



पश्चिम बंगाल पश्चिम बंगाल WEST BENGAL

G 194000

BEFORE MR. DEBASHIS KUNDU,
SOLE ARBITRATOR

In the matter of:
Arbitration and Conciliation Act, 1996;

And

In the matter of:
Arbitration Agreement dated 18th April,
2012;

And

In the matter of:
Disputes and differences

54/69

05 SEP 2014

No.	Date	(St. Adv)
Sold to	Bebashis Kundu	
Address	61/17 Moore Avenue.	
Rs.	5000/- P.	
ANJUSHREE BANERJEE		
L.S. WEIGHT (10.5.)		
HIGH COURT, KOLKATA-700 001		

kol-40.

05 SEP 2014

Amongst

1. Sri Prosenjit Saha, residing at A.P.C. Sarani, Deshbandhupara, Siliguri - 734004, District - Darjeeling;
2. Sri Ajit Saha, residing at A.P.C. Sarani, Deshbandhupara, Siliguri - 734004, District - Darjeeling;
3. Sri Bijoy Saha, residing at A.P.C. Sarani, Deshbandhupara, Siliguri - 734004, District - Darjeeling;
4. Sri Goutam Saha, residing at A.P.C. Sarani, Deshbandhupara, Siliguri - 734004, District - Darjeeling;
5. Prakash Distillery & Chemicals Co. Ltd., having its registered office at Hotel Prakash Building, 4th Floor, Hill Cart Road, Siliguri;
6. Bhojnarain Tea Co. Ltd., having its registered office at Hotel Prakash Building, 4th Floor, Hill Cart Road, Siliguri;
7. Canon Paper Industries Pvt. Ltd., having its registered office at Hotel Prakash Building, 4th Floor, Hill Cart Road, Siliguri;
8. Sahaji Finance Pvt. Ltd., having its registered office at Hotel Prakash Building, 4th Floor, Hill Cart Road, Siliguri;

A W A R D

1. The parties to the dispute, namely, (1) Sri Prosenjit Saha; (2) Sri Ajit Saha; (3) Bijoy Saha; and (4) Goutam Saha; are brothers having joint ownership, control and management in the various businesses and properties most of which were established/ purchased by their late father including four companies being the party Nos. (5) Prakash Distillery & Chemicals Co. Ltd. (hereinafter referred to as "Prakash"); (6) Bhojnarain Tea Co. Ltd. (hereinafter referred to as "Bhojnarain"); (7) Canon Paper Industries Pvt. Ltd. (hereinafter referred to as "Canon"); and (8) Sahaji Finance Pvt. Ltd. (hereinafter referred to as "Sahaji").
2. That the four brothers alongwith their family members and relatives as also their late parents were/are the shareholders of the aforesaid four companies. The details of such shareholdings in the four companies are certified by the Directors of said companies as on 30th November, 2013, which are annexed hereto and collectively marked as annexure "X".
3. After the death of their late father, various disputes and differences arose between the party Nos. 1 to 4 over a period of time with regard to the control and management of the affairs of the said four companies.
4. Inasmuch such aforesaid disputes and differences between the parties grew by the day, the four brothers at long last agreed to resolve their disputes and differences through an arbitration proceeding. Accordingly, the party Nos. 1 to 4 entered into an arbitration agreement dated 18th April, 2012 and appointed the undersigned as the sole arbitrator to resolve the disputes and distribute the said four companies along with their assets and liabilities pertaining thereto. The four companies also took Board resolutions on 18th April, 2012 to submit themselves to the arbitration proceedings before this Arbitral Tribunal.

5. The undersigned accepted such appointment as the Sole Arbitrator and thereafter entered into reference.

6. According to the terms of the reference, it was, inter alia, agreed by and between the parties that it would not be obligatory on my part to make a speaking or a reasoned award and/or maintain regular minutes and that I would be entitled to have the right to proceed summarily and also to make interim awards.

7. Further it was agreed between the parties that I would not be obliged to follow the procedural law, including taking of evidence, and would be at liberty to set up my own procedures and I would also have the power to reject any evidence tendered by any party without assigning any reason therefor. Further, the parties had agreed that the award/awards made by me would be final, conclusive and binding upon the parties.

8. At the very outset, the Party Nos. 1 to 4 had represented to me that each one of them was representing his respective family members/relatives, who were also shareholders in the said four companies and in course of the arbitration proceedings: each of the four brothers would represent his branch of family and/or his relatives.

9. At the first arbitral sitting, the parties agreed that they would not file any statement of claim and that they would only rely on the documents submitted before me as also individual statements made in course of the arbitral proceedings. The parties had submitted the Balance Sheets and Profit & Loss Accounts as also the Annual Returns of the said four companies in course of the subsequent arbitral proceedings. No one has disputed the correctness of such records and documents submitted before me.

10. After hearing the parties at length and on going through the documents and records submitted before me, I came to the conclusion that the valuations of the said four companies were required to be first assessed before proceeding further and thus the party Nos. 1 to 4 were directed to

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assess the valuation of the said four companies through a Chartered Valuer/Accountant. They, however, agreed amongst themselves that they would make self assessment of the valuation of the said four companies taking into account the bank liabilities and hand over such individual valuation by the four brothers to me for taking further steps, to which I agreed.

11. The main immovable asset of the family is about 420 cottahs of land belonging to Prakash lying and situate at Dagapur, Siliguri (hereinafter referred to as "Dagapur Land"), which lands were purchased by Prakash over a period of several years and under several deeds of conveyances. Only after getting the valuation of the said four companies, the Dagapur land could be divided amongst the four brothers/companies to equitably distribute amongst the four companies the proportionate share in the Dagapur land.

12. On questioning the parties as to the quantum of land required by Prakash to run its own factory at Dagapur, I was informed by all the four brothers that about 40 cottahs was sufficient to enable Prakash to run its factory at Dagapur. Thus $420 - 40$ cottahs = 380 cottahs of land was surplus to the requirement of Prakash and the same could be distributed amongst the four companies proportionately.

13. I accordingly directed the four brothers to assess the valuation of 380 cottahs of land of Prakash required to be distributed.

14. The party Nos. 1 to 4 subsequently submitted their individual self-valuation of the four companies to the undersigned. After receiving the individual valuations, I took the average the same to come to a final valuation of the four companies, which are as under:-

(Valuation of the companies including
including Bank Liabilities)
(Rs. Crores)

Prakash Distillery & Chemicals Co. Pvt. Ltd.	12.00
Bhojnarain Tea Co. Ltd.	11.00
Canon Paper Industries Pvt. Ltd.	3.00
Sahaji Finance Pvt. Ltd.	2.50

15. In so far as the valuation of the surplus land at Dagapur is concerned, I was informed by all the four brothers that the market value per cottah of land at the locale would be between Rs.8 lacs to Rs.8.5 lacs. The four brothers also apprised me that they had informally surveyed the Dagapur Land and found out that around 372 cottahs of land is physically available instead of 380 cottahs and therefore, I have based my further calculations on the basis of 372 Cottahs of land instead of 380 Cottahs. However, if at the time subsequently or at the final survey of the land if there is any further change in the quantum of land (372 cottahs) then the same shall be proportionately added/reduced from the individual allotments on the basis of the percentage which has been calculated hereinafter.

16. I have for the purpose of coming to a valuation of the surplus land accepted the lower rate that is Rs.8 lacs per cottah as the base price and thereafter multiplied the same with the total quantum of land (372 cottahs), which came to 29.76 crores which is rounded off to 29.50 which, however, was rounded off to Rs.29.50 crores.

17. Thus aggregate value of the four companies which comes to Rs.28.50 crores ($12 + 11 + 3 + 2.5 = \text{Rs.}28.5$ crores) is added to the valuation of the surplus land at Dagapur being Rs.29.50 crores. Therefore, the total value of the family assets (valuation of the four companies and Dagapur Land) comes to Rs.58 crores.

18. Therefore, the individual share in the family assets amongst the four brothers is Rs.14.5 crores ($\text{Rs.}58 \text{ crores} / 4 = \text{Rs.}14.5$ crores).

19. Thus, having arrived at the individual valuations of the four companies, I now propos to equitably distribute the Dagapur land amongst the four companies to come to a final valuation of the four companies along with the proportionate share of land at Dagapur.

20. Now for the purpose of distributing the proportionate share of the surplus land, I have first subtracted the valuation of the four companies from the individual valuation in the family assets of each brother (i.e. Rs.14.5 crores) and the difference between the valuation of the companies from the individual family assets would be thus supplemented by adding the valuation of

the proportionate surplus land so that the ultimate valuation of the individual companies along with the proportionate surplus land comes to Rs.14.5 crores. For this reason I have converted the valuation of the surplus land (Rs.29.5 crores) on a percentage basis from which the share of the four companies in the surplus land at Dagapur has been calculated, the result of which is stated hereunder:-

(Rs. In Crores)

Name of the Company	Allocated Value amongst the total Family Assets for each individual	Less - Valuation of the individual Company	Differential value between the allocated family asset of the individual and the company in question is now to be supplemented by value of surplus land at Dagapur
Prakash	14.50	(-) 12.0	2.5
Bhojnarain	14.50	(-) 11.0	3.5
Canon	14.50	(-) 3.0	11.5
Sahaj	14.50	(-) 2.5	12.0
	58.00	(-) 28.5	29.5

21. In this context, a sketch map showing the demarcated portion of the proportionate percentage of the surplus land of the four parties/companies is annexed hereto and marked "Y".

22. On the basis of the above calculations, the percentage of the surplus land amongst the four companies as also the quantum thereof is as under:-

Name of the Company	Percentage (Rounded off)	Quantum of the land thus allocate out the 372 Cottahs (Rounded Off)
Prakash	$2.5/29.5 \times 100 = 8.6\%$	32.00 Cottahs
Bhojnarain	$3.5/29.5 \times 100 = 11.9\%$	44.00 Cottahs
Canon	$11.5/29.5 \times 100 = 38.9\%$	144.50 Cottahs
Sahaji	$12.0/29.5 \times 100 = 40.6\%$	151.00 Cottahs
		372 Cottahs

23. Since the valuation of the total family assets was not disputed by any of the parties, as such, the only way to peacefully resolve the basis of allocation of the four companies amongst the parties Nos. 1 to 4 was through a system of lottery.

24. Accordingly, on 7th September, 2013 a lottery was held amongst the four brothers in my chamber at 61/7, Moore Avenue, Kolkata – 700 040 for allocation of the four companies along with their proportionate share of land at Dagapur, Siliguri, the result of which is as follows:-

<u>Name of the Party</u>	<u>Name of the Company allocated alongwith the quantum of land at Dagapur</u>
Sri Prosenjit Saha	Bhojnarain Tea Co. Ltd.
Sri Ajit Saha	Canon Paper Industries Pvt. Ltd.
Sri Bijoy Saha	Prakash Distillery & Chemicals Co. Ltd.
Sri Goutam Saha	Sahaji Finance Pvt. Ltd.

25. That in so far as the land in Mouza – Rangia, Shibmandir, Siliguri adjacent to the existing land of Canon standing in the name of the four party Nos. 1 to 4 being Deed No. 2706 of 2005 is concerned, the same will henceforth be transferred solely and exclusively in favour of Mr. Ajit Saha and/or his nominees and necessary registration of such by the other three brothers in the name of the party No. 2 and/or his nominees be executed within a period of two months. Accordingly, I hold and award the same.

26. Thus the final allocation of the four companies being party Nos. 5 to 8 along with its proportionate share of land at Dagapur which is presently owned by Prakash is now distributed and is to be owned, possessed and enjoyed by the four brothers/companies in the manner as stated hereinbelow:

		<u>Total Land 372 Cottas</u>	
<u>Name of the Party</u>	<u>Company Allocated</u>	<u>Percentage of Land allocated to the individual/company</u>	<u>Quantity of Land Allocated</u>
Sri Prosenjit Saha	Bhojnarain Tea Co. Ltd.	11.9%	44.00 Cottahs
Sri Ajit Saha	Canon Paper Industries Pvt. Ltd.	38.9%	144.0 Cottahs
Sri Bijoy Saha	Prakash Distillery & Chemicals Co. Ltd.	8.6%	33.0 Cottahs
Sri Goutam Saha	Sahaji Finance Pvt. Ltd.	40.6%	151.00 Cottahs

27. I accordingly hold and award aforesaid allocation of the four companies along with their proportionate share of the surplus land of Prakash at Dagapur, Siliguri, in the manner as more fully stated in paragraph 24 above, between the Party Nos. 1 to 4.

28. I also hold and award that 40 cottahs of land belonging to Prakash will be treated exclusively owned by Prakash which will be in addition to the quantum of land allocated out of the aforesaid surplus Dagapur land more fully stated in paragraphs 24 hereinabove.

29. I direct that the aforesaid quantum of land allotted to the individual parties/companies, as more fully stated in paragraph 24 hereinabove, along with 40 Cottahs of land of Prakash awarded under this Award is to be owned, occupied and enjoyed by the parties as more fully stated in paragraph 24 hereinabove.

30. In so far as the shares of the parties which are held by them in the four companies are concerned, it is directed as follows:-

(a) The shares of the deceased parents of the four brothers held in the above four companies are awarded to the concerned party in whose favour such particular company has now been allocated to the exclusion of other parties, more particularly stated in paragraph 24.

(b) Prakash being the holding company of Canon, having approximately 90% of the issued and paid-up capital thereof shall within a month from the date of making and publishing this Award transfer all its shares in Canon to Sri Ajit Saha and/or his nominees and execute the transfer forms so that necessary forms can be filed before the Registrar of Companies, West Bengal to effectuate fully the transfer of Canon to Sri Ajit Saha in terms of the instant Award.

(c) All the shares held by the parties in the companies which under this Award have not been allocated to them or their family members, friends and nominees, they shall transfer such shares to the allottee of the individual company under this Award or his nominee/s and they shall handover the share certificates alongwith the transfer deeds duly executed by them within one month from the date of making and publishing this Award so that the entire shareholding of the individual company belongs exclusively to the party to whom it has now been allocated under this Award. It is made clear that that the transferors of such shares shall sign the necessary transfer deeds and handover the share certificates within one month so that requisite forms can be filed before the Registrar of Companies, West Bengal.

31. Likewise, all the parties and/or their family members will resign from the Board of Directors of those companies which have not been allocated to them under this Award within one month from the date of making and publishing this Award so that the said companies can appoint their new Board of Directors and also necessary Form - 32's can be filed with the Registrar of Companies, West Bengal.

32. With the making and publishing of this Award, the parties to whom the individual companies have been allocated more fully stated in paragraph

24 hereinbefore shall have the exclusive right, title and interest to run, manage and control the affairs of such company so allocated to him. After making and publishing of this Award, no steps, however, shall be taken by any party who has not been allocated the other companies which has not been allotted him detrimental or against the interest of such companies till a new Board of Directors is appointed by the party to whom such company is allocated under this Award. Further they shall not seek or take any steps to sell, dispose of, alienate, encumber, deal with or create any third party interest in such company or over and in respect of the shares of such company and anything done contrary to the directions passed in the instant Award shall be treated and declared null and void.

✓ 33. This Award directs the parties to treat the accounts of the four companies being party Nos. 5 to 8 as joint family companies upto 31 March, 2014, after which said companies shall be held to be no longer joint family properties and would be treated as companies owned, managed and controlled by the party to whom such company has been allocated.

✓ 34. Even though at the time of lottery of the four companies it was specifically recorded that the said companies were to be allotted with all their assets and liabilities, yet I feel that the four parties had initially agreed even before me that they were willing to divide amongst themselves the bank liabilities of the four companies as on 30th September, 2013 since they felt that it was a joint family companies till 30th September, 2013 and were being jointly run, managed and controlled by the party Nos. 1 to 4 as family companies. I accordingly, hold and direct that all the bank dues pending as on 30th September, 2013 shall be equally divided amongst the four parties and paid off to the concerned bank and any liability thereafter (i.e. with effect from 1st October, 2013) would be on account of the party to whom such company has been allotted under this award and such liability is to be liquidated by him.

35. I direct the for a period of six months from making and publishing of this Award, the party No. 3 shall pay a sum of Rs.2,00,000/- (Rupees two lacs only) per month to the party No. 2 without claiming refund of the

same. Similarly the party No. 1 shall pay a sum of Rs.1,00,000/- (Rupees one lac) per month for a period of six months to the party No. 4 without claiming refund of the same.

✓ 36. It has been stated by all the four parties that presently they are not in a position to make full payment of the bank liabilities without resorting to sale their individual portions of the surplus land at Dagapur. As such, I hold and award that within a period of three months from the date of making and publishing of this award, the four parties, now being the owners of the respective companies allocated to them shall endeavour and sell their portion of land to the extent required to meet the bank liabilities which are joint in nature till 30th September, 2013, and in so far as the additional liabilities of the bank with effect from 1st October, 2013 is concerned, the same shall be made by the party Nos. 1 and 3 out of their own funds. This will, however, not prevent any of the parties from raising funds on his own from any other source without resorting to sale of his individual portion of the said surplus land.

37. Immediately upon payment and/or liquidation of the Bank liabilities in the manner as more fully stated hereinbefore, the title deeds of Prakash regarding Dagapur land as also land of Sahaji presently hypothecated in favour of Bhojnarain with bank and/or any other title deeds of the parties herein that may have been deposited with the banks pertaining to any of the other assets of any of the of the companies shall required to be released after payment of the bank dues and handed over to the owner of the properties who has been awarded such property under this award.

38. It is further directed that any litigation pending by or against any four company shall be the sole responsibility and liability of the new management in terms of the instant Award excepting in cases of criminal proceedings or the like, if any.

39. In so far as the personal guarantees and/or corporate guarantees, if any, have been given to the banks or financial institutions for obtaining loans from them, such loanee company will be required to discharge the

personal guarantees in which the other parties and/or their nominee/s apart from the party to whom such company has been allocated have given such personal guarantees or the corporate guarantees by replacing those guarantees with new/fresh guarantees acceptable to the concerned bank or financial institution.

✓ 40. Apart from the joint bank liabilities as on 30th September, 2013 as stated hereinbefore, any or all other liabilities of the concerned company which has not been allocated to the individual parties shall be sole liability of the concerned company to the exclusion of the others.

✓ 41. All movable and immovable assets, properties, companies etc. so allocated under this Award are and shall be treated on an "as is where is and whatever there is" basis save to the extent expressly mentioned in the foregoing paragraphs of the instant award. Each party shall be absolutely entitled to his allotment under this Award without any interference or disturbance from the other party/parties and shall be at liberty to deal with or dispose of the same, including sale, transfer, mortgage, lease etc. as he may so deem fit and proper.

42. It is further made clear that since Prakash is the owner of the surplus lands and the same is being distributed amongst the four companies, the quantum of land allocated to the other three companies, namely, Bhojnarain, Canon and Sahaji, at the time of registration or thereafter, any amount required to be paid by way of capital gains or otherwise under the provisions of the Income Tax Act, 1961 by Prakash by reason of sale/transfer of such land to the other three companies will be paid off by the transferees of such land since Prakash is not parting with or transferring the said lands voluntarily but the same are being distributed under the instant Award amongst the parties. It is further directed that all stamp duties and/or registration charges required for the purpose of registration of the surplus land at Dagapur, Siliguri in the names of Bhojnarain, Canon, Sahaji and/or their nominees shall be paid by the transferees and not by Prakash.

43. Eight copies of this award are made, each copy printed on a non-judicial stamp paper of Rs.500/- and each party is entitled to a copy thereof. All the eight copies of this Award will be treated as originals.

Debasish Kundu
(DEBASISH KUNDU)
SOLE ARBITRATOR

Date : 09.09.2014

Place : Kolkata

Annexure:

- "X" The details of such shareholdings in the four companies are certified by the Directors of said companies as on 30th November, 2013.
- "Y" A sketch map showing the demarcated portion of the proportionate percentage of the surplus land of the four parties/companies.