. Clause 2.3 makes the payment subject to compliance with the pre-conditions under Clause 3(e), and the payment was towards creditors as mutually agreed with the Selling Shareholders. Therefore, the Respondents cannot take only that portion of the Addendum which supports their case. The obligations of the Acquirer have to be read together with the conditions and obligations imposed upon the Target and the Selling Shareholders.

30. The same reasoning applies to the submission that the Petitioner had agreed to finance all liabilities of Rs.88 crores. The Term Sheet does not contain any such promise in those words. Clause 3(d), as reproduced in the document, provides:

“Liabilities appearing in the payable list as on April 06, 2026 shall be processed by the Acquirer. Any additional expenses beyond this list shall not be entertained and will remain the responsibility of the Selling shareholders.”

31. The Addendum refers to trade payables of about Rs.88 crores and requires formal ledger confirmations and balance confirmations from the concerned creditors. Therefore, the obligation cannot be increased merely because the Respondents say that the company required Rs.88 crores or Rs.40 crores for its operations. The Court has first to see what the parties have written and agreed. The written documents do not show any unconditional promise by the Petitioner to pay every liability of Heligo Charters. There are identified liabilities, specified infusions and specified stages of payment. To this limited extent, the submission of the Petitioner can be accepted.

32. The next question is about the nature of the amount of Rs.23.45 crores. The Petitioner says that the entire amount should be treated as money advanced towards the acquisition and that this shows substantial performance of the transaction. The Respondents say that this amount was advanced under a Inter-Corporate Loan Agreement and cannot be counted as purchase consideration or performance under the Term Sheet. On this issue, the documents before the Court are more specific. The Inter-Corporate Loan Agreement is dated 09 April 2026. Its recital states that the Borrower had requested “an unsecured inter-corporate loan for its principal business activities and working capital requirements” and that the Lender had agreed to provide a facility up to Rs.50 crores. The Agreement says that the loan would be infused “in one or more tranches from time to time” on the basis of specific requests made by the Borrower. It contains provisions about interest on the outstanding principal, repayment, security over the assets of the Borrower and consequences in case of default. Clause 9.1 of the Loan Agreement provides:

“Any disputes arising out of this Agreement shall be subject to the exclusive jurisdiction of the courts in New Delhi.”

33. Clause 10.3 provides:

“This Agreement constitutes the entire understanding between the Parties.”

34. Thus, the Agreement is a contract dealing with loan, repayment and jurisdiction. The timing of the first payment is important. The first payment of Rs.5.67 crores was made on 10 April 2026, one day after the Inter-Corporate Loan Agreement was

executed and almost one month before the Binding Term Sheet dated 09 May 2026. This is a strong circumstance supporting the Respondents' case that this payment was made under the Loan Agreement and was not consideration under the later Term Sheet. The Respondents have relied upon this chronology in their written submissions. The Petitioner disputes this position. It says that there was no positive obligation under the Loan Agreement to advance Rs.50 crores and that the Loan Agreement only created a facility up to that amount. There is some substance in this submission. The Loan Agreement says that the facility was "up to" Rs.50 crores. It does not say that the whole Rs.50 crores had to be compulsorily advanced. But this does not answer the question whether the amounts which were advanced were loans under that Agreement. On this question, there is material from the same period. The Respondents' reproduce the Petitioner's email dated 20 July 2026 in which the Rs.5 crores was stated to "shall be deemed as another tranche under the Inter-Corporate Loan Agreement dated 9th April 2026 ... subject to the same terms and conditions." The Respondents rely upon the draft Definitive Agreement circulated by the Petitioner on 08 August 2026, which described the amount of Rs.23.45 crores as having been advanced as a loan under the Inter-Corporate Loan Agreement.

35. The Petitioner has denied that the Rs.5.67 crores was a loan. It has stated in the Rejoinder that the Respondents have not produced sufficient documentary evidence to establish the nature of that payment. It has stated that the later payments of Rs.10 crores and Rs.2.92 crores were made in furtherance of the Term

Sheet. However, the difficulty for the Petitioner is that merely because some payments were made after the Term Sheet, their nature does not change. A Loan Agreement was in existence between the parties. That written contract contemplated loan tranches. The first payment was made after that Agreement. The email dated 20 July 2026 relied upon by the Respondents has not been shown to have been denied by the Petitioner. When all these circumstances are seen together, the Respondents' case that the Rs.23.45 crores were loan advances becomes stronger than the Petitioner's case that the same amounts were purchase consideration or acquisition infusion. I find that the Petitioner has not established that the Rs.23.45 crores can be treated as payment of the Rs.5 crore Purchase Price under Clause 2(c) of the Term Sheet. The documents instead show that the substantial part of these amounts was advanced under the Inter-Corporate Loan Agreement.

36. This finding does not mean that the Loan Agreement has no connection at all with the overall transaction. Clause 3(f) of the Term Sheet provides for repayment of amounts received from the Acquirer "in any form" including amounts towards "operations, inter corporate loans or Equity infusion" if the transaction fails in the circumstances contemplated there. This provision is important because it shows that the parties knew that money could move under different descriptions while still being connected with the overall transaction. However, this provision does not convert a loan into share purchase consideration. It only provides a mechanism for dealing with amounts advanced if the transaction

fails. Therefore, I accept the Petitioner's submission only to the limited extent that the different transaction documents were connected and were intended to operate together. I do not accept the submission that every monetary payment made between the parties became consideration under the Term Sheet. The contracts can be read together wherever required, but each contract must retain the legal character given to it by its own language.

37. The next question concerns the Petitioner's readiness and willingness to perform its own obligations. On this issue, the Respondents rely upon the unpaid amount of Rs.52.50 lakhs. They submit that this amount became payable on the 30th day from the Term Sheet because Clause 2(d)(ii) states "upon completion of due diligence or on 30th day from the date of the term sheet whichever is earlier". This submission is supported by the words used in the Term Sheet. The Petitioner says that due diligence had not been completed, and the payment obligation had not arisen. This interpretation cannot be accepted because it leaves out the words "or on 30th day ... whichever is earlier". The clause gives two possible dates and says that whichever comes earlier will be the operative date. Therefore, merely because due diligence was not completed, the payment could not be postponed beyond the 30th day. The Rejoinder acknowledges that the Petitioner was required to pay Rs.52.50 lakhs "upon completion of due diligence or on the 30th day from the date of the Term Sheet whichever is earlier". The Respondents say that the 30th day was 08 June 2026 and that this amount remained unpaid. From the material placed before me, the Petitioner has not shown that this amount was paid before

the termination notice. The Petitioner submits that it had advanced Rs.18.59 crores or, according to its larger case, Rs.23.45 crores and the unpaid Rs.52.50 lakhs should not be treated as important. I am unable to accept this approach. The contract required a specific payment of Rs.52.50 lakhs against transfer of another 10.5% shareholding. Amounts paid under another contract cannot be treated as compliance with this particular instalment. The Petitioner could not replace one obligation by another unless the documents or conduct of the Respondents permitted such replacement.

38. The Respondents submit that the first Rs.47.50 lakhs was paid late. There is some difficulty in placing much reliance upon this submission because the Share Transfer Agreement is stated in the material to record transfer of 58,81,051 shares against Rs.47.50 lakhs and payment of that amount. The chronology relied upon by the Respondents states that the amount was paid on 10 June 2026, whereas the Share Transfer Agreement is dated 07 May 2026. Because of this inconsistency, I do not treat the alleged delay in payment of the first Rs.47.50 lakhs as the decisive ground against the Petitioner. The unpaid Rs.52.50 lakhs stands on a different footing. The Petitioner has not shown payment of this amount before the termination notice. Its statement that it is ready to deposit the amount before the Court shows present willingness, but it does not remove the fact that the date for payment had passed. Readiness and willingness cannot be shown only by an offer made after the dispute has started when an important payment had remained unpaid earlier. I find that the Petitioner has

not shown compliance with its own payment obligations under the Term Sheet. This finding is important because the Petitioner seeks specific performance and wide interim protection against the other contracting parties.

39. The Petitioner submits that the obligations of both sides were reciprocal. It relies upon the alleged failure of the Respondents to complete due diligence, deposit the entire shareholding into escrow, apply for MoCA/DGCA approval, furnish creditor confirmations and execute the indemnity bond. There is substance in the submission that the Term Sheet placed important obligations upon the Target and the Promoters. The document requires opening of the Share Escrow Account and transfer of 90.50% of the paid-up share capital. It requires application for MoCA/DGCA approval within 10 days and contains other compliance requirements. The Respondents answer that they had taken steps towards these obligations and that the delay in security clearance and operational transition was caused by the Petitioner's own conduct, including changes in its proposed nominees. Their written submissions refer to preparation of the security-clearance application and to a change in the Petitioner's proposed directors on 10 August 2026. They rely upon correspondence and meetings which, according to them, took place in July 2026.

40. These factual matters are disputed. The Term Sheet makes completion of due diligence and other pre-conditions an important part of the transaction. It says that the date of Closing is the date when the pre-conditions binding upon the Target Company and Selling Shareholders are completed and complied with and the

consequent transfer of the balance 80% takes place. Therefore, by August 2026, the transaction had not reached a stage where the Petitioner could say that the remaining 80% shares had become absolutely and transferable to it. The Agreements had not been executed. The absence of those agreements is not sufficient to say that the Term Sheet is unenforceable. But it remains relevant when the Court is asked to pass an interim order which would prevent the Respondents from ending the transaction and would keep the entire company tied to the proposed acquisition till arbitration.

41. The Petitioner relies upon Clause 3(m), which provides that the Term Sheet terminates on the earlier of execution of the Definitive Agreements or mutual written consent. The Petitioner submits that there was no right of unilateral termination. This submission has considerable force if Clause 3(m) is read. The clause does not expressly state that either party can unilaterally terminate the Term Sheet merely by giving notice. Therefore, the Petitioner's argument that the notice cannot be justified merely by relying upon Clause 3(m) is not without substance. The Respondents submit that Clause 3(m) need not be treated as the only possible source of a right to bring the transaction to an end. According to them, once the Petitioner committed a material funding failure and the transaction could not proceed, they were entitled to end the arrangement. This submission cannot be rejected only because Clause 3(m) does not use the words "unilateral termination". The conduct of a party under the contract and the consequence of a fundamental failure to perform obligations may have to be examined separately from the specific

termination clause. But for the present proceedings, it is not necessary to finally decide whether the notice dated 16 August 2026 terminated the whole transaction. Even if the Petitioner's case is taken at its highest and it is assumed that the termination notice is disputed and that Clause 3(m) does not permit unilateral termination, the Petitioner still has to show that an interim injunction is necessary and that the present position supports such protection. For the reasons discussed, the Petitioner has not established this.

42. The Petitioner has relied upon the principle that the Respondents cannot take benefit of their own failure to perform reciprocal promises. A party cannot demand payment of an amount while deliberately preventing the condition which makes that payment payable. Therefore, if the Petitioner could establish that the Respondents deliberately failed to complete the pre-conditions and at the same time treated that failure as the Petitioner's default, the position could have been different. But the material before the Court does not establish that position with sufficient clarity. There are different versions regarding due diligence, regulatory applications, proposed directors, creditor confirmations and operational transition. The Respondents rely upon steps allegedly taken by them. The Petitioner relies upon its letter dated 20 July 2026 calling upon the Respondents to comply with Clause 3(e).

43. The alleged defaults of the Respondents do not answer the issue of the Petitioner's unpaid Rs.52.50 lakhs. That payment became payable by the express alternative date of the 30th day

and was not made conditional upon successful completion of all other stages. Therefore, even if the Petitioner proves that some obligations of the Respondents were not performed, that does not show that the Petitioner had performed all its own obligations. The Petitioner has relied upon the draft Share Purchase-cum-Company Acquisition Agreement to show that the Respondents had accepted that operational control was with the Petitioner and that the transaction had progressed. The Respondents deny this and say that the draft was circulated by the Petitioner. They rely upon an email dated 08 August 2026 stating, “Please find the draft SPA (Definitive Agreement) for Heligo”.

44. I do not consider circulation of a draft agreement to be an admission by Respondent No.4 of all the recitals or statements contained in that draft. A draft agreement contains proposed terms. It becomes evidence of a concluded agreement only when the surrounding circumstances show that those terms were accepted and adopted. In the present case, the Definitive Agreement was admittedly never executed. Therefore, I cannot treat the draft as if it were the binding document between the parties. At the same time, the existence of the draft does show that the transaction had gone beyond mere discussions. It supports the Petitioner’s submission that the parties were trying to move towards completion. But this circumstance does not answer the issues concerning the unpaid consideration, the nature of the Rs.23.45 crores and the incomplete pre-conditions. The Petitioner has submitted that the Respondents are approbating and reprobating because, on one hand, they seek return of the

escrowed shares and, on the other hand, they retain the Rs.23.45 crores. This submission cannot be accepted in the manner in which it is made. If the Rs.23.45 crores were loan advances, then their retention or repayment would be governed by the Loan Agreement, including its repayment provisions. If the transaction failed, Clause 3(f) of the Term Sheet contemplated repayment of amounts received in different forms, including inter-corporate loans, subject to the conditions stated there. Therefore, merely because one party may be required to return money does not mean that it has no right to seek release of shares under the arrangement.

45. The Respondents have stated that Respondent No.4 is ready to return the Rs.23.45 crores and Respondent No.1 is ready to return the Rs.47.50 lakhs against re-transfer of the 9.5% shareholding. I do not treat this statement as a final decision regarding their monetary liability. However, it is relevant for considering whether the Petitioner has shown an immediate injury which cannot otherwise be protected. The stand of the Respondents shows that the monetary part of the dispute can be accounted for between the parties.

46. The Petition seeks much wider orders than merely preservation of the particular escrowed shares. When all these prayers are seen together, they go beyond merely preserving the disputed escrow arrangement. If granted in the form in which they are prayed, they would restrict the affairs of Heligo Charters and would give the Petitioner protection over the whole corporate and operational structure of Respondent No.4 during the pendency of

the arbitration. Such wide orders cannot be granted merely because the Petitioner has paid a substantial amount to Respondent No.4. The Court has first to see whether the right claimed by the Petitioner is clear and whether the particular relief is required to protect that right. On the present material, the right to immediate completion of the acquisition has not reached that stage. The Term Sheet contains conditions which remained incomplete and the Definitive Agreements had not been executed.

47. The question concerning the escrow shares requires consideration. The Petitioner apprehends that Respondent Nos.1 to 4 may release, transfer or otherwise deal with the shares. The Respondents rely upon their communication dated 20 August 2026 addressed to the Escrow Agent and submit that they requested that the shares should remain in status quo while the dispute continues. Their written submissions state that the immediate request was to ensure that the shares covered by the escrow arrangement were not released, transferred or otherwise dealt with during the dispute. This fact changes the nature of the relief which is required. The notice dated 16 August 2026 had demanded release of the escrowed shares, as stated in the material. But only four days thereafter, on 20 August 2026, Respondent No.4 asked the Escrow Agent to maintain status quo. Therefore, the apprehension of the Petitioner that immediate release of the shares was about to take place cannot be considered to continue in the same manner after this later communication. The Petitioner may rightly say that the earlier demand for release created a genuine apprehension. But an interim injunction has to

be considered on the position existing when protection is sought. Where the very party against whom the injunction is sought has thereafter communicated that the escrowed shares should not be released or dealt with while the dispute is pending, a wide injunction is not necessary merely because of an earlier apprehension. I find that the Petitioner has not established an immediate threat to the escrowed shares which would justify the restraints sought in prayers (a) to (e).

48. The prayer seeking direction to deposit the balance shares presents difficulty. The Petitioner says that certain shares of Respondent Nos.2 and 3 and preference shares of Respondent No.1 were never placed in escrow. The Respondents say that the balance shares were deposited on 03 July 2026, at least so far as the shareholding of Respondent No.1 is concerned. The exact status of each security is disputed. Therefore, on the present material, the Court is not in a position to issue a mandatory direction regarding all such securities without first deciding issues concerning ownership, the obligations of each Selling Shareholder and the actual contents of the escrow arrangement. A mandatory order at the interim stage requires a clearer case than what is shown. The Petitioner has not established that the failure to put every identified security into escrow continued despite an undisputed demand and was the only reason for the later failure of the transaction. I do not consider prayer (f) justified on the material before the Court.

49. The Petitioner has placed considerable reliance on the fact that it had acquired 9.5% shareholding and that Respondent No.1

had deposited his remaining shares in escrow. It says that these acts show substantial performance and show its intention to complete the transaction. I accept that the transaction had progressed. The fact that 9.5% shares were transferred and that a substantial amount was advanced cannot be ignored. But “substantial performance” cannot be decided only by seeing how much money has moved between the parties. The Court has to look at the particular obligations which were still not performed. In the present case, the payment of Rs.52.50 lakhs remained outstanding. Due diligence had not been completed. The regulatory process had not reached completion. The Definitive Agreements had not been executed. There was a dispute regarding funding and the respective defaults of the parties. These are not small or insignificant matters.

50. The Petitioner says that it is even now ready to deposit Rs.52.50 lakhs. This may be relevant before the arbitral tribunal when the question of specific performance is finally considered. But in the present proceeding, the Court cannot rewrite the date contained in Clause 2(d)(ii) and treat a payment which was not made by its date as though it had been made on time only because the Petitioner later offers to pay it.

51. The Petitioner relies upon Section 51 onwards of the Contract Act and submits that where there are reciprocal promises, one party cannot demand performance from the other without performing its own promise. The general submission is understandable, but its application has to depend upon the particular promise involved. The Rs.52.50 lakhs was not stated to

be payable only after completion of all obligations of the Respondents. It was payable on the earlier of completion of due diligence or the 30th day. Therefore, the Petitioner cannot withhold that payment merely by pointing towards some other disputed obligations of the Respondents. At the same time, the Respondents cannot rely upon every alleged funding requirement as if the Term Sheet imposed an unlimited obligation upon the Petitioner. The Addendum provides a structured arrangement. The Rs.20 crores under Clause 2.1 had its own payment schedule, including Rs.16 crores after DGCA/MoCA approval. Clause 2.3 provided another Rs.20 crores, but made it subject to the pre-conditions. Therefore, the Respondents cannot convert the Petitioner's obligation into an unconditional promise to meet all requirements of Heligo.

52. The Petition seeks to preserve the acquisition for arbitration in which the Petitioner proposes to seek specific performance. Specific performance of the entire transaction would require consideration of whether the conditions were fulfilled, whether due diligence was successfully completed, whether regulatory approvals were obtained or could be obtained, whether the Definitive Agreements were required for completion, whether either side prevented the other from performing and whether the termination was effective. These questions are much wider than the issue whether the escrow shares should remain untouched for some period. The present material does not allow the Court to treat the ultimate right of the Petitioner to acquire 100% of Heligo as established. The Term Sheet shows that the remaining 80% was

connected with completion and compliance of the pre-conditions. The fact that the pre-conditions were not completed is a material circumstance.

53. I have considered the Petitioner's submission that Respondent No.4 had earlier resolved to sell the company as a going concern to the Petitioner and cannot now take an opposite position. The earlier Board resolution shows that Respondent No.4 had approved the proposed transaction. But a Board resolution approving a transaction does not by prove that every later condition was complied with or that Respondent No.4 permanently lost the right to complain about non-performance. The Board resolution has to be read together with the later Term Sheet and its conditions.

54. Similarly, I do not accept the Respondents' submission that the mere use of the expression "loss of confidence" is by sufficient in law to terminate a binding arrangement. Confidence by cannot replace performance or a termination mechanism. The Respondents will have to justify the termination with reference to the terms of the transaction and the alleged breaches. This issue can be examined in arbitration. But the weakness in the Respondents' formulation does not make the Petitioner entitled to the interim relief to the extent claimed. The Petition has to be decided on the whole material. Even if a reason given in the termination notice is disputed, it does not mean that the Petitioner is entitled to restrain the Respondents from dealing with the company when the Petitioner has not shown performance of its own obligations.

55. The same reasoning applies to the Petitioner's argument that the termination notice did not provide a cure period. The Respondents' submit that the notice was based upon failure to fund, failure of operational transition and failure to complete other steps. The validity of that notice will depend upon the terms and the evidence regarding the alleged breaches. Therefore, I do not treat the notice as conclusively valid. But at the same time, I do not treat its disputed validity, by, as sufficient to establish the Petitioner's present right to the extensive injunctions sought.

56. I have considered the submission concerning the alleged failure of Respondent No.4 to add the Petitioner's authorised person to the bank accounts. The Term Sheet does contain a provision that the Target Company shall facilitate addition of an authorised person on behalf of the Acquirer for operation of all bank accounts within seven days. It provides that, from the Effective Date, decisions of the existing shareholders and Board would be subject to prior approval of the Acquirer's Board till the entire shareholding was transferred. These provisions show that the transaction contemplated a significant role for the Acquirer even before final completion. Therefore, the Petitioner's submission that it was being excluded from management cannot be rejected as having no basis. At the same time, the same Term Sheet connects this interim management arrangement with completion of the pre-conditions and regulatory approvals. The Respondents say that the regulatory process required capability of the proposed Acquirer and that changes in nominees affected the process. There was provision for involvement of the Acquirer in

management and decision-making. The failure of that arrangement is a genuine part of the dispute. But the present material is not sufficient to grant the Petitioner control-oriented reliefs which would result in the Court managing the affairs of Respondent No.4 during the arbitration.

57. I have considered the Petitioner's reliance upon the Addendum provisions concerning creditor confirmations. The Addendum required the Selling Shareholder, "as a mandatory condition", to provide formal ledger confirmations and balance confirmations from the respective creditors and to deliver them to the Acquirer within 10 business days. The Addendum made the Rs.20 crore creditor payment subject to compliance of the pre-conditions. These provisions support the Petitioner's argument that the Respondents had obligations which were to be performed along with the infusions. Therefore, the broad submission of the Respondents that the Petitioner was required to put in money first, irrespective of whether these obligations had been performed, cannot be accepted. These provisions do not remove the Petitioner's obligation to pay Rs.52.50 lakhs by the earlier of completion of due diligence or the 30th day. They do not change the loan advances into share purchase consideration. The arrangement contains different obligations operating at different stages and subject to different conditions. The Court cannot combine all of them into one general obligation of whichever party has advanced more money.

58. On the material before me, I find the position to be as follows. (i) the Term Sheet dated 09 May 2026 is a binding

arrangement, but it is not an unconditional completed transfer of all the shares. (ii) the acquisition remained subject to due diligence, regulatory approvals, escrow, and other pre-conditions, followed by the Definitive Agreements contemplated by the Term Sheet. (iii) the Petitioner's contention that its total contribution was limited to Rs.20 crores is not consistent with Clause 2.3 of the Addendum, although the Respondents cannot treat the additional Rs.20 crores as an unconditional payment without considering the pre-conditions. (iv) the Rs.23.45 crores cannot be treated as the Rs.5 crore purchase consideration. The contemporaneous Loan Agreement and subsequent documents support the Respondents' case that these amounts were loan advances. (v) the Rs.52.50 lakhs payable under Clause 2(d)(ii) has not been shown to have been paid by the date. (vi) there are genuine disputed questions concerning performance by the Respondents, particularly in relation to due diligence, regulatory steps, creditor confirmations and operational transition.

59. The prayer seeking restraint against Respondent Nos.1 to 3 from dealing with all their shares, and the prayers concerning the share capital, Board, aircraft, helicopters, permits, contracts, borrowings and other material assets, are even wider. Granting these prayers would interfere with the functioning of Respondent No.4 without the Petitioner first establishing a right to exercise such control. Such relief cannot be granted merely for preserving the possibility of obtaining specific performance. I have considered whether the possibility that the loss can be compensated in money should by defeat the Petition. Shares in a going concern and

control of an operating aviation company may involve interests which cannot be measured only in money. But this does not remove the requirement of showing an actual and present risk. In the present case, the Respondents' own communication dated 20 August 2026 records that the escrow shares should remain in status quo while the dispute remains unresolved. Therefore, the immediate risk which is the main basis of the Petition has reduced.

60. In these circumstances, the material before me does not justify granting prayers (a) to (j), or the corresponding ad-interim and interim reliefs sought in prayer (k). The Petitioner has not made out a sufficient case for the mandatory directions concerning additional shares. It has not made out a case for directions which would prevent Respondent No.4 from carrying on its ordinary affairs and managing its aircraft, permits, contracts, and arrangements during the pendency of the arbitration. The relief sought is wider than what is necessary merely to preserve the subject matter of the dispute. The parties are free to approach the arbitral tribunal for appropriate interim protection in accordance with the arbitration agreement.

61. For all these reasons, after considering the documents, the competing submissions and the material available, I find that the Petitioner has not established the necessary case for granting the interim and ad-interim reliefs prayed for in the present Petition. The Petition does not warrant grant of the reliefs sought.

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

- i) The Petition under Section 9 of the Arbitration and Conciliation Act, 1996 is dismissed;
- ii) It is clarified that the observations made in this order are confined to the consideration of the present Petition under Section 9 of the Arbitration and Conciliation Act, 1996;
- iii) The parties are at liberty to seek such interim or protective reliefs as may be available to them before the Arbitral Tribunal in accordance with the applicable arbitration agreements;
- iv) All contentions of the parties are kept open;
- v) The Petition stands disposed of in the above terms.
- vi) There shall be no order as to costs.

(AMIT BORKAR, J.)