

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – 1, AHMEDABAD

ITEM No.302
Comp.App/33(AHM)2026
in
CP/72(AHM)2025

Under Section 442 of Co. Act, 2013

IN THE MATTER OF:

Harshvardhan Lunia & Ors
V/s
Lendingkart Technologies Pvt.Ltd & Ors

.....Applicant

.....Respondents

Order delivered on: 12/10/2026

C O R A M:

MR. SHAMMI KHAN, HON'BLE MEMBER (J)
MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

-SD-
SANJEEV SHARMA
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – 1, AHMEDABAD**

Comp. Application No.33(AHM) 2026

In

CP No. 72(AHM) 2025

*(An application under Section 442 of the Companies Act, 2013
seeking reference of the disputes in Company Petition No.
72(AHM)/2025 to mediation)*

In the original matter of:

Mr. Harshvardhan Lunia & Ors.

..... Petitioners/Applicants

Versus

M/s. Lendingkart Technologies Pvt. Ltd. & Ors.

..... Respondents

MEMO OF PARTIES

1. Mr. Harshvardhan Lunia,

Founder and Shareholder of:

M/s. Lendingkart Technologies Pvt. Ltd.,

Having address at:

A-93, Mayfair Flat, Jodhpur,
Ahmedabad, Gujarat – 380015.

2. Mr. Raichand Lunia,

Shareholder of:

M/s. Lendingkart Technologies Pvt. Ltd.,

Having address at:

A-93, Mayfair Flat, Jodhpur,
Ahmedabad, Gujarat – 380015.

3. Mr. Anand Lunia,

Shareholder of:

M/s. Lendingkart Technologies Pvt. Ltd.,

Having address at:

Classic Homes, No. 5, Rustom Bagh Road,
Opp. Manipal Heart Foundation,

Off Airport Road, Bangalore – 560017.

..... Applicants

VERSUS

1. Lendingkart Technologies Pvt. Ltd.

Through its Chief Executive Officer and Board of Directors,
Having its registered office at:
401, Fourth Floor, Iconic Shyamal,
Near Shyamal Cross Roads,
Manekbag, Ahmedabad,
Gujarat – 380015.

2. Fullerton Financial Pvt. Ltd.

Being a Majority Shareholder,
A company incorporated under the laws of Singapore,
Having its registered address at:
5 Shenton Way #18-06,
UIC Building, Singapore – 068808.

3. Lendingkart Finance Ltd.

A Subsidiary, through its
Chief Executive Officer and Board of Directors,
Having its registered office at:
Office 3 Connet, 401/B, Fourth Floor,
Silver Utopia, Cardinal Gracious Road,
Andheri East, Mumbai Suburban – 400099.

4. Mr. Prashant Prakash Joshi,

Director of M/s. Lendingkart Technologies Pvt. Ltd.
Having address at:
401, Fourth Floor, Iconic Shyamal,
Near Shyamal Cross Roads,
Manekbag, Ahmedabad,
Gujarat – 380015.

5. Mr. Anindo Mukherjee,

Director of M/s. Lendingkart Technologies Pvt. Ltd.
Having address at:
401, Fourth Floor, Iconic Shyamal,
Near Shyamal Cross Roads,
Manekbag, Ahmedabad,

Gujarat – 380015.

6. Mr. Pavan Pal Kaushal,

Director of M/s. Lendingkart Technologies Pvt. Ltd.

Having address at:

401, Fourth Floor, Iconic Shyamal,

Near Shyamal Cross Roads,

Manekbag, Ahmedabad,

Gujarat – 380015.

7. Mr. Hong Ping Yeo,

Director of M/s. Lendingkart Technologies Pvt. Ltd.

Having address at:

401, Fourth Floor, Iconic Shyamal,

Near Shyamal Cross Roads,

Manekbag, Ahmedabad,

Gujarat – 380015.

8. Ms. Rashmi Sharma,

Director of M/s. Lendingkart Finance Ltd.

Having office address at:

Office 3 Connket, 401/B, Fourth Floor,

Silver Utopia, Cardinal Gracious Road,

Andheri East, Mumbai Suburban – 400099.

9. Mr. Sreeram Iyer,

Director of M/s. Lendingkart Finance Ltd.

Having office address at:

Office 3 Connket, 401/B, Fourth Floor,

Silver Utopia, Cardinal Gracious Road,

Andheri East, Mumbai Suburban – 400099.

10. Ms. Kumudini Agarwal,

Company Secretary of

M/s. Lendingkart Technologies Pvt. Ltd.

Having office address at:

401, Fourth Floor, Iconic Shyamal,

Near Shyamal Cross Roads,

Manekbag, Ahmedabad,

Gujarat – 380015.

11. The Registrar of Companies,

Government of India,
ROC Bhavan, Opposite Rupal Park,
Naranpura, Ahmedabad,
Gujarat – 380013.

- 12. The Reserve Bank of India,**
Through Supervisory Examination Division,
(NBFC Division), Department of Supervision,
Main Building, Near Gandhi Bridge,
Post Bag No. 1, Ashram Road,
Ahmedabad – 380014.

..... Respondents

Order Pronounced On: 12.10.2026

C O R A M

MR. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
MR. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)

A P P E A R A N C E:

For the Applicants : Mr. Saurabh Soparkar, Sr. Adv. a.w.
Mr. Nizam Pasha, & Mr. Yash Dadhich,
: Mr. Isa Hakim, & Ms. Shivani Gadhavi,
Advocates
For the Respondents: Mr. Mihir Thakore, & Mr. Navin Pahwa,
Sr. Advocates a.w. Mr. Nihar Thakkar
& Ms. Benaisha, Advocates for R-2
: Mr. Tarak Damani & Mr. Aditya Joshi,
Advocates for R-1, R-3 to R-10

O R D E R
Per Bench

1. This Company Application No.33(AHM) 2026 has been
filed under Section 442 of the Companies Act, 2013 on
04.08.2026 vide inward no. E-2262. The Applicants have
prayed for the following reliefs: -

- A. *To admit and allow the present Application.*
- B. *To refer the disputes forming the subject-matter of Company Petition No. CP/72(AHM)/2025 to mediation under Section 442(1) of the Companies Act, 2013;*
- C. *To issue such directions as this Hon'ble Tribunal may deem necessary for facilitating and conducting the mediation proceedings;*
- D. *Pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case, in the interest of justice and equity.*

2. The Applicants have placed the facts through the Company Application and documents in the following manner as under: -

2.1 The Applicants are minority shareholders and members of the Company. They have filed the Company Petition No. CP-72 of 2025 under Sections 241 and 242 read with Section 213 of the Act and Rule 81 of the NCLT Rules, 2016. It is stated as to jurisdiction, the Company Petition is pending before this Tribunal and the registered office of the Company is in the State of Gujarat, therefore within the jurisdiction of this Tribunal. The Application is stated to be filed during the pendency of the petition and seek reference under Section 442 of the Companies Act, 2013 stating within the limitation.

2.2 It is stated that the application is brought under Section 442(1) of the Act in order to explore amicable resolution of the disputes through the mediation,

forming the subject matter of the Company Application.

- 2.3 It is stated that the original company petition no. 72(AHM) 2025 seeks intervention of this Bench against grave and continuing acts of the Oppression and Mismanagement alleged against the Respondent No.2 and its nominee directors on the Board of Respondent No.1 Company.
- 2.4 It is submitted that the detailed facts of the matter has been set out exhaustively in the Company Petition, which includes background of the applicants, establishment and growth of the company under the leadership of the Petitioner No.1, the acquisition of the majority control by Fullerton, the management of the affairs of the company and of Lendingkart Finance Ltd. (LFL) thereafter and the acts of Oppression and Mismanagement alleged. It is stated that for the sake of brevity, they are not reproduced.
- 2.5 It is submitted that the disputes arise from the relationship between the Applicants, who are the founder and minority shareholders, and Fullerton, which is the majority and controlling shareholder. They concern the manner in which the Company's affairs have been conducted since Fullerton acquired control. The Applicants maintain their allegations but state that an amicable resolution on mutually

acceptable terms may bring a complete and effective end to the disputes.

- 2.6 It is stated that the Applicants have made bona fide efforts to explore settlement during the pendency of the proceedings. Their willingness was recorded by this Bench on 18.06.2026. The relevant portion of that order is reproduced in the Application as under (Annexure A/ 1): -

“Ld. Senior Counsel appearing for the Applicant/ Petitioner has expressed willingness to settle the dispute with the Respondents and has shown inclination to submit a settlement offer on a without prejudice basis.

In view of the above, Ld. Senior Counsel for the Applicant/ Petitioner is directed to submit the settlement proposal to opposite side within three days from today. The Respondents shall respond to the said proposal thereafter.

The matter is adjourned and re-listed for further consideration on 09.07.2026.”

- 2.7 It is stated, pursuant to that order, Petitioner No. 1 addressed a without-prejudice settlement proposal dated 23.06.2026 to Respondent No. 1. Respondent No. 2 was copied, but the proposal was formally addressed to Respondent No. 1, which declined it. On 09.07.2026 the learned counsel for Respondent No. 2 stated that it did not receive the said proposal. This Bench, therefore, recorded that the learned counsel for the Respondents was not inclined to settle. According to the Applicants, the proposal had not at

that stage been formally placed before Respondent No. 2 (order dated 09.07.2026, Annexure A/2).

- 2.8 It is stated that in order to ensure that the settlement proposal might be formally placed before Respondent No. 2 and considered by its Board of Directors, the Petitioner No.1 addressed it directly to the Board of Directors of Respondent No.2, being the majority shareholder of the R-1 Company. As stated, the said proposal is currently pending under consideration.
- 2.9 It is stated that the Applicants /Petitioners are of bona fide view that the disputes are capable of amicable resolution through the mediation through an independent mediator would assist parties without prejudice. The Applicant has relied on Section 442(1) of the Companies Act, 2013, reproduced hereunder:

“442. Reference to mediation.— (1) Any of the parties to a proceedings before the Central Government, Tribunal or the Appellate Tribunal may, at any time apply to the Central Government, Tribunal or the Appellate Tribunal, as the case may be, in such form alongwith such fees, if any, as may be prescribed, for referring the matter pertaining to such proceedings for mediation and the Central Government, Tribunal or the Appellate Tribunal, as the case may be, shall refer the matter to mediation to be conducted under the provisions of the Mediation Act, 2023.

(2) Nothing in this section shall prevent the Central Government, Tribunal or the Appellate Tribunal before which any proceeding is pending from referring any matter pertaining to such proceeding suo motu to mediation to be conducted under the provisions of the Mediation Act, 2023 as the Central Government,

Tribunal or the Appellate Tribunal, as the case may be, deems fit.

(3) The mediator or mediation service provider shall file the mediated settlement agreement arrived at between the parties with the Central Government or the Tribunal or the Appellate Tribunal under the Act.

(4) The Central Government or the Tribunal or the Appellate Tribunal shall pass an order or judgment making the said mediated settlement agreement as part thereof.

(5) The fee of the mediator shall be such as may be prescribed.”

2.10 It is submitted that on an application under Section 442(1), the Applicants say the Tribunal “shall refer” the matter to mediation under the Mediation Act, 2023, which expressly allows recourse to mediation at any stage of the proceedings. The disputes, arising from majority–minority shareholder relations and concerning the Company’s management, control and value, are particularly suited to mediation. A resolution, if achieved, could bring the disputes to a full and final close.

2.11 A reference at this stage would give the parties an opportunity to explore a comprehensive resolution under the aegis of this Tribunal. The Applicants are willing to participate in good faith and without prejudice to the allegations, claims, rights, remedies and contentions raised in the Company Petition.

2.12 It is submitted that no prejudice would be caused to the Respondents by a reference and if the mediation do not succeed, the parties shall be at a liberty to

pursue their respective rights in the petition in accordance with the law.

- 3.** In the present matter, the Respondent No.1 filed its reply on 30.09.2026 vide inward no. D-7131, through Ms. Kumudini Aggarwal, being the authorised signatory of the R-1 Company, M/s. Lendingkart Technologies Pvt. Ltd. The brief of the reply is summarised as under:

- 3.1 The Respondent No.1 *prima-facie* denied all the statements and contentions and opposing the mediation application. It is contended and advised that the mediation cannot be thrust upon unwilling parties without their consent. It is stated that the application is described as yet another tactic by the Applicants to protect and delay the final hearing of the Company Petition.
- 3.2 In the Preliminary Objection, Respondent No.1 submitted that the Application does not conform to the form mandated by Section 442 of the act, read with Companies (Mediation and Conciliation) Rules, 2016. The application is stated to be not maintainable and to be dismissed in limine.
- 3.3 The R-1 advised that the mediation under Section 442 is by nature a consensual and voluntary process and cannot be imposed on an unwilling party, particularly one that has already rejected a settlement proposal.

- 3.4 It is stated that, pursuant to the liberty granted vide this Bench's order dated 18.06.2026, the Applicants addressed a without-prejudice settlement proposal dated 23.06.2026 to the R-1, which, after due consideration, R-1's Board found the proposal unfeasible and unrealistic and rejected it by letter dated 07.07.2026.
- 3.5 As recorded in the order dated 09.07.2026 (Annexure A2, page 16 of the Application), the R-1 clearly communicated to this Bench that it was not inclined to settle and that the Company Petition ought to be heard and decided on merits. There is therefore said to be 'no occasion' for a reference to mediation.
- 3.6 As contended, the present application is a dilatory tactic to impede, delay and obstruct the hearing and final disposal of the Company Petition.
- 3.7 The R-1 has further pointed to the Applicants' conduct in the proceedings: the filing of verbose and document-heavy pleadings; the pursuit of frivolous and vexatious interim applications, including an application for impleadment of third parties which this Tribunal dismissed; the filing of the present Application even after Respondent No. 1 made it clear that it was not inclined to settle; and a misguided amendment application. It is stated that the Application is to be viewed in aforesaid context/conduct.

3.8 Thus, the R-1 has prayed to dismiss the application with cost and to list the company petition for final hearing and disposal.

4. In the present matter, the Respondent No.2, M/s. Fullerton Financial Private Limited has filed its affidavit-in-reply on 24.08.2026 vide inward no. D-7086 through Mr. Wong Kah Peng, being the authorised signatory acting through its power of attorney holder Mr. Santosh Shinde, under the PoA dated 02.12.2025 (placed as Exhibit-A) vide board resolution dated 01.12.2025 (placed as Exhibit-B).

The contents of the reply are briefly summarised as under:

- 4.1 It is stated that the present reply is filed to oppose the mediation application. The R-2 denied the allegations and insinuations against him.
- 4.2 It is stated that the R-2 has objected to the reference to mediation. It is stated that the mediation cannot be foisted upon unwilling parties in the absence of their consent. It is stated that the present application is a deliberate conduct and intent to delay the final hearing of the present company petition.
- 4.3 It is stated in preliminary objection that the application does not comply with the form and procedure prescribed by the companies act and rules framed thereunder and hence it is not maintainable and liable to be rejected.

- 4.4 As stated, the R-2 is advised that Section 442 enables a party to apply during pendency in the prescribed form, along with the prescribed fee, for reference to the Mediation and Conciliation Panel. It further relies on Rule 6(2) of the Companies (Mediation and Conciliation) Rules, 2016 (“Companies Mediation Rules”), under which an application to the Tribunal for reference to mediation “shall be” in Form MDC-2 and accompanied by a fee of Rs. 1,000/-. A copy of Form MDC-2 is annexed as Exhibit C.
- 4.5 It is stated that the present application does not conform to the form prescribed under the Companies Mediation Rules. It is therefore said to be defective, non-compliant with Section 442 read with the Rules, and liable to be dismissed at the threshold on that ground alone.
- 4.6 It is contended by the R-2 that the Mediation has to be by consent of both sides and cannot be thrust upon the parties. The parties cannot be mandated to appear before a mediator against their will.
- 4.7 It is further contended that the mediation under Section 442 is voluntary in nature and ought not to be construed as mandatory. Respondent No. 2 relies on the view taken by various forums, including the NCLAT and the NCLT, Jaipur Bench, which are said to establish that mutual consent of the parties is essential for referring them to mediation. R-2 has

placed the copies of the said decisions on record as Exhibit-D.

- 4.8 At the hearing on 09.07.2026, R-2 conveyed to this Tribunal that it was not inclined to settle and that the Company Petition may be heard on merits. This is recorded in the order of 09.07.2026 (Annexure A2, page 16 of the Application). R-2 reiterated that it does not wish to refer the disputes to mediation.
- 4.9 The R-2 further submitted that there is no scope for settlement, much less through mediation. It relies on the following correspondence: (a) the Applicants issued a without-prejudice proposal on 03.08.2026 directly to the Board of Directors of Respondent No. 2, the same day on which the Mediation Application was served on it; and (b) by communication dated 07.08.2026 Respondent No. 2 explicitly rejected that proposal as neither fair nor feasible.
- 4.10 It is further stated that the present application is an attempt of the Petitioner/Applicant to derail and dilatory tactic the final hearing and disposal of the Company Petition on merits.
- 4.11 It is stated that the Applicants have repeatedly sought to delay the matter by filing voluminous pleadings and needless interlocutory applications. These include applications for (i) condonation of delay in filing rejoinders and (ii) impleadment of third parties, the latter dismissed by this Tribunal by order

dated 10.07.2026. Despite the express recording on 09.07.2026 that the Respondents are not inclined to settle, the Applicants have filed this Application and simultaneously addressed a settlement proposal to the R-2, which has been rejected.

4.12 It is contended that filing of the present application in these circumstances is described as a further attempt to consume judicial time and stall the hearing and adjudication of a Petition which the Applicants themselves instituted. Hence, the R-2 prayed to reject the application.

5. A rejoinder-in-reply in the present application has been filed by the Applicant/Petitioner on 30.09.2026 vide inward no. D-8439. The brief of the rejoinder reply to the Respondent No.1 is as under: -

5.1 The Applicants recapitulate that the Company Petition seeks reliefs against a sustained course of oppressive, prejudicial and mala fide acts and mismanagement continued by Respondent No. 2 through its nominee directors on the Boards of the Company and of M/s. Lendingkart Finance Limited (“LFL”), which are said to have gravely affected the affairs and financial health of both companies. The pleadings in the Company Petition and the Application are adopted and reiterated.

- 5.2 Pursuant to the liberty granted on 18.06.2026, a without-prejudice proposal was sent to Respondent No. 1, which declined it. Believing that the disputes remain capable of amicable resolution with the help of an independent mediator, the Applicants applied under Section 442.
- 5.3 It is stated that the statutory scheme permits any party to pending proceedings to seek a reference and does not make this contingent on the prior consent of every other party. Respondent No. 1's Reply proceeds principally on the footing that it does not consent and that the Application must fail on that ground alone.
- 5.4 In the preliminary submissions, the main objection of Respondent No. 1 conflates two distinct stages, namely reference to mediation and settlement through mediation. It is stated that Section 442 enables any party to apply for a reference and, once an application is made, uses mandatory language. The Applicants point out that under the presently operative provision the authority "shall appoint" one or more experts from the Mediation and Conciliation Panel, and that the amended provision likewise says the Tribunal "shall refer the matter to mediation". Rule 6(3) of the Companies (Mediation and Conciliation) Rules, 2016 is in like terms.

- 5.5 It is averred that an application by one party need not be accompanied by the consent of the others, and reading such a condition into Section 442 would add a requirement the legislature has not prescribed. The consensual character of mediation operates at the stage of settlement: no party can be compelled to accept any proposal or concession or to enter a mediated settlement. Absence of consent to an eventual settlement is not absence of jurisdiction to refer.
- 5.6 The Petitioners/Applicants placed reliance on the decision of ***Rupa & Co. Ltd. v. Firhad Hakim, 2025 SCC OnLine SC 355***, wherein, the Applicants say it cannot be read divorced from its context. There the Hon'ble Supreme Court was dealing with a reference in contempt proceedings, over the resistance of successful writ Applicants, after a writ of mandamus in their favour had attained finality. Its observations cannot be mechanically transposed to an application under Section 442 of the Act, which itself gives any party a statutory right to seek a reference.
- 5.7 Further, the Petitioners/Applicants also cited the decision of the Hon'ble Bombay High Court in the matter of ***Sugandha Hiremath v. Babasaheb Neelkanth Kalyani, 2026 SCC OnLine Bom 2833***, which considered ***Rupa & Co.*** together with ***Afcons Infrastructure Ltd. v. Cherian Varkey Constructions Co. Pvt. Ltd., (2010) 8 SCC 24***. They

say it holds that opposition by one party does not conclude the inquiry, and that the Court must first form an opinion whether the matter warrants a reference notwithstanding the opposition. The Court there declined a reference on the facts, but did not treat one party's objection as an automatic or jurisdictional bar.

5.8 The Applicants placed heavy reliance on the decision of ***Afcons Infrastructure (supra)***, decided in the context of Section 89 of the Code of Civil Procedure, 1908. They say it distinguishes arbitration and conciliation, which need the consent of all parties, from mediation, Lok Adalat and judicial settlement, for which consent is not required and which the Court may adopt in its discretion, having regard to the nature of the dispute, the interests of the parties and the need for expedition. A reference to mediation therefore does not by itself require consent, and the case here is said to be stronger because a specific statutory provision is invoked.

5.9 It is further averred that the earlier rejection of the Applicants' settlement proposal makes no difference. A bilateral proposal exchanged directly between parties is different from a structured process facilitated by an independent mediator. Failure of one such proposal cannot foreclose the possibility that a mediator may help the parties find common ground,

narrow the disputes, or reach terms not previously contemplated.

- 5.10 The contention of the Respondents that the Application is a dilatory tactic is denied. The Applicants have invoked a statutory mechanism made available during pendency, and its exercise cannot be called an abuse of process merely because Respondent No. 1 is presently unwilling to participate.
- 5.11 It is stated that the objection regarding Form MDC-2 is said to be procedural and not to affect the substance or maintainability of the Application. The Applicants further stated that the prescribed Form MDC-2, with proof of payment of the fee of Rs. 1,000/-, may be placed on record at the appropriate stage as this Tribunal may direct, and they undertake to comply. Procedure is said to be the handmaiden of justice. Hence, the Application is stated to be bona fide, in aid of an amicable resolution, and deserving of consideration on its own terms.
- 5.12 Further, the Petitioner has dealt with paragraph wise reply. The introductory paragraph and paragraphs 1 and 2 of the Reply are formal and call for no response; save for what is a matter of record, nothing in them is admitted.

- 5.13 The reply paragraph 3 of the Reply is denied. The Applicants deny that mediation cannot be referred without Respondent No. 1's consent, and deny that the Application is a tactic to delay the Company Petition.
- 5.14 The paragraph 4 is denied and stated that the Form MDC-2 objection is procedural, and the prescribed form with proof of fee will be placed on record when required.
- 5.15 The Paragraph 5 is denied and stated that the respondent is said to conflate the voluntary character of an eventual settlement with the statutory power of this Tribunal to refer the matter to mediation, which operate at distinct stages.
- 5.16 The reply paragraphs 6 and 7 are not disputed insofar as they record that a without-prejudice proposal was addressed by the Applicants and declined by Respondent No. 1, or reproduce matters appearing from the orders of this Tribunal. The conclusions sought to be drawn are denied. Rejection of one bilateral proposal does not make mediation futile and does not extinguish the Applicants' statutory right to seek a reference.
- 5.17 The reply paragraph 8 is denied by stating that the present application is a bona fide invocation of a statutory remedy and is not a dilatory tactic.

5.18 Paragraph 9 is denied in entirety and stated that the allegations about the Applicants' pleadings and other interlocutory applications are irrelevant to this Application, and filing pleadings and applications in pursuit of available remedies is not vexatious merely because the respondent opposes them. The reference to the Applicants' amendment application is likewise irrelevant.

6. The Applicant No.1 to 3 have filed Written Submissions along-with judgments on 06.10.2026 vide Inward No. D-. 8626. The contentions of the Applicants are as follows: -

6.1 The Applicants submitted that the present Written Submissions were filed pursuant to the order dated 01.10.2026, directing the parties to place on record a chronology of events, brief submissions and relevant judgments in Company Application No. 33(AHM)/2026.

6.2 The Applicants contended that Section 442 of the Companies Act, 2013 permits any party to pending proceedings to seek reference of the disputes to mediation and that the statutory provision uses mandatory language regarding such reference.

6.3 The Applicants submitted that Rule 6(3) of the Companies (Mediation and Conciliation) Rules, 2016 also provides for appointment of experts from the Mediation and Conciliation Panel upon receipt of an

application under Rule 6(2). According to them, unanimous consent is not prescribed as a condition for seeking such reference.

- 6.4 The Applicants argued that reference to mediation and settlement through mediation are two distinct stages. While the parties cannot be compelled to accept a proposal or enter into a settlement, the absence of consent to settlement does not, by itself, prevent consideration of a reference to mediation.
- 6.5 The Applicants relied upon *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24, wherein the Hon'ble Supreme Court, while interpreting Section 89 of the Code of Civil Procedure, 1908, distinguished arbitration and conciliation from mediation and held that the consent of all parties is not necessary for a reference to mediation.
- 6.6 The Applicants distinguished *Rupa & Co. Ltd. v. Firhad Hakim*, 2025 SCC OnLine SC 355, on the ground that the said decision concerned mediation in contempt proceedings despite opposition by successful writ Applicants after a writ of mandamus had attained finality. They submitted that the said decision did not interpret Section 442 of the Companies Act, 2013.
- 6.7 The Applicants further relied upon *Sugandha Hiremath v. Babasaheb Neelkanth Kalyani*, 2026 SCC OnLine Bom 2833, wherein the Hon'ble Bombay

High Court considered Rupa & Co. and Afcons Infrastructure and observed that the Court must examine whether a reference to mediation is warranted despite the opposition of a party. The Applicants pointed out that the reference was declined on the facts of that case.

- 6.8 On the basis of the above judgments, the Applicants contended that the absence of unanimous consent should not automatically bar reference to mediation under Section 442 of the Companies Act, 2013. They submitted that the Respondents' objection on this ground was misconceived.
- 6.9 The Applicants submitted that the rejection of their earlier without-prejudice settlement proposal did not render mediation futile. They contended that an independent mediator could assist the parties in identifying areas of agreement, narrowing the disputes requiring adjudication or exploring settlement terms not previously considered.
- 6.10 The Applicants referred to Safeco Hygiene Films Pvt. Ltd. v. Loganmoy Ltd., Company Appeal (AT) No. 262 of 2019, and SBPL Polymers LLP v. Loganmoy Ltd., Company Appeal (AT) No. 263 of 2019, decided by a common order dated 11.11.2020, wherein applications under Section 442 were declined. They argued that the said order did not examine the interpretation of Section 442(2) or Rule 6(3)

concerning the expression “shall” and did not decide the specific statutory question raised in the present Application.

- 6.11 Regarding the objection to the prescribed Form MDC-2, the Applicants submitted that the requisite demand draft towards the prescribed fee of Rs. 1,000/- had already been drawn. They undertook to place the duly completed form and proof of the requisite fee on record as directed by the Tribunal.
- 6.12 The Applicants contended that a procedural defect should not, by itself, defeat consideration of the Application without examining whether the defect could be rectified. They submitted that the objection regarding Form MDC-2 should not render the Application non-maintainable.
- 6.13 The Applicants denied that the Mediation Application had been filed to delay the final hearing of the Company Petition. They relied upon their earlier settlement efforts, including the proposal submitted pursuant to the Tribunal’s order dated 18.06.2026, as evidence of their willingness to explore an amicable resolution.
- 6.14 The Applicants submitted that a reference to mediation would not cause substantive prejudice to the Respondents, as no party could be compelled to settle or surrender its substantive rights. They further contended that, if mediation failed, the

Company Petition could proceed for adjudication in accordance with law.

6.15 The Applicants maintained that their Application was a bona fide invocation of the statutory mechanism under Section 442 of the Companies Act, 2013. They submitted that the rejection of an earlier bilateral settlement proposal should not, by itself, foreclose the possibility of resolving the disputes through an independent mediator.

6.16 In conclusion, the Applicants prayed that Company Application No. 33(AHM)/2026 be allowed and that the disputes forming the subject matter of Company Petition No. CP/72(AHM)/2025 be referred to mediation in accordance with Section 442 of the Companies Act, 2013 and the applicable Rules.

7. The Respondent No.2 also filed Written Submissions along-with judgments on 07.10.2026 vide inward diary no. D-8662. The contentions of the Respondent No. 2 are as follows: -

7.1 The Respondent No. 2, Fullerton Financial Private Limited (“FFPL”), filed its Written Submissions dated 06.10.2026, pursuant to the order dated 01.10.2026, opposing the Applicants’ request for reference of the disputes in Company Petition No. CP/72(AHM)/2025 to mediation under Section 442 of the Companies Act, 2013.

- 7.2 FFPL submitted that the amendment to Section 442 introduced by the Mediation Act, 2023 had not been notified and, therefore, the present Application was required to be considered under the existing Section 442(2) of the Companies Act, 2013.
- 7.3 FFPL contended that the Mediation Application was intended to delay the final hearing of the Company Petition. It relied upon the earlier impleadment application, which was dismissed on 10.07.2026, the subsequent Amendment Application and the filing of the present Application despite the Respondents' stated unwillingness to settle.
- 7.4 FFPL submitted that mediation is a consensual process and cannot be imposed upon an unwilling party. It contended that, after the Respondents had expressed their unwillingness to settle and the earlier settlement proposals had failed, a reference to mediation would serve no useful purpose and would delay adjudication.
- 7.5 FFPL relied upon *Safeco Hygiene Films Pvt. Ltd. v. Loganmoy Ltd. Matheson Trust Co. (BVI) Ltd. & Ors.*, Company Appeal (AT) No. 262 of 2019, order dated 11.11.2020, wherein the Hon'ble NCLAT rejected applications under Section 442(2) after the Respondents stated that an earlier settlement attempt had failed and that there was no possibility of settlement.

- 7.6 FFPL further relied upon *Jagbir Singh & Anr. v. Adwin Infratech Pvt. Ltd. & Ors.*, CA No. 13/JPR/2022 in CP No. 28/241-242/JPR/2021, order dated 23.04.2024, wherein the Hon'ble NCLT, Jaipur Bench, rejected a request for mediation in an oppression and mismanagement proceeding because mutual consent of the parties was absent.
- 7.7 FFPL relied upon *Vijay Data v. Data Ingenious Global Ltd. & Ors.*, 2026 SCC OnLine NCLAT 510, order dated 23.04.2026, wherein the Hon'ble NCLAT upheld an order calling upon the parties to explore settlement and observed that the principles of the Mediation Act, 2023 and the decision in *Rupa & Co. Ltd. v. Firhad Hakim* could be considered where a reference to mediation was proposed.
- 7.8 FFPL relied upon *Rupa & Co. Ltd. v. Firhad Hakim*, 2025 SCC OnLine SC 355, wherein the Hon'ble Supreme Court held that mediation must be with the consent of both parties and cannot be thrust upon either party. FFPL contended that this principle applied generally and was not confined to contempt proceedings.
- 7.9 FFPL relied upon *Babasaheb Neelkanth Kalyani v. Sugandha Hiremath & Ors.*, Interim Application No. 5241 of 2025, order dated 04.05.2026, wherein the Hon'ble Bombay High Court declined a request for mediation after finding that earlier settlement

attempts had failed and that no possibility of settlement through mediation existed.

- 7.10 FFPL distinguished *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24, relied upon by the Applicants, on the ground that the said judgment concerned Section 89 of the Code of Civil Procedure, 1908. It submitted that the principles laid down therein could not automatically be applied to proceedings under Section 442 of the Companies Act, 2013, having regard to Section 424 of that Act.
- 7.11 FFPL disputed the Applicants' contention that the word "shall" in Section 442(2) and Rule 6(3) of the Companies (Mediation and Conciliation) Rules, 2016 made reference to mediation mandatory upon an application by any party. It submitted that the provision must be read in the context of the statutory scheme and the circumstances of the case.
- 7.12 FFPL relied upon *Bachahan Devi v. Nagar Nigam, Gorakhpur*, (2008) 12 SCC 372, wherein the Hon'ble Supreme Court held that the use of the word "shall" is not conclusive in determining whether a statutory provision is mandatory or directory. The legislative intent, statutory scheme and consequences of non-compliance must also be considered.
- 7.13 FFPL submitted that Section 442(2) should not be interpreted as compelling a reference to mediation at

the instance of one party, irrespective of the stage of proceedings or the possibility of settlement. It contended that such an interpretation would cause further delay and defeat the purpose of the provision.

7.14 FFPL further contended that the Applicants' reliance upon Section 442(1), as amended by the Mediation Act, 2023, was misplaced because, according to FFPL, the amendment had not been notified and did not govern the present proceedings. It maintained that the Application was required to be examined under the provision then in force.

7.15 In conclusion, FFPL prayed that Company Application No. 33(AHM)/2026 be dismissed with costs and that Company Petition No. CP/72(AHM)/2025 be listed for expeditious final hearing and adjudication on merits.

8. The Respondent No.1 also filed Written Submissions along-with judgments on 07.10.2026 vide e-filing no. 2401105022622026/7. The contentions of the Respondent No. 1 are as follows: -

9. We have heard the Ld. Sr. Counsel for the Applicants, Ld. Counsel for Respondent No.1 and Ld. Sr. Counsel for Respondent No.2 and perused the record, including the pleadings, replies, rejoinder and written submissions filed

pursuant to the order dated 01.10.2026. The Respondents Nos. 3 to 12 have not filed any reply to the Application.

- 10.** The Applicants seek reference of the disputes in Company Petition No. CP/72(AHM)/2025 to mediation under Section 442 of the Companies Act, 2013. The Respondents oppose the reference, principally on the ground that their earlier settlement efforts failed and they are unwilling to participate in mediation.
- 11.** The Applicants rely upon the settlement proposal submitted pursuant to the order dated 18.06.2026 and the subsequent communication addressed to Respondent No. 2 on 03.08.2026. The record indicates that Respondent No. 1 rejected the proposal on 07.07.2026 and Respondent No. 2 rejected it on 07.08.2026.
- 12.** The Applicants contend that Section 442 of the Act, 2013 and Rule 6(3) of the Companies (Mediation and Conciliation) Rules, 2016, contemplate a reference upon an application by any party. The Respondents submit that the provision should not be construed to compel mediation where the other parties have expressly declined to participate.

13. In ***Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.***, (2010) 8 SCC 24, the Hon’ble Supreme Court explained the scope of Section 89 of the Code of Civil Procedure, 1908, and distinguished the various alternative dispute resolution processes. The judgment arose under the CPC and must be applied to the present proceedings having regard to the language and scheme of Section 442.
14. In ***Bachahan Devi v. Nagar Nigam, Gorakhpur***, (2008) 12 SCC 372, the Hon’ble Supreme Court held that the use of the word “shall” is not, by itself, conclusive of whether a statutory provision is mandatory. The provision must be construed in the context of its object, scheme and consequences.
15. In ***Rupa & Co. Ltd. v. Firhad Hakim***, 2025 SCC OnLine SC 355, the Hon’ble Supreme Court held that mediation cannot be thrust upon a party that opposes it. The decision arose in the context of contempt proceedings and enforcement of a writ of mandamus; its principle regarding consent must be considered in that context.

16. In **Babasaheb Neelkanth Kalyani v. Sugandha Hiremath & Ors.**, Interim Application No. 5241 of 2025, decided on 04.05.2026, the Hon'ble Bombay High Court declined mediation where one party was unwilling and earlier settlement attempts had failed. The decision supports the view that the circumstances and genuine possibility of settlement are relevant.
17. In **Safeco Hygiene Films Pvt. Ltd. v. Loganmoy Ltd. Matheson Trust Co. (BVI) Ltd. & Ors.**, Company Appeal (AT) No. 262 of 2019, with **SBPL Polymers LLP v. Loganmoy Ltd. Matheson Trust Co. (BVI) Ltd. & Ors.**, Company Appeal (AT) No. 263 of 2019, common order dated 11.11.2020, the Hon'ble NCLAT declined the requests for mediation under Section 442(2) after being informed that the earlier settlement attempt had failed. The decision is relevant to the circumstances of the present application.
18. The Applicants also rely upon **Sugandha Hiremath v. Babasaheb Neelkanth Kalyani**, 2026 SCC OnLine Bom 2833, whereas Respondent No. 2 relies upon **Jagbir Singh & Anr. v. Adwin Infratech Pvt. Ltd. & Ors.**, CA

No. 13/JPR/2022 in CP No. 28/241-242/JPR/2021, order dated 23.04.2024, and **Vijay Data v. Data Ingenious Global Ltd. & Ors.**, 2026 SCC OnLine NCLAT 510, order dated 23.04.2026. These authorities have been considered to the extent of the propositions for which they have been cited.

19. The Applicants' submission that an independent mediator may facilitate a settlement despite the rejection of earlier proposals has been considered. However, the record reflects that both Respondent Nos. 1 and 2 have **expressly declined** the proposals sent by the Applicant and have opposed reference to mediation before this Tribunal.
20. The Applicants' reliance on the mandatory expression "shall" in Section 442(2) and Rule 6(3) does not dispense with consideration of the statutory scheme and the circumstances of the case. We take cognisance of the use of expression that include word "shall". We are also conscious of the scheme of mediation that a reference to a mediation and mediation leading to a settlement are different stages of the process. A mediation may or may not lead to an ultimate settlement which depends on

consent of parties. However, in the facts of the case before us, there is express and strong opposition of the Respondents to the reference for mediation and the unsuccessful settlement efforts already undertaken, a compulsory reference would not serve a useful purpose in the present matter.

- 21.** The Respondent No. 2 has also raised objections regarding compliance with Form MDC-2 and payment of the prescribed fee under Rule 6 of the Companies (Mediation and Conciliation) Rules, 2016. In view of the conclusion reached on the request for reference, it is unnecessary to return a separate finding on this procedural objection.
- 22.** The contention that the application is intended to delay the main petition has also been noted. However, no finding on the Applicants' bona fides is necessary for deciding the present application, and the allegations of oppression and mismanagement in the main Company Petition remain to be adjudicated independently on their merits.
- 23.** In view of the foregoing discussion, and having regard to the Respondents' express unwillingness to participate in mediation and the failure of the earlier settlement

proposals, we are not persuaded to refer the disputes to mediation in the circumstances of this case.

- 24.** Accordingly, **Company Application No. 33(AHM)/2026** is **dismissed**. There shall be no order as to costs.
- 25.** All observations made herein are confined to the present application and shall not prejudice the parties' respective contentions in the main Company Petition.
- 26.** The Registry is directed to place a copy of this order in the record of Company Petition No. 72(AHM)/2025. The main Company Petition shall proceed in accordance with law.

-SD-
SANJEEV SHARMA
MEMBER (TECHNICAL)
Alpesh (PS)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)