



2026:DHC:8798



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% Order reserved on: **30.09.2026**
Order delivered on: **06.10.2026**
CNR No. DLHC010338582026
+ **CS(COMM) 805/2026**
SHAKEEL QURESHI & ORS.Plaintiffs

versus

RASHID QURESHI & ORS.Defendants

Advocates who appeared in this case:

For the Plaintiffs: Mr. Parag P. Tripathi and Mr. Ashish Mohan,
Senior Advocates with Mr. Karan Grover and
Ms. Udit Singh, Advocates.

For the Defendants: Mr. Vivek Srivastava and Ms. Bhoomika
Singh, Advocates for D-1.
Mr. Ankit Jain, Senior Advocate alongwith Mr.
Manmeet Singh, Mr. Anugrah Robin Frey, Ms.
Palak Nagar, Ms. Rishita Khandelwal and Ms.
Aparna Tyagi, Advocates for D-2.
Ms. Aishwarya Nabh, Advocate for D-3.

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

TUSHAR RAO GEDELA, J.

**I.A. 20108/2026 (Under Order XXXIX Rules 1&2 r/w Section 151, CPC
seeking *ex-parte ad-interim* injunction against the defendants)**

1. The present application has been filed by the plaintiff under Order
XXXIX Rules 1 & 2 read with Section 151 of the Code of Civil Procedure

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(hereinafter referred to as “CPC”), seeking *ex-parte ad-interim* injunction against the defendants.

FACTS GERMANE TO THE ISSUE:-

2. It is stated that M/s.Rehber Food Industries Private Limited (hereinafter referred to as “RFPL”) is a closely held company where Rehber Group and Non-Rehber Group each hold 50% shareholding. It is also stated that the plaintiffs are members of Rehber Group holding 25% collectively and are signatories to the Memorandum of Understanding (hereinafter referred to as “MoU”) dated 12.12.2022. It is further stated that the defendant no.3 is also a member of Rehber Group holding 10%, defendant no.1 is presently holding 1,45,833 equity shares equivalent to 5%, and defendant no.2 is a member of Non-Rehber Group.

3. It is claimed that under the MoU dated 12.12.2022, no change in shareholding was to take place without prior unanimous written consent of all Rehber Group members, and if any member desires to transfer his shares, the same shall first be offered to the members of Rehber Group exclusively, and only if no member is willing to purchase, could the shares be transferred to any other person with “*unanimous written consent*”.

4. It is stated that in January, 2026, defendant no.3 proposed to transfer 5% shareholding to defendant no.1 on the express representation that defendant no.1 would remain aligned with the Rehber Group and be bound by the MoU. Acting upon such representation, it is claimed that the plaintiffs granted conditional consent on 20.01.2026, reserving the right to withdraw the same if a breach is committed. This assurance is claimed to have been reiterated by defendant no.3 on 21.01.2026 and recorded by this Court in its order dated 19.03.2026 in CS(OS) No. 492/2025.

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5. It is further claimed that in breach of the said MoU and conditional consent, defendant no.1 on 24.06.2026 invited bids for the entire 1,45,833 shares from all shareholders, including Non-Rehber Group without first offering to Rehber Group, and despite objections from the company and the financing bank, and despite conditional offer by plaintiffs to purchase as per MoU on 25.06.2026, defendant no.1 proceeded with the bidding process, and on 26.06.2026 declared defendant no.2 as successful bidder for Rs.3,14,99,928/- at Rs.216/- per share.

6. It is also stated that the impugned transfer is not isolated but forms part of a continuing pattern whereby shareholding of Rehber Group is sought to be acquired by Non-Rehber Group in violation of the MoU, as is also subject matter of challenge in CS(OS) 492/2025 captioned ***Mohammed Irfan & Ors. vs. Mohammed Ziauddin Maniyar & Anr.*** before this Court (hereinafter referred to as “*suit no. 1*”), and CS(OS)(COMM) 500/2026 captioned ***Shakeel Qureshi & Ors. vs. Mohd. Mursaleen Qureshi & Ors.*** before this Court (hereinafter referred to as “*suit no.2*”), and defendant no.2, being fully aware of the MoU and pending proceedings, cannot claim to be a *bona fide* purchaser without notice.

7. It is claimed that the conditional consent dated 20.01.2026 stands vitiated on account of false representation and breach under Section 18 of the Indian Contract Act, 1872, rendering the transfer from defendant no.3 to defendant no.1 voidable and *non-est*, and consequently the subsequent transfer from defendant no.1 to defendant no.2 is also liable to be declared void.

OBJECTIONS, IN BRIEF:-

8. The defendants contended that the central document, which is seminal and core to the issue on territoriality would be the MoU dated 12.12.2022.

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This is for the reason that, as per the contentions of the defendants, the prayers in the suit are completely predicated on the terms and conditions contained in the said MoU. It was contended that if the suit is predicated on the MoU, all the clauses including the exclusionary clause has to be read harmoniously and in conjunction with the intent of the parties to the said MoU without any repugnancy. Read so, according to the defendants, clause 10 of the MoU would confer territorial jurisdiction exclusively on the Courts at Bareilly, Uttar Pradesh, and the territorial jurisdiction of this Court would be automatically excluded.

CONTENTIONS OF THE PLAINTIFFS:-

9. Mr. Parag Tripathi as well as Mr. Ashish Mohan, learned senior counsel appearing for the plaintiffs had drawn attention of this Court to the MoU as also all the documents filed in support of the averments in the plaint to contend that the transaction of transfer of shares from defendant no.1 to defendant no.2 is a separate transaction between two Non-Rehbar Group members independent of the terms of the MoU which is being challenged in the suit. They had also contended that defendant no.1 is located in Delhi and therefore, the suit has been instituted in the Court of Competent Jurisdiction i.e., Delhi as part of cause of action has arisen within the local limits of territorial jurisdiction of this Court as per Section 20, CPC.

10. Mr. Tripathi, learned senior counsel had also contended that apart from the above what would be more important would be the principle of approbate and reprobate relying on the ratio laid down in *Verschures Creameries Ltd. vs. Hull and Netherlands Steamship Co. Ltd.*, reported in [1921] 2 KB 608, and *Union of India vs. N. Murugesan*, reported in (2022) 2 SCC 25 to submit that a party cannot be allowed to accept and reject the same thing and that the principle behind the doctrine of election is inbuilt in the concept of approbate

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and reprobate. He had contended that defendant no.2 and other defendants cannot be permitted to take advantage of the MoU in the suit instituted by them and obtain a favourable order therein, while simultaneously contending that this Court lacks territorial jurisdiction based on the exclusionary clause contained in the MoU.

11. Stating so, Mr. Tripathi, learned senior counsel had taken great pains to take this Court through suit no.1 and suit no.2, and orders passed therein. He had submitted that the defendant no.2 was well aware of suit no.1 as the same was filed by two brothers of defendant no.2 alongwith the son of defendant no.2 seeking specific performance of an agreement based on a written confirmation from Mr. Maniyar which is predicated on the very same MoU. He had further submitted that the suit no.2 was filed by the plaintiff nos.1, 2 and 3 and defendant no.3 in the present suit against Mohd. Mursaleen Qureshi, Mohd. Imran (defendant no.2 in present suit) and Mohd. Rehan (son of defendant no.2 in present suit) seeking declaration that transfer of 2,79,166 equity shares of the company by Mr. Mursaleen Qureshi in favour of defendant no.2 is illegal and *non-est* being in violation of the MoU.

12. He contended that while both the suits were instituted and pending adjudication in this Court, none of the defendants had taken objection of lack of territorial jurisdiction. Rather, their participation in the previous suits, as also obtaining a decree in the first suit, would bind the defendants, and they cannot be permitted to “approbate and reprobate”. Learned senior counsel emphasised that the principle has a laudatory doctrine behind it, which is to ensure parties take a firm and consistent stand in different litigations and are not permitted to change their stand as per their convenience. He would urge that, in law, the principle of consistency has to be adhered to, so that, the



purity of procedure is maintained and parties are proscribed from taking contradictory stands in respect of a particular document.

13. It is in the aforesaid context, learned senior counsel points out that the defendants cannot be permitted of approbate or reprobate or contend that while suit nos.1 and 2 were properly instituted at Delhi though based on the MoU, the present suit is filed in a Court of incompetent jurisdiction based on the exclusionary clause of the very same MoU. According to learned senior counsel, this is impermissible.

14. Learned senior counsel had also emphatically contended that the objection of lack of territorial jurisdiction is not based on an inherent lack, rather based on a contractual covenant. He would urge that when it comes to a contractual covenant, the parties can, by conduct or otherwise, choose to confer jurisdiction on Courts other than the one contractually conferred, subject only to some cause of action having arisen in that other Court. According to him, the parties by their conduct can waive the objection to jurisdiction. Learned senior counsel emphasised that this would not tantamount to inherent lack of territorial jurisdiction and such objection could be waived. He would contend that, in the present case, this Court even otherwise would have the territorial jurisdiction for the reason that the defendant no.1 is located in Delhi. He stoutly urged that, in any case, this Court only has to examine as to whether a part of cause of action, as contemplated in Section 20(c) of the CPC has at all arisen which would undoubtedly confer territorial jurisdiction for this Court to adjudicate the present suit.

15. Another instance of contradictory stands of the defendants sought to be demonstrated by Mr. Tripathi, learned senior counsel is by drawing attention of this Court to para 31 of the reply of defendant no.2 to the present



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application, whereby the very existence of the MoU has been questioned. Predicated thereon, learned senior counsel would emphatically urge that a party which challenges the very existence or validity of the MoU cannot be permitted to rely on the exclusionary clause of the MoU to non-suit the plaintiff as per its convenience. Further, he drew attention to para 24 of the said reply to indicate that the defendants have taken a stand that the said document is an agreement *inter se* the Rehber Group and that the defendant nos.1 and 2 are not signatories to the MoU. According to learned senior counsel, this is a mutually destructive plea. Thus, in such circumstances, the defendants cannot be permitted to raise the objection of lack of territorial jurisdiction of this Court, particularly, when in the Suit no.1 filed by the defendants, this very Court had passed a decree in their favour.

16. In any case, learned senior counsel would contend that lack of territorial jurisdiction based on a contract and lack of pecuniary jurisdiction do not constitute “*inherent lack of jurisdiction*”, and thus can be waived by conduct or agreement between the parties.

17. Mr. Ashish Mohan, learned senior counsel for the plaintiff, referred to Clauses 9 and 10 of the MoU, particularly Clause 9(f) read with Clause 10 to submit that these clauses pertain to arbitration and alternate dispute resolution between the members who are signatories to the MoU and not third parties. His contention was that if the arbitration clause does not apply to third parties, axiomatically, provisions of Clause 10 of the MoU would also not apply to the third parties. Thus, according to him, the reliance on Clause 10 of the MoU to exclude the territorial jurisdiction of this Court is clearly misplaced.

18. Learned counsel for the plaintiffs relied on the following paras of the respective judgements for the proposition that a party cannot approbate and reprobate:-

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a. ***Verschures Creameries Ltd (supra):***

“SCRUTTON L.J. I am of the same opinion. Certain goods were delivered to a wrong consignee. The owners of the goods might have sued for conversion. They did not do this. They "assumpsit bring and, godlike, waive the tort." (1) They did not sue for the value of the goods; they sued for the contract price alleging a contract to sell and a right delivery under it, and they recovered judgment on that basis. Now they propose to turn round and sue their agents on the basis of a misdelivery; and Mr. Schiller argues that they can do this. It is not easy to see why this act of the owners should enure to the benefit of the agents, who were no parties to the action for goods sold and delivered, and who have in no way altered their position in consequence of any election involved in bringing that action, but the principle is well established. A plaintiff is not permitted to "approbate and reprobate." The phrase is apparently borrowed from the Scotch law, where it is used to express the principle embodied in our doctrine of election-namely, that no party can accept and reject the same instrument: Ker v. Wauchope (1); Douglas-Menzies v. Umphelby. (2) The doctrine of election is not however confined to instruments. A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage. That is to approbate and reprobate the transaction.”

b. ***N. Murugesan (supra):***

“26. These phrases are borrowed from the Scots law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party. We have already dealt with the provisions of the Contract Act concerning the conduct of a party, and his presumption of knowledge while confirming an offer through his acceptance unconditionally.”



CONTENTIONS OF DEFENDANT NO.2:-

19. Contrary to the aforesaid arguments, Mr. Ankit Jain, learned senior counsel appearing for the defendant no.2, first invited attention to the prayer clause of the suit to submit that all the reliefs sought therein are completely predicated solely on the MoU, and thus, it is the plaintiff which is relying completely on the terms and conditions of the MoU, which itself prescribes an exclusionary clause in Clause 10 of the MoU.

20. Handing over a written note regarding the controversy raised in respect of the two aforesaid suits, he would vehemently contend that in the suit no.1, defendant no.2 was not a plaintiff, and the said suit was not at all predicated or based on the MoU in which case the contention of the plaintiff that the defendant had relied on the MoU in their own suit is now approbating or reprobating, is false. That apart, he had also contended that it is also a false assertion that in the second suit, where some of the present defendants were also defendants there, had relied on the MoU. He also stated that it has been falsely averred and contended that no objection as regards lack of territorial jurisdiction in the context of the MoU was ever raised by the defendants.

21. In the above context, learned senior counsel handed over a copy of the written statement filed by the defendants in suit no.2 which was instituted by the present plaintiffs. Referring to paras (A) and (C) of the preliminary objections in the written statement filed in suit no.2, learned senior counsel would forcefully contend that contrary to the false statement of the plaintiff, objection as regards lack of territorial jurisdiction was taken and in the alternative required the Court to refer the dispute to arbitration in terms of Clause 9 of the MoU. Learned counsel stoutly urged that the defendant, as is



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trite law, has the unfettered right to take inconsistent pleas in his defence. Thus, according to learned senior counsel, the defendants have never approbated or reprobated *qua* the MoU as falsely and incorrectly contended by the plaintiffs.

22. The said written statement filed in suit no.2 is taken on record alongwith the affidavits and statement of truth, affidavit of admission and denial.

23. Mr. Jain, learned senior counsel would also submit that insofar as suit no.2 is concerned, it was the plaintiffs who had placed reliance on the MoU and placed the same on record and not the defendants. In fact, according to him, the defendants as referred above, had resisted the territorial jurisdiction of this Court in that suit too. Though the said suit is stated to be pending, however, according to learned senior counsel there is no bar or prohibition for this Court to examine the same issue and come to a definitive conclusion.

24. Learned senior counsel had also contended that the share transfer has already been confirmed in favour of the defendant no.1 by RFPL, in which the only two directors are the plaintiffs themselves, yet, have confirmed such transfer. In this context, learned counsel raised the proscription prescribed in Sections 241 and 242 of the Companies Act, 2013, to state that this Court would, even otherwise not entertain any suit or proceeding in respect of the subject matter which falls purely within the domain of the National Company Law Tribunal (NCLT).

25. Though, Mr. Jain, learned senior counsel has also referred to certain aspects on facts, however, since this Court is primarily examining as to whether the exclusionary clause in the MoU would at all be applicable to the facts of the present case to exclude jurisdiction of this Court, for the time being, this Court is not considering any of such submissions.

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CONTENTIONS OF DEFENDANT NO.1:-

26. Appearing for defendant no.1, Mr. Vivek Srivastava, learned counsel contended that the defendant no.1 is not party to any of the aforesaid two suits and as such the contention of the plaintiff based on the principle of approbate and reprobate is clearly not applicable to the said defendant. While referring to para 5 of the written statement, learned counsel contended that defendant no.1 has clearly taken the objection of lack of territorial jurisdiction of this Court purely based on the exclusionary clause contained in the MoU. Thus, according to him, irrespective of whether the other defendants have or have not raised this issue, the defendant no.1, whose act of transfer of share to defendant no.2 has been challenged in the suit of which *ad interim* injunction is prayed for in the present application, is clearly entitled not only to raise this objection, but also sustain it.

27. He also contended that defendant no.3 is undeniably the Managing Director of RFPL and the letter of confirmation of transfer of shares has been signed and executed by the defendant no.3 who is now in collusion with the plaintiffs.

28. He further contended that prayer clauses (e) and (f) are clearly directed against the defendant no.1 and a decree of mandatory injunction is sought manifestly predicated solely on the terms of MoU dated 12.12.2022. In such circumstances, he would contend that it does not lie in the mouth of the plaintiff to contend that the exclusionary clause under Clause 10 of the MoU has to be excluded or not taken into consideration while examining the issue of lack of territorial jurisdiction. He would contend that though defendant no.1 is located within the local limits of the territorial jurisdiction of this Court, however, the document/agreement of transfer of shares from defendant no.3 to defendant no.1, which is subject matter of challenge in the suit, was



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signed and executed in Bareilly, Uttar Pradesh, and the letter of confirmation of transfer of shares by the defendant no.3 was issued from Bareilly, Uttar Pradesh. In these circumstances, learned counsel would contend that the cause of action read with clause 10 of the MoU, having arisen at Bareilly, Uttar Pradesh, the exclusionary clause excluding the territorial jurisdiction of this Court has to be necessarily sustained and the suit returned to the plaintiff to be represented before the Court of competent jurisdiction.

29. Additionally, learned counsel for the defendants contended that in a case where it is found that the Court inherently lacks jurisdiction, the said objection needs to be adjudicated first before considering any other application. For this proposition, they relied on the judgement of the Supreme Court in *Asma Lateef and Another vs. Shabbir Ahmad and Others*, reported in **2024 SCC OnLine SC 42**, particularly the following para:-

“43. The legal and factual position of the present case having been noted above, we hold that a decision rendered by a court on the merits of a controversy in favour of the plaintiff without first adjudicating on its competence to decide such controversy would amount to a decision being rendered on an illegal and erroneous assumption of jurisdiction and, thus, be assailable as lacking in inherent jurisdiction and be treated as a nullity in the eye of law; as a logical corollary, the order dated 5th August, 1991 is held to be ab initio void and the decree drawn up based thereon is inexecutable.”

REJOINDER ON BEHALF OF PLAINTIFF:-

30. Mr. Tripathi, learned senior counsel, while refuting the aforesaid submissions stated that the arguments of the defendants only strengthen the contention that the issue requires evidence and cannot be decided at this stage. He would also contend that the institution of suit no.1 by the defendants amounts to electing Delhi as the competent Court of jurisdiction by the



defendants themselves, and therefore are precluded from taking a stand contrary to the one taken earlier.

31. So far as the contention regarding Sections 241 and 242 of the Companies Act, 2013, is concerned, he would contend that the accompanying suit is a commercial suit relatable to Section 2(1)(c)(xii) of the Commercial Courts Act, 2015, and as such this Court would have the necessary jurisdiction in that context too. He would pray that the said objection be overruled and an *ad interim* injunction be granted against the defendants in favour of the plaintiffs.

ANALYSIS AND CONCLUSION:-

32. A piquant situation has arisen in the present case, in that, the plaintiff has instituted the present suit claiming a cause of action having arisen in Delhi and by way of the present application seeks an *ad interim* injunction against the defendants from transferring 1,45,833 equity shares of defendant no.1 to defendant no.2, while in the reply filed to the present application and the written statement, the defendants have, amongst others, taken an objection with respect to want of territorial jurisdiction of this Court to entertain and adjudicate the accompanying suit on the grounds of an exclusionary clause in the MoU dated 12.12.2022 conferring jurisdiction on Courts at Bareilly, Uttar Pradesh.

33. It is in this context, as also in deference to the judgement in *Asma Lateef (supra)*, that this Court confines its examination of the rival contentions on the principle of lack of territorial jurisdiction based on an exclusionary clause, before adverting to or rendering any reasons for grant or refusal of *ad interim* injunction. In case, this Court agrees with the contention/objection of the defendants, perhaps, the requirement to examine



further contentions in regard to grant or non-grant of *ad interim* injunction may only be academic, hence may not be gone into.

34. Prior to examining the covenants of the MoU dated 12.12.2022, it may be significant to undertake a scrutiny and appreciation of the relief sought in the prayer clause of the plaint. The same is extracted hereunder:-

“a) Pass a decree declaring that the transfer of 1,45,833 equity shares by Defendant No. 3 in favour of Defendant No. 1 is illegal, void and non est for being in breach of the conditional consent granted by the Plaintiffs in terms of the Memorandum of Understanding (MoU) dated 12.12.2022 and;

b) Pass a decree declaring that any transfer, Share Purchase Agreement, agreement or arrangement entered into, or to be entered into, between Defendant No. 1 and Defendant No. 3 in respect of the said 1,45,833 equity shares, is illegal, void and liable to be set aside and;

c) Pass a decree declaring that the invitation of bid dated 24.06.2026, the bidding process conducted pursuant thereto, and the declaration of result dated 26.06.2026 declaring Defendant No. 2 as the successful bidder for 1,45,833 equity shares of M/s Rehber Food Industries Pvt. Ltd. held by Defendant No. 1, are illegal, void, non est and not binding upon the Plaintiffs, being in violation of the Memorandum of Understanding dated 12.12.2022 and of the representation/undertaking on the basis of which Defendant No. 1 acquired the said shares from Defendant No. 3 and;

d) Pass a decree declaring that any transfer, Share Purchase Agreement, agreement or arrangement entered into, or to be entered into, between Defendant No. 1 and Defendant No. 2 in respect of the said 1,45,833 equity shares, is illegal, void and liable to be set aside;

e) Pass an order of mandatory injunction directing Defendant No. 1 to first and exclusively offer the said 1,45,833 equity shares to the members of the Rehber Group, namely the Plaintiffs, strictly in terms of the MoU dated 12.12.2022, and restraining Defendant No. 1 from offering or transferring the said shares to Defendant No. 2 or to any other Non-Rehber Group member without obtaining the prior unanimous written consent of the Rehber Group members, as mandated under the MoU;

f) Pass an order of specific performance directing Defendant No. 1 to transfer the said 1,45,833 equity shares to Plaintiff No. 1, or to the Plaintiffs jointly, at a price not exceeding Rs. 216/- per share (being the price at which the shares were purportedly sold to Defendant No. 2);

Pass such other and further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”



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35. A perusal of the prayer clauses, particularly prayer clauses (a), (b), (c) and (e), undoubtedly brings to fore, not only the reliance upon, but are completely predicated on the recitals in the MoU. Clearly, the plaintiff's claims are in respect of an alleged breach by defendant no.3 of the conditional consent granted by the plaintiffs in terms of the MoU while transferring 1,45,833 equity shares of RFPL in favour of defendant no.1. The prayer clause (b) is interdependent upon the outcome of reliefs sought in prayer clause (a). Equally, prayer clause (c) seeks a declaration that the invitation of the bid dated 24.06.2026 and the bidding process conducted pursuant thereto, alongwith the declaration of the result dated 26.06.2026 declaring defendant no.2 as successful bidder for 1,45,833 equity shares of RFPL held by defendant no.1 as illegal, void, *non-est* and not binding on the plaintiffs, allegedly being in violation of the MoU dated 12.12.2022. Manifestly, this relief too basis itself completely on the terms and conditions of MoU which are alleged to have been breached. Prayer clause (d) is interdependent on the outcome of reliefs sought in prayer clause (c). Prayer clause (e) seeks an order of mandatory injunction to direct defendant no.1 to first and exclusively offer the said 1,45,833 equity shares to the members of the Rehbar Group namely plaintiffs, strictly in terms of MoU and simultaneously restraining defendant no.1 from offering or transferring the said shares to defendant no.2 or any other Non-Rehbar Group member without obtaining prior unanimous written consent of the Rehbar Group members, "as mandated under the MoU". Prayer clause (f) is interdependent upon the outcome of grant or refusal of relief sought in prayer clause (e).

36. In the opinion of this Court, the reliefs sought in the aforesaid prayers unequivocally point out to the clear dependency of the prayers on the covenants of the MoU. It appears that the case of the plaintiffs is wholly

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dependent upon the MoU which is the core and seminal document predicated whereon, the case in the suit has been built. It appears to this Court, *sans* MoU, the reliefs sought in the prayer clauses, may not be grantable by this Court or may lack the requisite factual foundation based whereon any such decree as sought can be passed. If the MoU is eschewed from consideration, it may not be possible for the plaintiffs, *prima facie*, to prove a breach. If no such breach can be proved, the consequential relief may not be grantable. In other words, but for the breach of the terms and conditions of the MoU, the factual narration of the plaintiffs claim may not have any foundation. Thus, in the humble and considered opinion of this Court, the MoU by itself is a significant document in the context of the relief sought and is intrinsically intertwined with the facts averred in the present suit. If that be so, but obviously, this Court needs to examine as to whether the territorial jurisdiction of this Court is excluded by operation of Clause 10 of the MoU.

37. Before this Court examines Clause 10 of the MoU, it would be imperative to consider the arguments of Mr. Tripathi, learned senior counsel on the doctrine of approbate and reprobate.

38. It must be recalled that the entire emphasis of Mr. Tripathi, predicated whereon the submissions of violation of the principle of approbate and reprobate was canvassed, was in the context of suit no.1 by the defendants and suit no.2 by the plaintiffs alongwith defendant no.3 instituted earlier in point of time before this Court. It has to be borne in mind that the first suit was filed by Mr. Mohd. Irfan (brother of defendant no.2), Mr. Mohd. Rizwan (brother of defendant no.2) and Mr. Mohd. Rehan (son of defendant no.2) on 28.07.2025, *inter alia*, seeking specific performance of an agreement based on a written confirmation received from Mr. Manihar for transfer of 2,79,166 shares in favour of the plaintiffs therein (relatives of defendant no.2 herein). It



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is relevant to note that the defendant no.2 herein was not a party to the first suit. In any case, it would be significant to note that the suit was not predicated on the MoU at all and only sought specific performance of a written confirmation received from Mr. Manihar in relation to the shares offered by him to all the shareholders of the company. This suit is stated to have been decreed *vide* order dated 23.02.2026 in terms of the settlement arrived at between the parties. Thus, the plaint in the suit no.1 was clearly not predicated on the MoU.

39. So far as the suit no.2 is concerned, it was instituted by the present plaintiffs alongwith the defendant no.3 herein against defendant no.2 herein and others seeking a declaration that the transfer of 2,79,166 equity shares of the RFPL by Mr. Mursaleen Qureshi in favour of defendant no.2 was illegal and *non-est* allegedly in violation of the MoU. It was submitted by the plaintiff that no objection as to the lack of territorial jurisdiction was raised by the defendants in that suit. This, clearly is not the case. The written statement filed by defendant no.2 in the suit no.2 handed over the Bench by Mr. Jain, learned senior counsel, indicates that in para (A) and para (C) of the preliminary objections, a clear and categorical objection as to the lack of territorial jurisdiction of this Court was taken. Thus, the plaintiff has made an incorrect factual assertion to that extent. It is stated that suit no.2 is pending consideration before this Court. However, the pendency of the said suit by itself, would not impede or prohibit/bar this Court from examining the question of lack of territorial jurisdiction.

40. From the aforesaid conspectus, *prima facie*, at this stage it appears that the submission based on the principle of approbate and reprobate may not apply to the facts of the present case. Since the defendant no.2 has clearly not relied upon MoU to base its claim, rather has contested the MoU as also the



territorial jurisdiction of this Court to adjudicate the said suit, the question of approbate and reprobate does not arise.

41. In continuation of the aforesaid, it is also significant to note that defendant no.1 was in any case not party to any of the aforesaid suits, and thus, manifestly the said principle in any case would not be applicable as against the defendant no.1. If one were to examine this issue of lack of territorial jurisdiction from the perspective of the defendant no.1, clearly the relief sought against the defendant no.1 are completely predicated on the MoU. It appears that as between the plaintiff and defendant no.1, the MoU may be a document which, if the alleged breach is proved or disproved, would result in grant or refusal of certain prayers in the suit. If that be so, and there is an alleged breach of Clause 3(B)(a)(iii) of the MoU, it would become necessary for the Court to examine the contents of MoU and contrast it with the breaches alleged to have arisen, necessarily entailing the Court to also consider Clause 10 of the MoU. In such a situation, it will be necessary and mandatory for the Court to consider as to whether this Court has the necessary territorial jurisdiction to entertain the present suit. In other words, Clause 10 of the MoU cannot be eschewed from consideration at this stage.

42. Having regard to the aforesaid analysis, it may be apposite to extract Clauses 9 and 10 of the MoU hereunder:-

“9. DISPUTE RESOLUTION

a)Any dispute arising between the parties interse shall be resolved by the group on is own and neither the Company nor any the other person or their rights and obligations shall be affected by such dispute.

b)It is agreed between the parties that any dispute within the group shall be resolved by the group on its own only and the decision in respect of that dispute shall be valid only when it is signed by the majority of members of that group. The decision taken by the majority of members of the group shall be binding on the group member(s).



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c) In the event there is any dispute or differences arising out of or in connection or controversy or claim arising out of or relating with this MoU, the parties shall endeavor to settle such disputes and differences by way of Negotiation.

d) In case of any dispute or differences arising out of or in connection or controversy or claim arising out of or relating with this MoU, the aggrieved party shall convey the grievance in writing to the other party for negotiation. In the event that negotiation fails, such dispute or differences arising out of or in connection or controversy or claim arising out of or relating with this MoU shall be referred to Arbitration in accordance with the Indian Arbitration and Conciliation Act, 1996.

e) The Arbitral Tribunal shall consist of three Arbitrators. One Arbitrator shall be appointed by each Party and one Arbitrator to be appointed by the other party. The two appointed Arbitrators shall appoint a third Arbitrator who shall be the Presiding Arbitrator.

f) That the seat and venue of Arbitration exclusively shall be subject to the jurisdiction of Bareilly Courts.

10. GOVERNING LAW AND JURISDICTION

The MoU shall be governed by and entrusted in accordance with the law of India only and subject to Bareilly jurisdiction."

43. Examination of Clause 9 of MoU demonstrates that the parties had provided a mechanism for dispute resolution by various methods including negotiation, failing which, by arbitration in terms of the Arbitration and Conciliation Act, 1996. Sub-clause (e) of Clause 9 provides for composition and constitution of the Arbitral Tribunal. Significantly, sub-clause (f) of Clause 9 of the MoU provides for the seat and venue of arbitration exclusively subject to the jurisdiction of Bareilly Courts. Thus, it is clear that so far as disputes within the members/signatories to the MoU is concerned the seat and venue of such arbitration is conferred at Bareilly.

44. However, apart from the aforesaid dispute resolution mechanism for resolution of disputes *inter se* the signatories of the MoU, any dispute in respect of the MoU is to be necessarily governed by and in accordance with



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the laws of India only and subject to “Bareilly jurisdiction” as per clause 10. Undeniably, defendant no.1 is not a signatory to MoU nor is a member of the Rehbar group. Equally, defendant no.2, too, is not a member of the Rehbar group but a member of “non member group of shareholders” of RFPL. Thus, even though defendant no.2 is a shareholder of RFPL, yet, neither a signatory nor a member of the MoU which comprises only and only the Rehbar Group.

45. In the aforesaid context, the submissions of Mr. Mohan, learned senior counsel, do not appeal to this Court.

46. *Ab supra*, and as a *sequitur*, in the considered opinion of this Court, Clause 10 of the MoU would exclude the territorial jurisdiction of this Court. Notwithstanding this aspect, the fact that defendant no.1 is located within the local limits of the territorial jurisdiction of this Court is not disputed, which by itself falls within the requirement of Section 20(a) of CPC. To that extent, it cannot be agitated by the defendant that this Court does not have the necessary territorial jurisdiction over the *lis*. However, it is trite that parties by consent can confer jurisdiction at a place, where cause of action wholly or in part has arisen to the exclusion of other places which may otherwise have the requisite jurisdiction to adjudicate the suit.

47. At this stage, it is necessary to understand as to why, even after this Court observes that it would have the jurisdiction based on the location of defendant no1, still proceeding to exclude its jurisdiction. To understand and unravel this palpable dichotomy, which is truly a mirage, this Court needs to examine the transactions in question.

48. In the suit, the plaintiff has contested and challenged two separate transactions. The first transfer of equity shares of 1,45,833, from defendant no.3 (Rehber Group Member) to defendant no.1 (Non-Rehber Group) *vide* the Share Purchase Agreement dated 29.01.2026 executed in Bareilly, Uttar

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Pradesh, may be referred as “*Transaction A*”. This transaction is stated to have resulted in confirmation of share transfer in the name of defendant no.1 *vide* the Confirmation Letter dated 04.02.2026 issued by the RFPL and signed by defendant no.3, its Managing Director. The allegation in the accompanying suit in this respect is that the same has been done in breach of the MoU.

49. The second transaction is the transfer of shares numbering 1,45,833 equity shares, of RFPL, from defendant no.1 to defendant no.2 which may be referred to as “*Transaction B*”. This transaction too, is challenged on the alleged breach of the terms of the MoU. The parties and the nature of alleged breaches may not be relevant for the adjudication of the territoriality issue.

50. It is observed by this Court from the records that the completion of Transaction A has resulted in the initiation and subsequent execution of Transaction B between defendant no.1 and defendant no.2. Undeniably, the plaintiff has challenged both the transactions for alleged breach of the terms and conditions of the MoU. What is significant to be noted and appreciated is the fact that the MoU is directly relatable to Transaction A for the reason that it is between a Rehber Group member and Non-Rehber Group member, the former being signatory to the MoU as also alleged to be bound by Clause 3(B)(a)(iii) regarding obtaining consent of Rehber Group members before transacting any share transfer with entities other than Rehber Group. It is only consequent to Transaction A and its successful completion, that Transaction B could have been entered into by defendant no.1 (Non-Rehber Group) with defendant no.2 (Non-Rehber Group). The latter is also a shareholder of RFPL.

51. Thus, if the plaintiff has to succeed in its claim regarding Transaction B, it has to necessarily succeed in its challenge to Transaction A, which is, in the opinion of this Court, at this *prima facie* stage, discernably interlinked to the MoU. The allegations in the plaint in respect of the said transaction are



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inextricably linked to failure of defendant no.3 to abide by the MoU as also the alleged failure of defendant no.1 to honour some alleged commitments relatable to the same MoU. Thus, it is through the acts of defendant no.3 in relation to the MoU and those of defendant no.1, that the plaintiff has sought its reliefs in the prayer clause. It may also be noted that the plaintiff has arrayed the defendant no.3 as party defendant and not a plaintiff, though it could have chosen to do so since the defendant no.3 does not seem to have any interest adverse to that of the plaintiff. Thus, as between defendant no.1 and plaintiffs, MoU would be the governing document. If that be so, there is no escape from applying clause 10 of MoU to the present suit.

52. Plainly, clause 10 of the MoU is an exclusionary clause which excludes the jurisdiction of all courts other than those at Bareilly, Uttar Pradesh. It is trite that between parties, there can be a valid agreement conferring jurisdiction to one place to the exclusion of others, caveat being that the place conferred jurisdiction by contract, would otherwise have a cause of action arising within the said jurisdiction. It is not disputed that the MoU was executed at Bareilly, the defendant no.3 is located at Bareilly, Uttar Pradesh, the Transaction A was signed and executed at Bareilly, Uttar Pradesh, and the MoU confers exclusive jurisdiction to Courts at Bareilly.

53. *Ergo*, in such circumstances, this Court has no choice other than to return the plaint to the plaintiff to be represented in a Court of competent territorial jurisdiction.

54. Ordered accordingly.

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55. The plaint is returned under Order VII Rule 10 CPC, alongwith all pending applications. Any interim arrangement or order passed earlier, is vacated.

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56. It is clarified that this Court has not expressed any opinion on the merits of the rival claims, including allegations of fraud, collusion, breach or liability, or on the validity of the MoU as raised by either side. All such questions are left open to be considered, if and when they arise, in accordance with law.

57. The present application, along with the suit, is disposed of in the aforesaid terms.

TUSHAR RAO GEDELA
(JUDGE)

OCTOBER 06, 2026/Sumit

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