**In the High Court at Calcutta**
**Civil Appellate Jurisdiction**
**Appellate Side**

**The Hon'ble Mr. Justice Sabyasachi Bhattacharyya**
**And**
**The Hon'ble Mr. Justice Sandip Kumar De**

***F.M.A.T. No. 342 of 2026***
**+**
***CAN 1 of 2026***

**AMBICA BERI**

**-Versus-**

**FORUM ATMOSPHERE FLAT OWNER'S ASSOCIATION**

| | | |
|---|---|---|
| For the appellant | : | Mr. Rudraman Bhattacharya, Sr. Adv.,<br>Mr. Shuvasish Sen Gupta,<br>Mr. Sourojit Dasgupta,<br>Mr. Siddhartha Banerjee,<br>Mr. Souvik Ganguly,<br>Ms. Rajeshwari Prasad, Advs. |
| For the respondents | : | Mr. Jaydip Kar, Sr. Adv.,<br>Mr. Krishnaraj Thaker, Sr. Adv.,<br>Mr. Shaunak Mitra,<br>Mr. Anwar Hossain, Advs. |
| Heard on | : | 22.09.2026 & 23.09.2026 |
| Reserved on | : | 23.09.2026 |
| Judgment on | : | 28.09.2026 |

**Sabyasachi Bhattacharyya, J.:-**

**1.** The petitioner in an application under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the 1996 Act") has preferred the present appeal against the refusal to grant an ad interim injunction sought in connection with the said application. The genesis of the application is a notice dated August 3, 2026 issued by the respondent, a company incorporated under Section 8 of the Companies Act, 2013 (for short, "the 2013 Act"), being a notice of the second Annual General Meeting (AGM) of the respondent/Association (Company) to be held on August 26, 2026.

**2.** In the said notice, it was alleged that the appellant, who claims to be the owner of one of the apartments in the building complex "Forum Atmosphere", being Apartment No.E-101, is not a rightful or recognized owner of the said apartment and that the appellant's share certificate of the respondent-Association is disputed and denied by the respondent. It was further mentioned that the said notice of the second AGM of the respondent was being issued for "abundant caution" and "procedural compliance" and shall not be construed to confer or recognize any right, power, title or interest or membership status of the appellant in respect of the property-in-dispute.

**3.** The appellant issued a notice under Section 21 of the 1996 Act on August 24, 2026 for referring the matter to arbitration, flagging the disputes and differences which have arisen between the parties in respect of the appellant's right as a shareholder.

**4.** Consequentially, the application under Section 9 of the 1996 Act, registered as Miscellaneous (Arb.) Case No.64 of 2026, was moved before the learned District Judge at Alipore, District – South 24 Parganas, *inter alia* seeking injunction restraining the respondent and its men and agents from convening the proposed second AGM on August 26, 2026 without allowing the petitioner/appellant to exercise her rights of membership, attendance and voting therein and from giving effect or further effect to the letter dated August 3, 2026 insofar as it restrains the petitioner/appellant from exercising such rights.

**5.** Learned senior counsel for the appellant contends that the premise of the respondent's allegations is that the construction in which the apartment-in-question is situated is illegal and that the share certificate of the respondent-Company issued in the name of the appellant is disputed. However, the Kolkata Municipal Corporation (KMC) has regularised such construction in accordance with law, the documents relating to which were produced before the Trial Court. Moreover, the share certificate issued in favour of the appellant in respect of the respondent-Company was also furnished before the learned Trial Judge.

**6.** It is contended that a shareholder in the company is entitled to voting rights in respect thereof, which is borne out by Clause 50 of the Articles of Association of the respondent-Company, which provides that each member of the unit shall have voting rights and shall have such number of votes which equals the number of shares held by him or her in the company.

**7.** Learned senior counsel points out that in terms of the arbitration clause incorporated in the Articles, any difference or dispute arising between the company an any of its members touching the true intent or construction of the incidents or consequences of the Articles or of the statutes or anything thereafter done, executed, omitted or suffered in pursuance of the Articles or of the statutes or touching any breach or alleged breach or otherwise relating to the premises or to the Articles or statutes shall be the subject-matter of arbitration.

**8.** Pursuant to the said arbitration clause, arbitral proceedings have been commenced by issuance of a notice under Section 21 of the 1996 Act at the behest of the appellant.

**9.** Learned senior counsel appearing for the appellant cites *Life Insurance Corporation of India v. Escorts Ltd. and Others*, reported at *(1986) 1 SCC 264* and *Vodafone International Holding BV v. Union of India and Another*, reported at *(2012) 6 SCC 613*, in support of the proposition that the rights of a shareholder include the right to elect directors and to participate in the management through them and to vote on resolutions at meetings of the company.

**10.** It is argued that the learned Trial Judge overlooked the aforesaid facts and law in refusing to grant ad interim injunction, thereby adversely affecting the valuable rights of the appellant as a shareholder of the respondent-Company.

**11.** By relying on Section 47 of the 2013 Act, learned senior counsel reiterates the contention that every member of a company has voting right, limited only by the shares held by such member. By relying on the Articles of Association of the respondent-Company, it is also contended that even proxy votes are permitted to be cast by the owners of the apartments in the concerned building complex, who are also shareholders of the respondent-Company (Association).

**12.** Learned senior counsel appearing for the respondent, in reply, argues that, in terms of Section 6 of the 2013 Act, the said Act has overriding effect on the Memorandum and Articles of a company and any provision contained in such Memorandum or Articles shall be void to the extent to which it is repugnant to the provisions of the 2013 Act.

**13.** Learned senior counsel places reliance on Section 241 of the 2013 Act, which provides for an application before the National Company Law Tribunal (NCLT) by any person aggrieved by the affairs of the company having been conducted in a manner prejudicial to the public interest or in a manner prejudicial or oppressive to him or to any other member or members or in a manner prejudicial to the interests of the company.

**14.** Since the nature of the present complaint pertains to the alleged conduct of the affairs of the company in a manner prejudicial and oppressive to the appellant, the remedy before the appellant lies in an application under Section 241, read with Section 242, of the 2013 Act.

**15.** Under Section 244 of the said Act, in case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, have a right to apply under Section 241. The present appellant, thus, does not qualify to apply under the said provision, in view of the appellant holding less than one-tenth of the issued share capital.

**16.** Section 430 of the 2013 Act, it is argued, bars the jurisdiction of a Civil Court in respect of any suit or proceeding regarding any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under the 2013 Act or any law for the time being in force, as well as from granting any injunction in respect of any action taken or to be taken in pursuance of any power conferred by or under the 2013 Act, or any other law for the time being in force, by the Tribunal or the Appellate Tribunal.

**17.** Since the arbitration clause is a part of the Articles of the respondent-Company and the violation alleged is of the provisions of the Articles themselves, by operation of Section 6, read with Section 430 of the 2013 Act, it is argued, it is the Tribunal which has exclusive jurisdiction to decide such disputes. Hence, it is argued that the application under Section 9 of the 1996 Act itself is not maintainable.

**18.** It is next contended that in view of the arbitration clause being a part of the Articles of the company, which deal with the management and affairs of the company and do not pertain to any property, any dispute as to ownership of an apartment held in the concerned building complex is beyond the scope of the arbitration clause. Thus, it is argued that the invocation of Section 9 of the 1996 Act itself is without jurisdiction.

**19.** Learned senior counsel appearing for the respondent next refers to the notice under Section 21 of the 1996 Act issued by the appellant and contends that the same is restricted to the notice of the AGM of the company, to be held on August 26, 2026. Since the said meeting has already been held, the notice has already spent its force. It is argued that *per se*, the dispute referred to in the said notice does not cover voting rights of the appellant as a shareholder for all time to come. Hence, the application under Section 9 of the 1996 Act, it is argued, has been rendered infructuous.

**20.** While deciding the issues involved in the present appeal, the Court is first to look at the arbitration clause. In terms of the said clause, which is incidentally a part of the Articles of Association of the respondent-Company, whenever any difference or dispute arises between the company on the one hand and any of its members on the other, touching upon the true intent or construction or incidents or consequences of the Articles or governing statutes or anything done, executed, omitted or suffered in pursuance of the same or touching any breach or alleged preach or otherwise relating to the premises or to the Articles, arises, the same shall be subject to arbitration.

**21.** It is trite law that an arbitration clause has to be in writing in terms of Section 7(3) of the 1996 and, under sub-section (2) of Section 7 thereof, may be either in the form of an arbitration clause in a contract or in the form of a separate agreement.

**22.** Sub-section (1) of Section 7 defines "arbitration agreement" as an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

**23.** Hence, the arbitration clause stands on a standalone footing, independent of the other clauses of the Articles of the respondent-Company where it incidentally finds place. Thus, the scope of the arbitration clause need not necessarily be restricted to the alleged breach of the Articles themselves, within the paradigm of the 2013 Act, but also extends to whatever disputes have been mentioned therein to be included within its purview. As such, the dispute regarding the ownership of the appellant's apartment, being covered by the said clause, is also a potential subject-matter of arbitration. The arbitration clause cannot be said to governed by the 2013 Act merely because it is placed incidentally in the Articles of the respondent-Company, which might otherwise operate within the matrix of the 2013 Act.

**24.** In the present case, the rights claimed by the appellant are on the premise of her ownership of an apartment in the building complex over which the respondent-Company has the charge of management, flowing from her membership of the respondent-Company as a shareholder thereof, as well as the appellant's rights, including voting rights, incidental to such shareholding. As provided in Section 47 of the 2013 Act and reiterated in *Life Insurance Corporation of India (supra)*[1] and *Vodafone International Holding BV (supra)*[2], the right to vote for a director and to participate in the management of the company through them, as well to vote in resolutions taken in meetings of the company, is an integral and inalienable right incidental to shareholding. Seen thus, the disputes, in respect of which the application under Section 9 has been filed and the notice has been issued under Section 21 of the 1996 Act, pertain directly to the incidents and alleged breach of the Articles of Association of the respondent-Company. However, the dispute is not restricted to the same but also relates to the premises of which the appellant is an owner.

**25.** We find from the annexures to the application filed in connection with the present appeal, which were also produced before the learned Trial Judge at the time of moving the ad interim prayer of injunction under Section 9 of the 1996 Act, that by an order dated May 24, 2025, the Special Officer (Building), KMC categorically recorded that the structural stability of the construction of the premises-in-question was certified by an expert and

---

[1] *Life Insurance Corporation of India v. Escorts Ltd. and Others*, **reported at** ***(1986) 1 SCC 264***

[2] *Vodafone International Holding BV v. Union of India and Another*, **reported at** ***(2012) 6 SCC 613***

there was no infringement on the part of the appellant. On the premise of the same, it was also communicated to the Officer-in-Charge of the local police station by the Assistant Engineer (C), Building, that the illegal construction at E-101, the apartment of the appellant, had been regularised under Section 400(1) of the KMC Act, 1980 by the Special Officer (Building) on May 24, 2025.

**26.** Thus, it is *prima facie* evident that the construction of the apartment-in-question of the appellant has been regularised by the KMC, which is the designated authority in such matters, and there cannot be any further grievance on the ground of illegality of such construction on the part of the respondent.

**27.** It is further seen from the share certificate issued in favour of the appellant by the respondent-Company that the appellant is the owner of a share in the Company. Thus, under Section 47 of the 2013 Act, and as per the proposition laid down in the cited judgments referred to above, the right to participate and vote in resolutions taken in meetings of the Company is an integral and inextricable incident of such shareholding.

**28.** Even in the impugned notice dated August 3, 2026, the existence of the share certificate has not been denied as such. The respondent merely alleges that the said share certificate is "disputed and denied", without explicitly mentioning the reason(s) for such denial.

**29.** However, from the materials produced before the Trial Court as well as before this Court, there cannot be any manner of doubt that a strong *prima facie* case of the appellant's shareholding in the respondent-Company as well as ownership of the apartment-in-question, as well as the legality of the construction of the same upon regularisation, has been *prima facie* established by the appellant. Thus, the appellant was otherwise entitled to participate in the AGM held on August 26, 2026 as well as has the right to participate and vote in all other meetings to be held by the respondent-Company on the strength of her shareholding and ownership of her apartment.

**30.** Insofar as the argument of the reference to arbitration and the application under Section 9 being infructuous is concerned, the said proposition is not sustainable, since, in the notice under Section 21 of the 1996 Act, the appellant has flagged disputes in respect of the very rights of the appellant as a shareholder. It is well-settled that a notice under Section 21 is not a plaint in a suit. Thus, it would suffice if the rudiments of the disputes are enumerated therein, even without the full particulars of the disputes being disclosed. A notice under the said provision is a mere precursor to the main arbitral proceeding, although the proceeding commences therefrom in law. The entire conspectus of the disputes is only to be disclosed at a later stage, in the statement of claim to be filed before the Arbitral Tribunal, as and when constituted, and need not be explicitly referred to in the Section 21 notice itself.

**31.** The immediate trigger of the application under Section 9 was the notice dated August 3, 2026, which was not restricted merely to the AGM to be conducted on August 26, 2026 but struck at the very root of the ownership of the appellant in respect of the apartment-in-question as well as the status of the appellant as a shareholder of the respondent-Company, thus, coming squarely within the ambit of the arbitration clause.

**32.** As such, it cannot be said that the cause of action for the arbitral reference and/or the application under Section 9 has spent its force, being much wider and pervasive than the AGM held on August 26, 2026.

**33.** This issue is, thus, decided against the respondent and in favour of the appellant.

**34.** The appellant harps on the purported bar under Section 6, read with Section 430, of the 2013 Act. However, such argument, though attractive at the first blush, is specious. Within the ecosystem contemplated in the 1996 Act, in particular Section 7 thereof, an arbitration agreement, is an agreement in its own right, a stand-alone contract independent of the parent agreement of which it is a part, if at all. Section 7(2) of the 1996 Act clearly recognizes that an arbitration agreement may be either in the form of an arbitration clause in a contract or in the form of a separate agreement. Thus, even if the arbitration agreement is embodied in a clause of a document, it overreaches the said document itself and partakes the character of an independent contract, equivalent to a separate agreement. Thus, the arbitration clause in the present case, although contained in the Articles of Association of the respondent-Company, is not limited to the said Articles and cannot be confined to the paradigm of the same.

**35.** From the arbitration clause itself, it is patent that the same covers disputes not only regarding the terms of the Articles and their breach but also any dispute or difference otherwise relating to the premise. Hence, the disputes which have arisen between the parties in the present case, pertaining both to the shareholding rights of the appellant and the legality of the construction of the apartment/premise belonging to the appellant and her ownership of the same, come within the ambit of the said clause.

**36.** Since the arbitration clause is an independent contract of its own, it operates beyond the purview of the Articles of Association and is not restricted to the architecture of the 2013 Act.

**37.** Section 6 merely provides that the provisions of the 2013 Act shall have overriding effect over the Articles of a company. However, since the arbitration clause is not, *per se*, a provision in the Articles, although it is incidentally contained in the Articles, but a stand-alone contract between the parties, it does not come within the algorithm of Section 6.

**38.** Even otherwise, Section 430 of the 2013 Act concerns the bar to a Civil Court, and not to arbitration. Unless, by its very nature, a dispute is not arbitrable, for example being a dispute in *rem* or flowing from a specific statute designating a particular forum, there is no bar to the arbitrability of a dispute even if it is otherwise amenable to the jurisdiction of the Civil Court or the Tribunal designated under the 2013 Act.

**39.** The dispute in the present case is not restricted to any oppression coming within the paradigm of the 2013 Act but is of much wider ambit, extending to ownership rights in respect of the apartment-in-question and the validity of the share certificate of the appellant.

**40.** Thus, the bar under the 2013 Act is not applicable in the present case from any perspective whatsoever.

**41.** Hence, this argument of the respondent is also not tenable in the eye of law.

**42.** In view of the above, we find that the learned Trial Judge failed to advert to the relevant provisions of law as well as the materials produced before the said Court in refusing ad interim injunction to the appellant despite a strong *prima facie* case having been made out. Even otherwise, the balance of convenience and inconvenience is in favour of grant of injunction, since the valuable rights of the appellant in respect of the apartment owned by her in the concerned building complex as well as her right to participate and vote in meetings of the respondent-Company is being continually infringed by the notice dated August 3, 2026. The urgency involved is evident, since the respondent-Company is proceeding to conduct meetings by excluding the appellant, despite her having a *prima facie* valid share certificate and her ownership of a flat in the building complex.

**43.** We cannot but also take note of the fact that the nature of denial to the share certificate and ownership of the appellant is bald and without any particulars. Moreover, the respondent tacitly acknowledged such rights by giving a notice of the second AGM of the respondent-Company to the appellant, which is required to be given only to members of the Company.

**44.** In such view of the matter, we find that the impugned order is vitiated both in law and in fact and cannot be sustained.

**45.** Accordingly, F.M.A.T. No. 342 of 2026 is allowed on contest, thereby setting aside the impugned order, bearing Order No.01 dated August 25, 2026, passed by the learned District Judge at Alipore, District – South 24 Parganas, in Miscellaneous (Arb.) Case No.64 of 2026, and granting injunction restraining the respondent from giving any effect or further effect to the letter dated August 3, 2026, insofar as it restrains the appellant from exercising her right of membership, attendance and voting in the meetings of the respondent-Company, till disposal of Miscellaneous (Arb.) Case No.64 of 2026.

**46.** CAN 1 of 2026 is consequentially disposed of.

**47.** It is made clear that the aforesaid findings are tentative in nature and shall not unduly influence the learned Judge taking up the application under

Section 9 of the Arbitration and Conciliation Act, 1996 at any further stage of the proceeding.

**48.** There will be no order as to costs.

**49.** Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon compliance of all formalities.

**(Sabyasachi Bhattacharyya, J.)**

I agree.

**(Sandip Kumar De, J.)**