IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION NO. 1389 OF 2025

IN

COMMERCIAL SUIT NO. 113 OF 2024

Piramal Capital and Housing Finance Ltd and Anr ..Applicants

In the matter between

Piramal Capital and Housing Finance Ltd and Anr ..Plaintiffs

Versus

Atria Brindavan Power Private Limited and Ors …Defendants

Mr. Venkatesh Dhond, Senior Advocate, with Mr. Shyam Kapadia, Mr. Vishnu Sriram, Ms. Srishti Kapoor, Ms. Rashika Bajpai, Ms. Aishwarya Singh and Ms. Kavya Arora, i/b Khaitan and Co, for the Applicant in IA/1389/2025 and for Original Plaintiff in COMS/113/2024.

Mr. Ravi Kadam, Senior Advocate, with Mr. Rohan Kadam, Mr. Abhishek Adke and Mr. Sagar Vichare, i/b Mr. Abhishek Adke, for Defendant Nos. 1 to 4.

Mr. Zal Andhyarujina, Senior Advocate, with Ms. Revati Desai, Ms. Priya Dangat and Mr. Rupesh Geete, for Defendant Nos. 5, 12 to 26.

Mr. Aadil Parsurampuria, with Mr. Atman Mehta, Mr. Vipul Patel and Mr. Rachit Bharwada, i/b Haresh Mehta and Co, for Defendant No.6.

ARUN RAMCHANDRA SANKPAL

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Mr. Ashish Kamat, Senior Advocate, with Mr. Pratik Kothari, Mr. Nishant Chotani and Ms. Sneha Nagaraj, i/b Mr. Pratik Kothari, for Defendant No.7.

Mr. Gaurav Joshi, Senior Advocate, with Mr. Mayur Khandeparkar, Mr. Feroze Patel, Mr. Tejas Agarwal, Ms. Anushka Singh and Ms. Vidhi Porwal, i/b IC Legal, for Defendant No. 8.

Mr. Sharan Jagtiani, Senior Advocate, with Mr. Munaf Virjee, Mr. Pranav Shetty, Mr. Akshay Doctor, Mr. Sumeet Nankani, Mr. Rushabh Parekh and Ms. Tirtha Mukherjee, i/b AMR Law, for Defendant No.11.

CORAM: N. J. JAMADAR, J.
RESERVED ON : 14th AUGUST 2025
PRONOUNCED ON : 12 FEBRUARY 2026

ORDER:

1. This Commercial Suit is instituted for recovery of an amount of Rs.4,64,67,41,242/- along with interest, and a declaration that the transfer of shares of Defendant No. 5 in Defendant No.6-company to Defendant No. 7 and all the documents executed in connection therewith are illegal, null and void, and to set aside the said transfer and also for compensation for the loss caused to the Plaintiffs by virtue of the said transfer.

2. The material averments in the Plaint, relevant for the determination of the Application for interim relief, can be summarized as under:

2.1 Plaintiff No.1 is an unlisted public company incorporated under the Companies Act, 1956. Plaintiff No. 2 is an Asset Reconstruction Company. Plaintiff No.2 is the assignee of Plaintiff No.1.

2.2 Defendant No.1-("Atria") is a private limited company. Defendant No.1 is, *inter alia,* engaged in the business of generating power through renewable energy sources. Defendant Nos. 2 and 3 ("Raju Brothers") are promoters and directors of Atria (D1) . Defendant No. 4 is a private (family) trust and also a promoter of Atria (D1). Raju Brothers are trustees of Defendant No.4-Trust. Defendant Nos. 5 and 6 are the subsidiary companies of Atria (D1). Likewise, Defendant Nos. 12 to 26 are also the subsidiary companies of Atria (D1).

2.3 Atria (D1) had issued, on a private placement basis, 90,000 debentures of face value of Rs.1 Lakh each, aggregating to Rs.900 crores by way of a Debenture Trust Deed (Atria DTD) dated 5th December 2016, executed by and between Defendant Nos. 1 to 4 and Axis Trustee Services Limited (D9), the Debenture Trustee. Under the said Atria DTD, the issue of debentures was divided into six tranches aggregating to a principal amount of Rs. 750 Crores with an optional tranche aggregating to Rs.150 Crores.

2.4 Plaintiff No.1 during the period 2016 and 2017 subscribed to 24,250 debentures by advancing an aggregate sum of Rs.242.50 crores, i.e. first tranche of Rs.152.50 Crores on 20th December 2016, the second tranche of Rs.35 Crores; on 7th July 2017, and the third tranche of part subscription amounting to Rs. 55 Crores on 18th December 2017.

2.5 Defendant No.1 was required to make payment of coupon/interest amount to the debenture holders on the dates and rates stipulated under Clause 25 of Atria DTD.

2.6 The principal/redemption amount was required to be paid/redeemed by Atria (D1) as on the dates stipulated under Clause

23, i.e., 20% on 19th December 2022, and the balance 80% on 19th December 2023.

2.7 Under Clause 12 of Atria DTD, Defendant Nos. 1 to 4, *inter alia,* agreed to create, and were required to perfect the security interest on the security created in favour of the debenture Trustee for the benefit of debenture holders. The securities included, *inter alia,* creation and perfection of pledge over 100% of the issued and fully paid up share capital of the issuer and creation and perfection of pledge over all the unencumbered securities in the subsidiaries whose securities were not pledged to Senior Project Lenders of such subsidiaries, as particularized in part A of Schedule XXIII.

2.8 As a part of the security basket, Defendant Nos. 1 to 4 have executed a Non-Disposal Undertaking (NDU) and a Power of Attorney (PoA) in respect of all the unencumbered securities held by the issuer and/or the promoter, directly or indirectly, in subsidiaries whose securities were pledged to senior project lenders of such subsidiaries, as particularized in Part B of Schedule XXIII and execution of the NDU and PoA in respect of unencumbered securities held by the issuer in securities whose securities were pledged to Senior Project Lenders of such subsidiaries.

2.9 In furtherance of the security package, on 7th December 2016, a Non-Disposal Agreement was executed by and between Atria (D1), WPA

Clean Energy Private Limited (D5) and Betul Wind Farms Private Limited (D6) and BGSE Financial Limited (D10), the DP Agent, under the NDU, in relation to WPA's (D5) unencumbered equity shares in Betul (D6).

2.10 Under the terms of NDU, WPA (D5) expressly undertook that it will not sale, transfer assign, dispose of, pledge, mortgage, hypothecate, charge or otherwise encumber the assets in any manner whatsoever, without prior consent of the security trustee. Under Clause 33 of the Atria DTD, Defendant Nos. 1 to 4 also agreed and undertook that they will not, and ensure that the "subsidiaries" shall not be permitted to make, any change in the shareholding of their subsidiaries, issue any debentures or create any security over their assets or shares, without the prior written consent of the debenture holders.

2.11 It is the claim of the Plaintiff that, on 19th December 2023, the final settlement date, Atria (D1) was liable to pay a sum of Rs.408,86,72,718/- comprising of the principal outstanding of Rs. 194 Crores, and interest, as agreed. Atria (D1), however, committed default in the discharge of its payment obligation. Thus an event of default occurred. Plaintiff No.1 reported the event of default on National E-Governance Services Limited (NESL).

2.12 In the meanwhile, pursuant to Clause 34.1.3 of Atria DTD, Plaintiff No.1 entered into a Deed of Assignment with Plaintiff No.2, on

13th February 2024, and thereby assigned the debentures exposure along with right, title and interest in favour of Plaintiff No.2. Despite having committed default, Defendant Nos. 1 to 4, the Plaintiffs assert, instituted a frivolous Suit, being Commercial OS No. 298 of 2024, against the Plaintiffs, Baboon Investments Holding B.V. (D11), another debenture holder under Atria DTD, and Axis Trustee (D9), at Bengaluru.

2.13 In the said Suit, the Commercial Court passed an order restraining the Plaintiffs as well as Baboon Investments (D11) from acting and exercising the rights under the Deed of Assignment and Atria DTD. Eventually, by an order dated 9th May 2024, the Karnataka High Court clarified that the said order dated 25th April 2024 passed by the Commercial Court would not come in the way of the Plaintiffs in initiating joint action against Atria (D1).

2.14 Thereupon, the Plaintiffs filed a joint Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“IBC Code”) against Atria (D1) before the NCLT, Bengaluru, for default in discharge of financial debt.

2.15 It is claim of the Plaintiffs that towards the end of July 2024, upon perusal of the documents filed by Betul (D6), before the Ministry of Corporate Affairs, the Plaintiffs found that Betul (D6) has issued several non-convertible debentures aggregating to Rs. 210 Crores under a Debenture Trust Deed dated 27th March 2024 executed between Betul (D6) and Vistra (D8) ("Betul DTD). It further transpired that, WPA Clean Energy's (D5) 50.01% shareholdings in Betul (D6) was held by Bammco Private Limited (D7). WPA Clean Energy (D5), Plaintiffs aver, surreptitiously, illegally and unauthorizedly transferred its entire shareholding in Betul (D6) in favour of Bammco (D7). The Plaintiffs claim Bammco (D7) purchased the said shares despite notice of encumbrances of the Plaintiffs over the said shares.

2.16 Betul (D6) has further jeopardized the security of the Plaintiffs by issuing secured Non-Convertible debentures (NCDs) aggregating to Rs. 210 Crores under Betul DTD, without obtaining the consent of Axis Trustee (D9), the debenture trustee under Atria DTD. Hence the Suit for diverse reliefs.

2.17 By the instant Application, the Plaintiffs are seeking interim reliefs asserting that Defendant Nos. 1 to 4, in breach of their obligations under Atria DTD and related documents, have taken active steps to jeopardize the securities created in favour of the Applicants. Defendant Nos. 1 to 4 and subsidiaries of Defendant No.1, i.e. Defendant Nos. 5, 6 and 12 to 26 are surreptitiously attempting to alienate their assets with a view to make unlawful gain and profit and/or delay the Plaintiffs from realising their dues, and are also eroding the value of the securities created in favour of the Plaintiffs.

Thus, in the context of the breach of contractual obligations and illegal actions, the Plaintiffs apprehend that there is a substantial risk that Defendant Nos. 1 to 4 may not honour any judgment or decree rendered in favour of the Plaintiffs and/or securities furnished may not turn out to be sufficient to discharge the debt.

2.18 Therefore, the Plaintiffs are seeking interim relief to direct the Defendant Nos. 1 to 4 to jointly and severally deposit the outstanding amount of Rs. 4,64,67,41,242/- in this Court, permit the Plaintiffs to withdraw the said amount to be deposited and, in the alternative, direct Defendant Nos. 1 to 4 to furnish solvent securities.

2.19 Asserting that the Plaintiffs have a genuine apprehension that Defendant Nos. 1 to 6 and 12 and 26 would continue to deal and/or part with securities created in favour of the Plaintiffs under Atria DTD, the Plaintiffs have prayed for an interim injunction to restrain Defendant No.1 to 6 and 12 to 26 from dealing with, alienating or creating any right, title or interest of any nature in respect of the securities created in favour of the Plaintiffs. Defendant Nos. 7 and 8 are also sought to be restrained from dealing with 38,82,882 shares in Betul (D6), allegedly illegally transferred by WPA Clean Energy (D5) in favour of Bammco (D7), and to direct WPA Clean Energy (D5) to deposit the entire purchase consideration received upon transfer of those shares in Court. In addition, disclosures are sought from Defendant Nos. 1 to 7 and 12 to 26.

3. Affidavits in Reply have been filed by the Defendants.

3.1 In the Affidavit in Reply on behalf of Defendant Nos. 1, 2 and 4, the tenability of the suit is assailed on the ground that this Court has no jurisdiction to entertain, try and decide the suit, as no part of the cause of action has allegedly arisen within local limits of jurisdiction of this Court. The registered office of the Defendant-companies is in Bengaluru. The transactions in question were executed in Bengaluru and the endeavor of the Plaintiffs to draw support from Clause 72 of Atria DTD to invoke the jurisdiction of Mumbai Courts is stated to be misplaced as Defendant Nos. 5, 6 to 12 to 26 are not bound by Atria DTD, being non-signatories thereto.

3.2 The instant Suit is also stated to be barred by the provisions contained in Section 10 of the Code of Civil Procedure, 1908 ("the Code"). The Defendants contend, the subject matter of the suit revolving around the alleged default in payment and transfer of securities under Atria DTD, is directly and substantially in issue in a previously instituted suit, i.e., Commercial OS No. 298 of 2024, before the Commercial Court at Bengaluru. The Plaintiffs have, in fact, resorted to multiple proceedings to agitate the same cause, with intent to harass the Defendants. Reference is made to the Petition under Section 7 of the IBC before the NCLT, Bengaluru.

3.3 The Defendants also contend that the interdict contained in Section12A of the Commercial Courts Act, 2015 comes into play. With a view to avoid mandatory pre-institution mediation, the Plaintiffs have concocted a false case of urgency. It is contended that the alleged information regarding transfer of shares was obtained in the month of July 2024 and, yet, the suit came to be instituted on 27th August 2024. The said claim of knowledge about the transaction in the month of July 2024 is belied by the fact that Form PAS-3 dated 30th March 2024 was publicly available on the website of Ministry of Corporate Affairs since March 2024.Thus, the suit which has been instituted in breach of the mandate contained in Section 12A of the Commercial Courts Act under the pretext of urgency cannot be entertained, and, therefore, the Plaint is required to be rejected under the provisions of Order VII Rule 11 of the Code.

3.4 The Defendants contend, the suit suffers from the vice of *suppressio veri and suggestio falsi.* The Plaintiffs have not approached the Court with clean hands and have made positive false statements. On this ground alone, the Interim Application ought to be rejected.

3.5 On the merits of the matter, the Defendants contended that Plaintiff No.1 and Baboon (D11) are guilty of repudiatory breaches of

Atria DTD. The debenture holders failed to perform their most fundamental obligation under the Atria DTD, i.e., to subscribe to all the tranches under Atria DTD. Plaintiff No.1 subscribed to the I, II and a part of the third tranche only. The failure of Plaintiff No.1 to subscribe to all the tranches, defeated the very purpose of issue of debentures. The Defendants found themselves in precarious situation on account of repudiatory breaches committed by Plaintiff No.1 and Defendant No.11, though the debenture holders enjoyed the cover of security created in terms of Atria DTD, far in excess of the funds advanced by the debenture holders.

3.6 On account of the repudiatory breaches by failing to subscribe to all the tranches, the Defendants contend, they stand released from obligations under the Atria DTD. In addition, the unilateral assignment of its rights under Atria DTD by Plaintiff No.1 to Plaintiff No.2, in breach of the terms of Atria DTD, has further compounded the situation.

3.7 In view of the repudiatory breaches and unlawful assignment, the Defendants contend the securities furnished by the Defendants stand fully released and the Defendants, as pledgers stand wholly discharged and, therefore, there is no *prima facie* case in favour of the Plaintiffs.

3.8 It is further contended that, the Plaintiffs have deliberately not disclosed the payments made by the Defendant No.1. The Defendants have serviced an amount of Rs.393,47,44,809/- and, yet, by suppressing such substantial repayment, the Plaintiffs are seeking reliefs in the nature of attachment before judgment. According to the Defendants, the Plaintiffs have miserably failed to make out a strong *prima case* and the acts which demonstrate that the Defendants, with intent to obstruct or delay the execution of decree, have dealt with the property. Thus, at this stage, a direction for deposit of the alleged outstanding amount or furnishing security in lieu thereof, being clearly in the nature of attachment before judgment, cannot be entertained.

3.9 In any event, the reliefs sought in the Interim Application partake the character of the final reliefs claimed in the suit. Therefore, the grant of interim reliefs, at this stage, would, in effect, amount to final adjudication of the Plaintiffs claim for final relief.

3.10 The Defendants contend the Plaintiffs claim of breach of the NDU is wholly unsustainable. In accordance with Clause 6.1.5 and 33.1.5 of Atria DTD, WPA Clean Energy (D5) and United Sustainable Energy India Private Limited ("USEIPL") have been permitted to swap their respective shareholdings in the Betul (D6) and Kukru Wind Power Private Limited (D14). Under the terms of Atria DTD, the Defendants were entitled to pay any amount towards settlement of payment with USEIPL, not exceeding Rs.100 Crores, in the event of any valuation difference between the shares of Betul (D6) and Kukru Wind Power (D14), to effect the flip in shareholding in terms of WPA SPV

Investment Agreements. Thus to honour the pre-existing contractual obligation, which is recorded in Atria DTD and in terms of Atria DTD, WPA Clean Energy (D5) and USEIPL proceeded to swap their respective shareholding in Betul (D6) and Kukru Wind Power (D14). Consequently, Bammco (D7) a nominee of USEIPL has acquired the shareholding of WPA Clean Energy (D5) in Betul (D6). Resultantly, Betul (D6) is no longer a subsidiary of Atria (D1).

3.11 The Defendants alleged that Plaintiff No.1 has exhibited extreme bad faith and adopted coercive tactics despite having committed repudiatory breaches. The failure on the part of the debenture holders to fully subscribe to the debentures starved Atria's (D1) projects of funds, impacted cashflow and business operations. Yet, Plaintiff No.1 unilaterally demanded an increase in Internal Rate of Return (IRR) from from 16% to 18% in breach of the express terms of Atria DTD. The debenture holders also exerted pressure on the Defendants for premature payments. The debenture holders thus with *mala fide* design tried to create "self-serving events of default" to wriggle out of their own subscription obligations. Yet, Atria (D1) has discharged its payment obligation and the Plaintiffs continued to enjoy the benefit of security cover far in excess of their actual advance.

3.12 The Defendants claim, Plaintiff No. 1 and Baboon (D11) are already secured far in excess of the debentures held by the debenture holders. The assets base of Atria (D1) is substantially sound and, thus, the apprehension on the part of the Plaintiffs that either the Plaintiff would not be in a position to have the fruits of the decree or there is likelihood of depletion of the secured assets is expressed with a view to show a cause of action which does not exist. Therefore, the balance of convenience tilts in favour of the Defendants. As the debenture holders are adequately secured they would not suffer any irreparable loss. Thus, the Application deserves to be rejected.

4. Defendant No.3 has adopted the Affidavit in Reply filed on behalf of Defendant Nos. 1, 2 and 4.

5. WPA Clean Energy (D5) has also adopted and affirmed the contentions in the Affidavit in Reply filed on behalf of Defendant Nos. 1, 2 and 4. In addition, it is claimed that since WPA Clean Energy (D5) is not a party to the Atria DTD, there is no cause of action against WPA Clean Energy (D5).

5.1 This Court has no jurisdiction as WPA Clean Energy's (D5) registered office is not within the jurisdiction of this Court nor the transaction impugned in the suit has taken place within the jurisdiction of this Court.

5.2 With regard to the swapping of the shareholding, WPA Clean Energy (D5) claims that the swapping of shares between WPA Clean Energy (D5) and USEIPL was not violation of Atria DTD. In contrast, Atria DTD expressly refers to such Agreements. It is contended that, the covenants in Atria DTD will have precedence over the provisions in NDU.

5.3 Lastly, it is contended that Plaintiff No.1 enjoys the securities meant for securing a debt of Rs.900 Crores, through the value of investment by Plaintiff No.1 is only to the tune of Rs.242.50 Crores. The securities created by the Defendants are thus far in excess of the current holding of debentures by the debenture holders.

6. Bammco (D7) has also resisted the Application. The territorial jurisdiction of this Court to entertain the Suit qua Defendant No. 7 is questioned. Defendant Nos. 5, 6 and 7 are all based in Bengaluru. The entirety of cause of action is alleged to have arisen outside this Court's limits, and thus this Court lacks territorial jurisdiction. Secondly, it is contended that, the transactions in question have been completed in compliance with applicable laws and governing Agreements. The Plaintiffs have thus no legal right to challenge the validity of the share transfer to Bammco (D7) or subsequent encumbrances in favour of Vistra (D8). At any rate, NDU, dated 7th December 2016 contains only a personal covenant against WPA Clean Energy (D5). Thus, it would give rise to a claim for damages against WPA Clean Energy (D5) and not against Bammco (D7).

7. Vistra (D8) has also resisted the prayers in the Application. In addition to the grounds of interim reliefs being in the nature of final relief, the delay and laches, in the context of bar under Section 12A of the Commercial Courts Act, sufficiency of existing securities and legal and valid pledge of the shares held by Bammco (D7), Vistra (D8) contends that Vistra (D8) is a third party entirely unconnected, unrelated and unconcerned with the *inter se* disputes between the Plaintiff and Defendant Nos. 1 to 4. There is no privity of contract between WPA Clean Energy (D5) and Vistra (D8) who is a bona fide pledgee and had no knowledge of the purported NDU. Moreover, the depository participant, BGSE Financials Limited (D10), never raised any objection to treating the WPA (D5) shareholding in Betual (D6) as unencumbered.

7.1 Vistra (D8) contends that due to the failure on the part of the Plaintiffs to comply with the SEBI's circular dated 14th June 2017, the Plaintiffs action is unsustainable. The Plaintiffs, according to Vistra (D8), through their agent, acquiesced to the transaction.

7.2 Lastly, according to Vistra (D8), at best the Plaintiffs exclusive remedy is a claim for damages against WPA Clean Energy (D5). The nature of NDU which contains only a promise for future security, coupled with a subsequent sale to a third party and the bona fide pledge to Vistra (D8) preclude any relief against the pledged shares.

8. Atria Wind Private Limited (D12) has also contested the Application. All the contentions raised on behalf of Defendant Nos. 1 to 4 have been adopted. In addition, it is contended the swapping of shares is not in violation of Atria DTD since the latter gives express notice of swapping of shares. In any event, Plaintiff No.1 who has subscribed to 2450 debentures for a total sum of Rs.242.50 Crores is adequately secured as the securities crated by the Defendants are far in excess of the current debenture holdings. The Plaintiffs have failed to plead and *prima facie* demonstrate that existing securities are insufficient. Thus, no interim relief can be granted.

9. Atria Solar Private Limited (D21) and Atria Hydel (KRS) Private Limited (D26) have also contested the Application on the grounds similar to those raised by the co-Defendants.

10. Affidavits in Rejoinder have been filed on behalf of the Plaintiffs controverting the contentions on behalf of the Defendants in the aforesaid Affidavits in Reply. Further Affidavits followed.

SUBMISSIONS:

11. Mr. Dhond, the learned Senior Advocate for the Plaintiffs submitted that, this is an open and shut case of flagrant violation of contractual obligations. On the one hand, Defendant Nos. 1 to 4 have committed default in payment towards the coupon/interest amount and redemption of debentures. On the other hand, the Defendants have surreptitiously diluted the security of the Plaintiffs by transferring the shareholding of WPA (D5) in Betul (D6) in favour of Bammco (D7), in clear breach of NDU. Yet, in order to further delay and defeat the claim of the Plaintiffs and Defendant No.11, a co-debenture holder, the Defendants have raised all sorts of technical defences. In the face of a clear case of breach of contractual obligations and erosion of the value of security of the Plaintiffs, all the parameters for grant of interim reliefs stand fulfilled. Lest, the Plaintiffs would be left in the lurch with no prospect of realisation of the outstanding dues, even if, eventually, a decree is passed in the suit. Therefore, it is necessary to grant comprehensive interim reliefs to protect the interest of the Plaintiffs.

12. Mr. Dhond submitted that, none of the grounds sought to be raised to oppose the interim reliefs merit countenance. The defence of repudiatory breach on account of the alleged non-subscription to all tranches of debentures, was raised only after the default on the part of the Defendants to discharge the debt when it fell due. Not only the Defendant Nos. 1 to 4 never raised any dispute about non-subscription to all the tranches of debentures but, by their positive acts, affirmed their contractual obligations even in respect of the exposure of Plaintiff No.1. Defendant No.1 continued to make payment of interest and a portion of principal amount, acknowledged the debt under the DTD in its Financial Statements, including for Financial Year 2022-2023, and expressly admitted, vide letter dated 24th November 2022, that it would pay the redemption amount of 80% of debentures, when it fell due on 31st December 2023.

13. The technical objections to the maintainability of the suit under Section 10 of the Code and Section 12A of the Commercial Courts Act, as well as on the ground of territorial and subject matter jurisdiction, according to Mr. Dhond, have been raised to sidestep the pivotal issues that arise for determination.

14. Mr. Dhond would urge that, in the facts of the case, the bar under Section 10 of the Code has no application at all as the issues that arise for determination in the Bengaluru suit are substantially and materially different from the issues that crop-up for the consideration in the instant suit. At any rate, Mr. Dhond would submit that, bar of Section 10 need not preclude the Court from considering the prayer for interim prayer as what Section 10 precludes is the trial of the subsequent suit and not grant of interim reliefs to meet exigencies of the situation. Reliance was placed by Mr. Dhond on the judgment of this Court in the case of **Sennaji Kapuechand Vs Pannaji Devichand[1].**

15. The objection that the suit does not contemplate urgent interim relief and, therefore, the Plaintiff must have resorted to mandatory pre-

1 1921 SCC OnLine Bom 113.

institution mediation, under Section 12A of the Commercial Courts Act; is far from the hard facts of the case. Incontrovertibly, WPA (D5) transferred its shareholding in Betul (D6) in favour of Bammco (D7) in clear breach of contractual obligations, and Defendant Nos. 1 to 4 have committed default in the discharge of debt even though the date of redemption has passed by. In such situation, it cannot be urged that the suit does not contemplate an urgent interim relief. Such a construction would defeat the legislative object contained in Section 12A of the Commercial Courts Act which dispenses with pre-institution mediation where the suit contemplates an urgent interim relief. A strong reliance was placed by Mr. Dhond on the guiding principles enunciated in **Yamini Manohar Vs T.K.D. Keerthi.**[2]

16. According to Mr. Dhond, the objection to the jurisdiction of this Court, both on the count of territorial and subject matter jurisdiction, is also completely misconceived. As the Plaintiff is seeking enforcement of the obligations of the Defendants under DTD; Clause (72) of which confers exclusive jurisdiction on the Courts at Mumbai, the objection to the jurisdiction of this Court is completely unsustainable even qua the subsidiaries of Defendant No.1.

17. Mr. Dhond would urge, under the terms of the DTD, 'Debenture Documents' include all security documents which, in turn, include the undertaking and every Agreement for pledge of securities executed by

2 (2024) 5 SCC 815.

Defendant No. 5 and Defendant Nos.12 to 26. In any event, since this Court has granted leave under Clause XII of the Letters Patent and the said leave continues, the objection to the jurisdiction of this Court cannot be now entertained.

18. Bar of subject matter jurisdiction, according to Mr. Dhond, is equally unfounded. The matter is not confined to rectification of register of members only. In contrast, the instant suit is a comprehensive suit involving multiple parties and multiple causes of action qua the Defendants, and wide ranging reliefs have been sought qua each of the Defendants. Thus, NCLT which is a creature of a statute is not empowered to determine the issues that crop-up for consideration and grant the comprehensive reliefs sought by the Plaintiff. It was urged that it is well-recognized that an inference of exclusion of the civil court's jurisdiction cannot be readily drawn.

19. Mr. Dhond took the Court through the documents to demonstrate that both Bammco (D7) and Vistra (D8) had adequate notice of the obligations of WPA (D5) under DTD and NDU and have, yet, entered into the transactions. In view of the constructive, if not direct, notice to Bammco (D7) and Vistra (D8), those Defendants cannot be permitted to raise the defence of *bona fide* purchaser/pledgee without notice.

20. The contention that the Plaintiffs are sufficiently secured and, therefore, no interim relief can be granted, is based on an erroneous impression. The said contention is in teeth of the contractual obligation to ensure that the security cover at all times is two times (2x) of the value of outstanding debt. An effort was made by Mr. Dhond to draw home the point that the securities on the own showing of Defendant Nos. 1 to 4 are in the range of 919 to 1399 Crores, even before the impugned transfer of the shareholding by WPA (D5), which is far below twice the fair market value cover of the total outstanding debt, required to be maintained under the DTD.

21. Mr. Dhond submitted, the endeavour on the part of the Defendants to wriggle out of the situation by referring to the extent of the securities would amount to calling upon the Court to rewrite the contract under the guise of balance of convenience. At any rate, the obligation not to dispose of or deal with the pledged securities, without prior written consent of the debenture holders, is not conditioned by the value of security.

22. A very strong reliance was placed by Mr. Dhond on a judgment of the Supreme Court in the case of **Rajasthan State Industrial Development and Investment Corporation and Anr Vs Diamond and Gem Development Corporation Limited and Anr.**[3]

23. Lastly, Mr. Dhond would submit that, the resistance sought to be put-forth by the Defendants on the ground that the reliefs sought by the Plaintiffs in the interim application are in the nature of final reliefs and,

3 (2013) 5 SCC 470.

therefore, cannot be granted at an interim stage, is also devoid of substance.

24. Since a very strong *priam facie* case is made out and there is imminent possibility of further breach of contractual obligations and erosion of the value of the security, the reliefs sought by the Plaintiffs deserve to be granted at an interim stage as there is substantial risk that the Defendants may not honour any judgment or decree rendered in favour of the Plaintiffs. It was submitted the Court is not denuded of the power to grant such reliefs in the exigencies of the situation. To this end, Mr. Dhond placed reliance on the judgments of the Supreme Court in the cases of **Deoraj Vs State of Maharashtra and Ors**[4] and **Nimbus Communications Ltd Vs Board of Control For Cricket in India**[5]

25. Mr. Jagtiani, learned Senior Advocate for Baboon (D11) supported the submissions on behalf of the Plaintiffs. It was urged that Baboon (D11) is also a subscriber of Debentures issued by Atria (D1) and has subscribed to 24,250 Debentures, like the Plaintiff No.1 under DTD. Baboon (D11) is, thus, identically circumstanced. Mr. Jagtiani would urge that, the security interest primarily comprised of pledge, and NDU over shareholding of Atria (D1) in its subsidiaries for the benefit of both the debenture holders i.e. Plaintiff Nos.1 and 11. Thus, Baboon (D11) is vitally interested in the cause espoused by the Plaintiff

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4 (2004) 4 SCC 697.

5 2013 (1) MhLJ 39.

No.1 and supported the grant of interim reliefs in the Interim Application which pertained to common security interest. It was submitted that, Baboon (D11) specifically supported the grant of interim reliefs in terms of prayer clauses (c) to (h) of the Application.

26. Mr. Jagtiani would urge, Atria (D1) has committed default in discharge of the obligation under DTD towards Baboon (D11) as well. Defence of repudiatory breach sought to be putforth on behalf of Defendant Nos.1 to 4 is a creature of an after-thought and wholly misconceived.

27. In any event, right to recover / enforce security for debentures subscribed will not in any manner be circumscribed by non-subscription of the subsequent tranches, for which no notice was issued. Breach of contract by one party, it is trite, does not automatically terminate the obligations under the contract, submitted Mr. Jagtiani. Reliance was placed on the judgment in the case of **State of Kerala V/s. Cochin Chemical Refineries Ltd.**[6]

28. Under the terms of the NDU, Mr. Jagtiani would urge, there was no unilateral right to swap NDU shares without the consent of the debenture holders. Agreement for Swap does not imply that the potential swap shares could not have been encumbered. Only consent granted in terms of clause 6.15, on which Defendants placed reliance, was to utilize upto 100 Crores of the debenture subscription amount

6 AIR 1968 SC 1361

towards the settlement of payment with USEIPL. Despite permissibility under the clause 6.1.5 of Atria DTD, no portion of debenture subscription amount has, in fact, been utilized for the said purpose. The endeavour on the part of the Defendants to construe clause 6.1.5 in a manner which enables dilution of security interest or dispenses with prior written consent of the debenture holders / trustees, is completely misconceived.

29. Refuting the contention of Bammco (D7) and Vistra (D8) that they are bonafide purchaser and pledgee, respectively, Mr. Jagtiani would urge that Defendant Nos.7 and 8 had adequate notice of encumbrances. Firstly, Defendant No.5 created a charge in form CHG-9 dated 7 December 2016. The said charge continues even today, as no document satisfying charge has been filed by Defendant No.5. Secondly, Audited Financial Statements of Defendant No.5, for the year ending 31 March 2023, note that the non-disposal undertaking has been provided by Defendant No.5 in respect of the said shares. Third, the term sheet annexed to Betul DTD also makes it clear that Vistra (D8) was well aware that the said share holding belonged to WPA (D5) prior to the subscription of the debenture under Betul DTD.

30. Mr. Jagtiani placed a strong reliance on the judgment of the Supreme Court in the case of **Videocon Properties Ltd. V/s. Dr. Bhalchandra Laboratories and Ors.**[7] to lend support to the submission

7 (2004) 3 SCC 711

that the buyer is entitled to enforce a charge created under Section 55 6(b) of the Transfer of Property Act, 1882 against the property and, for that purpose, trace the property even in the hands of third party and even when the property is converted into another form by proceeding against the substituted security.

31. Mr. Ravi Kadam, the learned Senior Advocate for the Defendant Nos. 1 to 4 stoutly opposed the prayers for the interim relief. In a case of the present nature, where Plaintiffs action and conduct suffer from the vice of extreme bad faith, no equitable relief can be granted in favour of the Plaintiff especially when the grant of interim relief would amount to a decree without trial, was the thrust of the submission of Mr. Kadam.

32. Elaborating the aforesaid submission, Mr. Kadam would urge that, the plaintiff had deliberately suppressed the fact that, a substantial payment of Rs. 393 Crores was made by the Defendant No. 1 towards coupon amount and 20% debentures redemption. In contrast, the Plaintiff No. 1 had subscribed to only 2425 debentures in the sum of Rs. 242.5 Crores, against the promise to subscribe Rs. 900 Crores. Since, the issue proceeds were to be utilized for the purpose of infusion of equity into various projects, the failure on the part of the Plaintiff No. 1 to subscribe to the debentures fully, jeopardised the business of commissioning and operating energy power plants, leading to the strain on working capital and seriously impacted revenue. In these circumstances, according to Mr. Kadam, serious triable issues as to the breach of obligations under DTD, arise for determination and can only be adjudicated at the trial.

33. Mr. Kadam further submitted that, despite not subscribing to the debentures to the tune of Rs. 900 Crores, as agreed, the Plaintiff No. 1 continued to enjoy the security cover for the said amount, with an exposure of Rs. 242.5 Crores only. As the Plaintiff No. 1 is fully secured by the pledge of shares of over Rs. 1,000/- Crores, no case is made out to even seek the interim relief, of the nature sought by the plaintiffs, much less, grant those reliefs. Mr. Kadam assiduously submitted that, in the absence of a pleaded case that, the securities already created in favour of the plaintiff are insufficient to discharge the debt, under no circumstances, interim relief can be granted.

34. Mounting a serious criticism against the nature of the interim relief, Mr. Kadam would urge, the grant of interim prayers (a) and (b), namely, a direction for deposit of the alleged outstanding sum of Rs. 464.67 Crores, with permission for withdrawal of the said amount, would amount to passing a decree to the fullest, without a trial. It was submitted that, it is rudimentary principle of law that, at an interim stage reliefs in the nature of final reliefs cannot be granted. Reliance was placed on the decision of the Supreme Court in the case of **State of U.P. and Ors Vs Ram Sukhi Devi**[8].

35. Mr. Kadam would submit, the reliance on the decision in the case of **Deoraj Vs State of Maharashtra and Ors**[9] from which support was sought to be drawn on behalf of the plaintiffs, is inapposite. If the ratio therein is correctly construed, the said judgment advances the cause of the defendants rather than the plaintiffs. In any event, no extraordinary and exceptional case is made out by the plaintiffs to seek reliefs in prayer clause (a) and (b) at an interim stage, urged Mr. Kadam.

36. Mr. Kadam would further submit that, prayer clause (c) is essentially in the nature of an order of attachment before judgment. On the one hand, the pleadings in support of the prayer clause (c) are demonstrably incorrect. On the other hand, no case has been made out to satisfy the stringent conditions for attachment before judgment. To this end, Mr. Kadam placed reliance on the judgment of the Supreme Court in the case of **Raman Tech and Process Engg Co and Anr Vs Solanki Traders**[10] wherein, inter alia, the summary of propositions enunciated in the case of **Premraj Mundra Vs. Md Maneck Gazi and Ors**[11] was approved.

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8 (2005) 9 SCC 733.

9 (2004) 4 SCC 697.

10 (2008) 2 SCC 302.

11 1951 SCC OnLine Cal 20.

37. Mr. Kadam submitted that, the substratum of the plaintiff's case, premised on the alleged violation of NDU by flipping 50.01% shareholding held by WPA Clean Energy (D5) in Betul (D6) in favour of the Bammco (D7) in lieu of 50.01% shareholding of USEIPL in Kukru Wind Power (D14) is completely flawed. The said transaction was clearly contemplated by the terms of the DTD and also had the imprimatur of Plaintiff No. 1 and Defendant No. 11. Mr. Kadam would urge that, the prior agreements were expressly recognized, and the transactions pursuant thereto approved, under the DTD. At any rate the stipulations in the DTD override the terms of the NDU. Thus, none of the prayers in the interim application deserve any countenance.

38. Mr. Zal Andhyarujina, learned Senior Advocate for Defendant Nos.5 and 12 to 26 supplemented the submissions of Defendant Nos.1 to 4 on the core of the controversy. It was submitted that, though Defendant Nos.5 and 12 to 26 are the subsidiaries of Defendant No.1, yet, they are not parties to the DTD. Consequently, there is no privity of contract between Plaintiff No.1 and Defendant Nos.5 and 12 to 16. Resultantly, the Plaintiffs have no cause of action against Defendant Nos.5 and 12 to 26. Nor this Court has jurisdiction qua the subsidiaries of Defendant No.1. Neither the Defendants subsidiaries have their registered office within the jurisdictional limits of this Court, nor the transaction sought to be impugned has taken place within the jurisdiction of this Court.

39. Mr. Andhyarujijna reiterated that the flip of shareholding was expressly authorized and within the complete knowledge of the Plaintiff No.1. It was further urged that the shares of Betul (D6) and Kukru (D14) never formed part of the pledged security, but were only secured by way of NDU.

40. Mr. Andhyarujina would submit, NDU was, in fact, executed to give effect to the terms of the DTD, and, not otherwise, as was sought to be urged on behalf of the Plaintiffs. Therefore, the Plaintiffs cannot be permitted to urge that, on account of the transfer of the shares of the subsidiaries, there is alleged depletion of the security and erosion in the value of the shares pledged under DTD. Lastly, it was urged that the apprehensions on the part of the Plaintiffs are, at best, speculative and unfounded, and, thus, no interim relief can be granted on the basis of such unfounded apprehension of invasion of the alleged rights of the Plaintiffs.

41. Mr. Tamboly, learned Counsel for Betul (D6), while supporting the submissions on behalf of Defendant Nos.1 to 5 and 12 to 26, submitted that the Defendant No.6 has already transferred the shares, and, thus, no relief can be granted against Defendant No.6. Mr. Tamboly emphasised that, Defendant No.6 is not a party to any of the transactional documents, and, thus, the Plaintiffs have no cause of action qua Defendant No.6, and, this Court would, thus, have no jurisdiction qua Defendant No.6.

42. Mr. Ashish Kamat, learned Senior Advocate for Bammco Pvt. Ltd. (D7), supported the submissions on behalf of Defendant Nos.5 and 12 to 26 on the point that the NDU, by itself, does not create any security. No further action to create security interest in pursuance of NDU was taken. Nor any charge or lien over the subject shares of the subsidiaries, especially Betul (D6), can be said to have been created pursuant to NDU.

43. Mr. Kamat would also urge that, this court has no territorial jurisdiction over Defendant No.7. In addition, in view of the provisions contained in Section 438 of the Companies Act, 2013, read with Sections 56 and 59, this court has no subject matter jurisdiction also. In fact, reliefs claimed in the suit in the context of the transfer of the shares of Betul (D6) in favour of Bammco Pvt. Ltd. (D7) are barred by the provisions contained in Section 430 of the Companies Act, 2013. Before entertaining the prayer for interim reliefs, the Plaintiffs would be required to surmount the impediment of jurisdictional challenges. Therefore, this Court ought to prima facie decide the jurisdiction before entertaining the prayer for interim reliefs. To this end, Mr. Kamat placed reliance on the judgment of the Supreme Court in the case of **Asma Lateef and Anr. V/s. Shabbir Ahmad and Ors.**[12]

44. Amplifying this challenge on jurisdiction, Mr. Kamat would urge that the challenge to transfer in the books of Betul (D6) can only be by way of an application for rectification of register of members under Section 59 of the Companies Act, 2013. WPA (D5) has transferred its shareholding in Betul (D6) to Bammco (D7) in exercise of the power under Sections 56 of the Companies Act, 2013. The legality of or authority for transfer of the said shares, consequently, falls within the jurisdiction of the National Company Law Tribunal under Section 59 of the Act, 2013. Therefore, the reliefs claimed under prayers clauses (c) and (d) of the Interim Application are barred by Section 430 of the Companies Act, 2013. Consequently, no injunction in furtherance of the prayer clauses (c) and (d) of the Interim Application can be granted.

45. To bolster up these submissions, Mr. Kamat placed reliance on the judgments in the cases of **SAS Hospitality Pvt. Ltd. and Anr. V/s. Surya Constructions Pvt. Ltd. and Ors.**[13], **Shashi Prakash Khemka (dead) through legal representatives and Anr. V/s. NEPC Micon and Ors.**[14] and **Chalasani Udaya Shankar and Ors. V/s. Lexus Technologies Pvt. Ltd. and Ors.**[15].

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12 (2024) 4 SCC 696

13 2018 SCC Online Del 11909

14 (2019) 18 SCC 569

15 (2024) 10 SCC 303

46. Mr. Kamat would further urge that the NDU, at the highest, is a personal covenant and does not give any rights to the Plaintiffs over the suit shares. For breach of such a personal covenant, damages are adequate and appropriate remedy. Thus, if the remedy is quantifiable in damages, there can be no irreparable loss to the Plaintiffs, and, consequently, no interim relief can be granted qua the subject shares.

47. Mr. Kamat would urge that, the instant suit was incompetent for having instituted without exhausting mandatory pre-institution mediation under Section 12A Commercial Courts Act, 2015, as it does not contemplate 'urgent interim relief'. It was submitted that the plaint contains vague assertions in regard to interim relief and is completely silent on the necessity of 'urgent' interim relief, as contemplated by Section 12A of the Commercial Courts Act, 2015. Mr. Kamat would urge that the Plaintiffs have made an undisguised attempt to create an artificial urgency only to bypass and circumvent the statutory and mandatory provisions contained in Section 12A of the Act, 2015. Thus, on this count, plaint is liable to be rejected, submitted Mr. Kamat.

48. Lastly, banking upon the judgment of the Supreme Court in the case of **Cotton Corporation of India Limited V/s. United Industrial Bank Ltd. and Ors.**[16], Mr. Kamat submitted with a degree of vehemence that, no interim relief can be granted against Defendant No.7 as no final

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16 (1983) 4 SCC 625

relief can be granted against Defendant No.7, in view of the aforesaid insuperable impediments.

49. Mr. Gaurav Joshi, the learned Senior Advocate for Vistra (D8), at the outset, submitted that, since no final relief has been sought against Vistra (D8), only interim relief cannot be granted. Mr. Joshi mounted a multi-pronged attack to the prayers qua Vistra (D8). Maintainability of the suit, in general, and the interim relief, in particular, was assailed on the grounds of lack of territorial jurisdiction, bar under Section 430 of the Companies Act, 2013 and the absence of final relief qua Vistra (D8) and delay and laches on the part of the Plaintiffs.

50. On the merits of the matter, Mr. Joshi would urge, Vistra (D8) is a bonafide pledgee and a third party who has no concern with the transaction between Plaintiffs and Defendant Nos.1 to 4. Defendant No.8 is a bonafide pledgee for value, in whose favour the pledge of the shares of Bammco (D7) in Betul (D6) has been created. In the absence of any privity of contract between the Plaintiffs and Vistra (D8), no interim relief can be granted against Vistra (D8).

51. Mr. Joshi would further urge that, the claim of the Plaintiffs premised on the NDU does not merit consideration on account of the non-compliance with the provisions contained in the Depositories Act, 1996, NSDL Bye-Laws and the terms of the NDU, and, thus, the purported obligations under NDU do not bind the third parties like Vistra (D8).

52. Laying emphasis on clause 3.1(m) of NDU, Mr. Joshi would urge that, NDU required creation of a debit freeze on the DP account in accordance with the Rule 12.7.1 of NSDL Business Rules 2015. Yet, the Plaintiffs failed to create such debit freeze. Failure on the part of the Plaintiffs to adopt proper safeguards for creation of record of purported NDU, at an appropriate stage, was at the own peril of the Plaintiffs. Non-compliance of the provisions of the SEBI Circular dated 14 June 2017 by failure to register the NDU in consonance with the stipulation thereunder, was also pressed into service. Having failed to initiate the protective measures in accordance with the provisions of NSDL Bye-Laws and the terms of the NDU, the Plaintiffs have disentitled themselves from claiming any interim reliefs.

53. Mr. Joshi next urged with tenacity that, the shares being fungible in nature, third party rights cannot be affected. It was, therefore, not incumbent upon the third parties, including Vistra (D8), to carry out title search or due diligence. Reliance was placed by Mr. Joshi on the judgment in the case of **PTC India Financial Services Ltd. V/s. Venkateswarlu Kari and Anr.**[17] to demonstrate fungible nature of securities and the consequences that entail the transfer of securities without pledge having been notified in the manner prescribed under the

17 (2022) 9 SCC 704

Depositories Act, 1996. Thus, even if the case of the Plaintiffs is taken at par, the mere fact that WPA (D5) sold the shares allegedly in breach of NDU, would not ifso facto invalidate the pledge of those shares by Bammco (D7) in favour of Vistra (D8).

CONSIDERATION:

54. At the outset, I deem it appropriate to deal with the preliminary objections to the tenability of the suit and the prayers for interim relief.

Bar under Section 12A of the Commercial Courts Act, 2015 :

55. The tenability of the suit was assailed on the ground that, it does not contemplate urgent interim reliefs. The Plaintiffs case for "urgent interim reliefs" was refuted on the ground of purported delay and laches in approaching the Court, without exhausting mandatory pre-institution mediation under Section 12A of the Act, 2015. Since the transaction was reported through PAS 3 with the MCA in March 2024, the claim of the Plaintiffs that the Plaintiffs learnt about the same in July 2024, was stated to be incorrect.

56. With the pronouncement of the Supreme Court in the case **Patil Automation Pvt. Ltd. V/s. Rakheja Engineers Pvt. Ltd.**[18], there can be no duality of opinion that the pre-stitution mediation envisaged by Section 12-A of the Act, 2015 is mandatory. In a commercial suit, the Court is enjoined to examine whether the institution of the suit without resorting to pre-institution mediation was justifiable on the touchstone

18 (2022) 10 SCC 1

of contemplation of a urgent interim relief. The only outlet to claim exemption from the peremptory pre-institution mediation is, the contemplation of an urgent interim relief in such suit.

57. Thus, when confronted with the question, as to whether the plaint is liable to be rejected for not exploring pre-institution mediation, the approach to be adopted by the Court would be one of striking a balance. At the one end of the spectrum is, the necessity to adopt an approach which does not defeat the object of mandatory pre-institution mediation. At the other end of the spectrum is, the compulsion to not shut doors on a party which requires an urgent interim relief in a commercial suit. A too rigid construction of the expression, "contemplates an urgent interim relief", would deprive a party of the hearing, at the threshold, where urgent interim relief is necessary to protect its interest.

58. In the case of **Yamini Manohar (Supra)**, the Supreme Court expounded the import of the expression, "a suit which does not contemplate any urgent interim relief", from the point of view of the party; whose contemplation matters, the test to be applied to judge the existence of contemplation of urgent interim relief and the possibility of urgent interim relief being prayed for to circumvent the mandate of pre-instituion mediation. The observations of the Supreme Court in paragraphs 10 to 12 read as under:

"10. We are of the opinion that when a plaint is filed under the CC Act, with a prayer for an urgent interim relief, the commercial court should examine the nature and the subject matter of the suit, the cause of action, and the prayer for interim relief. The prayer for urgent interim relief should not be a disguise or mask to wriggle out of and get over Section 12-A of the CC Act. The facts and circumstances of the case have to be considered holistically from the standpoint of the plaintiff. Non-grant of interim relief at the ad-interim stage, when the plaint is taken up for registration/admission and examination, will not justify dismissal of the commercial suit under Order VII, Rule 11 of the Code; at times, interim relief is granted after issuance of notice. Nor can the suit be dismissed under Order VII, Rule 11 of the Code, because the interim relief, post the arguments, is denied on merits and on examination of the three principles, namely, (i) prima facie case, (ii) irreparable harm and injury, and (iii) balance of convenience. The fact that the court issued notice and/or granted interim stay may indicate that the court is inclined to entertain the plaint.

11. Having stated so, it is difficult to agree with the proposition that the plaintiff has the absolute choice and right to paralyze Section 12-A of the CC Act by making a prayer for urgent interim relief. Camouflage and guise to bypass the statutory mandate of pre-litigation mediation should be checked when deception and falsity is apparent or established. The proposition that the commercial courts do have a role, albeit a limited one, should be accepted, otherwise it would be up to the plaintiff alone to decide whether to resort to the procedure under Section 12-A of the CC Act. An "absolute and unfettered right" approach is not justified if the pre-institution mediation under Section 12-A of the CC Act is mandatory, as held by this Court in Patil Automation Pvt. Ltd. (supra).

12. The words "contemplate any urgent interim relief" in Section 12-A(1) of the CC Act, with reference to the suit, should be read as conferring power on the court to be satisfied.

> They suggest that the suit must "contemplate", which means the plaint, documents and facts should show and indicate the need for an urgent interim relief. This is the precise and limited exercise that the commercial courts will undertake, the contours of which have been explained in the earlier paragraph(s). This will be sufficient to keep in check and ensure that the legislative object/intent behind the enactment of Section 12-A of the CC Act is not defeated."
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> (emphasis supplied)

59. In the case of **Dhanbad Fuels Private Limited vs. Union of India and another**[19], after adverting to the aforesaid pronouncement in the case of **Yamini Manohar** (supra), the Supreme Court enunciated that the test under Section 12A is not whether the prayer for urgent interim relief actually comes to be allowed or not, but whether on examination of the nature and the subject-matter of the suit and the cause of action, the prayer for urgent interim relief by the plaintiff could be said to be contemplable when the matter is seen from the standpoint of the plaintiff. However, what also be kept in mind by the Court is that the urgent interim relief must not be merely on unfounded cause of action by the plaintiff to bypass the mandatory requirement of Section 12A of the Act, 2015.

60. On the aforesaid touchstone, if the facts of the case at hand are evaluated, the element of urgency cannot be said to be diluted by the passage of time, as was sought to be canvassed on behalf of Defendant Nos.1 to 4 and 7. The time lag between the knowledge of the

19 2025 SCC OnLIne SC 1129.

impugned transaction (July 2024) and the institution of the suit in the month of August 2024, does not seem to be such as to erode the case of urgency. The element of urgency is required to be appreciated in the light of the apprehension entertained by the Plaintiffs in regard to the further depletion of the assets and the fundamental security of the Plaintiffs. Therefore, reliance placed by Mr. Kamat on the judgment of the Madras High Court in the case of **K. Varathan V/s. Prakash Babu Nakundhi Reddy**[20] is inapposite in the facts of the case at hand. Thus, the submissions on behalf of the Defendants that the plaint is liable to be rejected for not resorting to pre-institution mediation under Section 12-A of the Act, 2015, do not merit acceptance.

Bar under Section 10 of the Code of Civil Procedure, 1908 :

61. The principle of res-subjudice was next pressed into service on account of the pendency of Commercial OS Suit No.298 of 2024 instituted by Defendant Nos.1 to 4 against the Plaintiffs, Baboon (D11) and Axis Trustee (D9) in the Court at Benguluru. It is trite, to attract the provisions contained in Section 10 of the Code, 1908, so as to operate as a bar to the subsequent suit, the true tests is, whether the decree passed in the previous suit would operate as res-judicata in the subsequent suit. The essential elements for the applicability of the principle of res-judicata were expounded by the Supreme Court in the

20 C.S. (Comm. Div.) No.202 of 2022 dated 13 Oct. 2022 case of **National Institute of Mental Health & Neuro Sciences V/s. C. Parameshwara**[21], as under :

> "8......The object of Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The fundamental test to attract section 10 is, whether on final decision being reached in the previous suit, such decision would operate as *res judicata* in the subsequent suit. Section 10 applies only in cases where the whole of the subject-matter in both the suits is identical. The key words "directly and substantially in issue" are used in contradistinction to the words "incidentally or collaterally in issue". Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of the subject-matter in both the proceedings is identical."
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> (emphasis supplied)

62. In the case at hand, prima facie, this Court is of the view that the scope of the instant suit is significantly wide and materially different from the issues that directly and substantially arise for adjudication in OS Suit No.298 of 2024. In the said suit, Defendant Nos.1 to 4 are primarily seeking declaration that the Deed of Assignment executed by the Plaintiff No.1 in favour of Plaintiff No.2 is null and void and a permanent injunction to restrain the Plaintiffs from exercising their rights under the said Deed of Assignment and the DTD.

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21 (2005) 2 SCC 256

63. In the case at hand, in addition to enforcing the rights under DTD, the Plaintiffs are seeking reliefs in relation to alleged transfer of the securities in breach of the contractual obligations and are also seeking declarations and consequential reliefs against the transferees. The whole of the subject matter in both the suits does not appear to be identical. The Court also cannot loose sight of the fact that, under clause 72 of Atria DTD, the parties thereto have chosen to subject themselves to the jurisdiction of the Courts at Mumbai, exclusively.

64. At any rate, the stage of the proceedings before this Court is of critical salience. What Section 10 of the Code precludes is, the trial in the subsequent suit. The interdict contained in Section 10 strictly does not preclude the Court of a competent jurisdiction, in which the subsequent is instituted, from entertaining an application for interim relief.

65. In the case of **Sennaji Kapuechand Vs Pannaji Devichand (supra),** on which reliance was placed by Mr. Dhond, a Division Bench of this Court rejected a submission that, since the proceedings in the suit were stayed under Section 10 of the Code, owing to the pendency of the previous suit, no interlocutory order can be made in the subsequent suit. It was in terms observed that, what is provided under Section 10 is that no Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties. That does not prevent the Court from making interlocutory orders, such as orders for a receiver, or an injunction, (as sought in this case), an order for attachment before judgment, as was sought in that case.

66. In the light of the aforesaid position in law, the resistance on behalf of the Defendants premised on the pendency of Commercial OS Suit No.298 of 2024 before the Court at Benguluru for consideration of the prayer for grant of interim relief in the instant suit, cannot be acceded to.

Territorial jurisdiction :

67. As elaborate submissions were canvassed on behalf of the Defendants, especially Defendant Nos.5 to 8 and 14 to 26 that this Court lacks jurisdiction qua those Defendants, as neither the registered offices of those Defendants are situated within the local limits of the jurisdiction of this Court, nor the alleged offending transactions have taken place within the limits of the jurisdiction of this Court, it may be appropriate to briefly deal with this challenge as an impediment to the prayers in the Interim Application.

68. As noted above, there is no controversy over the execution, as such, of DTD and NDU. Those instruments were executed within the limits of this Court. Clause 72 of the DTD, inter alia, provides that the parties agreed that the Courts and Tribunals in Mumbai, Maharashtra, shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with the debenture documents and that accordingly, any suit, action or proceedings arising out of or in connection with the debenture documents may be brought in such Courts or Tribunals and the issuer shall ensure that the subsidiaries irrevocably submit to and accept for themselves and in respect of their property, generally and unconditionally, the jurisdiction of those courts or tribunals. Clause 72.2 contains a waiver of any objection in regard to the jurisdiction.

69. So far as Defendant Nos.1 to 4, no objection as to the jurisdiction of this Court can possibly be raised. Moreover, the disputes between Plaintiff No.1 and Defendant Nos. 1 to 4 and the subsidiaries of Defendant No.1 inexorably flow from DTD and NDU; which also contains an exclusive jurisdiction clause. In view of the aforesaid covenant in DTD, prima facie, this Court will have jurisdiction to entertain, try and decide all the disputes in relation to DTD and Debenture documents, which included security documents, in exclusion to other Courts, not only in relation to the dispute between Plaintiff No.1 and Defendant Nos.1 to 4, but even the subsidiaries of Atria (D1). In any event, the Plaintiffs have obtained Leave under Clause XII of the Letters Patent under an order dated 26 August 2024. Therefore, the objection to the territorial jurisdiction of this Court need not detain the Court any further, at this stage.

Bar under Section 430 of the Companies Act, 2013 :

70. The dispute as to the transfer of the securities and the consequent prayers to restrain Bammco (D7) and Vistra (D8) from dealing with the shares of Betul (D6) falls within the exclusive jurisdiction of the NCLT and the Civil Court's jurisdiction was expressly barred under Section 430 of the Companies Act, 2013, was the next ground urged on behalf of the Defendants.

71. On a careful perusal of the averments in the plaint and the material on record, this Court finds it difficult to sustain the aforesaid challenge. The issue of transfer of shares does not arise in the abstract or as a matter of initial allotment of or refusal to transfer the shares by a corporate entity. The dispute has its genesis in the breach of contractual obligations and the right to transfer the shares in the face of the securities created thereunder, and non-disposal undertaking. The instant suit is, thus, a comprehensive suit for the recovery of the debt and the enforcement of the securities, and not merely a dispute as to the transfer and transmission of the shares in breach of the statutory provisions, rules and bye-laws of the company.

72. Reliance placed by Mr. Kamat on the judgment in the case of **SAS Hospitality Pvt. Ltd. and Anr. V/s. Surya Constructions Pvt. Ltd. and**

Ors. (supra), is of no assistance to the Defendants. The dispute in that case arose out of allotment of shares by a corporate entity. **Shashi Prakash Khemka (dead) through legal representatives and Anr. V/s. NEPC Micon and Ors. (supra)** was in relation to the dispute of rectification of the register of members, upon transfer of shares, under Section 111A of the Companies Act, 1956. Even the decision in the case of **Chalasani Udaya Shankar and Ors. V/s. Lexus Technologies Pvt. Ltd. and Ors. (supra),** squarely addressed a situation covered by Section 59 of the Companies Act, 2013.

73. To put it in other words, the reliefs sought in respect of the shares of Betul (D6), which the Plaintiffs claim have been illegally transferred, in prayer clauses (e) and (f) of the Application, draw support and sustenance from the alleged rights of the Plaintiffs under DTD and the documents executed in pursuance thereof. Determination of legality and validity of such transfer of securities would fall within the plenary and expansive jurisdiction of the Civil Court. Thus, the challenge to the tenability of the prayers in the Interim Application on the count of bar under Section 430 of the Act, 2013, also appears to be devoid of substance.

74. Reverting to the contentious issues, few uncontroverted facts deserve to be noted.

75. The relations *inter se* Defendant Nos 1 to 4, and Defendant No.1, on the one part part, Defendant Nos. 5, 6 and 12 to 26, on the other part, the later being the subsidiaries of Defendant No.1, at least at the time of the execution of transactional documents and alleged event of default, is not much in dispute. The jural relationship between Defendant No.1 and Plaintiff No.1 as the issuer and subscriber to the debentures is also not in contest. Nor the execution of DTD dated 5th December 2016 and NDU dated 7th December 2016, as such, is put in contest. The subscription of 24,250 number of debentures by Plaintiff No.1, over a period of time, aggregating to Rs. 242.50 Crores is uncontroverted. The fact that 80% debentures were not redeemed on the date of redemption is incontestable, though the parties are at issue over the consequences that ensue the non-redemption of the debentures.

76. It also emerges from the record that, by and large, there is not much controversy over Betul (D-6) having issued secured controvertible debentures aggregating to Rs.210 Crores under the Betul DTD dated 27th March 2024 executed between Betul (D6) and Vistra (D8). The transfers of its 50.01% shareholding in Betul (D6) by WPA (D5) in favour of Bammco (D7) is also admitted.

77. The core controversy between the parties revolves around the question whether an event of default has occurred on account of failure to make redemption payment and outstanding coupon/interest amount and the aforesaid transfer of shareholding by WPA (D5) and issue of debentures by Betul (D6) under Betul DTD in contravention of the contractual obligations, and what consequences entail.

78. To appreciate the aforesaid controversy, a reference to the material terms of Atria DTD, the pivot around which the Plaintiffs case revolves, becomes necessary. They read as under:

> **5. SUBSCRIPTION**
>
> **5.1** Based on the Representations & Warranties, covenants, undertakings and indemnities provided by the issuer and the Promoters, contained herein and in the other Debenture Documents and subject to the fulfillment of the Condition Precedent relevant to each Tranche, and/of the corresponding subsequent Tranche conditions precedent relevant to each Tranche and the relevant conditions subsequent, Debenture Holders shall subscribe to the Debentures in Tranches by making payment of the corresponding Subscription Amount for each Tranche as set out in Schedule IV. The Tranche 1 Subscription Amount shall, subject to the fulfillment of the condition precedent, be paid to subscribe to Tranche 1 on the closing date. The subscription amount for each subsequent Tranche shall subject to the fulfillment of the Conditions Precedent relevant to such Tranche, Subsequent Tranche Conditions Precedent and the relevant conditions subsequent be paid by the Debenture Holders to the issuer for subscription to each such Tranche within the period set out in Clause 8.12.
>
> **6. APPLICATION OF SUBSCRIPTION AMOUNT.**

6.1 The Subscription Amount shall be utilized by the Issuer only for the purpose of:

… … …

6.1.5 any settlement of payments with USEIPL of an amount not exceeding Rs. 100,00,00,000/- (Rupees One hundred crores). In the event of any valuation different between the shares of Kukru Wind Power Private Limited and Betul Wind Farms Limited to effect the flip in the shareholding in terms of the WPA SPV Investment Agreements; and/or

12.1 SECURITY :

12.1.2 The Debenture Secured Obligations, in respect of the Debentures and the performance by the Issuer of its obligations in relation thereto, shall be secured by creation and perfection of the Security Interest on the Security in favour of the Debenture Trustee for the benefit of the Debenture Holders, in the following manner:

(a) Creation and perfection of Security Interest on all the properties, more particularly described in Schedule XVIII (Details of Hypothecated Properties) of this Deed in the manner described therein;

(b) Creation and perfection of pledge over 100% (one hundred per cent) of the issued and fully paid up share capital of the Issuer on a Fully Diluted Basis and 100% (one hundred per cent) of the compulsorily convertible debentures and/or any other security instrument issued by the Issuer, present or future;

(c) Creation and perfection of pledge over all the unencumbered securities held in the Issuer and/or the Promoters, directly or indirectly, on a Fully Diluted Basis, in AWPL, WPA, Solar HoldCo and the Subsidiaries whose securities are not pledged to senior project lenders of such

Subsidiaries, details of which as on date are not set out in Part A of Schedule XXIII. Provided that, the pledge so created on securities of a Subsidiary shall be released by the Debenture Trustee (acting under written instructions of the Debenture Holders) within 7 (seven) Business Days of a request being received from the Issuer to do so, along with documents evidencing: (I) the requirement by the project lenders, of pledge to be created over the securities of such Subsidiary to finance any of such Subsidiary's Projects; and/or (ii) that the same is a condition for investment in the relevant Subsidiary by the Green Investment bank;

(d) Execution of a power of attorney in connection with the pledges specified in (b) and (c) above;

(e) Execution of the non-disposal undertaking and power of attorney in a form and manner satisfactory to the Debenture Trustee, over all the unencumbered securities held by the Issuer and/or the Promoters, directly or indirectly, on a Fully Diluted Basis, in Subsidiaries whose securities are pledged to senior project lenders of such subsidiaries, details of which as on date are set out in Part B of Schedule XXIII;

(f) Execution of a power of attorney by the Issuer, in favour of and as required by the Debenture Trustee, to enable the Debenture Trustee to undertake all necessary actions to exercise its rights under the Debenture Documents including but not limited to those required to be taken upon occurrence of an Event of Default specified in Clause 34 of this Deed; and

(g) Execution of all documents, deeds, undertakings, power(s) of attorney, etc. required by the Debenture

Trustee, or entered into or executed by the Issuer or any other Person for creating and perfecting the Security.

32.1.4 CREATION AND PERFECTION OF SECURITY:

The Issuer and the Promoters shall ensure that the Security is created and perfected under the Debenture Documents, to the satisfaction of the Debenture Trustee, within the timelines prescribed hereunder or other Debenture Documents.

32.1.5 FMV COVER:

The Issuer shall maintain a Fair Market Value of at least 2 (two) times the outstanding Debenture Secured Obligations ("FMV Cover"). The Parties agree that the mechanism and parameters for calculation for Fair Market Value of various Projects have been set out in Schedule XXI. The Fair Market Value of the Issuer shall be determined on an annual basis or as may be required by the Debenture Trustee, and the Issuer shall provide all necessary assistance in relation to such determination.

33 NEGATIVE COVENANTS :

33.1 Subject to Clause 33.3 below, until the Debenture Final Settlement Date, the Promoters (to the extent as expressely provided in this Clause 33) shall not and the Issuer shall not and shall ensure that the Subsidiaries shall not, at any time, without the prior written consent of the Debenture Holders:

… … ...

33.1.5 redeem, repurchase or buy-back any shares or preference shares issued by the Issuer or any Subsidiaries except as required for the purposes hereinbelow:

(c) the repurchase by WPACEPL of securities held by USEIPL in terms of the WPASPV Investment Agreements;

"**Securities Documents" shall mean all documents entered into or executed by the Issuer, each of the Subsidiaries and the Promoters for creating and perfecting the Security, in form and substance acceptable to the Debenture Trustee, including:**

(i) this Deed;

(ii) Securities Pledge Agreements and the powers of attorney in connection therewith;

(iii) Non-disposal undertakings and the powers of attorney in connection therewith, in respect of securities of such Subsidiaries, as specified in Clause 12.1.1(e);

(iv) Power of Attorney;

(v) all documents, deeds, undertakings, power(s) of attorney, etc. required by the Debenture Trustee, or entered into or executed by the Issuer or any other Person for creating and perfecting the Security;

(vi) any other document including any deeds of assignment, guarantee or powers of attorney, designated as such by the Debenture Trustee; and

(vii) any amendments to the documents mentioned above.

"WPA SPV Investment Agreements" means collectively:

(i) Shareholders Agreement dated 4 September 2014 executed amongst United Telecom Limited, WPACEPL and Betul Wind Farms Limited;

… … …

"WPACEPL' means WPA Clean Energy Private Limited.

79. Under the Non Disposal Agreement (NDU) dated 7th December 2016, *inter alia* WPA (D5), the NDU provider, irrevocably and unconditionally agreed, undertook and confirmed that, during the terms of DTD, it shall not sale, transfer, assign, dispose of, pledge, mortgage, hypothecate, charge or otherwise encumber the assets in any manner whatsoever without the prior written consent of the debenture trustees. In the Schedule III appended to the said NDU, titled " The details of NDU securities", WPA (D5) provided non-disposal undertaking in regard to 20,81,031 (26.59%) shares held in Betul (D6) and 11,62,791 (24%) shares held in Kukru Wind Power (D14).

80. In the backdrop of the aforesaid broad nature of the contractual obligations, at the threshold, it is necessary to keep in view the approach to be adopted by the Court in the construction of commercial contracts, especially when the corporate entities, like the parties to the instant suit, enter into elaborate contractual obligations. Ordinarily, the terms of the contract are required to be construed in conformity with the express words employed by the parties and by giving the natural meaning to the words used by the parties. It is impermissible for the Court to make a new contract or re-write the contract, which the parties themselves did not choose to make.

81. In the case of **Rajasthan State Industrial Development (Supra),** on which reliance was placed by both Mr. Dhond and Mr. Jagtiani, the Supreme Court exposited the principle of interpretation of the terms of the contract, as under:

> "23. A party cannot claim anything more than what is covered by the terms of contract, for the reason that contract is a transaction between the two parties and has

been entered into with open eyes and understanding the nature of contract. Thus, contract being a creature of an agreement between two or more parties, has to be interpreted giving literal meanings unless, there is some ambiguity therein. The contract is to be interpreted giving the actual meaning to the words contained in the contract and it is not permissible for the court to make a new contract, however is reasonable, if the parties have not made it themselves. It is to be interpreted in such a way that its terms may not be varied. The contract has to be interpreted without giving any outside aid. The terms of the contract have to be construed strictly without altering the nature of the contract, as it may affect the interest of either of the parties adversely. (Vide: United India Insurance Co Ltd Vs Harchand Raj Chandan Lal (AIR 2004) 8 SCC 644 and Polymat India (P) Ltd Vs National Insurance Co Ltd (2005) 9 SCC 174."

(emphasis supplied)

82. Keeping the aforesaid principle in view, the issues that crop-up for consideration are required to be determined.

REPUDIATARY BREACH BY THE SUBSCRIBER-PLAINTIFF NO.1:

83. Incontrovertibly, Plaintiff No.1 subscribed to 24,250 debentures aggregating to a sum of Rs.242.50 Crores only. A strenuous effort was made on behalf the Defendants, especially by Mr. Kadam, to draw home the point that the failure of Plaintiff No.1 to subscribe to the issue fully, jeopardised the commercial interest of Atria (D1) and defeated the very purpose of Atria DTD. Therefore, on account of the repuadiatory breach on the part of Plaintiff No.1, the Defendants stood discharged of their contractual obligations, submitted Mr. Kadam.

84. The aforesaid contention is required to be appreciated in the light of the terms of the contract, attendant circumstances and the conduct of the parties. Under Clause 5.1 (extracted above), the subscription for the subsequent tranches was subject to fulfillment of the conditions precedent and conditions subsequent. Clause 7 provided for condition precedent. Under Clause 8.12, upon fulfillment of conditions precedent, the issuer was to deliver the debenture trustees a compliance certificate and subscription notice in the Form prescribed in Schedule XIII thereto. Clause 8.12 further provides that in respect of any subsequent tranche, upon fulfillment of all the relevant conditions precedent, conditions subsequent and subsequent tranche conditions precedent, the issuer shall issue the compliance certificate and subscription notice, and if the debenture trustee is satisfied with the same, the debenture holders shall pay the subscription amount for such subsequent tranche. The form of compliance certificate and subscription notice *inter alia* contains a request to the debenture holders to subscribe to the debentures by paying the specified subscription amount.

85. If the aforesaid clauses are read in juxtaposition with each other under the scheme of DTD, it becomes evident that under the scheme of DTD, the subscription to subsequent tranches, on the pre-determined dates, was not automatic but subject to compliance of the conditions, and satisfaction of the debenture trustees about due compliance and a requisition to the subscriber by way of notice to subscribe. It does not appear that, after a part of the third tranche was subscribed, Atria (D1) called upon the subscribers to subscribe to the debentures by following the mechanism provided under DTD. It is imperative to note that part of the third tranche was subscribed on 7th July 2017. *Prima facie* it does not appear to be the case of Defendant No.1 that Defendant No.1 has thereafter ever raised a requisition for subscription or made any grievance in regard to non-subscription to the rest of the tranches. The dispute regarding the non-subscription *prima facie* seems to have been raised only after the period of redemption and date of final settlement passed by.

86. In contrast, the conduct of Atria (D1) in making the payment of coupon amount/interest and even in acknowledging the liability to discharge the debt on the date of settlement militated against the contention on behalf of Defendant Nos. 1 to 4 that the contract was treated to be repudiated. In the letter dated 24th November 2022, (Exhibit "B" to the Affidavit in Rejoinder on behalf of Plaintiff No.1) Atria (D1) acknowledged in clear and explicit terms that it would complete redemption of 20% of the debentures on or before 6th Anniversary of closing date, and assured to redeem the balance 80%

debentures on 31st December 2023, in accordance with DTD. This admission implies that upto that point, in the least, Atria (D1) had not raised any grievance regarding the non-subscription to the balance debentures.

87. In the backdrop of the aforesaid facts, reliance placed by Mr. Jagtiani on a three Judge Bench judgment of the Supreme Court in the case of **State of Kerala (Supra)** appears to be well-founded. In the said case, the Supreme Court enunciated that breach of the contract by one party does not automatically terminate the obligation under the contract: the injured party has the option either to treat the contract as still in existence, or to regard himself as discharged. If he accepts the discharge of the contract by the other party, the contract is at an end. If he does not accept the discharge, he may insist on performance.

88. On the basis of aforesaid positive acts and admissions on the part of Atria (D1) an inference *prima facie* becomes inescapable that Atria (D1) did not repudiate the contract and continued to perform the same. It is, therefore, not open for Atria (D1) to now turn around and contend that there was repudiatary breach of contract on the part of Plaintiff No.1 in failing to subscribe to balance debentures.

<u>EVENT OF DEFAULT</u>:

89. The Plaintiff No.1 alleges that there were two events of default. First, the failure on the part of Atria (D1) to make redemption payment of 80% of the debentures. Under the terms of DTD 80% of the debentures were to be redeemed by 19th December 2023 or by 31st December 2023; as acknowledged by Atria (D1), above. It is not the case that Atria (D1) redeemed the 80% of the debentures, as agreed. Under Clause 34.1, failure by the issuer to redeem the debentures on any redemption due dates constitutes an event of default. To this extent, it is *prima facie* incontrovertible that the failure on the part of Atria (D1) to make the redemption payment to redeem 80% of the debentures on the final settlement date constituted an event of default.

90. Under Clause 34.2 of Atria DTD, non performance of the obligations under any debenture documents and non-compliance with negative covenants under Clause 33 also constitutes an event of default. The Plaintiffs alleged the transfer of 50.01% of the shareholding of WPA (D5) in Betul (D6) to Bammco (D7) and the subsequent issue of debentures by Betul (D6) under Betul DTD were in breach of the negative covenants contained in Clause 33.1.5 of the DTD, and thereby the second event of default triggered in.

91. As noted above, the aforesaid case of the Plaintiffs was refuted by the Defendants on the ground that under Clause 6.1.5 and 33.1.5 (c), the swapping of the shareholdings of WPA (D5) in Betul (D6) and Kukru Wind Power (D14) was authorised and to the knowledge of the Plaintiff. Elaborate submissions were canvassed on the pre-existing contractual obligations of WPA (D5), which were, according to the Defendants, explicitly saved and expressly permitted by the terms of DTD.

92. One of the securities under Clause 12.1.1 (e) of DTD was execution of NDU over all the unencumbered securities held by the issuer and/or the promoters, in subsidiaries whose securities were pledged to Senior Project Lenders of such subsidiaries, as particularised in Schedule XXIII. *Inter alia* under Clause (x) of Schedule XXIII, 20,81,031/- (26.59%) unencumbered shares of Betul (D6) were shown as unencumbered securities to be pledged to the debenture holders.

93. Under Clause 6.1.5, extracted above, the subscription amount was permitted to be utilised by the Atria (D1) for the purpose of any settlement of payments with USEIPL' of an amount not exceeding Rs.100 Crores to effect the flip in the shareholdings in the terms of WPA SPV Investment Agreements, in the event of any valuation difference between the shares of Kukru (D14) and Betual (D6).

94. Under Clause 33.1.5 until the debentures final settlement date, the promoters and the issuer agreed not to and ensure that the subsidiaries of Atria (D1) will not, without the prior written consent of the debenture holders (P1 and D11), redeem, repurchase or buy-back any shares or preference shares issued by issuer or any subsidiaries except:

… … …

c) the re-purchase by WPACEPL of securities held by USEIPL in terms of WPA SPV Investment Agreements;

95. What was, thus, saved from the requirement of prior written consent to deal with the shares or preference shares issued by the issuer or any subsidiaries was, the re-purchase of WPA (D5) securities held by USEIPL in terms of WPA SPV Investment Agreements. WPA SPV Investment Agreements were defined under Clause 1 of Schedule II (definitions and interpretation) to mean a host of instruments including shareholders Agreement dated 4th September 2024 executed amongst United Telecom Limited, WPA (D5) and Betul (D6).

96. A conjoint reading of the aforesaid clauses, in my considered view, albeit *prima facie,* does not lead to an inference that the transfer of the shareholding of WPA (D5) in Betul (D6) was out of the purview of the negative covenant. The permission for utilisation of the issue proceeds in the event of difference in valuation of the shares of Kukru Wind Power (D14)and Betul (D6), to effect the flip in the shareholding in terms of the WPA SPV Investment Agreements, may not support the contentions on behalf of the Defendant that WPA (D5) was free to transfer its shareholding in Betul (D6) without the written consent of the debenture holders.

97. The non-disposal agreement is a part of the security specifically provided under clause 12. The parties have specifically carved out unencumbered securities in contradistinction to the securities already created by the issuer or subsidiaries in favour of the principal lenders. All those unencumbered securities were specifically included in Schedule XXIII. These terms of the contract are, therefore, required to be given effect to. Thus, it would be for the Defendant Nos.1 to 6 to establish that the transaction entered into by the WPA (D5) with Bamkoo (D7) in relation to the shares of Betul (D6) fell within the exception contained in clause 33.1.5(c). At this stage, prima facie, the impugned transactions do not appear to be covered by the exclusionary clause. The Court is, thus, inclined to hold that the event of default on account of the non-compliance of the negative covenant in the context of the dealing with the unencumbered securities, without the consent of debenture holders, is prima facie, made out.

What should be the appropriate interim relief :

98. The suit is essentially for recovery of debt and enforcement of the securities in relation thereto. The prayers in prayer clauses (a) and (b), undoubtedly, partake the character of final reliefs, as the Plaintiffs seek order of deposit of the total outstanding amount, with a permission for withdrawal of the said amount, subject to outcome of the suit. Under prayer clause (c), the Plaintiffs seek directions to Defendant Nos.1 to 4 to furnish the solvent security. The said prayer is akin to a prayer for attachment before judgment. The resistance to the prayers (a) to (c) was conceivably premised on inappositeness of grant of final relief at the interim stage.

99. In the case of **State of U.P. and Ors Vs Ram Sukhi Devi (supra),** the Supreme Court emphasised that the final relief should not be granted at an interim stage and deprecated the practice of granting interim orders which practically give the principal relief sought in the Petition for no better reason than that of a prima facie case having been made out.

100. Mr. Dhond attempted to salvage the position by banking upon the judgment in the case of **Deoraj Vs State of Maharashtra and Ors (supra).** Reliance was placed on the following observations :

> "12. Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such cases the availability of a very strong prima facie case ___ of a standard much higher than just prima facie

> case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of case totally in favour of the applicant may persuade the Court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The Court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the Court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the Court may put the parties on such terms as may be prudent."

101. I am afraid, **Deoraj (supra)** assists the cause of the submission sought to be canvassed on behalf of the Plaintiffs. **Deoraj (supra)** arose out of an election dispute, where the matters of moment assume immense significance. The case at hand essentially presents a money claim. The element of neither compelling circumstance nor extreme hardship, can be pressed into service. Therefore, the prayer for a direction to deposit the entire outstanding amount, at the threshold, cannot be countenanced as it would amount to virtually passing a decree. Resultantly, the reliefs in terms of prayer clauses (a) and (b) are completely out of question.

102. The prayer to furnish solvent security (clause c), deserves to be appreciated in the light of the security cover which the Plaintiff No.1 enjoys. Under clause 12.1 of DTD, shares have been pledged in favour of the debenture trustees for the benefit of the debenture holders. It was the contention of the Defendants that the said security was created in contemplation of infusion of Rs.900 Crores and the Plaintiff No.1 enjoyed the whole security without subscribing to the debentures fully.

103. An attempt was made to join the issue by asserting that the Defendant Nos.1 to 4 were under obligation to maintain fair market value of at least twice the outstanding debenture secured obligation. The purported existing security, according to the Plaintiffs, falls below the FMV cover. The value of the security, evaluated by the PWC at the instance of Defendants, was in the range of Rs.919 to 1339 Crores.

104. It was further urged on behalf of the Plaintiffs that the security cover stood further depleted with the transfer of shares of Betul (D6) by WPA (D5) in favour of Bammco (D7), by Rs.150 to 172 Crores. Thus, Defendant Nos.1 to 4 have failed to maintain the FMV cover in accordance with the terms of the DTD as the said security is collectively for Plaintiff No.1 and Defendant No.11.

105. At this juncture, this Court may not delve into the niceties of valuation of the security cover. Prima facie, Plaintiff No.1 is adequately covered by security, the value of which appears almost double the outstanding dues under the DTD. The Court also cannot loose sight of the fact that the Defendant No.1 has made significant payment towards the coupon amount and redemption of 20% debentures.

106. In the totality of the circumstances, Mr. Kadam was justified in canvassing a submission that, no case for grant of reliefs in the nature of attachment before judgment was made out. Reliance on the decision of the Supreme Court in the case of **Raman Tech and Process Engg Co and Anr Vs Solanki Traders (supra),** wherein the principles governing the grant of relief in the nature of attachment before judgment, have been enunciated, appears well founded. The aforesaid reasoning governs the prayer clause (g) qua Defendant No.5 under which the Plaintiffs seek deposit of the entire purchase consideration in respect of the transfer of shares of Betul (D6) in favour of Bammco (D7).

107. Indeed, this Court has recorded a prima facie finding that the Defendant No.1 and its subsidiaries have dealt with the securities, created in favour of Plaintiff No.1, in breach of contractual obligations. The apprehension on the part of the Plaintiffs that there would be further erosion in the value of securities, if the Defendant No.1 and its subsidiaries enter into transactions in regard to those securities, cannot be said to be unfounded.

108. The Defendant No.1 and its subsidiaries are refuting the contractual covenants, and contend that NDU constitutes, at best, a personal undertaking and not security. Such a stand of the Defendants gives heft to the submissions on behalf of the Plaintiffs that, unless restrained, the Defendant No.1 and its subsidiaries may further enter into transactions in relation to those securities and thereby infringe the rights of the Plaintiffs. Thus, interim injunction in terms of prayer clauses (d) and (h) qua Defendant Nos.1 to 6 and 12 to 26 appears necessary to protect the interest of the Plaintiffs.

109. Balance of convenience lies in favour of the Plaintiffs as the securities created under clause 12 of DTD and the documents executed in furtherance thereof, enumerated in Exhibit J to the plaint, were to perfect the said security. In the absence of such restraint, the Plaintiffs would suffer an irreparable loss.

110. Reliefs qua Bammco (D7) and Vistra (D8), sought in prayer clauses (e) and (f), in the light of the material on record, do not appear to be, prima facie, sustainable. The elements of absence of privity of contract, the transactions entered into by Bammco (D7) and Vistra (D8), being in the nature of bonafide transactions, without notice of the Plaintiff No.1 claim, the likelihood of prejudice to third parties in view of the fungible nature of the securities and the inaction on the part of the Plaintiffs, especially BGSE Financials Ltd. (D10) – DP of Plaintiff No.1, dissuades the Court from granting any interim relief qua Bammco (D7) and Vistra (D8).

111. Furthermore, this Court is of the considered view that, in view of the existing security cover and the restraint against Defendant Nos.1 to 6 and 12 to 26, from further dealing with those securities, the interest of the Plaintiffs would be adequately secured.

112. The upshot of aforesaid consideration is that the Interim Application deserves to be partly allowed qua Defendant Nos.1 to 6 and 12 to 26 only, in terms of prayer clauses (d) and (h). Rest of the prayers deserve to be rejected.

113. Hence, the following order:

: O R D E R :

(i) Interim Application stands partly allowed.

(ii) There shall be interim reliefs against Defendant Nos.1 to 6 and 12 to 26 only, in terms of prayer clauses (d) and (h), which read as under :

> "(d) restrain Respondent Nos. 1 to 6 and 12 to 26, and their members, agents, employees and/or servants, by an order and injunction of this Hon'ble Court from in any manner dealing with, disposing of, alienating, encumbering or creating any right, title or interest of any nature in respect of the securities created in favour of the debenture trustee, i.e., the Applicants, under the DTD or any shareholding in subsidiaries/step down subsidiaries in terms of Clause 12 of DTD as set out in Exhibit J of the Plaint;

(h) direct Respondent Nos. 1 to 7 and 12 to 26 to disclose on oath any and all documents pertaining to the Impugned Transaction and/or any other transaction undertaken by Respondent Nos. 1 to 6, and 12 to 26 with respect to the securities offered under the DTD, more specifically set out at Exhibit J, including but not limited to the share purchase agreement, relevant authorisations, regulatory filings and all associated documents."

(iii) Respondent Nos.1 to 6 and 12 to 26 shall file affidavits of disclosures in terms of prayer clause (h), reproduced above, within a period of four weeks from today.

(iv) Rest of the prayers stand rejected.

(v) Costs in cause.

[N. J. JAMADAR, J.]