

C.P. Nos.133/2014, 134/2014, 135/2014 and 09/2016

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA

CORAM

Shri V. P. Singh  
Hon'ble Member (J)

Shri S. Vijayaraghavan  
Hon'ble Member (T)

In the matter of Sections 397,398,399,402,403 & 406 of the Companies Act,1956

And

In the matter of Sections 58,59 and 210 of the Companies Act, 2013

And

In the matter of C.P. No.133/2014

Sushil Kumar Agarwal & Anr. .... Petitioners  
Versus

West Bengal Chemical Industries Ltd. & Ors. .... Respondents

Parties on Record:

Mr. Lokenath Chatterjee, Advocate	]	
Ms. Roopa Seth Mitra, Advocate	]	For Petitioners
Mr. Pratik Shanu, Advocate	]	
Mr. Shaunak Mitra, Advocate	]	

Mr. Arindam Mukherjee, Advocate	]	For Respondent Nos. 1 to 4
Mrs. S. Saha, Advocate	]	

And

In the matter of C.P. No.134/2014

Sushil Kumar Agarwal & Ors. .... Petitioners  
Versus

Eskag Pharma Pvt. Ltd. & Ors. .... Respondents

Parties on Record:

Mr. Lokenath Chatterjee, Advocate	]	
Ms. Roopa Seth Mitra, Advocate	]	For Petitioners
Mr. Pratik Shanu, Advocate	]	
Mr. Shaunak Mitra, Advocate	]	

Mr. Jishnu Saha, Sr. Advocate      ] For Respondent nos. 1 to 7  
Mr. Raja Sarkar, Advocate      ]

And

In the matter of **C.P. No.135/2014**

Sushil Kumar Agarwal & Ors. .... Petitioners  
Versus  
Eskag Sanjeevani Pvt. Ltd. & Ors. .... Respondents

**Parties on Record:**

Mr. Lokenath Chatterjee, Advocate      ]  
Ms. Roopa Seth Mitra, Advocate      ] For Petitioners  
Mr. Pratik Shanu, Advocate      ]  
Mr. Shaunak Mitra, Advocate      ]

Mr. Jishnu Saha, Sr. Advocate      ] For Respondent Nos.1 to 5, 7 & 8

And

In the matter of **C.P. No.09/2016**

Sunil Kumar Agarwal & Ors. .... Petitioners  
Versus  
La Chemico Pvt. Ltd. & Ors. .... Respondents

**Parties on Record:**

Mr. Jishnu Saha, Sr. Advocate      ] For Petitioners  
Mr. Raja Sarkar, Advocate      ]

Mr. Lokenath Chatterjee, Advocate      ]  
Ms. Roopa Seth Mitra, Advocate      ] For Respondents  
Mr. Pratik Shanu, Advocate      ]  
Mr. Shaunak Mitra, Advocate      ]

**ORDER**

**Per Sri Vijai Pratap Singh, Member(J)**

C.P.No. 133/2014, C. P. No. 134/2014, C.P. No.135/2014 and C.P.No. 09/2016 were heard together in a consolidated manner and disposed of by this common order for the sake of convenience.

*S. Vijai Pratap Singh*



The petitioners in C.P.Nos. 133/2014, 134/2014 and 135/2014 and respondent nos. 2, 3 and 4 in C.P.No. 09/2016 will hereinafter collectively referred to as **"Sushil Agarwal Group"**. The petitioners in C.P.No. 09/2016 and respondents in C.P.Nos. 133/2014, 134/2014 and 135/2014 are hereinafter collectively referred to as **"Sunil Agarwal and Anil Agarwal Group"**.

In **C.P.No. 134/2014 (Eskag Pharma Pvt. Ltd.)** Sushil Agarwal Group has alleged following acts of oppression and mismanagement in the case of Eskag Pharma Pvt. Ltd. i.e. C.P.No. 134/2014. The petitioners have alleged in the above mentioned petition that Sushil Agarwal Group's holding is 11.09% (this figure is prior to the alleged illegal allotment made by Sunil and Anil Agarwal Group as challenged in the petition). In spite of such shareholding, the actual control of Sushil Agarwal Group in respect of the above company was to the extent of 1/3<sup>rd</sup>. This fact has also been admitted by Sunil Agarwal and Anil Agarwal Group in C.A.No. 83/2015.

The petitioners have alleged that Sushil Kumar Agarwal, Sunil Kumar Agarwal and Anil Kumar Agarwal were 3 Directors of Eskag Pharma Pvt. Ltd. Sushil Kumar Agarwal was a director since 1987. In June 2014 Sushil Kumar Agarwal came to know that Godavari Dealcom Pvt. Ltd. (which is a company owned and controlled by Sunil Agarwal and Anil Agarwal had been allotted 3800 equity shares of Eskag Pharma Pvt. Ltd. On 30<sup>th</sup> March 2013. The petitioners alleged that the said allotment is illegal, null and void and that Sushil Agarwal was not given any notice of the said meeting.

The petitioners have further alleged that Sunil Agarwal and Anil Agarwal Group caused further allotment of 90,200 shares of Eskag Pharma

Pvt. Ltd. to themselves at face value on 21st May. 2013. The petitioners have alleged that the said allotment is illegal and null and void because the alleged allotment is undervalued. The petitioners have further alleged that Sunil Agarwal and Anil Agarwal Group also purported to increase authorized share capital of Eskag Pharma Pvt. Ltd. wrongfully from Rs. 75 Lakhs to Rs. 1.6 Crores without any notice to the Sushil Agarwal Group. The petitioners have further alleged that 14,000 shares of Eskag Pharma Pvt. Ltd. were further allotted to M/s. Godavari Dealcom Pvt. Ltd. at a premium of Rs. 900/- per share on 30<sup>th</sup> May, 2014. The said allotment is also illegal and null and void.

The petitioners have also alleged that Sunil Agarwal and Anil Agarwal Group have further purported to wrongfully, illegally and without notice to Sushil Agarwal Group increased authorized share capital of Eskag Pharma Pvt. Ltd from Rs. 1.6 Crores to Rs. 1.8 Crores. The petitioners have further alleged that Eskag Pharma Pvt. Ltd. has filed an annual return for the financial year 2012-13 wherein Godavari Dealcom Pvt. Ltd has been shown as shareholders and such annual return is not valid.

The petitioners have further alleged that the registered office of the company i.e. Eskag Pharma Pvt. Ltd., was shifted w.e.f. 1<sup>st</sup> October, 2013. No notice of such change of registered office was given. The petitioners have also pointed out that the registered office of Godavari Dealcom Pvt. Ltd. is the same which is the new registered office of Eskag Pharma Pvt. Ltd. The petitioner, Sushil Kumar Agarwal, has further alleged that he was illegally removed from the Director of the Company, Eskag Pharma Pvt. Ltd. w.e.f. 21<sup>st</sup> January, 2014. No notice of EOGM, in which he was allegedly removed from the Directorship, was given to petitioner, Sushil Kumar Agarwal. Therefore, the petitioner has alleged that his removal as director of the company is wrongful, illegal and not valid.

*Sushil Kumar Agarwal*



82 The petitioners have further alleged that notice was not served at the address where Sushil Kumar Agarwal Group resides and the same was done knowingly with an ulterior motive. The petitioners have also alleged that Sunil Kumar Agarwal and Anil Kumar Agarwal group has utterly mismanaged the company and has siphoned of huge amount from the company, Eskag Pharma Pvt. Ltd. The petitioners have cited one instances of mismanagement and siphoning of fund whereby out of total 10.21 lakh units of a product "Suvida" almost 3.8 lakh units, that is, 38% of the total production were shown in the books as free sample conversion. Whereas in pharmaceutical industries standard practice for sample is only 1% of total production.

The petitioners have alleged that balance sheet and accounts of the company have been manipulated by Sunil Agarwal and Anil Agarwal Group in collusion with the auditors of the company and, therefore, the accounts do not reflect the true financial results of the company.

The above allegations of oppression and mismanagement has been pointed out in the petition by the petitioners Sushil Agarwal Group and on the above basis petitioners have made prayers that administrators be appointed to frame a scheme for the purpose of management and administration of the company because respondent nos. 2 to 7 and 12 and 13 are continuing to mismanage the affairs of the company on a regular basis for their own financial greed and are also causing irreparable prejudice and damage to the right of the petitioners by keeping them in dark with respect to the affairs of the company.

In reply to the petitioners allegations Sunil Agarwal and Anil Agarwal Group had admitted the fact that the companies, viz., West Bengal Chemicals Industries Ltd., Eskag Pharma Pvt. Ltd., Eskag Sanjeevani Pvt. Ltd. and La Chemico Pvt. Ltd. were equally owned and controlled by the three Agarwal

Brothers upon a oral family settlement being entered into among them during middle of 2013 and it was agreed that while Sushil Kumar Agarwal would take over La Chemico Pvt. Ltd.; Sunil Kumar Agarwal and Anil Kumar Agarwal would take over Eskag Pharma Pvt. Ltd. and Eskag Sanjeevani Pvt. Ltd. As West Bengal Chemical Industries Ltd. was a joint venture company of the Agarwal Brothers with the Govt. of West Bengal, it was decided that all the Agarwal Brothers would equally own family shareholding of the said company and would equally participate in the management of the same. It was stated by the Group of Sushil Agarwal and Anil Agarwal in the replies filed by them in C.P.No. 133/2014, 134/2014 and 135/2014 that the said oral family settlement had been given effect to and the same would be borne out from the conduct of the parties. While Sushil Agarwal increased the shareholdings in La Chemico Private Ltd. and also took control of its Board of Directors by introducing his son as a Director of the same. Sunil Agarwal and Anil Agarwal had similarly increased their shareholding in Eskag Pharma Pvt. Ltd. and Eskag Sanjeevani Pvt. Ltd. and has also taken the control of the Board of Directors of the said companies.

During the course of arguments Sunil Kumar Agarwal and Anil Kumar Agarwal made a statement that since Sushil Kumar Agarwal has denied the said alleged family settlement, therefore, Sunil Kumar Agarwal and Anil Kumar Agarwal decided to accept the position that each of the said three Agarwal Brothers would have equal ownership and control in each of the aforementioned four companies. They, accordingly, agreed to restore completely equality in shareholding and in the Board of Directors of Eskag Pharma Pvt. Ltd., Eskag Sanjeevani Pvt. Ltd. and West Bengal Chemical Industries Ltd., provided however, in terms of admission made by Sushil Kumar Agarwal Group in the C.P.Nos. 133/2014, 134/2014 and 135/2014,

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they agreed to restore equal ownership and control of Sunil Kumar Agarwal and Anil Kumar Agarwal in La Chemico Pvt. Ltd. The C.A.No. 83/2015 which has been filed by Sunil Agarwal and Anil Agarwal Group in C.P.no. 134/2014 was directed to be treated as common reply to affidavit filed by them in C.P.No. 133/2014, 134/2014 and 135/2014.

C.A.No. 83/2015 has been filed in C.P. No. 134/2014 whereby prayer has been made by Sunil Agarwal and Anil Agarwal Group that an order be made consolidating all the four company petitions and directing the Sushil Kumar Agarwal and his Group to accept the oral family agreement.

Sunil Agarwal and Anil Agarwal Group has further alleged that on account of family settlement Sushil Kumar Agarwal has taken over the control of La Chemico Pvt. Ltd. He inducted his son Suyash Agarwal as an additional director of La Chemico Pvt. Ltd. on 26<sup>th</sup> November 2012 and thereafter confirmed him as a director of the said company on 28<sup>th</sup> September, 2013. Sushil Kumar Agarwal, thereafter, wrongfully and illegally increased the shareholding of his group in La Chemico Pvt. Ltd. by allotting additional allotment of shares to himself and his family member which ultimately resulted in depletion of shareholding of Sunil Agarwal and Anil Agarwal Group in the said company. Sushil Agarwal also removed Sunil Agarwal from the Board of Directors of La Chemico Pvt. Ltd.

Sushil Agarwal Group has filed three company petitions with the allegations of oppression and mismanagement against Sunil Agarwal and Anil Agarwal Group and has specifically stated that specific acts of oppression and mismanagement in the companies, e.g. Eskag Pharma Pvt. Ltd., Eskag Sanjeevani Pvt. Ltd. and West Bengal Chemicals Industries Ltd. Whereas Sunil Agarwal and Anil Agarwal Group have denied the allegations and they have

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stated that in terms of oral family settlements Sushil Agarwal has taken over the complete control of La Chemico Pvt. Ltd. and Sunil Agarwal and Anil Agarwal Group has taken over the management and control of Eskag Pharma Pvt. Ltd. , Eskag Sanjeevani Pvt. Ltd. and West Bengal Chemical Industries Ltd. It is stated that the West Bengal Chemical Industries Ltd. is a joint holding company with the Govt. of West Bengal and all the three brothers have equal shareholding.

Sunil Agarwal and Anil Agarwal Group has further alleged that C.P.Nos. 133/2014, 134/2014 and 135/2014 have been filed by Sushil Kumar Agarwal and his group in a malafide attempt to deny the family settlement in respect of Eskag Pharma Pvt. Ltd., Eskag Sanjeevani Pvt. Ltd. and West Bengal Chemical Industries Ltd. while taking advantage of the same family settlement in respect of La Chemico Pvt. Ltd.

On the basis of the pleadings of the parties following question arises for the decision of the case:

- (1) Whether Sunil Agarwal and Anil Agarwal Group are guilty of oppression and mismanagement in the management and control of the companies, viz., Eskag Pharma Pvt. Ltd., Eskag Sanjeevani Pvt. Ltd. and West Bengal Chemical Industries Ltd. as alleged by Sushil Agarwal Group in C.P.Nos. 133/2014, 134/2014 and 135/2014?
- (2) Whether Sushil Agarwal Group had increased the shareholding in La Chemico Pvt. Ltd. and took control and management of La Chemico Pvt. Ltd. as a result of family settlement between the three brothers, i.e. Sushil Kumar Agarwal, Sunil Kumar Agarwal and Anil Kumar Agarwal and thereafter Sushil Agarwal Group also took control of the Board of Directors by inducting his son as director in

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the said company on account of family settlement among the parties and similarly Sunil Agarwal and Anil Agarwal Group had increased their shareholding in Eskag Pharma Pvt. Ltd. and Eskag Sajeevani Pvt. Ltd. and also taken over control of the Board of Directors of the said companies in terms of oral family settlement?

- (3) Whether Sushil Kumar Agarwal, Sunil Kumar Agarwal and Anil Kumar Agarwal are equally entitled to 1/3<sup>rd</sup> ownership and control of each of the company, i.e., Eskag Pharma Pvt. Ltd., Eskag Sanjeevani Pvt. Ltd., West Bengal Chemical Industries Ltd. and La Chemico Pvt. Ltd. and, if so, then what should be mode of division, keeping in view of the interest of all the four companies.
- (4) What relief, if any, parties are entitled to?

In case of **West Bengal Chemicals Industries Ltd. (C.P.No. 133/2014)** the petitioners have alleged following acts of oppression and mismanagement against Sunil Agarwal and Anil Agarwal Group.

The petitioners have alleged that Sushil Agarwal Group's substantial holding in the company is 13.65% (prior to the alleged illegal allotments and transfer which is under challenge in this petition) but the actual control of Sushil Agarwal Group in the company was to the extent of 1/3<sup>rd</sup>.

The petitioners have alleged that, in the Financial Year 2012-13, an aggregate of 21,017 shares of face value of Rs. 1000/- each were transferred by 5 companies (respondent nos. 9 to 13) in C.P.No. 133/2014, who are not part of the joint family business, to Godavari Dealcom Pvt. Ltd., which is a company exclusively owned by Sunil Agarwal and Anil Agarwal. The said 5 outsider companies being respondent nos. 9 to 13 were allotted shares in

the company in June 2011 in lieu of financial assistance given by them to the company on the understanding that on repayment of financial accommodation provided, respondent nos. 9 to 13 would transfer their shares to Sushil Agarwal, Sunil Agarwal and Anil Agarwal in equal proportion. However, the said shares were illegally transferred to Godavari Dealcom without the knowledge of Sushil Kumar Agarwal. The petitioners have alleged that the said share transfers are illegal and null and void.

The petitioners have further alleged that 11,000 equity shares of the company at face value were allotted to Godavari Dealcom Pvt. Ltd. on 31<sup>st</sup> March 2005. However, Sushil Kumar Agarwal did not have any notice of any EOGM or alleged allotment of shares. The petitioners have also alleged that Sunil Agarwal and Anil Agarwal had also wrongfully increased the authorized share capital of the company.

In July 2014 Sushil Agarwal Group came to know that Sushil Agarwal had allegedly been removed as director of the company w.e.f. 24<sup>th</sup> June 2014 and Mrs. Suchi Agarwal, wife of Sunil Agarwal, was allegedly appointed as director of the company. Petitioners have alleged that Sushil Kumar Agarwal has not received any notice of EOGM wherein decision of his removal from directorship was taken. The petitioners have also alleged that Sushil Agarwal Group has also not received any Board Meeting or General Meeting of the Company since October 2012. The petitioners have further alleged that annual returns and accounts for the financial year 2012-13 and 2013-14 are illegal and without approval or authorization. The petitioners have also levelled allegations of rampant mismanagement and siphoning of huge amount of money against Sunil Agarwal and Anil Agarwal Group.

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In case of **Eskag Sanjeevani Pvt. Ltd. (C.P.No. 135/2014 )** the petitioners have alleged the following acts of oppression and mismanagement against Sunil Agarwal and Anil Agarwal Group.

The petitioners have alleged that Godavari Dealcom Pvt. Ltd. have been allotted 28,000 equity shares of and in the company on 29<sup>th</sup> September, 2012 at a premium of Rs. 115/- per share. The said allotment is illegal and null and void because no notice of the said meeting was given to the petitioner Sushil Kumar Agarwal.

The petitioners have further alleged that 40,000 equity shares of the company was illegally allotted to Godavari Dealcom Pvt. Ltd. on 28<sup>th</sup> March 2013 at a premium of Rs. 130/- per share but Sushil Agarwal group had not received any notice for the same. Sushil Kumar Agarwal, the petitioner, has also alleged that after August 2012 he has not received any notice for the meeting of the company. The petitioners have further alleged that Seema Agarwal, wife of Sushil Agarwal has been illegally removed from the directorship of the company w.e.f. 23<sup>rd</sup> June 2014 by alleged special resolution passed in EOGM but no notice of EOGM was given to Sushil Agarwal group. The petitioners have also alleged that Sunil Agarwal and Anil Agarwal Group has utterly mismanaged the affairs of the company and siphoned of huge amount from the company. The balance sheet and accounts of the company have been manipulated by Sunil Agarwal and Anil Agarwal in collusion with the auditors of the company and therefore the audit report does not reflect the correct financial results for the said year.

The petitioners have alleged that on account of oppression and mismanagement by the Sunil Agarwal and Anil Agarwal group, the Sushil

Agarwal group, the petitioners herein, have been reduced to a hopeless and insignificant minority by reason of allotment of shares to Sunil Agarwal and Anil Agarwal Group (which includes Godavari Dealcom Pvt. Ltd.).

The petitioners have also alleged that on account of oppression and mismanagement 1/3<sup>rd</sup> representation of Sushil Agarwal Group on the Board of Directors of the said three (3) companies have also been taken away by Sunil Agarwal and Anil Agarwal Group and thereby completely controlling the Board of Directors of such companies. Sushil Agarwal has been completely ousted from the said three (3) companies in an illegal manner.

In the case of **La Chemico Pvt. Ltd. (C.P.No. 09/2016)** the petitioners have alleged that the company was incorporated in the year 1983 for the purpose of carrying out business in manufacturing of diverse medicines and drugs. The respondent No. 2, Sushil Kumar Agarwal since 27<sup>th</sup> September, 1993 was the only other director of the said company along with the petitioner no.1 Sunil Kumar Agarwal till 25<sup>th</sup> November, 2012. Respondent No. 3 Suyash Agarwal is the son of the respondent no. 2 Sushil Kumar Agarwal and respondent no. 4 Seema Agarwal, who was appointed as the additional director in the respondent no. 1 company in the year 2012 as part of implementation of family settlement/arrangement between the three brothers. Thereafter, respondent no.3 was illegally appointed as director of the said company without the knowledge and consent of the petitioner no.1. Annual General Meeting held with regard to the confirmation of respondent no. 3 as the director of the board of respondent no. 1 company from being the additional director was never informed to the petitioners. No board meetings were held to pass any resolution regarding the appointment of respondent no. 3 Suyash Agarwal as director of the company La Chemico Pvt. Ltd. Respondent No.4 Seema Agarwal is the wife of respondent no. 2 Sushil

Kumar Agarwal. The respondent nos. 5, 6 7 and 8 are the family holding companies of which the respondent no. 2 or his group has taken complete control through illegal removal of petitioner no. 2 Anil Kumar Agarwal from the Board of Directors. Respondent Nos. 9 and 10 are the companies in which the respondent no. 1 issued shares in the year 2014 without due intimation to the petitioner no. 1 Sunil Kumar Agarwal for the purpose of dilution the shareholding pattern of respondent no. 1 company. Respondent nos. 11, 12 and 13 are respectively the Chartered Accountant and Company Secretaries of the respondent no. 1 company. Respondent nos. 11,12 and 13 are acting in connivance and collusion with the respondent nos. 2 and 3 and assisting respondent nos. 2 and 3 in perpetrating the gross acts of oppression and mismanagement in the affairs of the respondent no. 1 company. The respondent no. 14 is banking institution and is the banker of respondent no. 1 company. Respondent nos. 15 and 16 are the companies from whom respondent no. 1 company has availed loan/financial assistance. Mother of petitioner nos. 1 and 2 Sunil Kumar Agarwal and Anil Kumar Agarwal and respondent no. 2 Sushil Kumar Agarwal namely, Chanda Devi Agarwal and Namrata Agarwal, daughter of respondent nos. 2 and 4, are also shareholders of respondent no. 1 company. The mother of petitioner nos. 1 and 2 and respondent no. 2 is now under complete control and domination of respondent no. 2 and his family members and they have illegally confined her at their residence and she is not allowed to meet the petitioner nos. 1 and 2.

On the basis of above allegations, Sunil Agarwal Group has filed the petition with the allegations of oppression and mismanagement against Sushil Agarwal Group.

Heard Ld. Counsels for the parties and perused the records.

In C.P. Nos. 133/2014, 134/2014 and 135/2014 Sushil Agarwal Group, the petitioners herein, have alleged acts of oppression and mismanagement against the Sunil Agarwal and Anil Agarwal Group in the companies, i.e., Eskag Pharma Ltd., Eskag Sanjeevani Ltd. and West Bengal Chemical Industries Ltd. Sunil Agarwal and Anil Agarwal Group have denied the above allegation of oppression and mismanagement and had taken the defence that there has been an oral family settlement among the Sushil Agarwal, Sunil Agarwal and Anil Agarwal and in compliance of that settlement Sushil Agarwal was to take over La Chemico Pvt. Ltd. and Sunil Agarwal and Anil Agarwal to take over Eskag Pharma Pvt. Ltd. and Eskag Sanjeevani Pvt. Ltd. They have also stated that as per family settlement West Bengal Chemical Industries Ltd., which was a joint holding company with the Govt. of West Bengal, was to remain under joint control of three brothers, i.e. Sushil Kumar Agarwal, Sunil Kumar Agarwal and Anil Kumar Agarwal.

In C.A.No. 83/2015 it has been admitted that all three brothers are 1/3<sup>rd</sup> owner of all the companies in respect of whose affairs C.P.Nos. 133/2014, 134/2014, 135/2015 and C.P. No. 09/2016 have been filed.

Sushil Agarwal group has denied that there is any alleged family settlement and it has been contended from their side that no proof of family settlement has been given by Sunil Agarwal and Anil Agarwal . It has also been contended by Sushil Agarwal Group that story of alleged oral family settlement is baseless and has been concocted in an attempt to justify the ex-facie illegal and wrongful acts in removing the Sushil Agarwal Group's name from the Board of Directors of Eskag Pharma Pvt. Ltd. , Eskag Sanjeevani Pvt. Ltd. and West Bengal Chemical Industries Ltd.

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Sushil Agarwal Group has emphasized on the fact that no proof has been given to the fact that there was an oral settlement among the parties. They have further contended that in 2004 there was a family settlement and that was in writing. After that no such family settlement has ever been taken place. It has been further contended that had there been any oral family settlement then there would have been no occasion for increasing shareholding of Sunil Agarwal in La Chemico Pvt. Ltd. Sushil Agarwal Group has alleged that Smt. Suchi Agarwal, wife of Anil Agarwal and Smt. Shobhana Agarwal, wife of Sunil Agarwal have been further allotted shares in La Chemico Pvt. Ltd. In addition to that, HUF of both Sunil Agarwal and Anil Agarwal were allotted shares in La Chemico Pvt. Ltd. Sushil Agarwal has also alleged that shares of La Chemico have been allotted to Tirupati Metal Pvt. Ltd., which is a joint family company equally owned and controlled by three brothers. Sushil Agarwal group has contended that had there been any oral family settlement there would have been no occasion for Sunil Agarwal and Anil Agarwal Group to subscribe to further shares of La Chemico Pvt. Ltd. The fact of oral settlement has also been denied on the ground that had there been any oral family settlement the logical course of action would have been for the parties exiting from the company to amicably transfer their shares in such company to the other party and to resign from the Board. In the instant case shares have not been transferred inter se amongst the parties nor has any director resigned. In fact, shares have been further allotted to entities controlled by Sunil Agarwal and Anil Agarwal Group and Sushil Agarwal and his nominee had been removed from the directorship of Eskag Pharma Pvt. Ltd., Eskag Sanjeevani Pvt. Ltd. and West Bengal Chemical Industries Ltd. Sushil Agarwal Group contended that the above facts clearly indicate that

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there was no such family settlement as alleged by the Sunil Agarwal and Anil Agarwal Group.

Sushil Agarwal Group have also contended that Sunil and Anil Agarwal Group have not given any explanation as to why Sushil Agarwal still retains some shares in the companies which were allegedly given to Sunil and Anil Agarwal Group in family settlement. Sushil Agarwal Group has also contended that had there been a family settlement then Sunil Agarwal would have resigned from the Board of La Chemico Pvt. Ltd.

Regarding the control and management of La Chemico Pvt. Ltd. by Suyash Agarwal it was contended that Suyash Agarwal, son of Sushil Agarwal was appointed as director of La Chemico Pvt. Ltd. in the year 2012 , i.e., one year prior to the alleged oral family settlement and that too with the written consent of Sunil Agarwal. Therefore, Sushil Agarwal Group has contended that Sunil and Anil Agarwal Group had no right to object to the same.

Sunil and Anil Agarwal Group in reply to the allegations of alleged oppression and mismanagement against them had contended that on account of oral family settlement in the year 2013 Sushil Agarwal Group was to take over the La Chemico Pvt. Ltd. and Sunil and Anil Agarwal Group was to take over Eskag Pharma Pvt. Ltd. and Eskag Sanjeevani Pvt. Ltd. and West Bengal Chemical Industries Ltd. was to remain in the joint control of all three brothers. They have further contended that the oral family settlement is clearly borne out from the conduct of the parties and the manner in which they had allowed the shareholdings and control of the Board of the aforementioned companies to be changed. Sushil Agarwal Group is denying such family settlement in their rejoinder filed in C.P. Nos. 133/2014, 134/2014 and 135/2014, Sunil Agarwal and Anil Agarwal Group has decided

not to pursue the matter of family settlement in the matter and had pleaded that each of the said three Agarwal Brothers be given equal ownership and control in each of the aforementioned four companies and they accordingly agreed to restore complete equality in shareholding and in the Board of Directors of Eskag Pharma Pvt. Ltd., Eskag Sanjeevani Pvt. Ltd. and West Bengal Chemical Industries Ltd. provided they are given equal ownership and control in La Chemico Pvt. Ltd.

Sushil Agarwal Group in C.P.No. 133/2014, 134/2014 and 135/2014 had agreed to restore the 1/3<sup>rd</sup> ownership and control of Sunil Agarwal and Anil Agarwal Group in La Chemico Pvt. Ltd. But in reply to the affidavit of Sunil Agarwal and Anil Agarwal Group in C.P.No. 133/2014, 134/2014 and 135/2014 Sushil Agarwal Group have stated that they do not agree to restore the equal ownership and control of La Chemico Pvt. Ltd.

In C.A. No. 83/2014 at page 22 [connected with C.P.No. 134/2014] Sushil Agarwal Group has stated that "It is pertinent to note that inasmuch as La Chemico Private Limited is not the subject matter of the instant proceeding, no order can or should be passed in respect thereof. In any event the allegations made in the application pertaining to La Chemico Private Limited are not accepted and are denied and disputed by the petitioners. As such it is humbly submitted that the application should be disposed of directing the respondents to take steps to ensure that all the three branches, i.e. the branches of petitioner no 1 and respondent nos. 2 and 3 are all equal in terms of shareholding and directorship in respect of Eskag Pharma Private Limited, Eskag Sanjeevani Private Ltd. and West Bengal Chemical Industries Limited".

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After the above stands taken by Sushil Agarwal Group, Sunil Agarwal and Anil Agarwal Group have filed C.P.No. 09/2016 wherein prayer was made for restoration of 1/3<sup>rd</sup> ownership and control of each of the three brother in La Chemico Pvt. Ltd., Eskag Pharma, Eskag Sanjeevan and West Bengal Chemicals.

Sunil Agarwal & Anil Agarwal Group has contended that in terms of oral family settlement Sushil Kumar Agarwal had taken over the complete control of La Chemico Pvt. Ltd. and inducted his son Suyash Agarwal as additional director on 26<sup>th</sup> November, 2012 and thereafter confirmed him as a director of the said Company on 28<sup>th</sup> September, 2013. Additional shares were further allotted to Sushil Agarwal and his Group in La Chemico Pvt. Ltd. which resulted in depletion of shareholding percentage of Sunil Kumar Agarwal and Anil Kumar Agarwal in La Chemico. Sunil Kumar Agarwal was also removed from the Board of Directors of La Chemico Pvt. Ltd.

Sunil Agarwal and Anil Agarwal Group have contended that while filing C.P.Nos. 133/2014, 134/2014 and 135/2014 Sushil Agarwal Group have completely taken over the control of more than 1/3<sup>rd</sup> shareholding of La Chemico Pvt. Ltd. Sushil Agarwal Group have also suppressed the fact of oral family settlement.

Sunil Agarwal and Anil Agarwal Group have contended that on the one hand Sushil Agarwal Group has taken advantage of family settlement and took control of La Chemico Pvt. Ltd. but after taking complete control of La Chemico Pvt. Ltd. with an ulterior motive Sushil Kumar Agarwal attempted to

undo the family settlement and thereby filed the C.P.Nos. 133/2014, 134/2014 and 135/2014 to undo the family settlement. The Sunil Agarwal and Anil Agarwal Group have further contended that the C.P.Nos. 133/2014, 134/2014 and 135/2014 had not been filed with clean hands and these Company Petitions has been filed after suppressing material facts and on this basis also the petitions filed by Sushil Agarwal group are deserved to be dismissed.

The instant proceedings arise out of the disputes in the Agarwal family relating to the control and management of the joint family business and acts of oppression and mismanagement perpetrated by Sunil and Anil Agarwal groups against Sushil Agarwal family. Shri Sushil Agarwal group have admitted in all the Company Petitions 133,134 and 135 of 2014 that all the companies i.e. M/s. Eskag Pharma Private Ltd. (C.P. no.134 of 2014), M/s. Eskag Sanjeevani Pvt. Ltd. (C.P. no.135 of 2014), West Bengal Chemical Industries Ltd. (C.P. no.13 of 2014) and La Chemico Pvt. Ltd. (C.P. no.09 of 2014) are family companies where each of the three brothers and their respective groups are entitled to 1/3<sup>rd</sup> share and ownership. The other group i.e. Shri Sunil Agarwal and Anil Agarwal group have also admitted the same fact in C.A. no.83 of 2015 wherein in para 27, it is stated that **"it has been correctly stated by the petitioners in the petition that each of the branches of the petitioner no.1 and respondent nos. 2 and 3 have both equal ownership and control of La Chemico Pvt. Ltd., Eskag Pharma Pvt. Ltd., Eskag Sanjeevani Pvt. Ltd. and the West Bengal Chemical Industries Ltd."**

The contentions of the rival group i.e. Sushil Agarwal Group and Sunil Agarwal Group in respect of above-mentioned facts are similar. None denies this fact that all the four companies are family companies where each of the three brothers and their respective groups are entitled to equal ownership and control i.e. 1/3<sup>rd</sup> share each.

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March, 2013 and Smt Shobhana Agarwal has also been allotted 230 shares of La Chemico Pvt. Ltd. in 2013. It has been further alleged that further shares of La Chemico were admittedly allotted to Tirupati Metals Pvt. Ltd., which is a company equally owned and controlled by three groups. If at all, there was any family settlement as alleged, then there would have been no reason for Sunil Agarwal and Anil Agarwal groups to subscribe to further shares of La Chemico under any circumstances. Petitioners have contended that the story of alleged family settlement is not supported by the facts mentioned above.

If there was any family settlement as alleged by Sunil Agarwal group for exit of all parties from companies allotted to other groups, then logical course of action would have been for the party exiting the company after amicable transfer their shares in such company, to the other party and to resign from the Board. However, in the instant case, shares have not been transferred *inter se* parties nor have any directors resigned. In fact, shares have been allotted to Sunil Kr. Agarwal and Anil Kr. Agarwal group while on the other hand Sushil Kr. Agarwal and his nominee has been removed as director from Eskag Pharma and Eskag Sanjeevani and West Bengal Chemical Industries Ltd.

Sunil Kr. Agarwal group have contended that after the family settlement Shri Sushil Kr. Agarwal has allotted further shares in La Chemico to take over control of La Chemico. It has also been argued that Shri Suyash Agarwal, son of Sushil Kr. Agarwal was appointed as Director of La Chemico, thereby ensuring control of Sushil Kr. Agarwal in La Chemico.

In reply to the above allegations Sushil Agarwal has contended that Shri Suyash Agarwal has been appointed as Director in La Chemico in the year 2012, i.e. one year prior to the alleged oral family settlement and that too with the written approval of Sunil Agarwal.

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On the above basis, Shri Sushil Agarwal group has contended that the defence of family settlement is totally after thought. Sunil Agarwal has not given any documentary evidence to prove the fact of any family settlement and from the conduct of the parties it cannot be inferred that there has been family settlement and in terms of family settlement, and in pursuance of that Sushil Agarwal group has taken control of the La Chemico and Sunil and Anil Agarwal group have taken control of Eskag Pharma Pvt. Ltd. and Eskag Sanjeevani Pvt. Ltd.

As per alleged family settlement, West Bengal Chemical Industries was to remain in joint control of all three groups but Sushil Agarwal has been removed from the Directorship of the company w.e.f. 24.06.2014 and Smt. Suchi Agarwal, wife of Sunil Agarwal was allegedly appointed as Director of the Company, as per the alleged family settlement. West Bengal Chemical Industries Ltd. was to remain in joint control of all three groups Chemical Industries Ltd., This is evident from the alleged form DIR 12, which is at page 182 to 185 of C.P. no.133 of 2014 and alleged resolution in this regard at pages 186 to 187 of C.P. no.133/2014. Removal of Sushil Agarwal from the Directorship of West Bengal Chemical Industries Ltd. and the induction of Suchi Agarwal as Director of the company also negates the theory of alleged family settlement. On the above basis, it appears that Sunil Agarwal group has failed to prove the fact of alleged oral family settlement in the year 2013 whereby Shri Sushil Agarwal was to take over La Chemico Pvt. Ltd. and Sunil and Anil Agarwal group were to take over Eskag Pharma Pvt. Ltd. and Eskag Sanjeevani Pvt. Ltd. and further West Bengal Chemical Industries Ltd. was to remain in joint control of all three groups. Instant proceedings arise out of disputes in the Agarwal family relating to the control and management of the joint family business and on the basis of allegations of oppression and mis-management against Sunil Agarwal group. Though Sunil Agarwal group has denied the allegation of oppression and mis-management and had taken the defence that as per the family settlement. Sushil Kr. Agarwal group was

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to take over the La Chemico Pvt. Ltd. and Sunil and Anil Agarwal group were to take over Eskag Pharma and Eskag Sanjeevani. Sunil and Anil Agarwal group has taken the defence in the Company Petition nos.133 to 135 of 2014 filed by Sushil Agarwal group alleging oppression and mis-management perpetrated by Sunil and Anil Agarwal group.

On the basis of above discussion, it is clear that there has been oppression and mis-management in the control of the Companies i.e., Eskag Pharma, Eskag Sanjeevani, West Bengal Chemical Industries Ltd. and also in La Chemico. The parties have further failed to prove that Sushil Kr. Agarwal group have increased their shareholdings in La Chemico and took control and management of La Chemico, as a result of family settlement due to the appointment of his son Suyash Agarwal as Director in the said Company. It has also been not established that Sunil Kr. Agarwal and Anil Kumar Agarwal group have increased their shareholdings in Eskag Pharma, Eskag Sanjeevani and West Bengal Chemical Industries Ltd. only on account of purported oral family settlement. On the basis of above discussion, it is also clear that Sushil Kr. Agarwal, Sunil Kr. Agarwal and Anil Kr. Agarwal are equally entitled to 1/3<sup>rd</sup> ownership and control of each of the Company, i.e. Eskag Pharma, Eskag Sanjeevani, West Bengal Chemical Industries Ltd. and La Chemico.

Sunil and Anil group have failed to prove the fact of alleged family settlement and it is also clear that there is a complete deadlock in the management of the companies in question and it is necessary to pass an order directing division of the companies with the only object of resolving such deadlock. In such a situation, where Court has found that there is a deadlock by reason of dispute relating to management and control of the companies, then Court may order division of assets of the companies.

Sushil Agarwal group has submitted that viable solution may only be by passing appropriate direction to value the main family business, i.e. Eskag

Pharma, Eskag Sanjeevani, West Bengal Chemical Industries Ltd. and La Chemico Pvt. Ltd. by independent valuer to be appointed by the Tribunal and thereafter on the basis of valuation arrived at, direct division or allotment of all the family companies amongst the three groups on the basis by appropriate  $1/3^{\text{rd}}$  shares of all three groups so that each group independently controls a particular business and/or company. In the event, there is any difference in valuation of companies allotted to three groups, such difference can be settled by payment of money. Sunil Agarwal and Anil Agarwal group have also contended that the Tribunal should issue direction for restoration of the group companies to Shri Sushil Agarwal and Sunil Kr Agarwal and Anil Kr. Agarwal to  $1/3^{\text{rd}}$  shareholdings and  $1/3^{\text{rd}}$  control of the Board of Eskag Pharma Pvt. Ltd., Eskag Sanjeevani Pvt. Ltd., La Chemico Pvt. Ltd. and West Bengal Chemical Industries Ltd. by directing appropriate transfer of shares in the said companies by the groups and/or by the holding companies holding shares in the same in equal shares to three Agarwal brothers and/or their family members to establish the equality in shareholdings and by directing each of the three brothers to have one seat in the Board of each of the companies.

Sunil Kr. Agarwal has opposed the prayer of Sushil Agarwal group regarding valuation of the companies for division. It has claimed that each of the group should be given  $1/3^{\text{rd}}$  in shareholdings and control in the Board of each company of Agarwal brothers.

Sunil Kr. Agarwal has also opposed the application for valuation on the ground that the valuation application which has been taken does not seek either valuation or division of La Chemico Pvt. Ltd. Sushil Agarwal group filed an application which has been numbered as C.A. No.590 of 2013 in C.P. no.135 of 2014 for division of family business of Eskag Pharma and Eskag Sanjeevani and West Bengal Chemical Industries Ltd. but has not prayed for division of La Chemico Pvt. Ltd.

S. Sijoyan

It is true that the contention of both the parties are that all the four companies are equally owned by three Agarwal brothers, then there is no question of division of only three companies i.e., Eskag Pharma and Eskag Sanjeevani Pvt. Ltd. and West Bengal Chemical Industries Ltd. by leaving out La Chemico. However, during argument, Sushil Agarwal group has also agreed to divide all the four companies amongst three brothers, but with a condition that appropriate valuation of all the four companies by independent Valuer be done. Sunil Kr. Agarwal has also opposed the division of four companies on the ground that in Company Petition nos.133 to 135 of 2014, Sushil Kr. Agarwal has not sought relief of family division or partition of the family companies but on the contrary they have maintained that each of the three Agarwal brothers were on the date of filing of the said three Company Petitions entitled to equal shareholdings, management and control of all four companies, i.e. Eskag Pharma, Eskag Sanjeevani Pvt. Ltd., La Chemico and West Bengal Chemical Industries Ltd. Since there is apparent distrust and discord among the three brothers even if Sushil Agarwal is restored the 1/3<sup>rd</sup> shareholdings in the Eskag Pharma and Eskag Sanjeevani and West Bengal Chemical Industries Ltd., even then he will remain in minority.

It is also evident that Sunil Kr. Agarwal and Anil Kr. Agarwal group have proposed right issue and in that respect the order has been passed on 20<sup>th</sup> October, 2014 regarding maintaining status quo in respect of shareholdings in Company Petition nos. 133,134 and 135 of 2014. The proposed right issue may have affected shareholdings of the Sushil Agarwal group, and further reducing them to perpetual minority in the group companies Eskag Pharma, Eskag Sanjeevani and La Chemico and West Bengal Chemical Industries Ltd., Sushil Kr. Group remaining as a minority shareholder even if he continues as a member of the Board of Directors may not be able to bring the matters complained of to an end. There will be continuous dispute and differences and friction among the three warring groups to take over each other. Sushil Kr. Agarwal has submitted that

ultimate solution has to be parting of ways between Sushil Agarwal and other groups i.e. Anil Agarwal and Sunil Agarwal. The object of relief under section 397,398 and 402 of the Companies Act, 1956 is to bring an end of the matters complained of. It appears that only viable solution is by division of the business by allocating business of different companies into three groups and this can only be done if the valuation of the companies and business is done by an independent Valuer so that Valuation Report can be the basis for dividing the businesses among the three groups after adjusting for the different valued companies similar to owelty money paid in case of partition of properties in joint family. In so many cases, where there is deadlock among the family companies, Court has taken the view for ordering division of companies on the basis of valuation. NCLT has also the power to pass such an order under the provision of Section 242 of the Companies Act, 2013. In the circumstances, it is necessary to issue direction to value the main family business i.e. Eskag Pharma Pvt. Ltd., Eskag Sanjeevani Pvt. Ltd., West Bengal Chemical Industries Ltd. and La Chemico Pvt. Ltd. by an independent Valuer. On the basis of valuation arrived at, direction for division and/or allotment of all the family companies amongst the three groups on the basis of admitted  $1/3^{\text{rd}}$  shares of all the three groups so that each group independently controls a particular business and/or company. In the event, there is any difference in valuation of companies allotted to three groups, such difference can be adjusted by payment of money. This will help the companies to continue their operations as viable business units and will protect the interests of various stake holders.

In all these cases it is seen that the procedures laid down in the Companies Act for increasing share capital, appointment/removal of Directors and re constitution of the Board have not been adhered to by the three brothers and their family groups.

In our view, fixation of the cut off date for valuation is also necessary to be determined. We are of the view that cut off date for valuation should be a


date prior to the filing of the present petitions. Company Petition nos.133,134 and 135 of 2014 have been filed on 12<sup>th</sup> of September, 2014. Therefore 31<sup>st</sup> March, 2014 will be the most appropriate date for determination of values of Agarwal group of companies so that no one can take the advantage of the proceedings done during pendency of petitions.

### ORDER

Preliminary decree is being passed in all the four company petitions for valuation of main business i.e., Eskag Pharma, Eskag Sanjeevani Pvt. Ltd., West Bengal Chemical Industries Ltd. and La Chemico Pvt. Ltd. by an independent Valuer. Both the groups i.e.Sushil Kr. Agarwal group and Sunil Agarwal groups are being directed to give the name of an independent Valuer through consensus within 15 days from the date of order, failing which both the groups will have the option to give names of three independent Valuers within 15 days thereafter, so that the Tribunal may issue order to the Valuer for valuation of the aforesaid four companies and cut off date for valuation will be 31<sup>st</sup> March, 2014 and Report for valuation may be called within six months and expenditure of independent Valuer will be borne by all the three brothers in equal proportion. Preliminary decree may be passed for valuation of all four Company Petitions. Company petitions Nos. 133 to 135 of 2014 and 9 of 2016 are decided in the above terms.

Parties are to bear their own costs.

Let the copy of this judgment be placed in all the four Company Petitions i.e. 133/2014, 134/2014, 135/2014 and 09/2016.



(S. Vijayaraghavan) 18/11/2016  
Member(T)

(Vijai Pratap Singh)  
Member(J)

Signed on this 18<sup>th</sup> the day of November, 2016