NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, COURT-I, CHANDIGARH

CA No. 201 of 2025
In
CP No. 59/CHD/HRY/2025

Application under Section 8 of the Arbitration And Conciliation Act, 1996

IN THE MATTER OF

USAR Commerce Technologies Private Limited
CIN: U47912HR2024PTC122902
Registered Office: We Work BlueOne Square,
246, Phase IV, Industrial Complex,
Dundahera, Gurugram – 122016, Haryana
E-mail: shlokbhartiya2000@gmail.com

… Applicant

Versus

1. **Utsav Soi**
   Address: A-101, Riverview Apartments,
   Mayur Vihar Phase-I, Delhi – 110091
   DIN: 10685156
   E-mail: utsavsoi20@gmail.com

… Respondent No. 1

2. **Shlok Bhartiya**
   Chief Executive Officer,
   DIN: 10685155
   Address: 7/121 A, Swaroop Nagar, Katarijiyora, Nawabganj,
   Kanpur – 208002,
   E-mail: shlok@shoppin.app

… Respondent No. 2

3. Manas Goel
Non-Executive Director
DIN: 09263499
Office Address: We Work BlueOne Square,
246, Phase IV, Industrial Complex,
Dundahera, Gurugram – 122016, Haryana
E-mail: shlokbhartiya2000@gmail.com

... Respondent No.3

4. IE Venture Investment Fund I
C/o Ground Floor, 12A, 94, Meghdoot, Nehru Place, South Delhi – 110019, India
E-mail: connect@infoedgeventures.com

... Respondent No. 4

5. Registrar of Companies, Delhi
4th Floor, IFCI Tower, 61, Nehru Place, New Delhi – 110019
E-mail: roc.delhi@mca.gov.in

... Respondent No. 5

AND IN THE MATTER OF:

Utsav Soi

...Petitioner

Versus

USAR Commerce Technologies Private Limited & Ors.

...Respondents

Order delivered on: 29.04.2026

Coram: SH. KHETRABASI BISWAL, MEMBER (JUDICIAL)

SH. SHISHIR AGARWAL, MEMBER (TECHNICAL)

Present:

For the Applicant: Mr. Atul V. Sood, Advocate

For the Respondents: Mr. Aalok Jagga, Advocate
Mr. Sushant Kareer, Advocate
Mr. Suriti Chaudhary, Advocate
Mr. Sahil Lohan, Advocate
Ms. Arushi Manu, Advocate
Mr. Aryaman Jagga, Advocate
Mr. Madhav Singhal, Advocate
Mr. APS Madaan, Advocate

ORDER

1. The present Application has been filed by USAR Commerce Technologies Private Limited *(Applicant/the Company)* against Mr. Utsav Soi *(Respondent No. 1)* and other Respondents under Section 8 of the Arbitration and Conciliation Act, 1996, seeking reference of the disputes raised in the Company Petition to arbitration in view of the arbitration clauses contained in the Share Subscription Agreement dated 26.07.2024, the Shareholders' Agreement dated 26.07.2024 and the Employment Agreement dated 03.08.2024, executed between the parties. The Applicant seeks the following reliefs:

> *"a. Dismiss the present Company Petition preferred by the Petitioner and refer the parties to arbitration in terms of Section 8 of the Arbitration and Conciliation Act, 1996;*
> *b. Impose exemplary costs on the Petitioner; and*
> *c. Pass any other order as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case."*

Brief Facts

2. Brief facts of the case, as submitted by the Applicant, which are relevant to the issue in question, are as follows:

(i) USAR Commerce Technologies Private Limited *("the Company"/"the Applicant")*, bearing CIN: U47912HR2024PTC122902, was incorporated on 27.06.2024 with its registered office at WeWork BlueOne Square, 246, Phase IV, Dundahera, Gurugram – 122016, Haryana. It operates an AI-driven fashion technology platform under the trade name "Shoppin'" and was co-founded by Mr Utsav Soi *(Respondent No. 1)* and Mr Shlok Bhartiya *(Respondent No. 2),* the Chief Executive Officer of *the Applicant Company.*

(ii) It is submitted that on 26.07.2024, the founders and IE Venture Investment Fund II (Respondent No. 4/"InfoEdge"/"Investor") executed two foundational agreements, the Share Subscription Agreement ("SSA"), by virtue of which the Investor subscribed to equity shares and Series Seed CCPS of the Company, and the Shareholders' Agreement ("SHA"), which governed the rights, obligations and governance of the Company inter se. Clause 21.10 of the SHA defined the SSA, SHA and Employment Agreement collectively as "Transaction Documents".

(iii) It is submitted that on 03.08.2024, the Company and the Respondent No.1 executed an Employment Agreement ("EA") appointing the Respondent No.1 as Chief Product and Technology Officer ("CPTO"). Clause 9.3 of the EA permitted termination "without cause"; Clause 10.2 linked the consequences of termination to the SHA; and Clause 15.1

contained a broad arbitration clause covering all disputes *"arising out of or in connection with"* the EA, with the seat of arbitration at Gurugram, Haryana.

(iv) It is submitted that the SHA contained consequential provisions governing termination of a Promoter's employment: Clause 5.2.2 provided for automatic vacation of directorship; Clause 3.2 empowered the Board to require acquisition of the terminated Promoter's shareholding; and Clause 3.3 provided for suspension of voting rights during such process. Clause 17 of the SHA contained an arbitration clause with a seat at New Delhi.

(v) It is further submitted that each of the three Transaction Documents contains a valid and binding arbitration clause. Clause 15.1 of the EA mandates arbitration for all disputes and differences arising out of or in connection with any of the matters set out therein, with the seat of arbitration at Gurugram, Haryana. Clause 17 of the SHA covers all disputes relating to, arising out of, or in connection with the SHA, including any question regarding its existence, validity or termination, with the seat at New Delhi. Clause 9 of the SSA is equally broad, covering disputes of a similar nature arising under the SSA, also with the seat at New Delhi. The existence, validity and enforceability of these arbitration clauses are not in dispute between the parties.

(vi) It is further submitted that on 17.10.2024, an Extraordinary General Meeting was convened at which the aforesaid SHA provisions were incorporated into the Articles of Association through an Amended and Restated AoA. The Respondent No.1 was present and voted in favour

of the resolution. Form MGT-14 was subsequently filed with the Registrar of Companies on 22.11.2024.

(vii) It is also submitted that by the Termination Notice dated 17.06.2025, the Company terminated the Respondent No.1's employment as CPTO under Clause 9.3 of the EA. The Respondent No.1, by communication dated 30.06.2025, disputed the termination as illegal and alleged absence of the Investor's consent. The Company, by reply dated 04.07.2025, denied the allegations and maintained that the termination and all consequential actions were contractually valid.

(viii) It is further submitted that on 29.07.2025, the Respondent No.1 issued a Notice Invoking Arbitration ("NIA") under Section 21 of the A&C Act, invoking Clause 15.1 of the EA read with the SHA, and nominated an Arbitrator. The Company declined the nomination by reply dated 27.08.2025. On 18.09.2025, the very same date on which CP No. 59/CHD/HRY/2025 was filed before this Tribunal under Sections 241-242 of the Companies Act, alleging oppression and mismanagement, the Respondent No.1 also filed ARB-591-2025 before the Hon'ble Punjab and Haryana High Court under Section 11 of the A&C Act seeking appointment of an Arbitrator. Meanwhile, the Company issued a Call Option Notice dated 18.10.2025 for the transfer of certain unvested shares, which the Respondent No.1 rejected. The Company thereafter invoked arbitration under the SHA and filed a Section 11 petition before the Hon'ble Delhi High Court on 29.11.2025, upon which notice was issued on 04.12.2025.

(ix) It is further submitted that during the hearing of ARB-591-2025 on 19.12.2025, the Respondent No.1's counsel sought permission to withdraw the petition, expressing the intention to pursue remedies before this Tribunal. A formal withdrawal application was filed on 12.01.2026, and by Order dated 20.01.2026, the Hon'ble Punjab and Haryana High Court dismissed ARB-591-2025 as withdrawn, without granting any liberty to reagitate the claims.

(x) It is further submitted that on the date of the present Application, arbitration has been invoked under two of the three Transaction Documents. Under the EA, Respondent No. 1 issued a Notice Invoking Arbitration on 29.07.2025 under Clause 15.1, as noted above, and thereafter filed **ARB-591-2025** before the Hon'ble Punjab and Haryana High Court under Section 11 of the A&C Act, which was subsequently withdrawn without liberty by Order dated 20.01.2026. Under the SHA, the Company issued a Notice Invoking Arbitration on 25.10.2025 under Clause 17 of the SHA, following Respondent No. 1's refusal to comply with the Call Option Notice, and thereafter filed **Arb. P. No. 2038 of 2025** before the Hon'ble Delhi High Court under Section 11 of the A&C Act, upon which notice was issued on 04.12.2025 and which remains pending. The SSA, though forming part of the Transaction Documents under Clause 21.10 of the SHA, has not been independently invoked by either party.

(xi) The Applicant has also placed before this Tribunal a comparison of the reliefs sought by the Respondent No.1 in the Notice Invoking Arbitration dated 29.07.2025 and those claimed in the Petition CP No.

59/CHD/HRY/2025 filed before this Tribunal. The said comparison table is reproduced below:

Relief Sought	**Claimed in NIA (29.07.2025)**	**Claimed in CP No. 59/2025**
Declaration that termination dated 17.06.2025 is invalid and of no legal effect	**Yes**	**Yes**
Reinstatement as CPTO / Restoration of position	**Yes**	**Yes**
Injunction protecting shareholding rights	**Yes**	**Yes**
Protection of directorship rights	**Yes**	**Yes**
Protection of voting rights	**Yes**	**Yes**
Compensation / damages for unlawful termination and reputational loss	**Yes**	**Yes**
Declaration re: appointment of Manas Goel as Director — null and void	No	**Yes**
Invalidation of EGM dated 01.07.2025	No	**Yes**
Declaration re: DIR-12 proceedings — void and vacated	No	**Yes**
Delivery of physical share certificates u/s 56(4)	No	**Yes**
Restraint on further Board Meetings	No	**Yes**
Inspection of company records	No	**Yes**

(xii) The Applicant also submitted that the principal reliefs sought in the Company Petition are substantially the same as those earlier sought by the Respondent No.1 in the Notice Invoking Arbitration dated 29.07.2025 and the Section 11 Petition before the Hon'ble Punjab and Haryana High Court. It was further contended that the additional

reliefs are merely consequential to the termination dispute and do not alter the essentially contractual nature of the controversy.

Reply on behalf of Respondent No. 1

3. The learned counsel for the Respondent No. 1 in his Reply submitted that the present Application is misconceived, not maintainable, and liable to be dismissed at the threshold, on the following grounds:

(i) The learned counsel for Respondent No. 1 submitted that the Company Petition is a bona fide petition under Sections 241-242 of the Companies Act, 2013, arising from a coordinated scheme to expel the Respondent No.1, a co-founder, Promoter and 35% Shareholder-Director, from the Company. It was submitted that each act complained of constitutes an independent statutory violation. The Respondent No.1's directorship was treated as vacated without following the mandatory procedure under Section 169 of the Companies Act; the Respondent No.1 was excluded from management and denied access to company records; an EGM was illegally convened on 01.07.2025 with only one Director present, at which Respondent No. 3 was appointed as Director; Form DIR-12 was illegally filed with the Registrar of Companies; and physical share certificates were denied to the Respondent No.1. It was urged that each of these acts falls squarely within the exclusive jurisdiction of this Tribunal under Sections 241-242 of the Companies Act, 2013.

(ii) It was further submitted that the termination dated 17.06.2025 is void ab initio on two grounds: first, Section 179(3)(e) read with Rule 8(3) of the Companies (Meetings of Board and its Powers) Rules, 2014

mandates a Board Resolution for removal of a Key Managerial Personnel (KMP) impossible given the two-member Board and none has been produced; second, the SHA classified termination of a Key Employee as a Reserved Matter requiring InfoEdge's prior written consent, also absent. The termination being void, all downstream acts are the fruits of the poisonous tree.

(iii) It was also submitted that disputes under Sections 241-242 are inherently non-arbitrable as they concern rights in rem and call for reliefs that no Arbitral Tribunal can grant. It was additionally submitted that a composite reference is impermissible as the EA, SHA and SSA carry distinct arbitration clauses, seats and parties, and that Respondent No. 3 is party to no arbitration agreement, which renders any composite reference a structural nullity.

(iv) It was further submitted that the Company Petition and ARB-591-2025 were filed on the very same date, i.e., 18.09.2025, ruling out any prior election. It was submitted that the NIA dated 29.07.2025 predates the appointment of Respondent No. 3, the DIR-12 filing, the Delaware incorporation and the CCPS dilutions, and cannot operate as an admission of arbitrability in respect of those subsequent violations. It was further submitted that a statutory remedy conferred by Parliament cannot be forsaken by procedural conduct before another forum. As regards the withdrawal of ARB-591-2025 without liberty on 20.01.2026, it was submitted that the Hon'ble Punjab and Haryana High Court had no authority over proceedings within this Tribunal's exclusive statutory domain and that res judicata is inapplicable as no merits were decided.

(v) Finally, subsequent developments were placed on record to establish that reference to arbitration would strip this Tribunal of its protective jurisdiction due to the clandestine incorporation of "Shoppin Commerce Inc." in Delaware, USA on 16.07.2025 to divert the Company's IP and goodwill; three illegal EGMs on 06.11.2025, 12.12.2025 and 31.12.2025 without 95% consent under Section 101, diluting the Respondent No.1's stake from 35% to 24%; and a Call Option invoked to acquire that stake worth approximately INR 28.8 crores for INR 50,000/-, all in wilful disregard of this Tribunal's Order dated 17.10.2025. It was accordingly prayed that the Application be dismissed and the disputes be held within this Tribunal's exclusive jurisdiction.

Submissions

4. Submissions made/arguments advanced on behalf of the Ld. Counsel for the Applicant Company.

(i) The learned counsel for the Applicant Company vehemently urged at the outset that the Company Petition, though framed under Sections 241-242 of the Companies Act, 2013, is in substance a dressed-up contractual dispute, and deserves to be dismissed as such. It was forcefully submitted that every relief claimed traces link directly to the termination of the Respondent No.1's employment under Clause 9.3 of the EA dated 03.08.2024. Vacation of directorship operated automatically under Clause 5.2.2 of the SHA read with Section 167(4); share acquisition arose under Clause 3.2; and suspension of voting rights under Clause 3.3. The learned counsel emphasised that these are pre-negotiated

contractual consequences which the Respondent No.1 himself agreed to and personally voted to incorporate into the Articles of Association on 17.10.2024, and that the mere operation of agreed contractual terms cannot be dressed up as oppression before this Tribunal.

(ii) The learned counsel further contended that the contractual character of these disputes is placed beyond doubt by the Respondent No.1's own prior conduct, and that the Respondent No.1 is therefore disentitled from urging the contrary before this Tribunal. It was pointed out that on 29.07.2025, prior to filing the Company Petition, the Respondent No.1 himself issued a formal NIA under Section 21 of the A&C Act, expressly describing the dispute as arising from "the unlawful and procedurally defective termination…and the Company's breach of its contractual obligations under the EA, SHA and SSA", and sought through arbitration reliefs identical to those now claimed. It was further pointed out that on 18.09.2025, the Respondent No.1 filed ARB-591-2025 before the Hon'ble Punjab and Haryana High Court under Section 11 of the A&C Act, seeking appointment of an arbitrator for the very same disputes. It was submitted that a party who has by his own conduct characterised a dispute as contractual and arbitrable cannot, in the same breath, urge before another forum that the selfsame dispute is non-arbitrable and statutory in nature.

(iii) It was strenuously argued on behalf of the Applicant that Section 8 of the A&C Act, post-2015, is mandatory in its terms wherein this Tribunal shall refer parties to arbitration unless it finds prima facie that no valid arbitration agreement exists. Placing reliance upon the

authoritative three-Judge Bench decision of the Hon'ble Supreme Court in *Vidya Drolia v. Durga Trading Corporation, (2021) 2 SCC 1*, the learned counsel submitted that the Arbitral Tribunal is the "preferred first authority" on all questions including non-arbitrability and that courts must *"when in doubt, do refer"*. Reliance was also placed upon the Seven-Judge Constitution Bench decision in *In Re: Interplay, (2024) 6 SCC 1*. It was submitted that the Constitution Bench has reaffirmed, in no uncertain terms, that a court seized of a Section 8 application must refrain from entertaining jurisdictional challenges and must leave those questions to be decided by the Arbitral Tribunal in the first instance. Section 5 of the A&C Act, it was urged, reinforces this position by requiring courts to minimise judicial intervention in matters governed by arbitration. It was submitted that the threshold condition is plainly met as Clause 15.1 of the EA (seat: Gurugram) and Clauses 17.2/17.3 of the SHA (seat: New Delhi) contain broad, valid, and uncontested arbitration clauses wide enough to encompass every relief in the Company Petition, and that reference to arbitration is accordingly mandatory.

(iv) The learned counsel vehemently urged that having personally invoked the very arbitration clauses now sought to be avoided, the Respondent No.1 is estopped from contending non-arbitrability and must be held to his own prior position. Placing reliance upon the judgment of the Hon'ble Supreme Court in *Joint Action Committee of Air Line Pilots' Association of India v. DGCA, (2011) 5 SCC 435*, it was submitted that a party blowing hot and cold with contradictory positions makes its conduct "far from satisfactory" and prolongs proceedings unnecessarily. It was

additionally urged that the withdrawal of ARB-591-2025 on 20.01.2026 without seeking any liberty to reagitate those claims seals this position and had the Respondent No.1 genuinely believed the Company Petition raised disputes of a fundamentally different character, seeking such liberty would have been elementary, and the deliberate omission to do so reflects a conscious election that the Respondent No.1 cannot now be permitted to resile from.

(v) The learned counsel took pains to distinguish and discredit each of the decisions relied upon by the Respondent No.1, submitting that they are either factually distinguishable or no longer good law in light of *Interplay (2024) 6 SCC 1*. It was argued that *Indus Motor Co. (P) Ltd. v. T.P. Anil Kumar, CA (AT) No. 204 of 2020 (NCLAT)*, is distinguishable on two independent grounds: first, the party resisting reference in that case had made no prior admission of arbitrability, a position diametrically opposed to the present case where the Respondent No.1 himself invoked the very same arbitration clauses; and second, the Section 8 application in that case was dismissed partly on account of serious fraud allegations, which are wholly absent in the present proceedings. It was further submitted that *Al-Sami Agro Products, CA (AT) No. 54 of 2020, Vipul SEZ Developers, CA (AT) No. 60/20*, and *Ganapuram Rathibandla Surya Raj v. B. Krishna Rao, COMCA No. 14 of 2022 (Telangana HC),* all predate the Constitution Bench in *Interplay* and cannot prevail over it; and none involved a petitioner who had personally invoked arbitration and characterised the selfsame disputes as contractual, as the Respondent No.1 has done here.

(vi) Without prejudice to the above, the learned counsel submitted that even if a composite reference under both the EA and SHA is impermissible owing to different seats, the Hon'ble Supreme Court in *Duro Felguera, S.A. v. Gangavaram Port Ltd., 8*, has settled that separate references under each independent arbitration agreement with its distinct seat are permissible and must be given effect. It was brought to the notice of this Tribunal that the Applicant has already invoked the SHA's arbitration clause and filed Arb. P. No. 2038 of 2025 before the Hon'ble Delhi High Court, upon which notice was issued on 04.12.2025. It was urged that the Delhi High Court's express observation that the pendency of other proceedings was not relevant to sending the SHA dispute to arbitration is itself a judicial recognition that these disputes are contractual and amenable to arbitral resolution.

(vii) In conclusion, the learned counsel drew the attention of this Tribunal to a consistent and unbroken line of NCLT/CLB authority directly supporting the position that petitions under Sections 241-242 of the Companies Act, 2013, which are in substance dressed-up contractual disputes, must be referred to arbitration in terms of the applicable arbitration clause. The following decisions were pressed as binding and persuasive authority in favour of allowing the Application: *E-Logistics Pvt. Ltd. v. Financial Technologies (India) Ltd., (2007) 139 CompCas 311 (CLB); Himanshu Shekhar v. Manohar Lal Sarraf & Sons Pvt. Ltd., CA-269/2023 in CP-125(ND)/2023 (NCLT, New Delhi, dated 18.10.2023); Ramnish Kumar Sharma v. M/s DR Johns Lab Pvt. Ltd., 2016 SCC OnLine NCLT 364; M/s Grass Lands Agro Pvt. Ltd. v. RS Mohammed Saleem, 2017 SCC*

OnLine NCLT 954; and Binod Kr. Bawri v. Calcom Cement Ltd., TA No. 14/2016 (NCLT, Guwahati, dated 05.01.2017), noting that the Special Leave Petition filed against the last-mentioned order was dismissed by the Hon'ble Supreme Court on 09.05.2025, thereby lending it added finality and weight.

5. Submissions made/arguments advanced on behalf of Ld. Counsels for the Respondent No. 1.

(i) Per contra, the learned counsel for Respondent No. 1 vehemently urged that the Company Petition is a bona fide petition under Sections 241-242 of the Companies Act, 2013, arising from a coordinated and systematic scheme to expel the Respondent No.1's, a co-founder, Promoter, and 35% Shareholder-Director from the management, affairs, and ownership of the Company. It was contended that each act complained of is an independent statutory violation wherein the directorship treated as vacated without the mandatory procedure under Section 169 (special notice, shareholders' meeting, opportunity of hearing); complete exclusion from management, records, systems, and premises; an illegal EGM on 01.07.2025 with only one Director present appointing Shri Manas Goel (Respondent No.3) in the Respondent No.1's place; illegal filing of Form DIR-12; and denial of share certificates and statutory records. The learned counsel urged that the Company, with only two co-founders, is in the nature of a quasi-partnership and that this unilateral exclusion strikes at the very basis of the association, placing reliance upon *Tata Sons Pvt. Ltd. v. Cyrus Investments Pvt. Ltd., (2021) 9*

SCC 449; Dale & Carrington Investment (P) Ltd. v. P.K. Prathapan, (2005) 1 SCC 212; Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holdings Ltd., (1981) 3 SCC 333; and *Mrs. Shailja Krishna v. Satori Global Ltd., 2025 INSC 1065*, to buttress these submissions.

(ii) It was further argued with considerable force that the Applicant's entire case rests on the validity of the termination dated 17.06.2025, and that this foundational premise is fatally flawed on two independent grounds. First, under Section 179(3)(e) read with Rule 8(3) of the Companies (Meetings of Board and its Powers) Rules, 2014, removal of a KMP requires a Board Resolution at a duly constituted Board Meeting; the Respondent No.1, as CPTO, was a KMP under Section 2(51)(v); the Board at the material time comprised only two Directors, Respondent No.2, Shlok Bhartiya and the Respondent No.1 himself, making a valid Board Resolution impossible; and no such resolution has been produced on record. Second, the SHA classified termination of a Key Employee as a Reserved Matter requiring InfoEdge's prior written consent, also absent from the record. The learned counsel submitted that the termination being void ab initio, all downstream acts vacation of directorship under Clause 5.2.2, the EGM of 01.07.2025, appointment of Manas Goel, and the DIR-12 filing are the fruit of the poisonous tree and stand equally vitiated, placing reliance upon *Sri Parmeshwari Prasad Gupta v. Union of India, (1973) 2 SCC 543*.

(iii) The learned counsel strenuously contended that disputes under Sections 241-242 are inherently non-arbitrable, as they concern rights in rem affecting the corporate structure as a whole and call for reliefs no

Arbitral Tribunal is competent to grant. Placing reliance upon *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532* which, it was submitted, is not overruled, the learned counsel argued that actions in rem are non-arbitrable. Further reliance was placed upon *Haryana Telecom Ltd. v. Sterlite Industries (India) Ltd., (1999) 5 SCC 688*, and *Rakesh Malhotra v. Rajinder Malhotra, (2015) 2 CompLJ 288 (Bom)*, for the proposition that Oppression and Mismanagement petitions involve an inseparable mix of rights in rem and in personam incapable of referral to arbitration. The learned counsel pressed three binding NCLAT decisions as directly in point: *Indus Motor Co. (P) Ltd. v. T.P. Anil Kumar, CA (AT) No. 204 of 2020*; *Al-Sami Agro Products Pvt. Ltd. v. Mrs. Duan Hongli, CA (AT) No. 54 of 2020*; and *Vipul SEZ Developers Pvt. Ltd. v. Solitaire Capital India Regd., CA (AT) No. 60/20.*

(iv) The learned counsel emphatically submitted that Section 8 does not permit bifurcation of a composite cause of action, placing reliance upon *Sukanya Holdings Pvt. Ltd. v. Jayesh H. Pandya, (2003) 5 SCC 531*, wherein the Supreme Court held that where any party is not bound by the arbitration agreement or where reliefs include both arbitrable and non-arbitrable components, the entire proceeding must remain before the judicial authority. It was specifically urged that Respondent No. 3, Shri Manas Goel, against whom a specific relief that his appointment as Non-Executive Director be declared null and void is sought, is party to none of the Transaction Documents and is bound by no arbitration clause whatsoever; that any arbitral award purporting to void his appointment

would be a nullity; and that this structural impossibility is independently fatal to the Application and sufficient by itself to dismiss it.

(v) Without prejudice to the foregoing, the learned counsel submitted that even if some reliefs are said to have a contractual colour, it is the dominant nature of the dispute that determines jurisdiction, and that the dominant nature here is overwhelmingly statutory. Reliance was placed upon *Indus Biotech Pvt. Ltd. v. Kotak India Venture (Offshore) Fund, 2021 SCC OnLine SC 268, and VGP Marine Kingdom Pvt. Ltd. v. Kay Ellen Arnold, 2022 SCC OnLine SC 1517*, to buttress this submission. It was urged that of the sixteen reliefs claimed, at most two challenge the termination notice and compensation bear any contractual colour, while the remaining fourteen restoration of directorship, invalidation of EGM resolutions, rectification of DIR-12, delivery of share certificates, restraint on Board Meetings, and access to records are purely statutory reliefs exclusively within this Tribunal's domain.

(vi) The learned counsel vigorously contested the estoppel and approbate-reprobate arguments advanced by the Applicant, submitting that they are misconceived on three counts. First, the Company Petition and ARB-591-2025 were filed simultaneously on 18.09.2025; there was no prior election of arbitration followed by a change of position; both were filed on the same date, the Section 11 Petition under the bona fide impression that one employment-related relief might be partially amenable to arbitration. Second, the NIA dated 29.07.2025 predates several of the oppressive acts now complained of, the appointment of Manas Goel, the DIR-12 filing, the Delaware incorporation, and the CCPS

dilutions, cannot operate as an admission that those subsequent statutory violations are arbitrable. Third, the doctrine of election cannot operate to forsake a statutory remedy conferred directly by Parliament, as held in *CIT v. M.R.P. Firm Muar, AIR 1965 SC 1216*. As regards the withdrawal of ARB-591-2025 without liberty on 20.01.2026, the learned counsel submitted that no liberty was required the Hon'ble Punjab and Haryana High Court was acting under the A&C Act and had no authority over proceedings within this Tribunal's exclusive statutory domain and that res judicata is equally inapplicable as no merits were decided, placing reliance upon *Adavya Projects Pvt. Ltd. v. Vishal Structurals Pvt. Ltd., 2025 SCC OnLine SC 806*, and *State of Goa v. Praveen Enterprises, (2012) 12 SCC 581*.

(vii) It was also argued on behalf of the Respondent No.1 that *In Re: Interplay, (2024) 6 SCC 1*, does not overrule Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532, and that the two judgments operate on entirely different planes. The learned counsel submitted that *Interplay* was confined to the formal question of whether an under-stamped arbitration agreement is void or inadmissible and who may examine that defect at the Section 8 or Section 11 stage, which remains a question of procedural validity well within the competence-competence framework and that nowhere in Interplay does the Constitution Bench address, overrule, or even advert to the *Booz Allen* categories of subject-matter non-arbitrability. It was urged that the competence-competence principle operates within the scope of the arbitration agreement and cannot vest an Arbitrator with jurisdiction over

disputes that are, by reason of their subject matter, altogether beyond the reach of private arbitration, and that *Booz Allen* remains binding authority on this question.

(viii) Without prejudice to all other submissions, the learned counsel contended that even if reference were otherwise permissible, a composite reference under the EA, SHA, and SSA is impermissible in law, since, each agreement carrying its own arbitration clause with a distinct seat (Gurugram under the EA; New Delhi under the SHA and SSA) and that in terms of *Duro Felguera, S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729*, each agreement must be given independent effect and a single composite reference cannot be ordered. It was further submitted that this difficulty is compounded by the position of Respondent No. 3 (Manas Goel), who is party to no arbitration agreement and in respect of whom no arbitral reference can be initiated at all.

(ix) Finally, the learned counsel drew the attention of this Tribunal to the subsequent developments in the case, urging that they conclusively establish that the present dispute is not a mere contractual disagreement and that referring it to arbitration would wholly strip this Tribunal of the protective jurisdiction it is duty-bound to exercise. It was pointed out that on 16.07.2025, the Respondents clandestinely incorporated "Shoppin Commerce Inc." in Delaware, an identical trade name, to divert the Company's IP, source code, customer data, and goodwill beyond the reach of Indian law, in gross breach of fiduciary duty under Section 166 of the Companies Act 2013. It was further urged that three successive illegal EGMs were convened on 06.11.2025, 12.12.2025, and 31.12.2025

without the 95% shareholder consent under Section 101; the MOA and AOA were illegally amended; CCPS were issued diluting the Respondent No.1's stake from 35% to 24%; USD 3 million (approx. INR 26 crores) was invested valuing the Company at INR 120 crores; and a Call Option was invoked to acquire the Respondent No.1's stake worth approx. INR 28.8 crores for a mere INR 50,000/-. The learned counsel submitted that this cumulative conduct satisfies every test of oppression laid down in *Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holdings Ltd., (1981) 3 SCC 333*, and that these acts were perpetrated in wilful disregard of this Tribunal's own Order dated 17.10.2025 restraining disposal of the Mobile Application, its Source Code, and associated data.

Analysis & Findings:

6. We have heard the learned counsels for the parties at considerable length and have also perused the Written Submissions filed on behalf of both sides.

7. The present Application has been filed under Section 8 of the Arbitration and Conciliation Act, 1996 raises the question as to *"Whether the disputes raised and reliefs sought in the Petition CP No. 59/CHD/HRY/2025, filed under Sections 241-242 of the Companies Act, 2013, are amenable to arbitration under the Employment Agreement dated 03.08.2024 and the Shareholders' Agreement dated 26.07.2024, or whether they constitute, fully or partly, non-arbitrable matters of oppression and mismanagement falling exclusively within the jurisdiction of this Tribunal?"*

8. At the outset, it is necessary to identify the precise character in which Respondent No. 1 has brought his grievances before this Tribunal in the main Company Petition bearing **CP No. 59/CHD/HRY/2025** *(hereinafter referred to as the Petition)*. Respondent No. 1 was not merely an employee of the Company under the EA dated 03.08.2024. He was, and remains, a co-founder, a 35% Promoter-Shareholder, and a founding Director of the Company, rights and capacities for which exist independently of and beyond his employment relationship. The fact that the termination of employment was the starting point may not make the entire dispute purely contractual in nature.

9. We have carefully considered the Applicant's assertion that the Company Petition is a mere dressed-up petition of a contractual dispute and that every relief claimed traces its origin to the termination under Clause 9.3 of the EA dated 03.08.2024. We are unable to accept this characterisation. Whether a petition is dressed up or not, requires reading it as a whole, its grounds, its reliefs, and the totality of the conduct complained of. The termination of employment on 17.06.2025 was by itself not the only substance of the oppression; it was merely its trigger. What followed was a course of conduct that went far beyond the enforcement of any contractual right. Directorship of Respondent No.1 was vacated without initiating any proceedings under Section 169 of the Companies Act, EGM was convened on 01.07.2025 with only one Director present and without the mandatory 95% shareholder consent under Section 101 of the Companies Act and appointed Respondent No. 3 as Non-Executive Director and replaced the Petitioner on the Board; Form DIR-12 was filed to record the cessation of the

Petitioner's directorship etc. Thereafter, the impugned amendments to the MOA and AOA, issuance of CCPS resulting in dilution of the Petitioner's stake from 35% to approximately 24%, and the invocation of a Call Option to acquire Respondent no 1's stake worth approximately Rs. 28.8 crores for Rs. 50,000/-.

10. None of these acts are the contractual consequence of a termination without cause under Clause 9.3 of the EA dated 03.08.2024. They ex facie are independent statutory violations, each capable of standing on its own as a ground of oppression, and more so when viewed cumulatively.

11. Similarly, the incorporation of "Shoppin Commerce Inc." in Delaware, USA on 16.07.2025, merely days after the Petitioner's termination for the alleged purpose of transferring or diverting the Company's core intellectual property, technology, source code, and business goodwill, was not a contractual consequence of the termination of employment. It is ex facie an act of oppression and mismanagement and a breach of fiduciary duty under Section 166 of the Companies Act, 2013, in view of which the Petition can not be called a mere dressed-up contractual petition.

12. We now address the Applicant's submission that Respondent No. 1 is estopped from contending non-arbitrability having himself invoked arbitration by way of the NIA dated 29.07.2025 and ARB-591-2025. We are not persuaded. The legal position is settled by the Hon'ble Supreme Court in *CIT v. M.R.P. Firm Muar, AIR 1965 SC 1216,* which in its para 13 has observed that:

> *"The doctrine of "approbate and reprobate" is only a species of estoppel; it applies only to the conduct of parties. As in the case of estoppel, it cannot operate against the provisions of a statute".*

The jurisdiction of this Tribunal under Sections 241-242 is a special statutory jurisdiction that cannot be waived or elected away by invoking a contractual arbitration clause. Moreover, both petitions were filed simultaneously on 18.09.2025, ruling out any prior conscious election. Reliance upon *Joint Action Committee of Air Line Pilots' Association of India v. DGCA, (2011) 5 SCC 435*, is misplaced as that case concerned inconsistent positions before the same forum, not distinct rights asserted before different statutory forums.

13. Turning to the question of non-arbitrability, we find that many of the reliefs claimed in the Petition relate to rights in rem, affecting the corporate structure/ corporate governance of the Company as a whole. These are not rights exercisable against specific individuals; they go to the constitution, governance, and ownership structure of the Company as a whole. As categorically held in *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532,* actions in rem are non-arbitrable and must be adjudicated by courts and public tribunals. Paragraph 22 is reproduced for reference :

> *"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 in-arbitrable, 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 recognised 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."

14. We are of the view that disputes of the nature raised in the present Petition under Sections 241-242 of the Companies Act, 2013 would fall squarely within the categories of proceedings that are, by necessary implication, reserved for adjudication by public fora and stand excluded from the purview of arbitration. These are the powers conferred exclusively upon this Tribunal by statute and cannot be exercised by any other forum. This position finds further support in Section 430 of the Companies Act, 2013, which bars civil courts from entertaining any matter that this Tribunal is empowered to determine. An Arbitral Tribunal, which derives its jurisdiction from the consent of the parties and adjudicates disputes in substitution of a civil court, may not be in a position to entertain matters from which civil courts are expressly excluded, by statute. Section 430 of the Companies Act, 2013, read with Sections 241-242, reflects the clear legislative intent that disputes of oppression and mismanagement of the

nature in the case at hand, are to be adjudicated exclusively by this Tribunal.

15. We have also considered the Applicant's reliance upon *Vidya Drolia v. Durga Trading Corporation, (2021) 2 SCC 1*, and *In Re: Interplay, (2024) 6 SCC 1*. We accept that the scope of examination at the Section 8 stage is narrow and that courts must *"when in doubt, do refer"*. However, *Vidya Drolia (supra)* itself recognises that a court may interfere when non-arbitrability is *"manifestly and ex facie certain"*. The present case falls squarely within that exception as the reliefs sought go to the heart of corporate governance. As regards the judgment of *Interplay (supra)*, it was confined to the narrow question of under-stamped arbitration agreements and does not specifically address the principles laid down in *Booz Allen (supra)* with respect to the categories of disputes that are reserved for adjudication by public fora as a matter of public policy.

16. It is well settled that proceedings under Sections 241-242 of the Companies Act, 2013, are statutory in character and seek remedies of a public nature that cannot be privatised through arbitration. The Hon'ble Bombay High Court in *Rakesh Malhotra v. Rajinder Malhotra, (2015) 2 CompLJ 288*, exhaustively examined this issue and held that petitions alleging oppression and mismanagement involve composite rights, i.e., some in rem and others in personam, which are inseparable and cannot be severed or referred to arbitration. The Hon'ble Court observed in para 83 as follows:

> *"It must therefore follow that where a petition under Chapter VI of the Companies Act, 1956 seeks reliefs some of which are in the nature of reliefs in rem and others that are in personam, then it is not possible or permissible to sever one from the other and disassemble such a petition....*
>
> *Haryana Telecom, to my mind, though in a petition for winding up, and clearly, therefore, a matter in rem, states as a proposition that no agreement between the parties can vest an arbitral panel with the power of winding up. Similarly, no arbitration agreement can vest an arbitral tribunal with the powers to grant the kind of reliefs against oppression and mismanagement that the CLB might."*

The powers of this Tribunal under Section 242 of the Companies Act are wide enough to address and adjudicate all disputes and reliefs sought/raised in the CP and subsequent IAs, which may not be possible to be adjudicated by an Arbitral Tribunal. Further, the Hon'ble Supreme Court in *Sukanya Holdings Pvt. Ltd. v. Jayesh H. Pandya, (2003) 5 SCC 531*, has also categorically observed that Section 8 cannot be invoked where the dispute involves parties not bound by any arbitration agreement or where all reliefs cannot be referred to arbitration. Both conditions exist here: The cause of action here is composite and cannot be split as some reliefs/disputes are clearly non-arbitrable and the Respondent No. 3, Shri Manas Goel against whom a specific relief is sought, is not a party to any arbitration agreement.

17. We find direct support in the binding decision of the Hon'ble NCLAT in *Indus Motor Co. (P) Ltd. v. T.P. Anil Kumar, CA (AT) No. 204 of 2020* wherein the Hon'ble NCLAT held in Para 19 that reliefs in a Company Petition, including a finding of oppression and mismanagement, removal of Directors and Shareholders, and other reliefs exclusively grantable under Section 242, are not amenable to arbitration. In Para 20, it was further held that where

not all reliefs are arbitrable, any bifurcation between an Arbitral Tribunal and the NCLT would frustrate the entire procedure and lead to conflicting judgments. Both propositions apply squarely to the present case.

18. We are also of the view that the exercise of this Tribunal's protective jurisdiction in the present case is not merely permissible but imperative. This Tribunal has already passed an interim Order dated 17.10.2025 restraining the Respondents from disposing of or transferring the Mobile App, its Source Code, and associated data.

19. In the light of the foregoing discussion, it is held that many of the disputes raised and reliefs sought in CP No. 59/CHD/HRY/2025 are not amenable to arbitration under the EA dated 03.08.2024 or the SHA dated 26.07.2024. They are statutory in nature, involving rights in rem affecting the corporate governance and ownership structure of the Company. The acts complained of are independent violations of the corporate governance envisaged under the Companies Act, 2013 and fall squarely within the exclusive jurisdiction of this Tribunal under Sections 241-242. Since not all reliefs are arbitrable, any bifurcation of the matter between an Arbitral Tribunal and this Tribunal would frustrate the entire procedure and may lead to conflicting judgments.

20. The disputes raised in **CP No. 59/CHD/HRY/2025** need to be adjudicated on merits by this Tribunal. The interim Order dated 17.10.2025 shall continue in full force and effect.

21. Accordingly, **CA No. 201 of 2025** is hereby ***dismissed and disposed of***.

Sd/-

(SHISHIR AGARWAL)
Member (Technical)

Sd/-

(KHETRABASI BISWAL)
Member (Judicial)

Yuvraj