

NATIONAL COMPANY LAW APPELLATE TRIBUNAL**PRINCIPAL BENCH****NEW DELHI****COMPANY APPEAL (AT) NO.261-263/2025**

(Arising out of judgement and order dated 30.09.2025 passed by NCLT, Allahabad in Company Petition No. 29/ND/2009)

In the matter of:

Suresh Kumar Agarwal & Ors

Appellant

Vs

J.B. Daruka Papers Ltd & Ors

Respondent

For Appellant: Mr Arun Kathpalia, Sr Advocate, Mr. Rajnish Sinha, Ms Aadiya Siunha, Mr Siddarth Shankar, Mr Ashutosh Sharma, Mr Aditya, Advocates.

For Respondent: Mr. Yogesh Jagia, Ms Nitya Ahuja, Ms Diksha Varma, Mr Abhinav Anand, Advocates.

JUDGEMENT**JUSTICE YOGESH KHANNA, MEMBER (JUDICIAL)**

This appeal has been filed against an impugned order dated 30.09.2025 passed by the Ld. NCLT, Allahabad alleging the Ld. NCLT has restored Respondents No.2, 4 and 5 as directors inspite of ignoring they had handed over their resignation letters to Ld. Mediator, Shri Murari Lal Mathahelia, their real paternal uncle/Phupha, in February, 2008 itself.

2. It is the case of the appellants they have been managing Respondent No.1 company since 2008 *i.e.* for the last 17 years but by way of the impugned order, the management has been displaced. It is argued Respondent No.1 is a family company and earlier its management was with three groups *viz* the branches of

three brothers i.e., the Vishwanath Group-the appellants; Jagdish Group and Mr. Shambhoo Nath Group, the respondents. The family was doing various businesses and one of it was run by a company namely M/s J.B. Daruka Papers Ltd i.e. Respondent No.1.

3. It was argued there were certain disputes between the parties in 2008 but with the help of Mr. Murari Lal Mathahelia, their real paternal uncle/Phupha, MOU was entered into, though orally and it was agreed there shall be a bid of the company/Respondent No.1, by three groups above and it shall go to the highest bidder. The terms of the bid were reduced in writing on 04.02.2008 and were signed by the parties. Such bidding terms were as under: -

1. Reserve Price of Bid has been decided at Rs. 4.00 Crore,
2. Minimum Bid difference is 1 0.00 Laks between Two Bids, of each Bidder,
3. Terms of payment after Bid finalization are as under: -
 - a) Loan repayment of Loans of close friends & Relatives - shall be within 15 days.
 - b) Payment of Share Capital and other payment shall be-
 1. 25% of payment within next 15 days,
 2. 25% of Balance within next 15 days,
 3. 50% of Balance within next 15 days, but upto 31.03.08.
 - c) During this period interest @ 12% shall be paid on the payment duration.
 - d) Bid should be for land, Plant a machinery and Building (all),
4. In case of non-payment after 1.4.08, penal interest @ 36% Per Year shall be charged for first 15 days i.e. upto 15.4.08, and thereafter Penal interest @ 50% Per Year shall be charged on outstanding Payable balance,
5. Personal Guarantee of Directors who are outgoing shall be withdrawn from PNB (Term) Loan before use of Term Loan amount.
6. Interest on loan amount shall be paid upto 15.4.08 for the year ending 31.3.08.

4. It is the alleged the bidding took place on 04.02.2008 and the appellants became the highest bidder and in consequence thereof resignation letters were submitted by the Respondents to their uncle namely Murari Lal, which letters were then deposited with the ROC. Though as per the bid document, as alleged amount of Rs.20.80 crores was payable by the appellants, though is disputed to be Rs.36 crores by the Respondents.

5. It was also argued out of the bid amount, an amount of Rs.2.20,40,000/- was paid by cheque to the respondents and the *remaining amount was paid in cash*. Reliance thereto was made to an affidavit dated 12.07.2013 of Mr. C.L. Kanoria, the brother of their Phupha, -Sh Murari Lal stating *inter alia* the balance amounts were paid in cash to the Respondent's groups.

6. The appellants allege in April, 2009 Respondents came rushing to the Court complaining of various acts *viz* they never received cash; their resignation letters as well as settlements were all forged and right issue which was issued in the meanwhile, they were not given any notice thereof.

7. Qua the denial of signatures by the Respondents upon the MOU as also upon resignation letters, an application CA 2/12 was moved by the appellant for sending the documents for forensic examination, but it was also dismissed alongwith the impugned order.

8. It is thus alleged by the appellants there is no dispute the Respondents have agreed to exit from the company; the bidding took place; the appellants were the highest bidders and an "x" amount was paid and thus the rights of

parties stood determined and now the disputes left are *qua* the quantum of money to be paid to the two different groups *viz* Shamboo Nath and Jagdish Group. In support of his argument the learned counsel for the appellants referred to paras 24 and 27 of the Company Petition filed by the Respondents wherein they admitted they agree to exit; the appellants were the highest bidders and the MOU was reduced in writing.

9. It is also alleged by the appellants in lieu of the bid settlement document, the appellants had released the respondents from their personal guarantees and there is no document filed by respondents wherein they can allege an amount of Rs.36 crore was agreed to be paid by the appellants herein except their pleading in para 24 of their Company Petition. It is argued the dispute now is only *qua* determination of quantum of money to be paid to them and is to be decided by Civil Court as, admittedly, a company court has no jurisdiction to pass a decree of specific performance *per* Pradeep R Kamdar & Others Vs Rajiv Sanghvi & Others *MANU/MH/3520/2022*.

10. It was argued where the Respondents admit of issuing of resignation letters and of receiving part payments and have agreed to exit at a price, and did not file any complaint from 05.02.2008 till April, 2009 *qua* non-payment of their dues and also considering the affidavit of Mr. CL Kanoria, the younger brother of their uncle/Phupha which duly notes an amount of Rs. 8 crores was paid to the Respondents, there was no cause left to approach the Ld. NCLT. Thus it was

argued if the respondents allege some amount remained unpaid, they should file a suit for specific performance before the Ld. Civil Court.

11. The learned counsel for Respondents No.2 to 7 have another story to tell. They insist none of the clauses of settlement dated 04.02.2008 were fulfilled, though personal guarantees of the directors were got replaced by the appellants without their knowledge. It was argued instead of making payments under the terms of the bid the appellants rather ousted them on the basis of forged letters of resignation and pointed out to a legal notice dated 30.12.2010 sent on behalf of the appellants to the Respondent herein, by their counsel Mr. Ram Kishan Srivastava, Advocate which rather noted the appellants had only made payments of Rs.2,20,40,000/- between 31.03.2008 to 22.07.2008 but the respondents have not transferred their shares and the respondents were called upon to transfer their shares and/or *to repay the amount*. Now if payment of Rs.6 crores was made in cash, as alleged by the learned senior counsel for the appellants in the year 2008 itself, then it ought to have been stated in their legal notice dated 30.12.2010, hence it prima facie show *except* an amount of Rs.2,20,40,000/- nothing more was paid and the terms of the bid were violated by the appellants themselves. The legal notice dated 30.12.2010 further clarified the shares were never transferred and Respondents are still members of Respondent No.1 company and thus rights issue without informing them was rightly cancelled by the Ld. NCLT as held to be an act of oppression. Further a letter dated 07.02.2009, written by the State Bank of India to Respondent was also relied upon by the respondents which noted a family settlement had taken place on

04.02.2008 and family members have entered into an agreement on 05.06.2008, and it was accompanied by a memorandum of oral family settlement, allegedly executed on a stamp paper of Rs.100/-, purportedly signed by all the family members, including the Respondents herein. However, a letter dated 17.07.2009 of the Treasury Officer filed on record rather confirmed the stamp paper of such memorandum dated 05.06.2008, was in fact sold on 10.12.2008, thus it was argued it could never be the signatures of Respondents herein and it shows manipulation of record.

12. Further reference was made to letters dated 05.04.2010 written by appellant No.1 Mr. Suresh Kumar and Respondent No.12 Mr. Umesh wherein they admitted that signatures of Respondents were forged on the resignation letters. It read as under:-

“Respected Rajju Bhaiya

Sadar Pranam.

There have been many mistakes on our part. We forged signatures of Santosh Bhaiya, Anand and you on the resignation from the directorship of the paper mill. The signatures of directors and guarantors on SBI's C/C limit, renewal and enhancement of Santosh Bhaiya, Purushotam Bhaiya. Shibbu Bhaiya, Anand and you were forged by me. Family settlement deed is completely fake and bogus. During partition, if unknowingly there has been any mistake from my younger brother Sanjay and Ramesh. apologies on their behalf too. Since I am not coming in front of you in person therefore, I am extending my apologies through this letter.

---sd---

*[Suresh Kumar]
5.4.2010*

13. Another letter of R12 Mr. Umesh is as under:-

*“Respected Raj Kumar Bhai Sahab
There have been many mistakes from both of us brothers during partition. Both of us extend our apologies for the insult and humiliation you had to undergo though knowingly or knowingly because of us. The settlement deed is bogus we again sincerely apologies hoping that you being elder to us will forgive us thinking us to be your younger brothers. We assure you that in future there will be no such mistakes repeated from our side.*

*Sd
UMESH AGARWAL
5.4.2010*

Thus it shows the conduct of the appellants herein.

14, Reference was also made to an order dated 30.04.2009 which noted no decision shall be taken in the Board Meetings which would affect the interest of the respondents herein and the appellants shall produce the books of accounts as and when called by Company Law Board. The Ld. Company Law Board on 03.02.2010 then called for the books of accounts but in response an affidavit dated 03.05.2011 was filed by the appellant as under:-

“Affidavit

1.xxx

2.xxx

3) I say that by order dated 3.2.2010 this Hon'ble Board directed the Respondent to produced documents mentioned in para 7 of C.A.No.589/09 more specifically as under:

- a) Resignation letters of Petitioner Nos.1, 3 & 4 all dated 15.02.2008 resigning from board of directors.*
- b) Memorandum of family settlement deed dated 5th of June 2008.*
- c) Minutes of all the board and general meetings.*
- d) Attendance registers of members and directors.*

e) *Receipts executed by Petitioners for receipt of money as claimed by respondents in their counter affidavit.*

f) *Books of accounts for financial year 2007-08 and 2008-09.*

4) *I say that the memorandum of family settlement deed, resignation letter and receipts executed by petitioner are not in the possession of the respondents and is in possession of the mediator Mr. Madhusudan Mathanelia and Mr. Murarilal Mathalia.*

5) *I further say that the attendance register of members and directors is also not in possession of the Respondents and is in possession of the Petitioners.*

15. Nothing was alleged in the affidavit *qua* the cash amount paid and even the documents, though directed by the Company Law Board, were ever produced.

16. Thus it was argued except the bid document no other document was ever executed and the terms of said document were never complied with. It was argued Respondents No.2-7 had approx. 41% shares in Respondent No.1 company and they never executed any transfer deed. It was alleged on 01.02.2008 the Board was enlarged by the appellants without notice to Respondents No.2-7 and two directors namely Mr. Ramesh and Mr. Niranjana were added. On 01.02.2008, there was no discussion upon any alleged settlement and only discussion was of bid dated 04.02.2008 but its terms and conditions were never complied with by the appellants herein. The learned counsel for the Respondent also referred to two sets of resignation papers submitted by the appellant, i.e. one before the ROC and second filed alongwith the Criminal Revision Petition No.2580/2010 before Hon'ble High Court of

Allahabad at Lucknow Bench and both resignation letters dated 15.02.2008 do reveal contents and place of signatures were different.

17. It is submitted by the learned counsel for Respondent despite various requests by the Respondents, the originals of resignation letters were never produced by the appellant on the plea those were lying with the Ld. Mediator. Rather Respondents No.2-7 filed an application for production of such documents and despite the order dated 03.02.2010 these were never produced. Rather the appellants filed an affidavit dated 30.05.2011 wherein the Appellant No.1 stated the Memorandum of Family Settlement deed dated 05.02.2008, resignation letters and receipts of payments were all in possession of Mediator whereas in para 9 of their Cr. Revision Petition they had alleged the resignation letters were given in the hands of appellants and their family members directly. It was alleged on 01.02.2008, the Board was expanded without any notice to the Respondents and the terms and conditions of the bid dated 04.02.2008 were never complied with by the appellants and they ousted the Respondents *vide* Board Resolution dated 09.02.2008 without notice and *it was an act of oppression.*

18. Further the second issue raised by the learned counsel for the Respondent was *qua* the increase of authorized share capital from Rs.4 crores to Rs.7 crores. The reference was made to Form No.23 dated 31.03.2008 filed under Section 192 of the Companies Act, 1956 stating interalia it was an intimation for increase in authorized capital of the company and then they passed a special resolution.

However, the extract of EOGM dated 31.03.2008 would show it was an ordinary resolution passed to increase the share capital from Rs.4 crores to Rs.7 crores and also to amend clause V of the Memorandum of Association and Article 2 of the Articles of Association. The explanatory statement for such Board Meeting is annexed at Page 754 of the Paper Book wherein the need for increase in share capital was alleged to be for augmenting its present activities, hence the need to amend Memorandum and Articles of Association. However, in their appeal in para XVI at Page 42 the reason for increase in authorized capital was for installing a chemical recovery plant as per the requirement of Pollution Control Board. Thus everywhere the appellants were misleading the shareholders as in para 12 of the Criminal Revision Petition No.2580/2010 filed before the Allahabad High Court, the appellant alleged the authorized capital was increased for uplifting the production skills of the company. No notice for increase in the authorized share capital was ever given to Respondents No.2 to 7 upon the allegation that they had resigned as directors. This was nothing but oppression of the Respondents. Reference was also made to the schedule of unsecured loan in the financial statement of the company wherein the only infusion of the capital was Rs.23 lakh hence there was no need to bring rights issue, without notice to the Respondents.

19. Reference was also made to an order dated 28.04.2009 of the Company Law Board wherein it was directed no decision should be taken in the Board Meeting which would affect the interest of the respondents herein and three days be given to the Respondents with a copy of agenda and the respondents

shall be at liberty to send an Observer, but these directions were also never followed. Further on 20.04.2010 an order was passed by the learned NCLT for the interim joint arrangement to run the company i.e. 5 directors of the appellants and 5 of the respondents on the Board but this was also not adhered to. Reference was also made to an order dated 03.02.2012 wherein it was directed that weekly statement of receipts and expenditure be furnished to the Company Law Board and to the Respondents but it was also not complied with and thus it was in these circumstances the order was passed under Section 420(b) of the Companies Act, 1956 for sale and purchase of the shares. It was also argued after the impugned order dated 30.09.2025 the appellant have taken away Rs.6 crores from the company and have transferred it to their family concerns.

20. The learned counsel appearing on behalf of Respondent No.12 argued otherwise *viz* the family settlement was never acted upon and Shambu Nath Group comprised of Respondent No.11-Shambu Nath, since deceased and Respondent No.12- Umesh Kumar son of Shambhu Nath, never got a penny out of these Rs. 20 crores or Rs.36 crores and they still hold the shares of the company to an extent of 16.4% and the register of members was never amended, Further, though Respondent 12 was removed as a director but then was re-appointed on 01.07.2008 and in proof thereof he referred to two Forms No.32, both dated 01.07.2008 reappointing Respondent No.11 and 12 as directors and also the letters dated 01.07.2008 issued by Respondents No.11 and 12, accepting their appointments as directors. The Company Petition also records

in para 34(iii) the Respondents No.11 and 12 were re-inducted as directors of Respondent company w.e.f. 01.07.2008 for which Form No.32 were filed. The reply filed by the appellants herein to para 34(iii) stated it was only a matter of record.

21. Now though the alleged family settlement dated 04.02.2008 talks of withdrawal of personal guarantees in 2008 itself but the personal guarantees of Respondents No.11 and 12 were withdrawn in 2023. Reference was given to the sanction memo of Canara Bank dated 23.04.2009 wherein the personal guarantees given by Respondents No.11 and 12 were duly noted. Further supplementary affidavit filed by Respondent No.12 noted that Respondent No.12 had received a notice dated 25.09.2014 under Section 13(2) of SARFEASI Act wherein both Respondents No.11 and 12 were shown as guarantors. Further a letter dated 25th March, 2009 written by State Bank of India to the company was shown wherein SBI had decided to release Mr. Raj Kumar Agarwal since deceased –Respondent No.2; Shri Santosh Kr Agarwal-Respondent No.4 and Mr. Anand Kumar Agarwal-Respondent No.5 *viz* Jagdish Parsad Group, but not the group of Shambu Nath i.e. Respondents No.11 and 12. Thus the alleged family settlement was never implemented *qua* Shambu Nath Group.

22. Admittedly the guarantee of Respondents No.11 and 12 were released in the year 2023 when the OTS was entered into with the Bank. The Respondent No.12 was removed *vide* a Board Resolution dated 30.03.2015 by the Board of the Company in the interest of the company as he was allegedly writing various

letters to the company. Thus it was argued that alleged family settlement was never implemented and though Jagdish Parsad Group was paid some amount but Shambu Nath group was never paid a single penny.

23. We have also perused the record of the Appeal Paper Book and we find the affidavit/reply of Respondent No.12 to the Company Petition which in fact was a joint reply filed with the appellants herein and it notes an amount of Rs.2,20,40,000/- was only paid to the Jagdish Parsad Group and it was also stated if the Respondents have any grievance, they are bound to transfer to the appellants the entire amount if not transferring their shares. Further in para 28 of this joint reply filed by the appellants and Respondent No.12 herein, it was also alleged out of Rs.9 crores an amount of Rs.8,22,40,000/- was paid to the Jagdish Parsad Group, thus on their own admission full amount was never paid.

24. During the course of arguments the appellant referred to an application under Regulation 44 of Company Law Board Regulations filed by them wherein also the appellants had admitted out of an amount of Rs.9 crores to be paid to Respondent Jagdish Parsad's Group only an amount of Rs.8,22,40,000/- was paid. Admittedly as of now, no proof of Rs.6 crores paid in cash, is filed before us or is shown to us during the course of arguments. Further the notice dated 30.12.2015 of the appellants rather say only an amount of Rs.2,20,40,000/- was paid between 31.03.2008 to 22.07.2008 for 1506400 equity shares of Rs.10 each and the respondents No.2 to 7 were liable to pay interest @ 18% per annum on the said amount. It did not specify if Rs.6 crore was paid in cash. Even the

affidavit of brother of *Phupha* also cannot be accepted as admittedly he was never a mediator.

25. Thus what culls out from the arguments of the appellants is they entered into an oral settlement which took place on 04.02.2008 under which certain conditions were to be complied with, but were never complied. Admittedly full amount, as alleged, under the settlement, was never paid to Jagdish Parsad's Group and not a single penny was paid to Shambu Nath's group. Hence in these circumstances, an Administrator was appointed by the Ld. NCLT *vide* the impugned order to run the company with the help of petitioners and respondents. However, we also note *vide* another order dated 30.09.2025 the Company Application No.2/2012 filed under Regulation 44 (supra) was dismissed wherein it was noted the Administrator after examining all records and facts relating to running of the company *shall make any investigation* if required to be done in the matter relating to *fraud, collusion, diversion and siphoning of funds* etc as alleged against the company, though *vide* the said order the request for forensic examination of the disputed documents was rather rejected on the ground it would serve no purpose. But we are of the view if at any time there is buy out, there again there would be a dispute of Rs.6 crore *if* paid in cash or not by the appellants to the respondents No.2 to 7 and since the appellants allege they have in their possession the receipts of cash paid to Jagdish Group, hence in case such receipts are shown to the Ld. Administrator and if are denied by the Respondents, the Ld. Administrator shall be at liberty to move before the Ld. NCLT to send those receipts for forensic examination and

to this extent the impugned order is modified. However, we are not inclined to grant any other relief. Accordingly the appeal is disposed of in terms of the above.

Pending applications are disposed of.

(Justice Yogesh Khanna)
Member (Judicial)

(Mr. Ajai Das Mehrotra)
Member (Technical)

Dated: 19.03.2026
Bm