

IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH

[Through Physical hearing/VC Mode (Hybrid)]

ITEM No.16

**CA. Nos. 72, 91, 97, 98/2022, 43/2024, 133/2025
& IA(CA) No.13/2022 in
CP. No. 88/BB/2021**

IN THE MATTER OF:

Mr. Tono Thomas ... Petitioner

Vs.

Nowon Technologies Pvt Ltd ... Respondent

Petition under Section 241-242 of CA, 2013

Order delivered on: 28.07.2026

CORAM:

**SHRI. SUNIL KUMAR AGGARWAL
HON'BLE MEMBER (JUDICIAL)**

**SHRI. RADHAKRISHNA SREEPADA
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Petitioner : Ms. Maitreyi Bhat
For the R1 to R3 : Shri K M Vishakh Nag for A Murali
For the R4 to R7 : Shri Saji P John
For Respondent No. 8 : Shri Aditya Sethi in CP No. 88 of 2021

ORDER

CA. Nos.97, 98/2022, 133/2025 and I.A (CA) No.13/2022 are allowed vide separate orders.

The Respondent Nos. 4 to 8 deleted from array of parties in the Company Petition.

List the CAs, for arguments on 10.08.2026.

-Sd-

**RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)**

-Sd-

**SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)**

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IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH

(Hybrid mode)

C.A No. 133 of 2025

In

C.P No. 88/BB/2021

Under Order 1 Rule 10 (2) of the Code of Civil Procedure 1908

Read with Rule 11 of the national Company Law Tribunal Rules, 2016

IN THE MATTER OF:

Pathpartner Technology Private Limited,

No.16, PSS Plaza, 1st and 2nd Floor,

New Thippasandra Main Road,

HAL III Stage,

Bengaluru - 560075

--- Applicant

Versus

Mr.Tono Thomas,

12A Express Estates,

Kaloor,

Cochin-682016

--- Respondent

Order delivered on: 28.07.2026

CORAM:

1. Shri Sunil Kumar Aggarwal, Hon'ble Member (Judicial)

2. Shri Radhakrishna Sreepada, Hon'ble Member (Technical)

COUNSELS PRESENT:

For the Applicant : Ms. Tamarra Sequeira

For Respondent : Mrs. Maitreyi bhat

ORDER

Per RADHAKRISHNA SREEPADA, Member(Technical):

1. This Company application is filed on 29.07.2025 by Mr.Pathpartner Technology Private Limited (hereinafter referred as "Applicant") under Order I Rule 10 (2) of the Code of Civil Procedure 1908 read with Rule 11 of the NCLT Rules, 2016 against **Mr.Tono Thomas** (hereinafter referred as "Respondent") inter-alia seeking the following reliefs:

- a. Delete the name of the Respondent No.8 from the array of parties as the Present petition is not maintainable either in law or in facts of the case qua Respondent No.8; and/r*

b. Grant such other reliefs as this Hon'ble Tribunal deems just and necessary in favour of the Respondent No.8/Applicant in the interest of justice and equity.

2. Facts of the case in the application are as under:

- a. The Petitioner has filed the subject petition on Section 241 and 242 of Companies Act, 2013 seeking the removal of Respondents No.2 & 3 from the Respondent No.1 Company, amongst several other reliefs which have been made collectively against the Respondents including Respondent No.8, which entity is unconnected to Respondent No.1
- b. The Applicant/Respondent No.8 denies all allegations averments, contentions and submissions contained in the petition as if the same have been specifically traversed and denied, save and except as expressly admitted which are not contrary to or inconsistent with the facts averments, submissions and contentions. The petition besides being misconceived and erroneous, seeks to give false and incomplete facts. The Petitioner is not in any way connected with Respondent No.8 but has arrayed Respondent No.8 as private limited company existing under the Companies Act, 2013 and having its registered office at No.16, PSS Plaza 1st and 2nd Floor, New Thippasandra Main Road, HAL III Stage, Bengaluru -560075 as Respondent as an abuse of the process of this Tribunal and to circumvent his contractual obligations to refer any alleged disputes with Respondent No. 2-7 to arbitration.
- c. Respondent No.8 is in no way connected with the Petitioner or Respondent No.1 and this fact is patently manifest from absence of averments against Respondent NO.8. In fact, the Respondent No.8 is a separate legal entity, and no allegations of oppression and mismanagement could be made against Respondent No.8. The Petitioner has made stray remarks in respect of the functioning of Respondent No.8, which is in no way connected with Respondent No.1 and its functioning and are in fact wholly unsubstantiated. The said averments are denied.
- d. The Sections 241-242 of the Act clearly lay down the grounds on which the member may file a petition for oppression and mismanagement. The Petitioner has however, arrayed a third party i.e., Respondent No.8

without making any averments against the said Respondent/Applicant herein. However, the Petitioner has most curiously proceeded to seek reliefs, including those for rendition of accounts, payment of dividends and redemption of shares against all the Respondents, including Respondent No.8, which is an independent legal entity. The present petition is not maintainable against Respondent No.8, and as such, the petition ought to be dismissed against this Respondent in limine. The petition suffers from misjoinder insofar as Respondent No.8 is concerned.

- e. It is clear from a review of the petition that the Petitioner is relying on the Share Subscription Agreement dated 30.10.2009. Clause 23 of the SSA contains an arbitration clause requires that all disputes in connection with the SSA be referred to arbitration under the Indian Arbitration and Conciliation Act, 1996. It is clear from a perusal of the SSA that the Petitioner has expressly agreed to refer all disputes to arbitration. The Petitioner cannot cherry-pick parts of the SSA on which to rely while ignoring others. The intention to refer to arbitration is clear, specific and binding. Having thus agreed to refer all dispute to arbitration, the Petitioners are estopped from approaching this tribunal by way of the present 'dressed up' malafide and vexatious petition.
- f. It is submitted that no cogent averments have been made against Respondent No.8. Further the Petitioner has claimed to have filed the petition claiming continuing acts of oppression and mismanagement. A bare review of Section 241-242 of the Act indicate that such claim can be made against persons involved in the business of the Company in question. However, the Petitioner has filed the present petition against Respondent NO.8, which is in no way connected with the Petitioner or Respondent NO.1. The Petition is bad for misjoinder and is unsustainable.
- g. The Petitioner has sought reliefs which are beyond the scope of petition under Section 241-242 of Act and beyond the scope of enquiry by this Hon'ble Tribunal in such a proceeding. The Petitioner has sought reliefs of rendition of accounts, profits, redemption of shares and payment of dividends from 'all' Respondents, which would include Respondent No.8 herein. No such relief can be granted as Respondent NO.8 is in no way

connected to the Respondent No.1 or the Petitioner. On these grounds, among others detailed above, the present petition ought to be dismissed in limine, and specifically as against Respondent No.8.

- h. A bare perusal of the Petitioner's prayers for interim relief clearly indicate that he is attempting to travel well beyond the confines of Section 241 And 242 of the Act, under which he has filed the petition. The petitioner by clever drafting, surmises and a fanciful imagination has tried to create the impression of a connection between his illegal disputes with his fellow shareholders in Respondent No.1 by including references to Respondent No.8 in order to interfere in the business of Respondent NO.8 with whom he has no connection. The Petitioner's actions in this regard are wholly malafide and unsustainable. It is denied that the Petitioner is entitled to any relief insofar as the Respondent is concerned, more specifically reliefs involving the shares of Respondent No.8, with which the Petitioner has no connection whatsoever.
3. Statement of objections if filed by the Respondent vide Dy. No. 4947 dated 09.09.2025 contending as follows:
- a. The Applicant/Respondent No.8 is a necessary party to the present petition in the absence of whom reliefs sought in the main petition cannot be granted. Respondent No.8 is a Company in which the Respondents No.2 & 7 are directors and the Petitioner has made specific allegations against the Respondent No.8 about the funds of the Respondent No.1 Company being diverted to Respondent No.8 Company.
 - b. The Petitioner in the petition has raised specific allegations against the Respondent No.8 under para 32 to 46; Para 54 and para 65 in the main petition. The averments in the main petition clearly lay down how Respondents No.2 to 7 misappropriated funds of the Respondent No.1 to the benefit of Respondent No.8 company. Respondents No.2 to 7 have been siphoning off the funds to Respondent No.8 Company wherein the Petitioner has also produced the evidence in the main petition to show how Respondent No.8 Company made profits due to illegal designs of Respondent No.2 to 7. The resources of Respondent No.1 Company such as staff and infrastructure have also been used by

- Respondent No.8 Company. The flow of funds from the Respondent No.1 Company to the Respondent No.8 is an essential facet of the case.
- c. It is well established principle under law that the veil of corporate entity would be pierced in cases of oppression and mismanagement in order to determine the culpability of the persons behind the veil of Company. As such, the director of Respondent NO.8 Company are Respondent No.2 and Respondent No.7 who are also directors of Respondent No.1 Company. Furthermore, the Respondent No.2 has offered shares in Respondent No.8 Company to the Petitioner in order as a compensation for a manner in which the Petitioner investment in Respondent No.1 Company was misutilized. More importantly, on perusal of ROC documents, it reflects that the registered address of Respondent No.1 Company and Respondent No.8 Company are same from the inception till the year 2013. It has become apparently evident that the Petitioner's investment in the Respondent No.1 Company has been utilized by the Respondent No.8 Company.
- d. The Respondent against whom the reliefs have been sought are not party to the Share Subscription Agreement dated 30.01.2009. Further the reliefs sought by the Petitioner do not arise from the Agreement and cannot be granted by the arbitration.
4. We have heard the Learned Counsel for the Applicant and Respondent and gone through the material available on records.
5. **ANALYSIS:** Principles regarding the Necessary party and Proper Party are laid down and discussed by the Hon'ble Supreme Court in **Nak Engineering Company Pvt. Ltd. Vs. Tarun Keshrichand Shah and Ors.** In SLP (C) Nos. 6024-6025 OF 2022 as below

The fundamental distinction between a "necessary party" and a "proper party" was succinctly explained in Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay, wherein this Court held:

"6... A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary

for a complete and final decision on the question involved in the proceeding.”

34. In *Kasturi v. Iyyamperumal*, this Court crystallized the twin tests for a necessary party:

“...the question of jurisdiction of the court to invoke Order 1 Rule 10 CPC to add a party who is not made a party in the suit by the plaintiff shall not arise unless a party proposed to be added has direct and legal interest in the controversy involved in the suit. ... two tests are to be satisfied for determining the question as to who is a necessary party.

The tests are:

(1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party.”

35. This principle has been consistently reiterated. In *Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd.*⁷, this Court reiterated:

“15. A “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a “necessary party” is not impleaded, the suit itself is liable to be dismissed.

“proper party” is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.”

36. Thereafter, in Vidur Impex & Traders (P) Ltd. v. Tosh Apartments (P) Ltd.⁸, the broad principles governing impleadment were summarized:

“41.2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the court.

41.3. A proper party is a person whose presence would enable the court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

41.4. If a person is not found to be a proper or necessary party, the court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.”

7. Tested against these Principles and the Tests laid down, the Petitioner has not established the necessity of impleading the parties proposed. The Petitioner has also not clarified as to what relief is being claimed against them.

8. It is seen that the Applicant in this application is the Respondent No 8 in main petition. The Applicant is a Private Limited Company and is a Separate Legal entity. It is not connected with the Respondent no 1 Company in the main Petition. It is neither a Shareholder of the Respondent Company no 1, on the date of filing of the petition and hence the Petitioner cannot claim any Relief against the Applicant.

9. DECISION: Considering the Totality of facts, We are of the considered opinion that without any specific and direct role having been established in the petition the presence of the applicant is totally unnecessary and may actually be burdensome. Hence, the application is allowed and the Applicant/ Respondent no 8 is deleted from the array of parties in the Petition and the **CA in 133 of 2025 is Allowed.**

-Sd-

**RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)**

-Sd-

**SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)**