



2025:DHC:11971



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **CS(COMM) 1059/2025 and I.A. 28963/2025, I.A. 29148/2025**

MR. SOURAV DASPATNAIK

R/O: AE 368 SECTOR-1, SALT LAKE CITY,
KOLKATA, 700064, WEST BENGAL

....PLAINTIFF

(Through: Mr. J. Sai Deepak, Sr. Adv. with Mr. Arjun Syal, Mr. Shreyan Das, Mr. Rohit Kumar, and Mr. Naman Verma, Advs.)

Versus

MR. STRATGRWOTH BUSINESS ADVISORS LLP

HAVING ITS OFFICE AT:

313-A-3 T/F PRATAP BHAWAN,
BAHADUR SHAH ZAFAR MARG,
I.P. ESTATE, POLICE STATION DARYA GANJ,
NEW DELHI, CENTRAL DELHI- 110002

.... DEFENDANT NO.1

MR. VINEET AGARWAL

R/O H /147, SARITA VIHAR, NEW DELHI, INDIA- 110076

.....DEFENDANT NO.2

MR. PARITOSH GUPTA

R/O T-17/502, COMMON WEALTH GAMES VILLAGE,
NEAR AKSHARDHAM MANDIR,
DELHI, LAXMI NAGAR EAST DELHI,



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INDIA, EAST DELHI, NEW DELHI- 110092

..... DEFENDANT NO.3

SWACH ENVIRONMENT PVT. LTD.

HAVING ITS OFFICE AT:
UNIT 130A, 18TH FLOOR,
INFINITY BUSINESS CENTRE, PLOT NO. G1,
BLOCK GP, SECTOR V, SALT LAKE CITY,
KOLKATA- 700091

.... PROFORMA DEFENDANT NO.4

HALDIA WATER SERVICES PRIVATE LIMITED,

HAVING ITS REGISTERED OFFICE AT:
UNIT NO 130B, 18TH FLOOR, INFINITY BUSINESS CENTER,
INFINITY BENCHMARK
BUILDING, SALT LAKE ELECTRONICS COMPLEX, PLOT G1,
BLOCK-GP, SECTOR V,
SALT LAKE, KOLKATA – 700091

..... PROFORMA DEFENDANT NO.5

*(Through: Mr. Tanmaya Mehta, Mr. Atul Sharma, Mr. Aditya Vashishth,
Mr. Aman Agarwal and Mr. Vasu Vats, Advs. for D- 1 to 3.
Mr. Rishav Banerjee, Mr. Shambo Nandy, Mr. Ronit Kumar and Mr. E. K.
Shibu, Advs for D-4 and 5)*

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Reserved on: 11.12.2025

Pronounced on: 23.12.2025

JUDGMENT

This civil suit by the plaintiff is, essentially, against defendant nos. 1 to 3 seeking permanent and mandatory injunction restraining them exercising any rights as shareholders or director of the defendant no.4-company.

2. The fundamental grievance raised by the plaintiff is premised on the



ground that the defendant nos. 1 to 3 have, illegally and improperly, defrauded the plaintiff of huge sums of monies and have fraudulently grabbed and taken over the entire shareholding of the defendant no.4, and majority shareholding of the defendant no.5-companies. It is, thus, stated that defendant nos.4 and 5-companies have been caused significant wrongful loss.

3. The defendants, *in limine*, have raised objections on the maintainability of the suit, essentially, relating to non-compliance with the mandate under Section 12A of the Commercial Courts Act, 2015, the suit being barred under Section 430 of the Companies Act, 2013 (hereinafter “**Companies Act**”), and the existence of an arbitration agreement between the parties.

4. The case set up in the plaint is that the plaintiff is the Managing Director at the defendant no. 4-company, Swach Environment Pvt. Ltd. (hereinafter “**Swach**”). The defendant no. 5-company, Haldia Water Services Private Limited (hereinafter “**HWSPL**”) is a subsidiary of Swach. The defendant no.1 firm, StratGrwoth Business Advisors LLP (hereinafter “**StratGrwoth**”) along with its partners, being defendant nos. 2 and 3, were business advisors.

5. Between the years 2018 and 2020, Swach appears to have availed loans exceeding Rs. 67,00,00,000/- (Rupees Sixty Seven Crore only) from a third-party creditor, SREI (hereinafter “**SREI**”). Swach defaulted in repayment of the said loans and SREI initiated proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016. Thereafter, the plaintiff was introduced to StratGrwoth and defendant nos. 2 to 3 for availing business



advisory services for Swach. StratGrwoth and defendant nos. 2 to 3 were to help identify suitable investors for Swach and facilitate capital infusion.

6. In furtherance of the aforesaid arrangement, the following agreements were executed:

- i. Loan-cum-Pledge Agreement dated 17.01.2025 between StratGrwoth, through defendant no. 2, and the plaintiff (hereinafter “**Loan Agreement**”);
- ii. Share Purchase Agreement dated 17.01.2025 between StratGrwoth, SREI, and Swach, (hereinafter “**SPA**”); and
- iii. One Time Settlement Agreement dated 31.03.2025 between Swach, SREI, and StratGrwoth (hereinafter “**OTS**”).

7. The arrangement was that the plaintiff would advance a loan to StratGrwoth to acquire hundred per cent shareholding in Swach from SREI, under the Loan Agreement. The said acquisition of shares would be in terms of the SPA. Thereafter, the StratGrwoth and defendant nos. 2 to 3 would find suitable investors to facilitate the clearance of Swach’s outstanding dues with SREI in terms of the OTS. Under the Loan Agreement, upon the transfer of hundred per cent shareholding to StratGrwoth, the shares were to be pledged in favour of the plaintiff, which he would invoke to gain control of Swach.

8. However, Swach defaulted in its obligations under the OTS, allegedly, on account of defaults by defendant nos. 1 to 3. Further, the said defendants did not pledge the shares in favour of the plaintiff and have, instead, repaid the loan amount to him. On the other hand, they have set about to reconstitute the Board of Directors of Swach and HWSPL, and suspended the plaintiff as a director at Swach and HWSPL.



9. Mr. Tanmaya Mehta, learned counsel for defendant nos. 1 to 3, submits that the dispute, essentially, relates to the management of Swach, and therefore, ought to be raised before the NCLT under the Companies Act. As such, he submits, this Court does not have jurisdiction to entertain the suit in view of the bar under Section 430 of the Companies Act. Mr. Rishav Banerjee, learned counsel for defendant nos. 4 and 5, adopts the submissions of Mr. Mehta.

10. Mr. J. Sai Deepak, learned senior counsel for the plaintiff, submits that the wrong sought to be remedied by way of the suit is not the management of Swach by defendant nos. 1 to 3, but the fraud played by them on Swach, in so far as they never had any intention to facilitate infusion of funds into Swach and had, on the basis of the fraudulent representations, induced the plaintiff and Swach to enter into the aforesaid arrangement with them. The dispute, he submits, involves serious questions of fraud, and as such, can only be adjudicated by a Civil Court.

11. He further submits, without prejudice to his contentions, that the plaintiff being a non-shareholder director, is not a 'member' for the purposes of Section 244 of the Companies Act so as to be able to move the NCLT under Section 241 thereof. Therefore, according to him, the dispute does not fall within the jurisdiction of the NCLT and therefore, the suit is not barred under Section 430 of the Companies Act.

12. I have heard learned counsel for the parties and perused the record.

13. If the plaint averments are perused in the context of the prayer, it is clear that plaintiff seeks to assert rights of Swach and HWSPL in his capacity as their director. The same is evident from a bare perusal of the alleged causes of action as claimed in paragraph no. 47 of the plaint, which



is extracted below, for reference:

“The cause of action first arose in September 2023 when the Defendant Nos. 1 to 3 induced the Plaintiff at Indian Habitat Centre introduced by Dr. Ajay Pradhan, Independent Director of Swach in good faith and which meeting was also attended by Mr. Sundeep Malhotra and Mr. R.K. Srivastava, with false representations. The cause of action further arose when the Plaintiff acting for Defendant No.4 executed the Advisory Mandate/Engagement Letters dated 08.12.2023 and thereafter again on 03.02.2024. The cause of action further arose when believing upon the false representations, the Plaintiff was made to part ways with huge some of monies. The cause of action further arose on 17.01.2025, when Defendant Nos. 1 to 3 further induced Plaintiff into believing their false representations by executing a Loan-cum-Pledge Agreement for Rs. 15,00,000/- which was supposedly used for purchase of the shares. The cause of action further arose when Defendant Nos. 1 to 3 gave effect to their grand illegal design by executing a tripartite One Time Settlement Agreement dated 31.03.2025 between Swach, SEFL, and the Defendant No. 1 for settlement of Swach’s outstanding dues towards SEFL. The cause of action further arose on 28.05.2025, when parties held a meeting in the office of Swach, Avanta Business Centre, West End Saket, New Delhi when once again Plaintiff requested the Defendant Nos. 1 to 3 that the pledge agreement be executed at the earliest especially when the personal guarantee for the funding agencies for payment of OTS amount is being provided by him. The cause of action further arose on in August 2025, wherein Defendant Nos. 1 to 3 stated that Swach should make the payment from its internal accruals and gave effect to their final step of the grand illegal design to usurp control of Swach by convening an EGM. The cause of action last arose on 09.09.2025 when the Defendant Nos. 1 to 3 in furtherance of their mala-fide intention called for the Annual General Meeting of Board on 30.09.2025. As such the cause of action is still continuing.”

(Emphasis supplied)

14. It is seen that each cause of action relates to the defendants no. 1 to 3’s shareholding in Swach and their alleged grand illegal design to usurp control of the company. The only agreement with defendant nos. 1 to 3, which the plaintiff is privy to, is the Loan Agreement. However, with the loan amount under the said Agreement having been repaid to the plaintiff, no relief is claimed under the same. Therefore, there is no doubt that the



present suit is in the purported best interests of Swach and HWSPL.

15. However, subsequent to the filing of the suit, the plaintiff has been suspended as the Managing Director of Swach *vide* resolution of the purported meeting of the Board of Directors dated 17.11.2025, and as a Whole-Time Director at HWSPL *vide* the resolution of the purported meeting dated 19.11.2025 of the Board of Directors. This position has been brought on record by the plaintiff *vide* I.A. 29148/2025.

16. Even assuming that these two resolutions are *non est* in the eyes of law, the question as to whether the plaintiff can institute the civil suit being merely a director, on behalf of Swach and HWSPL, is an issue which assumes significance at the threshold.

17. A company is a distinct entity, and it is the company which has to determine whether it will make anything that is wrong to the company a subject-matter of litigation, or whether it will take steps itself to prevent the wrong from being done. If a director is to institute a suit on its behalf, he has to be authorised to do so by the company. Reference can be made to the decision of the Calcutta High Court in *Al Amin Seatrans Ltd v. Owners and Party Interested in Vessel M V Loyal Bird*.¹ The Bombay High Court took a similar view in its decision in *Bsn (Uk) Ltd. and Others v. Janardan Mohandas Rajan Pillai and Ors*.² The relevant portion of the said decision is extracted below, for reference:

“27. A non-proprietary director is entitled to sue the company only in certain cases. In Pulbrook v. Richmond Consolidated Mining Co. [1878] 9 Ch 610, it was held that where a director who is improperly and without cause excluded by his brother directors from the board, he is entitled to an order restraining such directors from so excluding him.

¹AIR 1995 CAL 169.

²1993 (3) BOM CR 228.



The second plaintiff is not attempting to enforce any of his individual statutory rights. Like any other employee of a company a non-shareholder director owes duties to the company but has no right to exercise any of the powers which a shareholder who is a proprietor of the company can exercise. The case of Jackson v. Minister Bank Ltd. [1885] 15 LR Ir 356 relied upon by Mr. Chinoy is an Irish case. The case of Jackson (supra) and also the case of Joint Stock Discount Co. v. Brown [1869] LR Eq. Cases 381 also relied upon by Mr. Chinoy are contrary to settled Indian law and as such, have neither persuasive nor binding effect. These cases even do not hold that a non-shareholder director can maintain a derivative action on behalf of the company. Even the articles of association of a company constitute contract between the company and its members but do not confer any rights on a person other than a member. The articles of association do not confer any rights on a non-proprietary director of the company.”

18. In view of the foregoing discussion, what follows is that the suit is not maintainable because the plaintiff does not have any *locus standi* to institute the same as he does not claim to have been authorised by Swach in this regard. Therefore, there is no cause of action for the plaintiff to institute the suit, and the plaint is liable to be rejected under Order VII Rule 11(a) of the Code of Civil Procedure, 1908.

19. If the plaintiff seeks to assert any of his rights, the reliefs sought in the suit will have to be appropriately framed. The nature of the relief prayed in the present suit cannot be granted at the instance of the plaintiff, as the plaintiff seeks interference with the internal governance of separate legal entities i.e., Swach and HWSPL, which otherwise is to be in accordance with the wishes of the shareholders. The plaintiff, admittedly, does not have any shareholding in the companies. If he has any grievance, being a director, in respect of the suspension/termination of his directorship, he may take recourse to the appropriate legal remedies for enforcement of his terms of appointment/employment. In the absence of any express authorisation to do the same, he cannot be allowed to don the mantle of the company itself, and



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file suits on its behalf. Swach and HWSPL, being distinct legal entities, are fully capable of protecting their interests through their shareholders, and their directors would be bound by the decisions of the shareholders; whether or not to institute an action, against any wrongdoing.

20. In view of the foregoing delineation of law, the submissions made by learned counsel on the other issues are not being dealt with on their merits.

21. Accordingly, the suit along with the pending applications stands dismissed.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

DECEMBER 23, 2025
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