NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

COMPANY APPEAL (AT) No.277 of 2025

(Arising out of judgement and order dated 06.10.2025 passed by the Ld. NCLT, New Delhi in CP/60/ND/2025, New IA/3416/ND/2025)

In the matter of:

Microtek International Pvt Ltd,
H-56, Udyog Nagar,
Main rohtak Road,
New Delhi -110041 **Appellant**

Vs

1. **Mr Anil Gupta**,
   S/o Shri Om Prakash Gupta
   H.No.35A, Road No.77
   West Punjabi Bagh,
   Delhi-110026.

2. **Mr. Nand Kishore Aggarwal,**
   S/o Shri Mange Ram Aggarwal,
   R.No. House No.22, Road No.78,
   West Punjabi Bagh,
   Delhi-110026

3. **Mr Ajay Aggarwal**
   S/o Nand Kishore Agarwal
   H.No.22, Road No.78
   West Punjabi Bagh,
   Delhi-110026

4. **Amit Aggarwal**
   S/o Nand Kishore Aggarwal,
   H.No. 22,
   Road No.78
   West Punjabi Bagh
   Delhi-110026

5. **Ashi Agarwal,**
   W/o Amit Aggarwal,
   H.No. 22,

Road No.78
West Punjabi Bagh
Delhi-110026

6. **NKA Resources LLP**
G-11, Udyog Nagar,
Main Rohtak Road,
North West Delhi 110041 **Respondents**

For Appellant: Mr Abhinav Vasisht, Sr Advocate, Mr. Abhijeet Sinha, Sr Advocate, Mr Aashish Gupta, Ms Chandni Ghatak, Mr Chiranjeev Singh, Mr Abhilasha Sharma, Advocates.

For Respondent: Mr Arun Kathpalia, Sr Advocate, Mr Gaurav Mitra, Mr Nalin Dhingra, Ms Ramya Aggarwal, Advocates for R1. Mr Arjun Pall, Advocate for R2-6.

JUDGEMENT

JUSTICE YOGESH KHANNA, MEMBER (JUDICIAL)

This appeal is filed again an impugned order dated 6th October, 2025 passed by Ld. NCLT, New Delhi in New IA/346/ND/2025 in CP No.60/ND/2025 whereby the Ld. NCLT has dismissed the IA filed by the appellant seeking to place on record additional documents namely E&Y Bench Marking Report dated 16.12.2024 for the Ld. NCLT's consideration.

2. It is the submission of the Ld. senior counsel for the appellant that *CP 60/2025* was filed on 24.03.2025 and was listed for the first time on 15.04.2025. The reply was directed to be filed and the appellant filed its reply on 12.05.2025. In its reply the appellant had referred to the contents of E&Y Report as is evident from the following paras of its reply dated 12.05.2025 before the Ld. NCLT: -

> ***20**. However, on 15.01.2025 the Answering Respondent addressed a detailed email to the certain erstwhile directors from the Gupta Group, namely Mr. Subodh Gupta, Mr. Arush Gupta and Mr. Saurabh Gupta pointing out that battery-procurement and inverter-sale transactions entered into with*

Okaya Group entities during FY 2023-24 and FY 2024-25 were not at arm's length. The independent benchmarking exercise undertaken by EY demonstrated that these transactions had caused the Answering Respondent a loss of INR 59.30 crore. The email specifically reserved the Answering Respondent's rights to pursue civil and criminal remedies.

***106**. Simultaneously, in accordance with the Answering Respondent's Board of Director's decision, M/s Ernst & Young LLP ("E&Y") conducted an Arm's Length Pricing study with respect to the related party transactions between the Answering Respondents and its subsidiary on the one hand, and the Okaya Group on the other hand, for the Subject Period.*

***107**. On 16.12.2024, E&Y provided its report after conducting an Arm's Length Pricing study and benchmarking analysis of the related party transactions for the Subject Period ("Benchmarking Report").*

***108**. This arm's length pricing study was conducted by comparing the price/ margins of the related party transactions with the price / margins of comparable transactions under comparable circumstances with uncontrolled enterprises.*

***109**. In the Benchmarking Report, it was observed that the related party transactions were not conducted at arm's length prices. xxxxx.*

***110**. In view of the above, the Answering Respondent has incurred a net loss of INR 59,30,68,329/- as a result of the aforementioned related party transactions, which were not conducted at arm's length prices.*

***111**. On the basis of the findings in the Benchmarking Report, the Answering Respondent sent emails to Mr. Subodh Gupta, Mr. Saurabh Gupta and Mr. Arush Gupta on 15.01.2025 highlighting the findings of the Benchmarking Report and stating that the Answering Respondent and its subsidiary have suffered a loss of INR 59,30,68,329/- due to the related party transactions during the Subject Period.xxxxx*

3. Admittedly, a rejoinder was filed by the respondents to such reply, wherein the allegations made in the reply were countered. Paragraphs *8* to *10* of the rejoinder filed by the respondent before the Ld. NCLT are as follows:

> *"8. The Petitioner submits that the Respondents have solely relied entirely upon a purported Arm's Length Pricing study and analysis of the related party transactions with Okaya Group to impugn the bona fides*

of the Gupta Group. The purported report is stated to be prepared by E&Y and dated 16.12.2024. In this regard, it is vital to note:

a. The Respondents have not provided a copy of the purported report despite the Gupta Group requesting for the same at least as far back as 10.2.2025.

b. The Respondents have not placed a copy of the purported report on record.

c. Without speculating as to its contents, it is necessary to point out that the credibility of such reports rests on its underlying data, assumptions and methodology. In this case, a rudimentary apples-for-apples comparison between transactions or prices without accounting for inherent variance in products and services can lead to a skewed and unreliable conclusion.

9. The ostensible reason why the Respondents have not placed the purported report on record is that the EY report in question is based on questionable data and baseless assumptions, tailored to support the Respondents' bid to oust the Gupta Group.

10. In these circumstances, it is necessary for the Petitioner, indeed this Hon'ble Tribunal, is given the opportunity to examine and scrutinize this purported report, and all the data upon which it is based, before any value can be ascribed to it. Further, this Hon'ble Tribunal may be pleased to invoke its power under Section 424(2)(a) and summon the authors of the report. The authors of the report should also be asked to provide an affidavit in support of the details contained in the report upon the pain and risk of being prosecuted for perjury."

4. Learned senior counsel for appellant also referred to various orders passed by the Ld. NCLT including order dated 27.05.2025 wherein the learned NCLT notes the part arguments were heard. Even on 03.06.2025 further arguments were heard and on 11.06.2025 the arguments were concluded and the parties were directed to file written submissions within two weeks.

5. The appellant then filed written submissions on 27.06.2025 alongwith the copy of E&Y Report. The matter was, however, adjourned to 22.07.2025; 16.09.2025 and on 30.09.2025 for further orders.

6. In the meanwhile on 23.09.2025 an IA No.346/ND/2025 was filed by the appellant to bring on record E&Y report but the IA was dismissed *vide* the following impugned order: -

> ***New IA/346/ND/2025***
>
> *This is an application filed on behalf of the Applicant to take on record the additional documents. In this matter, this Tribunal vide order dated 11.06.2025 had directed both the parties to file their written submissions, the same is available on record and is also recorded in order dated 16.09.2025. Therefore, this Adjudicating Authority finds no valid reasons to allow filing of additional documents at this stage. Therefore, IA/346/ND/2025 stands dismissed.*

7. The submission of the learned senior counsel for the appellant is the impugned order is patently wrong since the case was never reserved for orders and was kept open, hence there was no impediment in filing and allowing of such application since the contents of the report were already a part of the pleadings. He referred to the prayer in IA No.*346* (supra) to say it was only to bring on record M/s E&Y Report and nothing else so that the Ld. NCLT may not say the said report was never a part of the record. It is pertinent to mention the appellant herein had also filed another CP No.*151/2025* against the Respondent herein under Section *241-242* of the Companies Act wherein this report is an Annexure. Now in view of the dispute between the two groups of the same company it would have been better if both CP No.*60/2025* and CP No.*151/2025* would have been

clubbed and heard together. In any case since the appellant is relying upon this report since beginning as its defence in the present CP and is evident from various paras of its reply to the company petition, it was argued there could be no impediment to allow this report to be brought on record.

8. It was argued while producing this report the appellant had not taken respondent by surprise and did not introduce new facts and to have an overall adjudication of the disputes between the two groups of the same company, such report is relevant and ought to be brought on record, especially when there was no closure or reserving of the order in CP No.60/2025.

09. The learned Sr. counsel for the respondent, on the other hand submitted the Report was very much in *the power* and *possession* of the appellant since 16.12.2024 and that on 10.02.2025 when the respondents have sought a copy of the said Report from the appellant, it was never supplied to them. Even in its rejoinder, the respondent sought the E&Y Report but was never provided and rather the appellant chose to argue the matter without filing such report and only when written submissions were filed by the parties, thereafter the appellant moved the instant application *viz. I.A. No. 346/2026,* which was dismissed *vide* a reasoned impugned order and such order does not require any interference.

10. Reference was made to Section *422* of the Companies Act, *2013* to say, the petition has to be decided within three months from the date of filing of such petition and further reference was made to Rule *41* & Rule *55* of the NCLT Rules,

2016, to say, the documents ought to be filed along with the pleadings so as to enable the Court to act expeditiously.

11. Reference was also made to ***'Sudhir Kumar Alias S. Baliyan' Vs. 'Vinay Kumar G.B.'*** in ***[(2021) 13 SCC 71],*** wherein it was held as under:

> ***10.4.*** *Now, so far as the other documents sought to be relied on/produced as additional documents other than the invoices are concerned the same stands on different footing. It is not disputed and in fact it was specifically admitted and so stated in the application that those additional documents other than the invoices were in their possession but not produced being voluminous and that the suit was filed urgently. However, it is to be noted that when the second suit was filed, it cannot be said to be urgent filing of the suit for injunction, as the first suit was filed in the month of October 2018 and there was an ex parte ad interim injunction vide order dated 29-10-2018 and thereafter the plaintiff withdrew the said the first suit on 27-7-2019 with liberty to file a fresh suit as per the Commercial Courts Act and the second suit came to be filed on 31-8-2019 after period of one month of the withdrawal of the first suit. Therefore, the case on behalf of the plaintiff that when the second suit was filed, it was urgently filed therefore, the additional documents sought to be relied upon other than the invoices were not filed as the same were voluminous cannot be accepted. And therefore as such Order 11 Rule 1(4) shall not be applicable, though the application was filed within thirty days of filing of the second suit. While seeking leave of the court to rely on documents, which were in his power, possession, control or custody and not disclosed along with plaint or within the extended period set out in Order 11 Rule 1(4), the plaintiff has to establish the reasonable cause for non-disclosure along with plaint.*
>
> ***11.*** *In view of the above and for the reasons stated above, the plaintiff can be permitted to rely on the documents in the form of invoices as mentioned in the application as additional documents. However, such production shall not affect the outcome of interim injunction application*

submitted under Order 39 Rule 1CPC, which as such is reported to be kept for orders."

12. Thus, it was argued, in the arena of stringent timeframe, and when such report was always in possession and custody of the appellant and it failed to share a copy thereof when asked, thus after the conclusion of the arguments, ought not be allowed to produce it before the Court concerned. Even otherwise, the said Report is be a secondary evidence and shall have no value without an affidavit of the person who had prepared it.

13. We have heard the arguments. We note an email dated 04.11.2024 was sent by the respondent wherein the respondent itself was seeking such report either by Deloittee or by EY. The contents of such email are as under:-

"7. Soon after this request was made by the statutory auditors, we and Mr Ajay Aggarwal had agreed that Deloitte, suggested by us, and EY, suggested by him, both be appointed for carrying out this study.

9. We understand that Okaya Power has already appointed Deloitte to carry out this study. Okaya Power is willing to get this study done, entirely at its own cost and expense, and it is important that they be given full cooperation and access to documents and information of the Company to complete this exercise at the earliest. We believe that this would remove any confusion regarding the related party transactions and will enable the statutory auditors to proceed with their audit.

10. We believe that agenda item No. 6 in the Board meeting, currently called for November 5, 2024, be adjourned until after Deloitte has had the opportunity to complete its work and given its report. This would remove all confusion on the related party transactions.

11. In any event, as some of you are already aware, pursuant to a family settlement, we have decided to resign from the Board and transfer our personal shares in the Company. Our resignation letters are separately

attached. We request you to please take these on record in tomorrow's meeting."

14. Further we note The Benchmarking Report was requisitioned by the Board of Directors on the suggestion of the Statutory Auditor who desired a transfer pricing study should be done, as recorded in email to board members, available at page *113* of the Appeal Paper Book (APB). The Benchmarking Report has been submitted by M/s Ernst & Young LLP and is available at page *658 to 693* of the Appeal. The aim of the report was to determine the arm's length price of sale and purchase of goods between Microtek and Okaya Group entities. These two entities are related parties. As per the report, the auditor has shortlisted 108 companies in the similar business and had ultimately selected 3 companies with similar business for which data was available for comparison. The comparison of price of similar products sold to independent parties, lead to the conclusion there is shortfall in price charged from Okaya group of Rs. 16,42,65,385/- for sales made between April 2023 to September 2024 as per Annexure-1 of the report. As per Annexure 7A, there is shortfall of Rs. 4,39,89,715/- in price charged to Okaya group entities. Similarly, as per Annexure-7B, an amount of Rs. 38,48,13,229/- is less charged to Okaya group entities. Thus, an amount of Rs. 59,30,68,329/- is less charged from Okaya group entities by Microtek for goods transferred which is indicator of transfer of profit to Okaya group from Microtek.

15. In view of the above we are of the considered view that Ld. NCLT, while passing the Impugned Order, failed to appreciate that no prejudice would have

been caused if the E&Y Report were to be taken on record since: ***(i)*** the Appellant had consistently referred to and relied upon such document through its Reply written submissions; ***(ii)*** the Respondent No. 1 had itself called for production of the E& Y Report; ***(iii)*** the E&Y Report was already on record of the Ld. NCLT as the Appellant had filed the same along with its written submissions, and the Aggarwal Group had filed the same in their Counter O&M; ***(iv)*** the Ld. NCLT had not reserved judgment;

16. It bears emphasis that the E&Y Report is of crucial importance to the adjudication of the issues raised by way of the Petition. The E&Y Report is demonstrative of the fact that when the members of the Gupta Group were on the Board of the Appellant, they had allegedly engaged in unapproved/unauthorized related party transactions which caused an alleged loss of INR 59.3 Crores to the Appellant.

17. It is a settled principle of law that ***(i)*** when evidence is placed, albeit with delay, the court/tribunal is required to consider whether the said evidence / document would be relevant to issues and/or lead to a just and effective adjudication; ***(ii)*** documents may be placed on record anytime prior to a final order being passed; ***(iii)*** there is no express provision/rule prohibiting filing of documents by the parties' post completion of their respective pleadings in the Companies Act or in the Rules made thereunder (specifically, Rule 55 of NCLT Rules 2016); and ***(iv)*** parties may not be deprived to file documents even if there is delay as rules of procedure are hand-maid of justice.

18. In ***'Sanjay Kumar Singh' Vs. 'State of Jharkhand'*** reported in ***[(2022) 7 SCC 247],*** the Hon'ble Supreme Court held:

> ***"7.*** *It is true that the general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27CPC enables the appellate court to take additional evidence in exceptional circumstances. It may also be true that the appellate court may permit additional evidence if the conditions laid down in this Rule are found to exist and the parties are not entitled, as of right, to the admission of such evidence. However, at the same time, where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed. Even, one of the circumstances in which the production of additional evidence under Order 41 Rule 27CPC by the appellate court is to be considered is, whether or not the appellate court requires the additional evidence so as to enable it to pronounce judgment or for any other substantial cause of like nature."*

19. In ***'Axis Bank Ltd.' Vs. 'Naren Sheth & Anr.'*** reported in ***[(2024) 1 SCC 679],*** the Court held:

> ***"22.*** *Ultimately, in para 142 of the Report in Dena Bank case [Dena Bank v. C. Shivakumar Reddy, (2021) 10 SCC 330], it was held that additional documents could be introduced at the stage of appeal also. The said para is reproduced hereunder : (SCC p. 388, para 142)*
>
> > *"142. There is no bar in law to the amendment of pleadings in an application under Section 7 IBC, or to the filing of additional documents, apart from those initially filed along with application under Section 7 IBC in Form 1. In the absence of any express provision which either prohibits or sets a time-limit for filing of additional documents, it cannot be said that the adjudicating authority committed any illegality or error in permitting the appellant*

> *Bank to file additional documents. Needless however, to mention that depending on the facts and circumstances of the case, when there is inordinate delay, the adjudicating authority might, at its discretion, decline the request of an applicant to file additional pleadings and/or documents, and proceed to pass a final order. In our considered view, the decision of the adjudicating authority to entertain and/or to allow the request of the appellant Bank for the filing of additional documents with supporting pleadings, and to consider such documents and pleadings did not call for interference in appeal."*

20. In view of the above, we are of the considered view that formally placing the document on record, when already its contents are part of the pleadings, shall not cause any prejudice to the respondents, specially when both the parties initially were inclined to appoint auditors either M/s E&Y LLP or M/s Deloitte and thus we direct the Ld. NCLT to take on record the E&Y Report in CP No.60/ND/2025 and we dispose of this appeal in terms thereof.

21. Pending applications are also disposed of.

[Justice Yogesh Khanna]
Member (Judicial)

[Barun Mitra]
Member (Technical)

[Ajai Das Mehrotra]
Member (Technical)

Dated:25-11-2026

bm