NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

I.A. No. 7630 of 2026 in
Company Appeal (AT) No. 396 of 2026

IN THE MATTER OF:

Starport Logistics Ltd. ...Appellant

Versus

Alba Asia Pvt. Ltd. & Anr. ...Respondents

Present:

For Appellant : Mr. Vipul Ganda and Mr. Prashant Mehta, Sr. Advocate with Mr. Aditya Nayyar, Mr. Hardeh Sharma, Mr. Lav Dhawan, Mr. Ninad B., Ms. Nitu Barik and Ms. Arpita Sahu, Advocates.

For Respondents : Mr. Samar Bansal, Sr. Advocate with Mr. Anuj Mirdha, Mr. Keshav Bansal, Mr. Anshu Bhanot, Mr. Vedant Kapur and Ms. Anshika Saxena, Advocates for R-2.

Mr. Kunal Kunungo, Advocate for R-1.

WITH

I.A. No. 7632 of 2026 in
Company Appeal (AT) No. 397 of 2026

IN THE MATTER OF:

Saket Agarwal ...Appellant

Versus

Alba Asia Pvt. Ltd. & Ors. ...Respondents

Present:

For Appellant : Mr. Vipul Ganda and Mr. Prashant Mehta, Sr. Advocate with Mr. Aditya Nayyar, Mr. Hardeh Sharma, Mr. Lav Dhawan, Mr. Ninad B., Ms. Nitu Barik and Ms. Arpita Sahu, Advocates.

For Respondents : Mr. Samar Bansal, Sr. Advocate with Mr. Anuj Mirdha, Mr. Keshav Bansal, Mr. Anshu Bhanot, Mr. Vedant Kapur, Mr. Saksham and Ms. Anshika Saxena, Advocates for R-2.

O R D E R
(Hybrid Mode)

Indevar Pandey, Member (T)

The Company Appeal (AT) No. 396 of 2026 accompanied with I.A. No. 7630 of 2026 has been filed by Starport Logistics Ltd. (hereinafter referred to as **'Starport'**) and Company Appeal (AT) No. 397 of 2026 accompanied with I.A. No. 7632 of 2026 has been filed by Sh. **Saket Agarwal**. Both these appeals challenge the order passed by Ld. NCLT, Mumbai Bench-1 on 07.08.2026, in Company Petition No. 684(MB)/2020 and Company Petition No. 209/2023 vide which the Ld. NCLT ordered the winding up of Alba Asia Private Limited (hereinafter referred to as **'Alba Asia'**).

2. C.P. No. 684 of 2020 was filed by Starport Logistics Limited (Formerly known as ABG Ports Pvt. Ltd.) under Section 241-242 r/w Sections 42(10) and 59 of the Companies Act, 2013 (hereinafter referred as **'Act'**) alleging Oppression and Mismanagement by Louis Dreyfus Armateurs S.A.S (hereinafter referred as **'LDA'**).

3. C.P. No. 209 of 2023 was filed by the LDA seeking the winding up of Alba Asia on the grounds that the company has ceased to carry any business; there is complete deadlock between shareholders which is incapable of being resolved; the company has no business; and the purpose for which it was incorporated has ceased to exist. Further, there is no scope for revival of the company as all business activities have remained suspended and the company does not have any employees or management to conduct its business.

4. The first appeal **C.A. (AT) No. 396 of 2026** has been filed u/s 421 of the Act by **Starport** against the order passed by Ld. NCLT, whereby it admitted the C.P. No. 209 of 2023 filed by **Respondent No.2/LDA** and ordered the winding up of **Respondent No.1/Alba Asia**. Further the Ld. NCLT vide the same impugned order also disposed of the C.P. No. 684 of 2020.

5. The second appeal **C.A. (AT) No. 397 of 2026** has been filed u/s 421 of the Act by Sh. Saket Agarwal, who was the nominee Director of Starport on the Board of Alba Asia. In his appeal the appellant has stated that Respondent No.1/ Alba Asia and Respondent No.2/ LDA have defaulted and not complied with statutory compliances due to which multiple cases has been initiated against him by GST Department, Income-Tax Department and SEBI. He is particularly aggrieved by the findings in the para-25 of the impugned order, wherein while dealing with the opposition to the winding up, the Ld. NCLT had observed that the Starport Side was opposing the winding up on the apprehension that its nominee directors who were resident in India, may face legal consequences for contravention of FEMA and the Companies Act. It is his submission that he has ceased to be a Director of Starport in 2019 and had no involvement in the subsequent affairs or statutory defaults of Respondent No.1.

Brief Facts of the case

6. Brief facts of the case relevant to this appeal are as given below: -

i. Starport Logistics Ltd. filed C.P. 684 of 2020 on 20.02.2020 under sections 241, 242 read with sections 42(10) and 59 of the Companies Act, 2013 alleging acts of oppression and mismanagement perpetrated

by LDA in the affairs of Alba Asia and further seeking rectification of register of Alba Asia and issuance of shares corresponding to Rs.63,35,60,000/- in favour of LDA.

ii. Alba Asia was incorporated on 18th November 2008 by Starport under the Companies Act, 1956 having its registered office in Mumbai. It is engaged in the business of providing logistics services, namely cargo handling, transport and marine support services. Its authorised Capital is 1,00,00,000/- divided into 10,00,000/- equity shares of Rs. 10/- each.

iii. As LDA was interested in diversifying its business in India. Starport and LDA agreed to invest in logistic services business in India through Special Purpose Vehicles (SPVs) to be incorporated by Alba Asia for the purpose. LDA agreed to become shareholder to acquire 49% stake in Alba Asia in the year 2009. Consequent thereto, the parties entered into Shareholder Agreement ('SHA") in July 2009, whereby LDA agreed to subscribe 96,078 shares of Rs. 10 each for a consideration of Rs. 90 Crores, thus Starport was to hold 1,00,000 shares in Alba Asia and LDA 96,078 shares.

iv. SHA also contemplated equal representation of Starport and LDA on the board of Alba Asia in case each of them holds minimum 48% each, and in any other case each shareholder was entitled to appoint a Director for every 11% of shares in Alba Asia held by them.

v. By the year 2014-15, due to a downturn in the infrastructure sector, the business of the Company and its SPVs were adversely affected, therefore, additional funds were often required by Alba Asia on various

occasions to keep the business of the Alba Asia as a going concern and its SPVs afloat. Accordingly, the Shareholders were required subscribe to fresh equity shares, however, on multiple occasions, only LDA made due payments of the share application money, and Starport didn't contribute its proportionate share. Accordingly, the allotment of shares to LDA remain pending against the amounts remitted by them to Alba Asia for subscription of the shares.

vi. Consequently, the parties entered into an understanding in the meeting held on 13.03.2014 at Paris, whereby it was inter alia agreed that –

a. Starport shall bring in the pending amount (of Rs 16.40 Crores) to match LDAs equity infusion by 20th March, 2014.

b. Thereafter, both the parties shall bring USD 3 million each in month of April, 2014.

vii. Resultant to the agreement, LDA remitted aggregate amount of Rs. 64,28,60,000/- to Alba Asia from time to time from January 2015 to May 2018, as against which, Alba Asia only allotted shares for Rs. 93,00,000/- and did not allot equity shares to LDA for the remaining amount, which is held as share application money by Alba Asia as on date.

viii. Alba Asia failed to allot the shares against the money received from the LDA within the prescribed time on account of LDA's nominee on the board of Alba Asia not agreeing for such allotment in the absence of fulfilment of obligation on the part of the Starport to bring in amounts for subscription of Alba Asia's shares to make each party holder of 50%

equity of Alba Asia. Alba Asia fully utilised the funds infused by LDA for making downstream investments in its subsidiaries and associate companies engaged in port infrastructure projects. Over a period of time company's business came to a standstill. The Company failed to file its annual returns from financial year 2017-2018, as required under Companies Act, 2013. These failures have also caused contravention of provisions under FEMA Act, 1999 along with applicable regulations and Companies Act, 2013.

ix. Thereafter, Starport and LDA executed an Agreement dated 07.03.2019, wherein it is stated that "Such infusions were supposed to be followed by the exact same amount of funds by Starport, in order to preserve the 50:50 shareholding structure.

x. During pendency of CP 684 of 2020, LDA filed Company Petition No. 209 of 2023 on 07.06.2023 seeking winding up of Alba, a company incorporated under the provisions of the Companies Act, 1956, under Sections 271(e) and 272 of the Companies Act, 2013. The Petition has been filed under Section 271(e) on the ground that it is just and equitable that the Company should be wound up.

xi. It is undisputed facts that Alba Asia is not carrying out any business and its investment in the SPVs and subsidiaries have also lost the value in view of admission of these entities in the Insolvency Process or closure of their businesses. Further, on account of impasse between LDA and Starport in relation to affairs of Alba Asia, the chances of revival thereof also appear to be bleak. The resident director i.e. nominee(s) of Starport resigned from board of Alba Asia between

December 2017 to February 2019 thus leaving LDA's nominees on the board of Alba Asia, who being foreign nationals, were unable to effectively manage the Company from abroad and lacked adequate knowledge of the Indian legal and operational affairs. It is undisputed fact that Alba Asia was also facing serious financial difficulties. Starport had also failed to infuse its proportionate share of capital. Although LDA requested the shareholders to infuse additional capital, however, Starport didn't despite having agreed in terms of agreement dated 07.03.2019.

7. At this stage, we are only considering the prayer for interim orders sought by Appellants.

8. In C.A. (AT) No. 396 of 2026, the **Appellant/ Starport** in I.A. No. 7630 of 2026 has made the following interim prayers: -

A. Allow the present Application and stay the operation, execution, and effect of the Impugned Order dated 07.08.2026 passed by the Hon'ble National Company Law Tribunal, Mumbai Bench- I, pending final hearing and disposal of the Appeal;

AND/OR

B. Restrain the Liquidator, Mr. Anil Kashi Drolia, from taking any coercive steps, seizing assets, or proceeding with the liquidation of Respondent No.1.

AND/OR

C. Pass any such other or further order(s) as this Hon'ble Tribunal may deem fit and proper in the interest of justice.

9. In CA (AT) No. 397 of 2026, the **Appellant/Saket Agarwal** in I.A. No. 7632 of 2026 has made the following interim prayers: -

A. *Stay the operation and effect of paragraphs 25, 27(f) and 27(g) of the Impugned Order dated 07.08.2026 to the extent the same may be construed as fastening or creating any liability upon the Applicant for acts, omissions or defaults occurring after 18.02.2019;*

B. *Direct/clarify that the Impugned Order dated 07.08.2026 shall not be construed as recording any finding that the Applicant was responsible for the affairs, statutory compliances or defaults of Respondent No. 1 after 18.02.2019;*

C. *Direct that any requirement of cooperation by the Applicant with the Liquidator shall remain subject to law and shall not be treated as an admission of liability or responsibility for any post-resignation default;*

D. *Pass any other or further order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*

10. The main submission of the Appellants is that the provisions contained in Sections 272(2) and 272(4) of the Companies Act have not been complied by Respondent no.1/Alba Asia. Similarly, there is no compliance with Section 274(1) of the Companies Act, which provides for filing of statement of Affairs along with winding up petition. It is their submission that Ld. NCLT vide its order dated 18.03.2024 directed the company Alba Asia to file and place on record statement of the affairs of the company in terms of Section 274(1) of the Companies Act, 2013 but the same was never filed.

11. The second submission of the Appellants is that the Respondent No.1/ Alba Asia was not supposed to be a 50:50 joint venture company between Starport and LDA as the shareholders agreement does not prescribe any such ratio. The insistence by LDA for not converting it shareholding for the additional funds infused by it in Alba Asia till Starport brings its share of contribution to keep the share holding at 50% each does not have any merit. Therefore, Alba Asia should have converted the amount brought in by LDA into Alba Asia without any further delay to ensure compliance with RBI Regulations and FEMA.

12. Thirdly they have further invited attention to the observations of the Ld. NCLT in para- 25 of the impugned order referring to the portion in italics quoting a judgment of Bombay High Court in ***"Daulat Makanmal Luthria Vs. Solitaire Hotels Pvt. Ltd. (1991 SCC OnLine Bom 557)"***, which interalia held that the winding up should be resorted to only when all other means of healing an ailing company are of no use and further that remedies are available under the statute concerning the running of the company. It is their submission that in view of the same, Oppression and Mismanagement petition should have decided earlier so that alternative remedies could have been adopted to keep the company functional.

13. The Appellants have further stated that the disposal of winding up petition without first considering the Oppression and Mismanagement u/s 241-242 of the Act would be in the teeth of the aforesaid judgment *Daulat Makanmal (supra)* of Bombay High Court and consequently, the operation of the impugned order should be stayed on this ground only.

14. The Appellants have further submitted that the Financial Statements and Annual Returns of the Company/Alba Asia for F.Y. 2016-17 shows that it was a debt free company with Rs.13.38 crores of long-term advances and Rs. 1.96 crores of short-term advances. Thus, the company had around 15.34 crores of recovery which was expected from its borrowers. There is no justification for winding up of the company.

15. The Appellant in C.A. (AT) No. 397 of 2026, Sh. Saket Agarwal has adopted the same arguments as Starport. In addition, he stated that even though he has resigned from the company on 18.02.2019, he is further

aggrieved by the observations made by the Tribunal in the Paras- 25, 27(f) and 27(g) which may lead to problems relating to SEBI and FEMA compliances. He is already receiving notices from GST, Income Tax and SEBI.

16. The Respondent No.2/ LDA which is the contesting Respondent before us submitted that Section 272(1)(a) talks about filing of winding up petition by the company itself. Whereas in this case, the application has been filed by LDA u/s 272(1)(b) of the Act, which provides for filing by any contributory or contributories. It is an admitted fact the company in question here is Alba Asia in which 50% of shareholding was supposed to be that of Starport and 50% shareholding of LDA. Even though the matching contribution for 50% shareholding of Starport was not received by the company.

17. The Respondent submitted that Section 272(4) is applicable only in cases where the application for winding up is filed by the company itself. In this case, the application was filed by LDA, which is a contributory to the company. In such cases the Section 272(4) of the Act is not applicable.

18. The Respondent stated that due to recession in 2014-15 the shareholders were required to subscribe to fresh equity shares, however, only LDA made due payment of share application money and Starport did not contribute its matching share. Subsequently, there was a meeting in Paris on 13.03.2014 where it was agreed that Starport will infuse Rs.16.40 crores by 20.03.2014 and thereafter both partis were to infused $3 million in April, 2014. Over a period of time LDA remitted Rs.64.28 crores (approximately) against which it was allotted shares for Rs. 93 lacs only. The balance money has been kept as share application money by Alba Asia till date.

19. Subsequently, vide agreement dated 07.03.2019 both parties accepted that to preserve the 50:50 shareholding pattern, the matching infusion has to be made by Starport. LDA even agreed to bear the adverse tax consequences, if any, to such infusion by Starport. However, the Appellant failed to infuse further funds in the company.

20. Regarding 50:50 shareholding of the partners, the LDA invited our attention to minutes of the meeting between RBI and Alba Asia on 15.12.2016 and a further agreement dated 07.03.2019 between the parties, which has been noted by the Ld. NCLT. Both these documents clearly state that the shareholding of Starport and LDA in Alba Asia would be on 50:50 basis.

21. Summing-up the Ld. Counsel for the Respondent states that NCLT has considered all the facts on record including statement of receipts and payments of Alba Asia from 01.04.2017 to 27.02.2026, which were prepared on the directions of Ld. NCLT by an Insolvency Professional. The report observed that the closing balance of the company as on 20.01.2026 was only Rs.13.56 lacs. It has also been noted that the company has no operational activity or source of revenue. Its business contracts have either expired or been terminated, and the company has remained non-functional for a prolonged period. There are also no employees or managerial personnel available to conduct it day-to-day affairs. Thus, the Company is not merely facing temporary financial difficulties; its business operations have effectively come to an end and there is no material placed before us to indicate any prospect of revival.

22. We now take a look at relevant portions of Section 272 and 274 of the Companies Act, which are extracted below: -

Section 272: Petition for winding up

272 (1) Subject to the provisions of this section, a petition to the Tribunal for the winding up of a company shall be presented by—
(a) the company;
(b) any contributory or contributories;
(c) all or any of the persons specified in clauses (a) and (b);
(d) the Registrar;
(e) any person authorised by the Central Government in that behalf; or
(f) in a case falling under clause (b) of Section 271, by the Central Government or a State Government.
(2) A contributory shall be entitled to present a petition for the winding up of a company, notwithstanding that he may be the holder of fully paid-up shares , or that the company may have no assets at all or may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities, and shares in respect of which he is a contributory or some of them were either originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months immediately before the commencement of the winding up or have devolved on him through the death of a former holder.
(3) …….
(4) A petition presented by the company for winding up before the Tribunal shall be admitted only if accompanied by a statement of affairs in such form and in such manner as may be prescribed.

Section 274. Directions for filing statement of affairs

(1) Where a petition for winding up is filed before the Tribunal by any person other than the company, the Tribunal shall, if satisfied that a prima facie case for winding up of the company is made out, by an order direct the company to file its objections along with a statement of its affairs within thirty days of the order in such form and in such manner as may be prescribed:

Provided that the Tribunal may allow a further period of thirty days in a situation of contingency or special circumstances:

Provided further that the Tribunal may direct the petitioner to deposit such security for costs as it may consider reasonable as a precondition to issue directions to the company.

(2) A company, which fails to file the statement of affairs as referred to in sub-section (1), shall forfeit the right to oppose the petition and such directors and officers of the company as found responsible for such non-compliance, shall be liable for punishment under sub-section (4).

23. We note from the language of Section 272(1) that the petition for winding up of a company before the Tribunal can be presented by the Company itself under Section 272(1)(a) or by any contributory or contributories under Section 272(1)(b), in addition there are several other categories of entities listed, which can file such petition. In the present case the petition has been filed by LDA in its capacity as Contributory, which is covered by Section 272(1)(b). The contention of the Appellants is that a statement of affairs of the company should have been submitted along with the winding up petition as provided in Section 272(4).

24. We note the language of the Section 272(4) which refers to "*a petition presented by* ***the company*** *for winding up*" shall be admitted only if it is accompanied by statement of affairs. In this case we notice that the petition was filed by a contributory and not by the company and therefore the provisions of Section 272(4) would not be applicable here.

25. A further point made by the appellant relates to Section 274 which deals with "Directions of filing statement of affairs". It has been submitted that Ld. NCLT vide its order dated 18.03.2024 directed the company to file a statement of affairs. However, in spite of the said order, the company did not file the statement of affairs, and therefore there was no compliance with the provisions of Section 274(1) of the Act. The impugned order can be stayed/ set aside on this ground only.

26. It is to be noted that Section 274(2) of the Act provides that in case the statement of affairs is not prepared by the company, such non-compliance

only leads to liability on the officers and Directors of the company. None of whom were available to prepare such statement at that relevant point of time.

27. The Tribunal has noted in Para-5 of the impugned order that the Alba Asia is not carrying any business and after discussing in detail it states that there are no effective means to revive the Company. Further in Para-12 of the impugned order, the Tribunal has noted that the opposition of Starport against admission of Alba Asia into winding up process was mainly stemming from the consequences arising from failure of Alba Asia to allot the equity shares against the share application money received from LDA making the directors of Alba Asia liable under provisions of FEMA Act, 1999 and Companies Act, 2013. Further, the lenders objection to the winding up process was arising from their apprehension that such process would defeat their actions for recovery from Starport in its capacity as guarantor for the borrowings of TCTPL.

28. We note that the Tribunal vide its order dated 24.06.2025 appointed Mr. Jyanti Lal Jain, Insolvency Professional for compilation of the financial statements of Alba Asia at the request of Bank of India. The Insolvency Professional duly submitted that statements of receipts and payments of Alba Asia for the period from 01.04.2017 to 27.02.2026 which was duly certified by AGG & Co., Chartered Accountants.

29. The Tribunal notes Since there was no person in charge of the company at this time it was not possible for the company to prepare the statement of affairs. The only Directors in place were the nominee Directors of LDA, who

are based in France. The nominee director of Starport had already resigned from the company way back in 2019.

30. The objective of statement of affairs is to get a complete picture of the company including its financial and operational matters. For a closed company without any operations on ground, the financial statements prepared by the Insolvency Professional would be sufficient to meet the objective. Keeping in view the factual position on ground this was a practical solution given by Ld. NCLT. The procedural law cannot be allowed to derail the process, where substantive compliance has been obtained by the Tribunal.

31. The Appellants have also raised the issue of the non-allocation of shares to LDA by Alba Asia on the grounds that there was no agreement for 50:50 shareholding between Starport and LDA as per shareholders agreement. We are not impressed by the contention of the Appellants in view of documentary evidence to the contrary.

32. In this regard we take note of minutes of the meeting of Alba Asia with the RBI on 15.12.2016, which is extracted below:-

ANNEXURE A-9

MINUTES OF THE MEETING OF REPRESENTATIVES OF ALBA ASIA PRIVATE LIMITED ("THE COMPANY") WITH THE RESERVE BANK OF INDIA ("RBI") HELD ON THURSDAY, 15.12.2016 AT THE OFFICE OF RBI, MUMBAI REGIONAL OFFICE, MAIN BUILDING, 3RD FLOOR, MUMBAI-400001 AT 4:00 P.M.

ATTENDEES:

REPRESENTING RBI:

1. Mrs. Devika Gowrishankar	:	Asst. General Manager, Foreign Exchange Department
2. Ms. Gloria D'souza	:	Manager, Foreign Exchange Department
3. Mr. K. B. Sankaranarayanan	:	Asst. Manager, Foreign Exchange Department

REPRESENTING ALBA ASIA PVT. LTD.:

1. Mr. Gurpreet Malhi	:	Chief Executive Officer
2. Mr. Mitesh Darji	:	Company Secretary & Compliance Officer

1. AGENDA OF MEETING:

Application for extension of time for issuance and allotment of Equity Shares and filing of Form FC-GPR under Automatic Route filed with RBI on 23.11.2016. A copy of the said application is enclosed herewith as Annexure-1.

2. SUMMARY OF THE DISCUSSIONS MADE DURING THE MEETING:

(i) Mrs. Devika Gowrishankar was apprised regarding the frequent extensions being applied for by the Company viz. extension for allotment granted on 16.06.2016 and 24.11.2015 viz. almost in every six months.

(ii) In response to the reason for seeking the frequent extensions for allotting shares, Mr. Gurpreet Malhi stated that the Company is a Joint Venture Company between Starport Logistics Limited and Louis Dreyfus Armateurs SAS France, wherein both the shareholders hold the shares in the ratio of 50:50 basis respectively. The Company is into the infrastructure sector and doing the business of developing ports and handling of bulk cargoes at major ports in India.

It was further stated that port sector is covered under infrastructure sector and it is facing economic downturn and slowdown. Further, the Company is presently in the construction phase of its project at Tuticorin. Also, the Company is facing great cost overrun in its project at Tuticorin due to the delay in dredging caused by VOCPT. The Company has got the sanctions from the consortium lenders and is in the process of commencing interim operations by this month end.

Further, since the project is in construction phase, there is NIL revenue and the amounts injected are being used to service the debts of the public sector banks in order to avoid the account turning into NPA.

Mr. Mitesh Darji also stated that one of the reasons to seek frequent extension is also that for the fresh equity infusions from its foreign shareholder, the Company does not have RBI's extension for allotment. The Company cannot allot shares against the fresh foreign remittances without allotting the shares against the tranches which have come first.

NOTARY Debajyoti Behuria Advocate Regn. No. 19716 Period: 24/02/2020 to 24/02/2025 GOVT. OF INDIA

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(iii) Ms. Gloria stated that the reasons given above are similar which were given to RBI during the meeting with RBI at the time of availing the extension in November, 2015. She pointed out that the Company is in violations of FEMA provisions as the foreign share application money is used / infused in the subsidiaries by the Company without first allotting the shares to the shareholders.

(iv) Mr. K. B. Sankaranarayanan reiterated that the Company was supposed to call for less / no share application money from its foreign shareholder and to clear off the allotment of shares against the pending share application money. However, the Company is still continuing to inject the fresh share application money from its foreign shareholder without first allotting the shares against the pending foreign share application money.

(v) Mr. Gurpreet Malhi stated that till date the Company has received approx. Rs.400 crores as share application money from both the shareholders against which almost Rs.350 crores have been allotted and around Rs.28.33 crores from foreign shareholder is pending for allotment which can be allotted only after the Indian shareholder infuses the funds on order to maintain 50:50 shareholding of the Company.

(vi) Mrs. Devika asked as to why the Company is not considering other options of funding the Company and only relying on promoter's contribution by way of equity viz. ECB or other debt funding. In response this, Mr. Gurpreet Malhi stated that the Company major requirement of funds is during the construction phase. Once the Company starts generating the revenue, the promoter's contribution by way of equity may not be needed at all. However, he also stated that the Company shall try to explore the other options available, if any, to it.

(vii) Thereafter, Mrs. Devika and Ms. Gloria stated that RBI at this stage cannot grant the extension only on the basis of application and submissions made during the meeting. In addition to this RBI will need the following:

- Action plan for issuance and allotment of shares against the total foreign inward remittances received by the Company and pending for allotment; and
- Action plan containing the approximate amount of funds that the Company will need from its foreign shareholder by way of equity along with the proposed timeline.

(viii) Mrs. Devika and Ms. Gloria also stated that by looking at the past trend, the Company will definitely need the equity infusion from its foreign shareholder. For this, the RBI Regional Office, Mumbai may also consider to give advance permission after consulting with RBI's Central Office at Delhi, provided that the Company submits action plan containing estimated amount of fund required from its foreign shareholder along with the proposed timeline with RBI.

(ix) It was finally agreed that the Company shall submit to RBI both action plan for issuance and allotment of shares against the total foreign inward remittances received by the Company as well as the proposed requirement of equity infusion along with timeline from foreign shareholder soon to support the present application submitted with RBI for extension of time issuance and allotment of Equity Shares and filing of Form FC-GPR.

3. **VOTE OF THANKS:**

There being no other points to discuss, the meeting concluded with the vote of thanks to the attendees present.

NOTARY
Debajyoti Behuria
Advocate
Regn. No. 19716
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33. The meeting was held in the context of frequent extension being applied by the company for allotment of equity shares to LDA. It was stated by the CEO of the Alba Asia that the company is a joint venture company between Starport and LDA wherein both the shareholders hold the shares in the ratio of 50:50 basis respectively.

34. We further take note of agreement dated 07.03.2019 signed between both the parties. This agreement also notes that the Starport was supposed to infuse same amount of money as LDA to preserve the 50:50 shareholding structure of the company/ Alba Asia. This agreement was noticed by the Ld. NCLT in their order. The agreement is extracted below: -

ANNEXURE A-14

AGREEMENT

Made this day 7th March 2019 in Suresnes,

Louis Dreyfus Armateurs S.A.S. (**LDA**), Starport Logistics Limited (erstwhile ABG Ports Private Limited) (**Starport**) and ALBA Asia Private Limited (erstwhile ABG-LDA Bulk Handling Private Limited) (**Company**) have entered into a Shareholders' Agreement dated 21st July 2009 (**Shareholders' Agreement**). Each of LDA and Starport shall hereinafter be referred to individually as a **Party** and collectively as the **Parties**.

The Parties acknowledge it was always the intention between LDA and Starport in relation to the Company to be a 50:50 shareholding structure. In furtherance of this understanding, the Company has provided undertakings to maintain direct or indirect management control of the Company.

For the purpose of meeting the funding requirements of the Company and the Company's subsidiaries, Starport and LDA have infused monies from time to time. However, LDA has injected additional monies in the form of share application monies into the Company, in several occasions.

Such infusions were supposed to be followed by the exact same amount of monies by Starport, in order to preserve the 50:50 shareholding structure. The Parties acknowledge that Starport has been unable to inject its matching share of monies to preserve the 50:50 shareholding structure. The time limit authorised by the Reserve Bank of India for allotting shares to a shareholder has elapsed.

As a result, such non-allotment within prescribed timelines has caused the Company to be in breach of certain foreign exchange regulations and provisions under the Companies Act, 2013. Each Party hereby agrees to ensure that such contravention is rectified in the manner as provided in this Agreement.

The Parties undertake to take the required corrective measures, within 120 days after signing of this Agreement, in order to ensure that:

(a) contraventions by the Company due to non-allotment of shares are remedied; and

(b) equal amounts of Shares are issued to LDA and Starport simultaneously in order to ensure that the 50:50 shareholding pattern of the Company is maintained.

If the valuation of the Company is acceptable to LDA, Starport hereby agrees and undertakes to subscribe to the required amount of Shares of the Company (**Starport Shares**) at the present valuation of the Company. LDA and Starport will cooperate in good faith so that LDA can fund this subscription by Starport into the Company.

LDA hereby agrees and undertakes to manage any adverse tax consequence that would arise from Starport subscribing to the Starport Shares.

Parties hereby undertake not to disclose the present Agreement to any third party without the prior approval of the Parties, except if required by law.

LOUIS DREYFUS ARMATEURS SAS
Name : MARIE
Title : CEO

STARPORT LOGISITCS LIMITED
Name : SAKET AGARWAL
Title : DIRECTOR

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35. It is clear from the documents on record that the shareholding pattern of the company was agreed to be on 50:50 basis and the same was agreed to by mutual agreements between Sarport and LDA. Any contentions to the contrary by the appellants have no basis in facts.

36. Another interesting fact which arises from agreement dated 07.03.2019 is that it has been signed in Suresnes, Paris by Mr. Saket Agarwal in his capacity of Director of Starport. It is stated on record by Mr. Saket Agarwal that he resigned as nominee Director of Starport on the company/Alba Asia on 18.02.2019. This shows his involvement in matters relating to Alba Asia even after his resignation from its Board of Directors from th Starport side.

37. The appellant's reliance on the judgment of Hon'ble Bombay High Court in ***Daulat Makanmal (supra)*** has been duly noted by the Ld. NCLT which clearly records that there is nothing left in Alba Asia and neither of the group is willing to have it revived. Starport is only opposing this winding up apprehending that it is their nominee, who are resident of India on the board of Alba Asia may face legal consequences for contravention of various provision under FEMA and Companies Act. As the nominees of LDA are sitting out of India. Ld. Tribunal clearly records that this cannot be a ground to oppose a winding up petition. Further, the Tribunal also notes that Section 242(1) of the Act vests power in the Tribunal to pass an order, only when a winding up order would unfairly prejudice the members of the company, even if passing of such order of winding up would be just an equitable. The Tribunal again notes that neither of the group is willing to continue with the company. So, it cannot be said that the winding up the order would be prejudicial to the

interest of the Starport. Ld. NCLT accordingly held that it is just and equitable to wind up the affairs of Alba Asia under Section 271(e) of the Act. We are of the view that there is no infirmity in the directions of Ld. NCLT in para- 25 of the order and it had taken due notice of the judgment of Hon'ble Bombay High Court in ***Daulat Makanmal (supra)*** in the discussion and differentiated it on the grounds of different factual matrix in the present case.

38. It is to be further noted that Starport had tried to sell its entire share holding in Alba Asia for which it had published notice in 'Financial Express' seeking bid for purchase of its shareholding. Starport had also declined to purchase shareholding to LDA. This clearly means that Starport has no interest in revival of the Company. When both shareholders are unwilling to revive the company, which is closed, with no business in hand and no employees, there was no other option for the Ld. NCLT except to order the winding up. As we have noted earlier that

39. Sh. Saket Agarwal has also made an additional prayer for stay of the operation of para 25, para-27(f) and 27(g) of the impugned order. Regarding observations in Para 25, the same has been discussed in detail earlier and we did not find any merit in contentions of the Appellants. Paras 27(f) and 27(g) of the impugned order are extracted below :-

> ***"f)*** *This Bench hereby directs the directors and other officers of the Company to follow Rule 22 (3) of the Companies (Winding up) Rules, 2020 to cooperate with the liquidator in providing information and taking custody of the assets, properties and books of accounts.*
>
> ***g)*** *This Bench further directs the directors and other officers of the Company to follow Section 274(3) of the Act and submit the report within a period of thirty days of this order. The books of account of the Company shall also be compiled and audited up to the date of order of the liquidator appointed under this order."*

40. We note that these are the directions to directors and other officers of the company to ensure compliance with provisions of Companies Act and Rules and provide necessary help and assistance to the Liquidator, so that the process of winding up may be taken forward. These directions do not cause any inconvenience/ injury to any party in this appeal. We are therefore of the view that no interim orders need to be issued qua these two directions of the Ld. NCLT.

41. Based on the findings above, particularly in view of the fact that Starport does not want to run the company and it has already tried to sell its shareholdings in the company. No immediate injury would be caused to it by the said winding up order. Similarly, in the case of Saket Agarwal, he would be required to assist the Liquidator as per the Act and this does not cause any immediate prejudice to him which requires the stay of the relevant portion of the impugned order. Accordingly, the prayers for stay in IA Nos. 7630/2026 and 7632/2026 filed by the Starport and Sh. Saket Agarwal respectively, are rejected. The aforesaid IAs are disposed of in terms of above said directions. Both the company appeals to be listed on 12.01.2027.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

Place: New Delhi
Dated: 27.11.2026

Harleen