$~

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

% Judgment Reserved on: *15.04.2026*
Judgment delivered on: *15.07.2026*
Judgment uploaded on: *15.07.2026*

\+ **RFA(OS)(COMM) 33/2019 & CM APPL. 34798/2019**

APERAM STAINLESS SERVICES AND SOLUTIONS PRECISION SAS & ANR .....Appellants

versus

JINDAL SAW LTD & ANR .....Respondents

Advocates who appeared in this case

For the Appellants	:	Mr. Jayant Bhushan, Sr. Adv. alongwith Ms. Zeba Khair, Mr. Shashank Agarwal, Amartya Bhushan, Advs.
For the Respondents	:	Mr. Ramakrishnan Viraraghavan, Sr. Adv. with Mr. Dinesh Pardasani, Mr. Siddarth Mehra, Ms. Pratiksha Dwivedi, Advs.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMEET PRITAM SINGH ARORA, J.

1. The present appeal is filed against the judgment dated 16.07.2019 passed by the learned Single Judge in CS (COMM) 1314/2016 ['impugned judgement'], whereby the suit for specific performance filed by Respondent No.1/Jindal Saw Ltd was decreed through summary judgment under Order

XIII A of the Code of Civil Procedure, 1908 [‘CPC’].

Aggrieved by the grant of specific performance without a full trial, Appellant No.1/Aperam Stainless has preferred the present appeal contending that several disputed questions of fact, particularly relating to fraud, misrepresentation, valuation of shares and readiness and willingness of the parties, required adjudication through oral evidence.

1.1. By the impugned judgment, the learned Single Judge by exercising its suo moto powers also decreed the connected suit filed by Appellant No.2/Aperam Alloys Imphy SAS [‘Imphy’] for recovery of USD 450,000 towards goods supplied to the Respondent No.2/IUP Jindal Metals and Alloys Ltd [‘IUP’]. Learned Single Judge was of the opinion that the decree of specific performance in favour of Respondent No. 1 cannot be passed without grant of the decree of payment of USD 450,000 against Respondent No. 2/IUP. Though, no appeal has been filed against the said decree of money, arguments have been addressed on the sustainability of the said decree of USD 450,000 if the decree of specific performance is set aside. We have considered this submission as well in this judgment.

FACTS

2. The facts stated in the appeal are as under: -

2.1 The dispute originates from a Joint Venture Agreement dated 12.08.2004 between Appellant No.1, a French company engaged in precision stainless steel products, and Respondent No.1, pursuant to which a joint venture company, Respondent No.2/IUP, was incorporated in India. Initially, Appellant No.1 held 27% shareholding in Respondent No. 2/IUP, which was subsequently reduced to 19.29%, while Respondent No.1 became the majority shareholder. According to the Appellant, serious differences arose between the parties over the management and operation of the Respondent No. 2/IUP, and Respondent No.1, by virtue of its majority control, effectively excluded the Appellant from participation in the affairs of the company and denied it access to financial and management information.

2.2 In view of its exclusion from the management of the Respondent No. 2/IUP, Appellant No.1 sought to exit the venture and exercised its contractual put option in 2009. However, Respondent No.1 did not act upon the said request. Thereafter, Respondent No.1 repeatedly represented that the Appellant's shares in the Respondent No. 2/IUP had NIL value. The Appellants disputed such assertions and alleged that Respondent No.1 had failed to comply with the Joint Venture Agreement and the Articles of Association by excluding it from board and shareholder meetings and withholding information regarding the company's affairs.

2.3 The Appellant contends that, having been denied access to Respondent No. 1's financial information, it was compelled to rely upon the representations made by Respondent No.1 during negotiations for its exit. Pursuant to such negotiations, a valuation report dated 22.11.2013 prepared by Chartered Accountant N.C. Aggarwal & Co., engaged by Respondent No.1, valued Appellant No.1 's shares at Rs. 1.20p per share. Relying upon the said valuation, the parties entered into a Settlement Agreement dated 20.12.2013 ['Settlement Agreement'], under which Appellant No.1 agreed to transfer its shares in Respondent No. 2/IUP to Respondent No.1 for USD 50,000. The Settlement Agreement also separately provided for payment of

USD 450,000 by Respondent No. 2/IUP to Appellant No. 2/Imphy towards unpaid dues for goods supplied by Appellant No. 2/Imphy to Respondent No. 2/IUP.

2.4 The Appellants assert that despite execution of the Settlement Agreement and compliance with their obligations, Respondent No.1 and Respondent No. 2/IUP repeatedly delayed completion of the transaction and failed to perform their obligations for nearly three years. During this period, the Appellants undertook a review of publicly available statutory records and allegedly discovered that the valuation report dated 22.11.2023 had grossly undervalued the Respondent No. 2/IUP company. According to the Appellant, while the valuation report assessed the shares at Rs. 1.20p per share, Respondent No.1's own financial statements reflected the value of its investment in the Respondent No. 2/IUP company at approximately Rs. 40.10p per share. On this basis, the Appellants alleges that Respondent No.1 deliberately misrepresented the value of the shares and fraudulently induced it to enter into the Settlement Agreement at a substantially depressed valuation.

2.5 Following further investigation, the Appellants concluded that the Settlement Agreement had been procured by fraud and misrepresentation. Consequently, by communications dated 13.09.2016, Appellant No.1 purported to avoid and terminate the Settlement Agreement insofar as it related to the transfer of shares, while Appellant No.2/Imphy simultaneously demanded payment of USD 450,000 due from the Respondent No. 2/IUP.

Shortly thereafter, Respondent No.1 instituted CS (COMM) 1314/2016 seeking specific performance of the Settlement Agreement, whereas Appellant No.2/Imphy instituted CS (COMM) 45/2017 seeking recovery of the unpaid amount of USD 450,000.

3. Learned Single Judge *vide* impugned judgment decreed the suit for specific performance of the Settlement Agreement dated 20.12.2023 sought by the Respondent No.1 in CS (COMM) No. 1314/2016, directing Appellant No.1 to, against receipt of consideration as mentioned in the said Settlement Agreement, transfer the shares held by it in Respondent No.2/IUP in favour of Respondent No.1 and to perform its other obligations under the said Settlement Agreement.

4. It further, in exercise of its suo moto powers under Order XIIIA CPC directed that Respondent No.2/IUP, under the said Settlement Agreement, simultaneously with the amount of USD 50,000 towards the price of shares, is also liable to pay the amount of USD 450,000 towards supply of material for recovery of which amount CS (COMM) No. 45/2017 has been filed by Appellant No.2/Imphy. It observed that there can be no decree for specific performance of the said Settlement Agreement in favour of Respondent No.1, without a decree being also passed in CS (COMM) No. 45/2017 in favour of Appellant No.2/Imphy and against Respondent No.2/IUP, of recovery of USD 450,000. It directed payment of interest *pendente lite* at 6% p.a. on the aforesaid amounts by Respondent No.1 and Respondent No. 2 respectively.

FINDINGS AND ANALYSIS

5. This Court has heard the learned counsel for the parties and perused the record.

6. Appellants have filed the aforesaid regular appeal seeking setting aside of the impugned judgment and seeking a remand of the suit CS (COMM) 1314/2016 for trial.

7. Appellant No.2/Imphy has not filed any appeal seeking setting aside of the judgment passed in its favour in CS (COMM) No. 45/2017 directing Respondent No.2/IUP to pay a sum of USD 450,000. This was also clarified by the Appellants at the first hearing in this appeal on 02.08.2019, wherein it was stated that the appeal is confined to the findings returned in CS (COMM) 1314/2016. The relevant portion of the order dated 02.08.2019 reads as under:

> "**RFA(OS)(COMM) 33/2019 & CM APPL. 34798/2019 (stay)**
> 1. The appellant is aggrieved by the common judgment dated 16.07.2019 passed by the learned Single Judge in CS (COMM) 1314/16 filed by the respondent no. 1 (Jindal Saw Limited) against the appellant no.1 (Aperam Stainless Services and Solutions Precision SAS) and CS (COMM) 45/17 filed by the appellant no. 2 (Aperam Alloys IMPHY SAS) against the respondent no. 2 (IUP Jindal Metal and Alloys Limited).
>
> 2. The present appeal is confined to the findings returned by the learned Single Judge in CS (COMM) 1314/16 decreed in favour of respondent no.1 by directing the appellant no. 1 herein to perform all its obligations under the Settlement Agreement dated 20.12.2013, particularly in respect of the transfer of shares of the respondent no. 2 held by the appellant no. 1, in favour of the respondent no. 1, on the latter paying USD 50,000 with interest @6% per annum from 20.09.2016, till the date of the payment and against payment by the respondent no. 2 to the appellant no. 2 of USD 450,000 with interest @6% from 16.01.2017, till the date of payment.
>
> 3. We have heard the learned counsel for the parties, at the stage of admission.
>
> 4. List on 14.11.2019, for admission."

8. On the hearing dated 15.04.2026, learned senior counsel appearing for Respondent No.1 and Respondent No.2/IUP contended that since the Appellants have not challenged the grant of money decree in CS (COMM) 45/2017, they cannot maintain a challenge to the grant of decree of specific performance in CS (COMM) 1314/2016 as they both are intertwined and find its basis in the Settlement Agreement, which is sought to be repudiated by Appellant No.1 and Appellant No.2/Imphy in this appeal.

In reply, learned senior counsel for the Appellants stated that he agrees that if the Appellants succeed in this appeal, the judgment has to be set aside in its entirety and the decree of money granted in favour of the Appellant No. 2/Imphy for USD 450,000 will also have to be set aside. He states that the decree for money passed in CS (COMM) No. 45/2017 was passed by the learned Single Judge on its own, as Appellant No.2/Imphy had already withdrawn[1] its application being I.A. No. 6764/2018 filed under Order XIIIA CPC on 08.01.2019.

9. In these facts, we proceed to examine the merits of the challenge raised by the Appellants to the impugned judgment for decree of specific performance of the Settlement Agreement by the learned Single Judge in exercise of its powers under Order XIIIA CPC, upon an application bearing I.A. No. 6194/2018 filed by the Respondent No.1.

10. The Appellants have challenged the impugned judgment for a decree of specific performance on the following grounds:

i. Respondent No. 1 had procured Appellant No. 1's consent for

[1] As recorded at paragraph nos. 29 to 38 of the impugned judgment

the purchase price of USD 50,000 for transfer of its shareholding ['Aperam Shares'] in Respondent No.2/IUP by fraud;

ii. Respondent No. 1 had itself failed to perform its obligations under the Settlement Agreement in spite of requests and reminders from Appellant No. 1;

iii. Respondent No. 1 was not ready and willing to perform its obligations under the Settlement Agreement;

iv. The agreement to transfer Aperam Shares held by the Appellant No.1 in Respondent No.2/IUP in terms of the Settlement Agreement had been validly voided by Appellant No. 1.

ISSUE I: WHETHER THE PURCHASE PRICE OF USD 50,000 STOOD VITIATED BY MISREPRESENTATION AND FRAUD

11. The oral submissions of the Appellants largely revolved around the plea that Appellant No. 1's consent for the purchase price of USD 50,000 for Aperam Shares is vitiated by misrepresentation and fraud.

11.1 It is contended that the price of the Aperam Shares was actively misrepresented and grossly undervalued by the Respondent No.1 with the intent of deceiving the Appellant No.1 and inducing it to enter into the Settlement Agreement, which amounted to fraud. It is contended that the same is a triable issue and could not be decided summarily.

11.2 It is contended that allegations of fraud and misrepresentation go to the very root of the contract and the same ought not to have been summarily dismissed without any opportunity to the Appellant No.1 to lead evidence to prove its case, more so, when the Appellant No.1 sought to lead expert evidence of an independent auditor in support of its case that the price for the Aperam Shares was knowingly and falsely misrepresented by Respondent No.1.

11.3 It is contended that the Settlement Agreement is voidable at the option of the Appellant No.1 as it was arrived at without the free consent of the Appellant No. 1 as regards the price of USD 50,000 for the Aperam Shares. It is contended that all the ingredients of fraud have been pleaded by the Appellant No. 1 in the written statement, and an opportunity ought to have been afforded to the Appellant No.1 to prove the same through trial.

11.4 It is contended that the learned Single Judge failed to appreciate that the exception to Section 19 of the Indian Contract Act, 1872 ['Act of 1872'] did not apply to cases of active misrepresentation and fraud. It is settled law that in case of active misrepresentation, knowing the fact to be false, is distinct from mere silence or concealment. It is not incumbent upon the party defrauded to establish that it had no means of discovering the truth with ordinary diligence. It is contended that in the present case, the Appellant No.1 had been prevented by the Respondent No.1 from participating in the management and affairs of Respondent No.2/IUP and it had no means of obtaining any knowledge about the working, business, financials and affairs of the Respondent No.2/IUP, and thus, it was compelled to rely upon the representations of the Respondents during negotiations for accepting the price of the shares, agreed to, on 20.09.2012. Further, it is contended that active fraud is prima facie evident from the vast variation between the valuation of shares by Respondent No.1 in November 2013 for the purposes of the Settlement Agreement at Rs. 1.20p per share and the valuation procured by Respondent No.1 for the purposes of its own balance sheets for the periods ending March 31, 2013, as well as March 31, 2014, at Rs.40.10p per share, i.e. for the period just before and after the valuation by the same Chartered Accountant i.e., M/s N. C. Aggarwal. It is contended that no explanation has been provided for such a vast fluctuation in the value of shares of the Respondent No.2/IUP.

11.5 It is contended that it is evident from KPMG's report dated 02.01.2017 [‘KPMG’s valuation report’] filed by the Appellant No.1, as well, that Respondent No.1 valued the shares of the Respondent No.2/IUP for the purposes of its own financial statements at Rs. 40.10p per share both in March 2013 and in March 2014 whereas for the purposes of the Settlement Agreement, the same were valued at Rs. 1.20p per share in November 2013. It is also contended that KPMG has flagged numerous factors which were not taken into consideration by the Chartered Accountant M/s N. C. Aggarwal while carrying out the valuation.

11.6 It is contended that the plea of fraud was specifically pleaded in the written statement and referred to the para-wise reply on merits at paragraph 10. The counsel relied upon the contents of KPMG’s valuation report to contend that the valuation report dated 22.11.2013 submitted by the Chartered Accountant N.C. Aggarwal [‘N.C. Aggarwal’s valuation report’] was a fraud. It is contended that the Appellant No.1 did not have the means to verify the correctness of the contents of the N.C. Aggarwal’s valuation report or independently assess the value of the Aperam Shares.

11.7 It is contended that the issue, whether the Appellant could have verified the correctness of the price by due diligence or not, is an issue to be determined post-trial and could not have been decided by the learned Single Judge on the basis of the pleadings alone. The counsel stated that passing a decree under Order XIIIA CPC on the basis of the pleadings has to be an exception and not the norm.

11.8 Reliance was placed on **Sangam (India) Ltd. v. National Highways Authority of India**[2], wherein the Division Bench of this Court held that cases involving allegations of fraudulent misrepresentation and active concealment do not lend themselves to disposal merely by invoking the Exception to Section 19 of the Act of 1872 on the assumption that the aggrieved party could have discovered the truth through due diligence.

11.9 Reliance was also placed on **Niaz Ahmad Khan v. Parshotam Chandra**[3], wherein the Allahabad High Court, while considering the exception to Section 19 of the Act of 1872, held that the question whether a party had the means of discovering the truth with ordinary diligence is intrinsically dependent upon the facts and circumstances of the case and requires examination of the surrounding evidence.

11.10 It is contended that, however, without giving any consideration to these facts, the learned Single Judge has held that there was no misrepresentation *qua* price of the shares or that the consent of the Appellant No.1 was not caused by valuation of Rs.1.20p of shares arrived at by the Chartered Accountant N. C. Aggarwal, once the parties had agreed for the

[2] 2024 SCC OnLine Del 3667
[3] 1930 SCC OnLine All 252

settlement at a lump-sum amount of USD 500,000. It is contended that in doing so, the learned Single Judge had applied the Exception to Section 19 of the Act of 1872 that the contract would not become voidable where the party whose consent was so caused by misrepresentation had the means of discovering the truth with ordinary diligence, however, without considering the fact that the Appellant No.1 had been prevented by the Respondent No.1 from participating in the management of Respondent No.2/IUP and had no means of obtaining any knowledge about the working, business and financials of the Respondent No.2/IUP.

11.11 It is contended that even otherwise, the question whether, at the time of execution of the Settlement Agreement, the Appellant had the means of discovering the correct value of the shares of the Respondent No. 2/IUP by exercising ordinary diligence is a matter of trial and could not be decided by the learned Single Judge in a summary hearing.

11.12 It is contended that the learned Single Judge erred in holding that the Appellant No.1 has no response to the e-mail dated 20.09.2012, being prior in time to the N.C. Aggarwal's valuation report. It is contended that the e-mail dated 20.09.2012 merely records oral discussions between counsels for the parties in the course of negotiations and does not amount to a contract as per law. It is contended that, moreover, paragraphs 10 of para wise reply in the Written Statement filed by Appellant No.1 in CS(COMM)1314/2016 clearly shows that the Appellant No.1 has specifically pleaded that it relied on the representations made by Respondent No.1 regarding the fair market value of the shares of the Respondent No.2/IUP throughout the negotiations, which finally culminated in the N.C. Aggarwal's valuation report, after which the Settlement Agreement was signed.

12. The Respondents have rebutted the aforesaid arguments of the Appellant with the following submissions:

12.1 It is contended that the Appellant's whole argument of alleged fraud is based upon the N.C. Aggarwal's valuation report being a misrepresentation of the true value of the Aperam Shares held in Respondent No. 2/IUP. However, it is contended that the following facts will show that the valuation of the shares contained in the Settlement Agreement was in no way based on the N.C. Aggarwal's valuation report. The said valuation report was issued/prepared solely for compliance with RBI[4] requirements, as the parties could not have agreed on a value of the said shares in contravention of the requirement of law present at the time, which required the use of the 'discounted cash flow method'. It is contended that, notably, even in Clause 4(e) of the Settlement Agreement, it has been recorded that either party has not made or relied on any representation regarding any fact which was relied on in making the Settlement Agreement and thus, the said report was not the basis of determination of the sale consideration.

12.2 It is contended that the settlement amount was finalised through negotiations between the representative of parties from 30.12.2010 to 20.09.2012. It is contended that the settlement value recorded in the Settlement Agreement decreased from USD 2 million (initially proposed) to USD 1 million, and ultimately to USD 500,000. It is contended that, crucially, the e-mail dated 20.09.2012 from the Appellant's counsel

[4] Reserve Bank of India

confirmed that the USD 500,000 was to be apportioned between the 'value of shares' and the 'cost of previously supplied materials'. At the time of the Settlement Agreement, based on N.C. Aggarwal's valuation report (aligned with RBI Guidelines), USD 50,000 (slightly lower than the assessed value of USD 51,409) was allocated to the shares, while the remaining USD 450,000 was assigned to the cost of supplied materials.

12.3 It is contended that the e-mail dated 20.09.2012, being the basis of the Settlement Agreement, is clearly evident from 'Recital K' wherein it has been recorded that 'the Parties agreed on the settlement and are hereby recording the terms thereof'.

12.4 It is contended that the above fact has been duly dealt by the learned Single Judge in the impugned judgment wherein it was recorded that Appellants herein had no response, neither in pleadings nor in the arguments, to the contents of e-mail dated 20.09.2012, which is of much before the N.C. Aggarwal valuation report *qua* which misrepresentation is alleged. The learned Single Judge also records that once the parties on 20.09.2012 had arrived at such an agreement, they took time of over one ['1'] year till 20.12.2013 to sign the Settlement Agreement, where the cumulative value of the Settlement Agreement remains frozen at USD 500,000 as agreed in teleconference on 10.09.2012. It is not the plea of the Appellants that anything transpired between 20.09.2012 and 20.12.2013.

12.5 It is contended that the only response to this issue by the Appellants is that the e-mail dated 20.09.2012 records the ongoing discussions between counsels of the parties and is not a final settlement. It is contended that, notably, this stand has been raised by the Appellants for the first time in the appeal and was not a part of the pleadings before the learned Single Judge. It is contended that, further, in any case, there was no valuation report when the parties had arrived at the settlement on 20.09.2012, pursuant to which the Settlement Agreement was drafted, and the cumulative figure of the settlement amount as well as the terms of the Settlement Agreement remained the same.

12.6 It is contended that in terms of the Exception to Section 19 of the Act of 1872, if the party whose consent was obtained through misrepresentation had the means of discovering the truth with ordinary diligence, the contract cannot be avoided. In the present case, since the parties were already in dispute, Appellant No. 1 did not occupy a position of trust with the Respondent and could have independently obtained its own valuation instead of relying on the Respondent's valuation. It is contended that however, it is evident that the valuation through auditor was conducted solely to comply with RBI requirements, and therefore, Appellant No.1 never obtained an independent valuation of the shares, hence, there can certainly be no misrepresentation *qua* price which has been mutually agreed after negotiations in September, 2012 and prior to the valuation by Chartered Accountant N.C. Aggarwal.

12.7 It is contended that the share value(s), in N.C. Aggarwal's valuation report, KPMG's valuation report and financial statements of Respondent No. 1 differ in the methodology used for arriving at the value of the share and the purpose for which they were carried out. It is stated that the methodologies used are distinct and not comparable. It is stated that the methodology employed in N.C. Aggarwal's valuation report is as per RBI Regulations and therefore, correct. It is contended that the methodology employed in KPMG's valuation report does not align with the RBI requirements and is therefore not relevant.

It is contended that there is no need for oral evidence as, due to the commercial nature of the transaction, all communications inter-se the parties were documented in the form of e-mails and letters, which are admitted. The only document relied upon by the Appellant, which was disputed by the Respondent, is KPMG's valuation report.

The Respondent contends that the Appellant has not challenged the finding in the impugned judgment that there is no individual on behalf of the Appellant, who is proposed to step into the witness box to lead oral evidence with respect to the negotiations leading to the settlement recorded in the e-mail dated 20.09.2012. It is further contended that no evidence is required to be led on KPMG's valuation report as the same does not contain the valuation on the basis of the discounted cash flow method, as required by the RBI Guidelines.

12.8 It is contended that the price settled between the parties was not based on the market value of the shares but on the basis of the mutual settlement arrived at between the parties, as recorded at Clause 1.1 of the Settlement Agreement.

13. Learned Single Judge has given its findings on this issue at paragraphs 39 to 50 and 54 of the impugned judgment which reads as under:

> "39. I will first take up the defence of Aperam Stainless, of misrepresentation. The defence is that the consent of Aperam Stainless to sell all shares held by Aperam Stainless in IUP for USD 50,000 equal to

USD 0.0185 per share was obtained by misrepresenting the fair market value of the price which as per the RBI Regulations was to govern the sale which required prior permission of RBI.

40. It is not in dispute that Aperam Stainless, whether for reasons attributable to Jindal or for any other reason, since the year 2009 had no participation in IUP, created in joint venture with Jindal in 2004.

41. It is also not in dispute that Aperam Stainless exercised the Put Option on 3rd February, 2009 and whereunder the Jindal had a right to purchase the shares held by Aperam Stainless.

42. The senior counsel for Aperam Stainless and Imphy had no response whatsoever, neither in the pleadings nor in the arguments, to the e-mail dated 20th September, 2012 which is of much before the valuation report of 22nd November, 2013 qua which misrepresentation is alleged. The said e-mail reproduced above shows that in the teleconference on 10th September, 2012 it was agreed between the parties that Aperam Stainless will be paid a lump sum amount of USD 500,000/- being half of USD 1,000,000 earlier demanded and since the price to be paid by Jindal, of the shares held by Aperam Stainless in IUP and to purchase which Jindal had a preemptory right, was regulated, it was further agreed that if the agreed amount of USD 500,000/- was more than the regulated amount/price which could be paid towards share price, the excess/balance after adjusting regulated amount/price, shall be paid towards due of Imphy.

43. I may highlight that the supplies by Imphy to IUP were between January and March 2007 and the limitation prescribed by law for recovery of price thereof, vide Article 14 of the Schedule to the Limitation Act, 1963, of three years, had lapsed in March 2010. It is not the plea that the limitation stood extended. Thus, as on 20th September, 2012, the price of the supplies from Imphy to IUP, even if any remaining, was not legally recoverable.

44. This becomes clear as daylight, from a reading of some other unrebutted documents. Aperam Stainless, vide its letter dated 3rd February, 2009 to Jindal, in accordance with Clause 7.2.1 of the JV Agreement, communicated its decision to exercise its Put Option right over the 2,70,00,000 shares of IUP representing 27% of the share capital of IUP and further informed that the price of the purchase and sale, again in accordance with Clause 7.2.1 of the JV Agreement, shall be the value of the initial contribution net of depreciation of the equipment supplied during the period up to the date of exercise of the option calculated according to a straight line method and the result of the said calculation was 137.64 million Indian rupees. Jindal, vide its letter dated 30th

December, 2010 to Aperam Stainless, with reference to the Put Option exercised by Aperam Stainless stated, that (i) in accordance with the terms of the JV Agreement, Price Waterhouse Coopers (PWC) was appointed to decide the fair market value of the shares held by Aperam Stainless in IUP and PWC had submitted its report setting out the fair market value of the IUP shares to be Nil; (ii) thus no amount was payable by Jindal to Aperam Stainless for transfer of shares of Aperam Stainless in favour of Jindal; and, (iii) since the Put Option had already become effective, Aperam Stainless should immediately deliver the original share certificates and execute the transfer forms in favour of Jindal. Aperam Stainless responded to the said letter vide its letter dated 17th February, 2011 wherein (a) it contested the valuation of PWC; (b) called upon Jindal to change the name of IUP and to remove all references to IUP in the Articles of Association of IUP; and, (c) proposed resolution of the disputes by a single settlement and on this basis proposed to "settle outstanding issues for an aggregate consideration of USD one million". Jindal, vide its letter dated 7th April, 2011 communicated its refusal to settle for aggregate consideration of USD one million and further stated that as per Regulations, the maximum amount which could be paid towards the shares could not be more than fair market value and as the shares were not listed on any stock exchange, the valuation of PWC should be accepted. Jindal, vide its reminder dated 19th January, 2012 to Aperam Stainless, also intimated that Aperam Stainless had ceased to continue to hold shares in IUP and the nominees of Aperam Stainless had ceased to be the Directors of IUP and called upon Aperam Stainless to transfer the shares. It was in the said background that the e-mail dated 20th September, 2012 reproduced hereinabove was sent by Aperam Stainless to Jindal, recording the agreement reached in the discussion in the teleconference on 10th September, 2012, of payment by Jindal to Aperam of USD 500,000 towards shares of IUP held by Aperam Stainless and to purchase which Jindal had the first right, on Aperam Stainless exercising Put Option. I may highlight that in the correspondences detailed in this paragraph, of prior to 20th September, 2012, there was no reference to the dues/claims of Imphy and only in the e-mail dated 20th September, 2012, while agreeing to lump sum payment by Jindal of USD 500,000, it was provided that if the fair market value of the shares was less than USD 500,000, the balance shall be paid in settlement of amounts due from IUP to Imphy towards equipment.

45. It is not in dispute that the sale of shares could not take place without RBI permission and for grant of which permission it was necessary that the sale was either for a price invested towards equity less depreciation or fair market value, whichever is more.

46. Once the parties on 20th September, 2012 had arrived at such an agreement, they took time of over one year i.e. till 20th December, 2013, to

sign the Settlement Agreement. The Settlement Agreement dated 20th December, 2013 mentions the same figure of 500,000 as agreed in teleconference of 10th September, 2012 and recorded in the email dated 20th September, 2012. It is not the plea that anything transpired between 20th September, 2012 and 20th December, 2013, to influence the total consideration agreed. The only inference is that the consideration agreed to in the Settlement Agreement was the consideration agreed to as far back as on 20th September, 2012 and the parties, as per commercial exigencies, agreed to, out of USD 500,000, appropriate USD 50,000 towards price of shares and USD 450,000 towards price of material supplied.

47. However while signing the Settlement Agreement, the parties in compliance of the requirement of RBI recorded therein that the consideration of USD 50,000 for shares held by Aperam Stainless in IUP was the fair market value of the shares and in support cited the valuation report of N.C. Aggarwal & Company, Chartered Accountants and annexed a copy of the report to the Settlement Agreement. N.C. Aggarwal & Company, Chartered Accountants also have while certifying the valuation taken care to specify the said valuation to be "considering the provisions contained in Reserve Bank of India Circular No.RBI/2009 – 10/445/A.P.(DIR Series) Circular No.49 dated 4th May, 2010".

48. Section 18 of the Contract Act defines "misrepresentation" as meaning and including (i) positive assertion of that which is not true though he believes it to be true; (ii) breach of duty which, without any intent to deceive, gains an advantage of the person committing it, by misleading another to his prejudice; and, (iii) causing a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement. Section 14 defines "free consent" as consent which is not caused, inter alia by misrepresentation. It however proceeds to further provide that consent is said to be caused by misrepresentation when it would not have been given but for the misrepresentation. Thus, even if there is misrepresentation but is not the cause of the consent, there is no misrepresentation in law, for it to be said that consent is not free. Finally, Section 19 of the Contract Act provides that when consent to an agreement is caused by misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. It however again further explains, that a misrepresentation which did not cause the consent does not render a contract voidable and carves out an exception for a case where the party whose consent was so caused by misrepresentation, had the means of discovering the truth with ordinary diligence.

49. Applying the aforesaid law, the contemporaneous correspondence between the parties does not support the plea of Aperam Stainless, of Jindal having practiced any misrepresentation qua the valuation of the

shares or of, the consent of Aperam Stainless to the Settlement Agreement dated 20th December, 2013 of which Jindal is seeking specific performance, being not free and the Settlement Agreement being voidable at the option of Jindal. The first demand of Aperam Stainless, after exercising the Put Option, for the price of its shares in IUP, which Jindal had a preemptory right to buy, was of 137.64 million Indian rupees i.e. equal to USD 2,008,463.39 i.e. of USD two million. However the same was subsequently lowered by Aperam Stainless itself, to USD one million, in its email dated 17th February, 2011. Finally, in the teleconference on 10th September, 2012 between Jindal and Aperam Stainless, a lump sum amount of USD 500,000 i.e. half million was agreed, and knowing fully well that the price which could be paid and received towards shares was regulated by RBI, it was also agreed that if the said regulated price of shares was less than USD 500,000, the balance amount remaining out of USD 500,000, after appropriating the regulated price, would be paid and received towards price of material supplied, which though on that date was not legally recoverable from Jindal and/or from IUP. This is confirmed in email dated 20th September, 2012. It is the agreement reached in the teleconference on 10th September, 2012 and confirmed in e-mail dated 20th September, 2012, which was given effect to in the Settlement Agreement dated 20th December, 2013, relying on the report of N.C. Aggarwal & Co. Chartered Accountants, by appropriating an amount USD 50,000 towards price of shares and USD 450,000 towards price of material. Once the total amount to be paid by Jindal and to be received by Aperam Stainless and Imphy was settled voluntarily, appropriation of the same under different heads was a matter of commercial exigencies and convenience of the parties and it is not open to Aperam Stainless and/or Imphy to subsequently claim that while the commitment qua USD 450,000 mentioned in the Settlement Agreement to be paid towards price of materials binds Jindal, Aperam Stainless is not bound by the price agreed to be appropriated of USD 50,000 towards the consideration of shares. The documents establish that not only was it felt at the contemporaneous time that if the entire amount of USD 500,000 was agreed to be paid towards shares, permission therefore will not be granted by RBI, but even otherwise, commercially it suited the parties to receive bulk of the total amount of USD 500,000 already agreed / settled, to be paid and received towards price of material and only the minimum towards price of shares. The price of the shares to be paid to a foreign joint venture partner is regulated, to prevent outflow of foreign exchange, and realizing the same, the parties at the contemporaneous time felt that permission required would be obtained if the price of shares was kept at minimum. In any case, it cannot be said that the consent of Aperam Stainless was caused by valuation of shares of N.C. Aggarwal & Co. Chartered Accountants. It cannot also be forgotten that it is not as if there was any relationship of trust between Jindal and Aperam Stainless, for Aperam Stainless to rely on valuation got done by Jindal. Aperam Stainless, in the letter dated 3rd February, 2009, exercising the Put Option and whereupon Jindal became entitled to purchase the shares, itself was blaming Jindal for the state of affairs of IUP and demanded the price of about USD two million as aforesaid. This was followed by valuation got done from PWC, which reported nil value of the shares. In pursuance thereto, Jindal was calling upon Aperam Stainless to transfer the shares at nil value. This was followed by negotiations as to price, with Aperam Stainless successively bringing down its demand from that of USD two million, to USD one million and then to USD half million, which was agreed to by Jindal. There can certainly be no misrepresentation qua price which has been agreed to after such negotiations. Moreover, since the relationship with Jindal was already strained, the minimum due diligence expected from Aperam Stainless exercising Put Option was, to have its own valuation done. The case thus also falls in the exception to Section 19 of the Contract Act. No case of misrepresentation is made out.

50. Once there is no misrepresentation, even if there were to be any inadequacy of the price of shares, the same, vide Explanation 2 to Section 25 of the Contract Act, does not make the agreement void.

………

54. As far as the argument urged by the senior counsel for Aperam Stainless / Imphy of fraud is concerned, the senior counsel also could not controvert that there is no basis thereof in the pleading. The only argument was that it is a plea of law which is not required to be pleaded. However the said argument ignores that fraud is defined in Section 17 of the Contract Act as an act committed by a party to a contract with the intent to deceive another party thereto or to induce him to enter into the contract. Thus the plea of fraud is a factual plea and Order VI Rule 4 of the CPC also provides that in all cases in which a party pleads or relies on any fraud, particulars shall be stated in the pleading. There are no particulars of who with the intent to deceive whom had offered what inducement to enter into the contract. I have in ***Om Prakash Vs. IOCL Officers Welfare Society*** 2019 SCC OnLine Del 6719 dealt with the requirement of full particulars for a plea of fraud and the need to reiterate the same is not felt. In the absence of any foundation and pleadings, no credence can be given to the arguments at the bar on the ground of fraud."

[Emphasis supplied]

13.1 We note that the said finding of the learned Single Judge are based on review of the undisputed correspondence exchanged between the parties on 03.02.2009, 30.12.2010, 17.02.2011, 07.04.2011, 19.01.2012 and the final e-mail dated 20.09.2012. The e-mail dated 20.09.2012 documents the terms and conditions agreed between the parties at the teleconference held on 10.09.2012. The agreement recorded in the e-mail is that Appellant No.1 will be paid a lump-sum amount of USD 500,000 for the shares held in Respondent No.2/IUP, and the said payment will be split between Appellant No.1 and Appellant No.2/Imphy. The said correspondence predates the N.C. Aggarwal's valuation report dated 22.11.2013, which is the foundation of the Appellants' allegations of misrepresentation and fraud.

The e-mail dated 20.09.2012 issued by the attorney of Appellant No.1 to the attorney of Respondent No.1 reads as under:

> "Please find below a summary of our discussions in the teleconference on September 10, 2012. I would be grateful for your comments.
>
> The following terms were agreed between the parties i.e. Aperam Stainless Services & Solutions Precision successor to IUP ("Aperam"), Jindal Saw Limited (Jindal) and IUP Jindal Metal & Alloys Limited (JVC):
>
> 1. Aperam will be paid a lump sum amount of USD 500,000 made up as follows.
>
> A) Shares
>
> Jindal shall purchase all the shares of Aperam in the JVC and Jindal shall pay Aperam a price for the shares equal to the Indian rupee value of the shares calculated according to the current guidelines of the Govt. of India. Against payment, Aperam shall transfer to Jindal all the shares that Aperam holds in JVC.
>
> B) the balance of the USD 500,000 shall be paid to Aperam by the JVC in settlement of the amounts due by the JVC to Aperam for supplies of equipment received by the JVC from Aperam.
>
> ……..
>
> ……..
>
> At Closing the following shall take place.
>
> a) Aperam shall sign the transfer form and transfer the share certificates to

Jindal and Jindal shall simultaneously pay Aperam the agreed amount for the shares.

b) the JVC shall pay Aperam the amount agreed for the equipment."

[Emphasis supplied]

13.2 The learned Single Judge has concluded that the Settlement Agreement records the sum of USD 500,000 towards consideration, as was already agreed between the parties in the e-mail dated 20.09.2012. It records that the commercial exigency of compliance with the RBI Regulations required the payment to be made in two tranches, with USD 50,000 allocated towards the price of shares and USD 450,000 allocated towards the price of the materials supplied by Appellant No.2/Imphy to Respondent No.2/IUP. Learned Single Judge discussed in detail that Appellant No.2/Imphy's claim for the price of the materials supplied in the year 2007 was time-barred as of 20.09.2012 and 20.12.2013; however, the said claim/liability has been acknowledged by the Respondents to give effect to the transaction value of USD 500,000 as agreed in the e-mail dated 20.09.2012. Learned Single Judge, on review of the correspondence, concluded that the consideration amount of USD 500,000 was agreed between the parties on 20.09.2012 and the consent of the Appellant to this consideration was not caused by the N.C. Aggarwal's valuation report. It concluded that no case of misrepresentation based on the N.C. Aggarwal's valuation report dated 22.11.2013 is made out. It further held that the consideration of USD 500,000 was agreed to between the parties on 20.09.2012, after negotiations, and since the relationship between Appellant No.1 and Respondent No.1 was strained, the learned Single Judge held that Appellant No.1 was obliged to have undertaken its own valuation before agreeing to the value of the sale consideration as contemplated in an exception to Section 19 of the Act of 1872.

13.3 Learned Single Judge has held that, the submission of the Appellants that their consent to the valuation of Aperam Shares at USD 50,000 is vitiated by fraud or misrepresentation, is not made out.

FINDINGS ON ISSUE NO. I

14. The substratum of the argument of the Appellants on this issue, is that the decree of specific performance could not have been granted for the Settlement Agreement vis-à-vis transfer of shares held by Appellant No.1 in Respondent No.2/IUP, in favour of Respondent No.1 under Order XIIIA CPC, as its consent for the price of USD 50,000 recorded therein is vitiated by fraud and misrepresentation and this plea should be tested at trial by giving it an opportunity to lead oral evidence of its auditor, who prepared the KPMG report.

15. At the outset, we may note that allegation of misrepresentation on valuation of USD 50,000 for Aperam shares was raised for the first time in the e-mail dated 16.04.2016.

We further note that the Settlement Agreement was sought to be terminated by the Appellant No. 1 *vide* letter dated 13.09.2016[5] [‘termination notice’] in part only, to the extent it recorded the agreement for transfer of shares held by Appellant No.1 in Respondent No.2/IUP, in favour of Respondent No.1 for USD 50,000. The letter recorded that Appellant No. 1 has recently learnt that its consent to the said valuation of USD 50,000 was

[5] Annexure A-15 to the appeal at printed page 283

vitiated by gross misrepresentation of valuation. It also recorded in the letter that since the transfer has not been affected till date, i.e., 2013-2016, there was a need to carry out a fresh and current valuation of Respondent No. 2/IUP and its shares.

By a separate letter dated 13.09.2016[6], Appellant No.2/Imphy, however, sought to enforce the Settlement Agreement against Respondent No. 2 for payment of USD 450,000 for supply of goods. Prior to this, on 28.01.2016, RBI had granted its approval with respect to the remittance for USD 450,000 by Respondent No.2/IUP to Appellant No.2/Imphy, though the approval was given in the name of Appellant No. 1 instead of Appellant No.2/Imphy. As per Appellant No. 2, there was thus no impediment for making payment of debt of USD 450,000.

16. Having reviewed the correspondence exchanged between the parties and the findings in the impugned judgment, we find that until the e-mail dated 16.04.2016, Appellant No.1 had never alleged any misrepresentation or fraud by Respondent No. 1 *qua* the valuation of USD 50,000 for the transfer of Aperam Shares recorded in the Settlement Agreement. The correspondence bears out that a firm agreement was arrived at between the parties on 20.09.2012 for, both, sale of Aperam shares and payment of debt due to Appellant No. 2, with the total consideration agreed as sum of USD 500,000, which also subsequently forms the basis of the Settlement Agreement. The Settlement Agreement however clearly apportions the sum of USD 500,000 in two parts of USD 50,000 and USD 450,000 respectively for two distinct transactions. This agreement was arrived at between, their

[6] Annexure A-15 to the appeal at printed page 277

respective counsels, after due negotiations. Pertinently, the correspondence exchanged between the parties in 2013-2015 shows that Appellants, through their respective counsel, were continuously following up on the status of the payments of USD 50,000 and USD 450,000, respectively. The price of the transfer of Aperam shares was thus settled between parties as early as on 20.09.2012, which is much prior to the N.C. Aggarwal's valuation report.

17. Pertinently, the Appellant has relied upon the averments made at paragraph no. 10 of the written statement[7] to contend that the finding of the learned Single Judge at paragraph 54 of the impugned judgment, which records that the particulars of fraud as required under Order VI Rule 4 CPC have not been pleaded, is wrong. It is stated that sufficient particulars have been set out in the written statement and thus, it is a fit case for deciding the issue of fraud only after oral evidence has been led.

17.1 To test this plea, we will examine the written statement and the mandate under Order VI Rule 4 CPC.

17.2 The relevant paragraph of the written statement of fraud reads as under:

> "10. Contents of Paragraph 10 of the Plaint are misleading and, hence, are denied. As stated earlier, the Agreement dated 20 December 2013 was entered into on account of a situation of complete deadlock created by the Plaintiff in its attempts to oust Defendant No. 1 from the affairs of Defendant No.3 Company and to wrest complete control. Since, Defendant No.l was not able to constructively carry forward its intended business plans for investment in the joint venture. Defendant No.l agreed to negotiate a settlement with the Plaintiff. However, as the Defendant No.l was kept out of the affairs of the Defendant No.3, it had no option but to rely on the representations made by the Plaintiff as regards the valuation of the Defendant No.3 Company. Plaintiff assured Defendant No.l that it had

[7] At printed page 186 of the written statement filed by the Appellant No. 1 in CS(COMM) 1314/2016.

employed best practices and that its auditor, N.C. Aggarwala & Co., was well placed to carry out the valuation. Defendant No.l relied on the valuation done by N.C. Aggarwala & Co. and, on that basis agreed to the terms of the Agreement dated 20 December 2013. However, as stated earlier, the Agreement dated 20 December 2013 is vitiated by the fraud played by the Plaintiff and its auditors upon the Defendant No.l and, as such, cannot be performed, least of all upon the request of and to the benefit of the Plaintiff. It is denied that the valuation done by N.C. Aggarwala & Co. was properly done or that the price of the shares calculated by the said Chartered Accountant was as per Discounted Cash Flow Method. Contents of the preliminary submissions are reiterated as true and correct and the same may be read in response to the paragraph under reply. The same are not repeated herein for the sake of brevity."

We also find it apposite to reproduce Order VI Rule 4 CPC, which reads as under:

"ORDER VI

4. Particulars to be given where necessary.—In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading."

17.3 The provision of Order VI Rule 4 CPC would require, in the facts of this case, for the Appellant No. 1 to name the representative of the Respondent(s) who allegedly made the representation *qua* the value of the shares, the date when the misrepresentation or deceit happened and the name of the representative(s) of the Appellant No. 1 to whom the misrepresentation or deception was made. Thus, the name of the person(s), the date of the alleged deception and the facts constituting the alleged deception have to be specifically pleaded to meet the requirements of Order VI Rule 4 CPC.

In this regard, it is apposite to refer to the judgment of the Supreme

Court in **Bishundeo Narain v. Seogeni Rai**[8], wherein it was held that in cases involving allegations of fraud, the party making such allegations must set forth full and specific particulars thereof, and that general or vague averments are insufficient. The Supreme Court emphasised that particulars such as the nature of the representation, the person who made it, the person to whom it was made, and the time, place and circumstances in which it was made are essential, failing which the Court would be unable to arrive at a proper conclusion. The relevant paragraphs read as under:

> "**22.** We turn next to the questions of undue influence and coercion. Now it is to be observed that these have not been separately pleaded. It is true they may overlap in part in some cases but they are separate and separable categories in law and must be separately pleaded. It is also to be observed that no proper particulars have been furnished. Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice however strong the language in which they are couched may be, and the same applies to undue influence and coercion. See Order 6 Rule 4, Civil Procedure Code.
>
> …
>
> **25.** We will deal with the case of coercion first. It will be seen that the plaintiffs' case regarding that is grounded on the single allegation that their father was threatened with death. When all the verbiage is cleared away, that remains as the only foundation. The rest, and in particular the facts set out in Paras 8 to 12 about the ferocious appearance of Firangi Rai and his allegedly high-handed and criminal activities and his character, are only there to lend colour to the genuineness of the belief said to have been engendered in Ghughuli Rai's mind that the threat of death administered to him was real and imminent. But as regards the threat itself, there is not a single particular. We do not know the nature of the threat. We do not know the date, time and place in which it was administered. We do not know the circumstances. We do not even know who did the threatening. Now, when a court is asked to find that a person was threatened with death, it is necessary to know these particulars, otherwise it is impossible to reach a proper conclusion.

[8] 1951 SCC 447

> **26.** It was argued that it is not necessary for a plaintiff to give particulars and if the other side is not satisfied, there are provisions in the Code which entitle him to ask for them. That is a grave misapprehension."
>
> [Emphasis Supplied]

17.4 Furthermore, reliance of the Respondents on the case of **Ranganayakamma and Another v. K.S. Prakash (Dead) by LRs. And Others**[9] is also relevant in this regard. In the said judgment, the Supreme Court reiterated that where a party seeks to avoid a transaction, settlement, decree or contract on the ground of fraud, coercion, misrepresentation or undue influence, the particulars thereof must be specifically pleaded and proved in accordance with Order VI Rule 4 CPC. The Court held that vague and general allegations are insufficient unless the pleadings disclose, inter alia, when the representations were made, who made them, the nature and contents of such representations, and the circumstances in which the alleged fraud or misrepresentation occurred.

17.5 The Appellants have merely relied upon the contents of the financial statements of Respondent No. 1 in its written statement[10] dated 03.01.2017 to allege that the value of the Aperam shares held by the Appellant No.1 in Respondent No.2/IUP company, as per the N.C. Aggarwal's valuation report is misleading, and therefore its consent to the said Settlement Agreement executed on 20.12.2013 has been obtained by fraud.

17.6 However, a perusal of the averments in the written statement filed by the Appellant No. 1 fails to set out the material particulars required for establishing fraud, and therefore the finding of the learned Single Judge at

---

[9] (2008) 15 SCC 673, at paragraph nos. 40, 41, 43 to 45.
[10] At paragraph 17 of the written statement of Appellant No.1 in CS(COMM) 1314/2016

paragraph 54 of the impugned judgment is correct and does not merit any interference.

In our considered opinion, the plea of fraud raised by the Appellants in the written statement does not satisfy either the pleading requirements under Order VI Rule 4 CPC or the substantive requirements for establishing fraud in law. It is well settled that fraud must be specifically pleaded with full particulars and thereafter proved by cogent evidence. Mere assertions that a transaction was unfair, that a valuation was incorrect, or that a party subsequently considers the bargain disadvantageous do not by themselves constitute fraud. In the present case, apart from a challenge to the correctness of the valuation adopted in the N.C. Aggarwal valuation report, no material facts have been pleaded or shown which would establish any fraudulent representation by the Respondents in years 2012 and 2013 that induced the Appellant No. 1 to agree to the settlement dated 20.09.2012 and execute the Settlement Agreement. The allegations in the written statement, therefore, remain unsupported by the foundational facts necessary to sustain a plea of fraud and cannot defeat the enforcement of the Settlement Agreement.

17.7 In the facts of the present case, the Appellants have failed to enlist the particulars and details of fraud allegedly practised by the Respondents on the Appellants in 2012 and 2013. Since Appellants and Respondents are corporate entities, the Appellants were obligated to identify their representative(s) who were allegedly defrauded by the representative(s) of the Respondents. The Appellants also had to identify the alleged representative(s) of the Respondents, who made the misrepresentation.

However, the Appellants have not identified any such representatives of the parties.

It is evident from the admitted documents that indeed Appellants had agreed to the consideration of USD 50,000 for shares on the basis of their own determination. It is for this reason Appellants are unable to identify any relevant witness who participated in the negotiations to lead oral evidence to prove their alleged allegations of fraud.

17.8 Moreover, the N.C. Aggarwal's valuation report was always available with the Appellants since 2013. The financial statements of Respondent No. 1 for the year ending 2013[11] and year ending 2014[12], are publicly published documents and were also always available to the Appellants in 2013 and 2014 respectively. No plea of fraud or misrepresentation was raised at any time prior to issuing e-mail dated 16.04.2016. The counsel of Appellants corresponded with Respondents for the implementation of the Settlement Agreement between 2013 to 2015, there was no whisper of fraud or misrepresentation vis-à-vis the agreement of total consideration amount of USD 500,000 in the correspondence, or even the allocation of USD 50,000 for transfer of shares held by Appellant No. 1 and USD 450,000 for payment of dues to Appellant No. 2. The Appellants, in the correspondence, however, continuously protested the delay in payments and Closing of the Settlement Agreement. The Appellant No. 2 on 16.04.2016 and 13.09.2016 demanded payment of USD 450,000 as per the Settlement Agreement, and the plea of misrepresentation and fraud was only raised by Appellant No. 1 for the first time on 16.04.2016, limited to, fixation of sale consideration for the Aperam

[11] Dated 30.09.2013
[12] Dated 30.09.2014

Shares.

17.9 In addition, the stand that N.C. Aggarwal's valuation report is misleading, and therefore the consent to the said Settlement Agreement, has been obtained by fraud, was taken by Appellant No.1 for the first time in their written statement, filed in CS(COMM) 1314/2016. No such plea was raised in the correspondence exchanged between the parties between 2013 to 2016. This fact, in our opinion, shows that the allegation of fraud and misrepresentation is a stand taken by the Appellants, as a *ruse* in view of the disputes which have arisen between the parties with respect to the delay of three [3] years in Closing the Settlement Agreement by the Respondents. The written statement was filed with KPMG valuation report dated 02.01.2017, contending the correct price of the shares is Rs. 40.10p per share. It is evident that Appellants, after issuing the termination notice and upon being served with summons in the suit, went about building a defence to sustain the plea of alleged misrepresentation and fraud. However, neither at the contemporary time in 2012 or 2013 or anytime thereafter, the Appellants harboured any doubt till 16.04.2016 with respect to their free consent to the consideration of USD 500,000 agreed between the parties.

17.10 We therefore agree with the findings of the learned Single Judge that since the Settlement Agreement expressly records that neither party has relied upon the other party for any fact and has independently verified each fact recorded in the agreement, N.C. Aggarwal's valuation report was *not* the basis of the settlement amount of USD 500,000 recorded in the said Settlement Agreement; and the said amount of USD 500,000 was agreed through negotiations between the parties, ably assisted by their counsels, as early as 20.09.2012. We also agree with the findings of the learned Single Judge that the N.C. Aggarwal valuation report *merely* formed the basis of the split of USD 500,000 for the allocation in favour of Appellant No. 1 and Appellant No. 2/Imphy, respectively, but did not form the basis of the total consideration of USD 500,000, which stood documented in the e-mail dated 20.09.2012. The findings of the learned Single Judge are duly borne out by the documents relied upon by the Appellants and merit no interference.

18. We note that, the Appellants in the appeal and the written submissions have submitted that they intend to lead expert evidence of an independent auditor to substantiate their plea that the price of USD 50,000 for Aperam Shares was knowingly and falsely misrepresented by Respondent No. 1. The relevant para of the written submissions dated 22.01.2025 reads as under:

> "20. Allegations of fraud and misrepresentation go to the very root of the contract and the same ought not to have been summarily dismissed without any opportunity to the Appellant No.1 to lead evidence to prove its case, more so, when the Appellant No.1 sought to lead expert evidence of an independent auditor in support of its case that the price for the Aperam Shares was knowingly and falsely misrepresented by Respondent No.1."

18.1 The independent expert auditor is the same KPMG representative, who has issued the valuation report dated 02.01.2017. The said auditor was admittedly not privy to any negotiations held in 2009-2012 and 2013, leading to execution of Settlement Agreement and is therefore, not competent to depose on the allegations of fraud or misrepresentation. This has been discussed later in the judgment.

18.2 The Supreme Court in **P.V. Radhakrishna v. State of Karnataka**[13]

[13] (2003) 6 SCC 443, at paragraph no. 10

held that it is the fundamental rule of evidence that facts must ordinarily be proved through direct evidence given by a witness who has personal knowledge of those facts. A person can testify only to what he personally saw, heard, perceived, or participated in, and not to what he subsequently learnt from others or inferred from documents.

Therefore, where a party (i.e., Appellant No. 1) alleges that its consent for sale consideration of USD 50,000 was procured by fraud or misrepresentation during negotiations, the best and primary evidence must come from the persons (counsels) who directly participated in those negotiations in year 2012 and 2013 and to whom the alleged representations were made, rather than from third-party experts who had no involvement in the relevant events.

18.3 In our considered opinion, the oral testimony of an independent valuation expert or auditor cannot, by itself, constitute proof of the fraud or misrepresentation allegedly practised by the Respondents upon the Appellants, which is stated to have induced the Appellants to agree to the terms governing the transfer of Aperam Shares in Respondent No.2/IUP as recorded in the e-mail dated 20.09.2012 and subsequently embodied in the Settlement Agreement dated 20.12.2013. The alleged fraud as per Appellant No. 1, pertains to the negotiations and representations said to have been made between the parties leading to the consensus recorded in the aforesaid documents. Consequently, evidence with respect to such alleged representations could 'only' emanate from persons who participated in, or had direct knowledge of, the negotiations culminating in the agreement between the parties. Admittedly, the negotiations on behalf of the Appellants were conducted through their legal representatives and counsel. Significantly, no such representative or counsel, who participated in the negotiations has been identified or proposed as a witness to substantiate the plea that any false representation was made by the Respondents which induced the Appellants to agree to the settlement consideration of USD 500,000; and, therefore, the decision is evidently conscious and deliberate.

18.4 The absence of any such primary evidence further reinforces the conclusion of the learned Single Judge that the plea of fraud and misrepresentation lacks the necessary factual foundation and is unsupported by any material capable of establishing that the Appellants' consent was procured by deception. Also, we are of the considered opinion that the reason for the absence of these particulars is that the parties negotiated the price between 2009 and 2012, wherein the Appellants initiated their demand with USD 2 million and ultimately agreed to a lump-sum amount of USD 500,000.

19. The Appellants are an established corporate entity, which has been represented by competent counsel at each step of negotiations forming the basis of the Settlement Agreement, since 2009 until the e-mail dated 20.09.2012, thereafter until execution of the Settlement Agreement dated 20.12.2013 and even during the follow-up of the implementation of the said Settlement Agreement between 2013 and 2016.

The submission of the Appellants that they were defrauded into agreeing to the sale consideration of USD 50,000 for the Aperam Shares valued at Rs. 1.20p per share has been rightly rejected by the learned Single Judge by referring to Exception 1 of Section 19 of the Act of 1872. The total consideration of USD 500,000 for the sale of Aperam Shares and repayment to Appellant No.2/Imphy was agreed on 20.09.2012, and the Settlement Agreement formalising the said agreement and allocating the amounts of USD 50,000 and USD 450,000 was entered into on 20.12.2013. It was the terms and conditions of the e-mail dated 20.09.2012 at paragraph 4 of the said e-mail that the Appellants would be granted full access to all the corporate documents, including minutes of the board and general meetings of Respondent No. 2/IUP to satisfy itself that Respondent No.2 was compliant with all its legal obligations. In fact, Settlement Agreement at Article 2.1 acknowledged that Appellant No. 1 through its representative has duly examined all the minutes of the board and general meetings as well as corporate register of Respondent No.2/IUP. In this background of facts, Article 4(e) of the Settlement Agreement which records that neither party has relied upon any fact or representation of the opposite party assumes significance and negatives the allegation of the Appellants that it relied upon representations made by Respondents while agreeing to the price of USD 50,000 for the Aperam Shares.

20. The reliance placed by the Respondents on the judgment of the Supreme Court in **Reliance Eminent Trading and Commercial Private Limited v Delhi Development Authority**[14] is apposite, and we find that the allegation of alleged fraud and misrepresentation raised in the written statement (including paragraph 10) failed to raise any pleas, which could have succeeded at trial on the basis of the oral evidence of the independent auditor on behalf of the Appellants.

[14] 2026 SCC OnLine SC 744, at paragraph nos. 59 and 60.

21. The Appellant No. 1 has relied upon the judgment of **Sangam (India) v. NHAI** (supra) and **Niaz Ahmad Khan v. Parshotam Chandra** (supra) to contend that the Exception of Section 19 of the Act of 1872 would not be applicable in cases of deliberate fraud by the defendant. However, in this case in view of our findings that since the Appellant No. 1 has failed to plead the necessary particulars of fraud as per Order VI Rule 4 CPC in its written statement, its defence of fraud has been rightly held by the learned Single Judge as a plea without foundation, and therefore we agree that Appellant No. 1 has no real prospect of succeeding in defending against the claim on this plea of fraud.

22. The aforesaid discussion shows that:

i. The negotiations for determining the terms of settlement recorded between the parties in the Settlement Agreement, has its genesis in the negotiations held between the parties through their counsels between 2009 and 2012. The sum of USD 500,000 was agreed between the parties as on 20.09.2012 for two transactions i.e., transfer of Aperam shares and repayment of debt due to Appellant No. 2/Imphy. This sum of USD 500,000 was agreed much before the valuation report of N.C. Aggarwal came into existence.

ii. The Settlement Agreement was executed on 20.12.2013 and sum of USD 500,000 was split into USD 50,000 and USD 450,000 thereafter, the Appellant No. 1 followed up for payment of USD 50,000 and USD 4,50,000 respectively through its counsel regularly until 2015.

iii. The terms of the Settlement Agreement expressly record that the Appellants exercised due diligence and independent decision making before executing the said Agreement.

iv. The allegation of misrepresentation on the valuation of USD 50,000 was raised by the Appellant No. 1 for the first time in its e-mail dated 16.04.2016.

v. The documentary evidence on the basis of which the Appellant No. 1 seeks to substantiate its plea of fraud is KPMG valuation report dated 02.01.2017, which came into existence a day prior to the filing of the written statement on 03.01.2017.

vi. The Appellant No. 1 has failed to identify the representative of Respondent No. 1 who allegedly misrepresented the price during the negotiations leading to the issuance of the e-mail dated 20.09.2012 and subsequently execution of the Settlement Agreement dated 20.12.2013.

vii. The Appellant No. 1 has also failed to identify its representative, to whom the alleged misrepresentation was made by the representative of Respondent No. 1.

viii. Law requires that the evidence of fraud has to be given by the party to personally saw, heard, perceived or participated in the negotiations. Thus, the auditor who prepared the KPMG valuation report dated 02.01.2017 is not competent in law to prove the alleged plea of fraud raised by Appellant No. 1.

ix. The Appellant No. 1 in its written statement has failed to provide the requisite particulars of the person(s) who deceived and who were deceived respectively, date of the alleged deception and the facts constituting the alleged deception to meet the requirement of Order VI Rule 4 CPC.

x. The Appellant has therefore, failed to justify its plea that it has evidence to prove the allegation of fraud by leading oral evidence.

xi. As per the admitted documents, all correspondence and negotiation, held between the parties from 2009 to 2012 and 2013, was held through their respective counsel. These facts belie the submission of the Appellant No. 1 that it was defrauded into agreeing to the price of USD 50,000 for the transfer of shares.

23. In view of the aforesaid discussion, we are in complete agreement with the findings of the learned Single Judge, that there is no merit whatsoever in the contention of the Appellants that Respondent No. 1 procured the consent of Appellant No. 1 to the purchase price of the Aperam Shares at USD 50,000 by fraud or misrepresentation. The findings of the learned Single Judge on this issue are accordingly upheld.

ISSUE II: WHETHER RESPONDENT NO. 1 WAS NOT READY AND WILLING TO PERFORM ITS OBLIGATION UNDER THE AGREEMENT AND WAS ITSELF IN DEFAULT

24. We shall now examine the correctness of the finding of the learned Single Judge returned in exercise of its powers under Order XIII A CPC to hold that Respondent No. 1 was always ready and willing to perform its obligations under the Settlement Agreement in relation to the purchase of the Aperam Shares as on 13.09.2016, being the date on which Appellant No. 1 purported to terminate the Settlement Agreement insofar as it pertained to the transfer of the said Aperam shares.

25. Learned Single Judge has given its findings on this issue at paragraphs 55, 56, 57 and 58 of the impugned judgment, which read as under:

"55. That leaves only the defence, of Jindal being not entitled to specific performance for the reason of being itself in default.

56. However again, no explanation whatsoever has been given by Aperam Stainless to the communications dated 11th August, 2014 and 12th October, 2015 whereby the Settlement Agreement dated 20th December, 2013 was admitted to be pending closure and proposing closure within "couple of weeks". The same indicate that the time of performance was extended.

57. It is admitted by Aperam Stainless in para no.24 of its written statement in CS(COMM) No.1314/2016 that there were obligations to be complied with also before closure. It is not in dispute that there could be no closure without RBI permission. I have minutely perused, the pleadings and do not find any plea that they were any defaults / deficiencies by Jindal in securing the RBI permission. Once the closure of the Settlement Agreement was not possible without RBI permission which was obtained on 28th January, 2016, it cannot be said that Jindal was in default, to be not entitled to specific performance.

58. The Specific Relief Act, 1963 has been amended with effect from 1st August, 2018 (notified from 1st October, 2018) to remove some impediments imposed thereby to specific performance of contracts and to facilitate specific performance. While Section 10 of the Act as it stood prior to amendment, made the grant of the relief of specific performance discretionary, post amendment, "specific performance of a contract shall be enforced by the Court subject to the provisions contained in sub Section 2 of Section 11, Section 14 and Section 16". The senior counsel for the Aperam Stainless has not argued that Section 11(2) or Section 14 or Section 16 are attracted or bar specific performance in the present case, except as hereinabove mentioned. Jindal, on the contemporaneous documents discussed hereinabove, is found to have performed and/or to have been ready and willing to perform the essential terms of the contract, and immediately on receipt of RBI permission on 28th January, 2016, called upon Aperam Stainless to perform its part and on refusal of Aperam Stainless, filed the present suit on 20th September, 2016. Though the amendment to the Specific Relief Act is of after the institution of the suit, but it has been held in **Adhunik Steels Ltd. Vs. Orissa Manganese and Minerals (P) Ltd.** (2007) 7 SCC 125 that the law of specific relief in its essence is a part of the law of procedure, for, specific relief is a form of judicial redress. With respect to procedural laws, it has been consistently held that amendments thereto are retrospective. Reference if any required may be made to **Purbanchal Cables and Conductors Pvt. Ltd. Vs. Assam State Electricity Board** (2012) 7 SCC 462, **Thirumalai Chemicals Ltd. Vs. Union of India** (2011) 6 SCC 739 and **Rajendra**

Kumar Vs. Kalyan (2000) 8 SCC 99."

[Emphasis supplied]

25.1 Learned Single Judge has rejected the submission of the Appellants that the Respondent was not ready and willing to perform the Settlement Agreement. Learned Single Judge has held that the permission from RBI for making payment of USD 450,000 to Appellant No.2/Imphy was received on 28.01.2016, and the time for performance was extended by Appellant No. 1 *vide* communications dated 11.08.2014[15] and 12.10.2015[16]. In these facts, the learned Single Judge held that Respondent No. 1 was not in default and was entitled to specific performance of the Settlement Agreement in CS(COMM) No. 1314/2016 filed on 20.09.2016.

26. Appellant has specifically challenged the readiness and willingness of the Respondent No. 1 in its written submissions and the written statement.

26.1 It is contended that even otherwise, Respondent No.1 was not entitled to the relief of specific performance of the Settlement Agreement in respect of the sale of Aperam Shares by Appellant No.1 to Respondent No.1 as it was not ready and willing to perform its own obligations under the Settlement Agreement and was itself responsible for its non-performance. It is contended that it is apparent from the pleadings and the correspondence on record that the Appellants cooperated and supplied all the information and documents required in terms of the Settlement Agreement to Respondent No.1 by July 2014. The Appellants complied with the Closing steps which had to be performed, and it was the Respondent No. 1, who failed to perform its obligations in Closing this transaction.

---

[15] Email at printed page 37 of defendant's document in CS(COMM) 1314/2016
[16] Email at printed page 79 of plaintiff's documents in CS(COMM) 1314/2016

26.2 It is contended that the learned Single Judge erred in holding that the delay on the part of Respondent No.1 in Closing, was attributable to the requirement for RBI permission for transfer of shares. It is contended that neither did Respondent No.1 require any permission from RBI for making payment of USD 50,000 for purchase of Aperam shares nor is it the case of any party that such permission was required. It is contended that the permission from RBI was required by the Respondent No. 2/IUP for seeking revalidation of invoices for making payment of USD 450,000 to Appellant No.2/Imphy for the goods admittedly supplied by it which is a distinct obligation. Furthermore, the delay on account of applying for RBI permission for revalidation of invoices was also caused by the Respondent No.2/IUP. It was only on 25.08.2014 that the counsels for the Respondent No.2/IUP informed the counsels for Appellant No.2/Imphy that RBI permission was required for the said purpose and, even after allegedly receiving the said permission after almost two ['2'] years on 28.01.2016, only informed the Appellant of the same more than a month later.

26.3 It is contended that the learned Single Judge has erred in holding that the price for the Aperam Shares agreed between the Appellant and Respondent No.1 was USD 500,000, when it is apparent from a plain reading of the Settlement Agreement that the price for the Aperam Shares was only USD 50,000. Ld. Single Judge failed to consider that as per the terms of the Settlement Agreement, payment of USD 50,000 was to be made by Respondent No. 1 to Appellant No. 1 while payment of USD 450,000 was to be made by the Respondent No.2/IUP to Appellant No.2/Imphy. Thus, USD 450,000 could not have been a consideration for transfer of shares in favour of Respondent No.1. A bare reading would show that the Settlement Agreement comprises two distinct and separate agreements between two sets of parties to the Settlement Agreement, i.e. an agreement for sale of shares of Appellant No. 1 in the Respondent No.2/IUP to Respondent No. 1 for a consideration of USD 50,000 and an agreement for payment of USD 450,000 by the Respondent No.2/IUP to Appellant No.2/Imphy for goods supplied and, admittedly used by the Respondent No.2/IUP.

26.4 It is contended that the learned Single Judge has erroneously held that the interests of the Appellant No.1 and Appellant No.2/Imphy are one and the same and that the amount of USD 450,000 was allegedly to be paid towards consideration for the sale of Aperam Shares, however, due to foreign exchange regulations preventing the same, the said amount was appropriated towards payment for goods supplied by Appellant No.2/Imphy to the Respondent No.2/IUP for commercial purposes. This narrative is completely contrary to the very terms of the Settlement Agreement that is sought to be specifically enforced by way of the Suit.

27. We note that Respondent No. 1 has not dealt with this ground of challenge to the impugned judgment in its written submissions. However, in the impugned judgment, the contention of the Respondent No. 1 is recorded to the effect that it has always been ready and willing to perform its part of the Settlement Agreement and asserted that there was no delay on its part. It is stated that it issued repeated requests and reminders to Appellant No. 1 for Closing the Settlement Agreement. It relies upon the fact that it obtained permission from the RBI on 28.01.2016 for remittance of USD 450,000 to

Appellant No. 2/Imphy.

FINDING ON ISSUE NO. II

28. At the outset, we may note that it is the pleaded case of Respondent No. 1 in its plaint that the transaction for the transfer of shares is for consideration of USD 50,000. The subject matter of CS(COMM)No. 1314/2016 is the specific performance of this transaction for the transfer of Aperam Shares held by Appellant No.1 in Respondent No.2/IUP company in favour of Respondent No. 1. The said transaction does not admittedly require any permission from RBI.

Respondent No. 1 has pleaded in this plaint that it is the transaction of payment of USD 450,000 by Respondent No.2/IUP to Appellant No.2/Imphy, which required permission from the RBI, and the said permission was received on 28.01.2016. In the plaint[17] Respondent No. 1 has pleaded that it followed up with Appellants to provide the necessary documents required for submission to RBI for obtaining permission to facilitate payment of USD 450,000 and alleged that since Appellants substantially delayed providing the said documents, this led to a delay in procuring the permission from RBI. It is stated that after receiving permission from RBI on 28.01.2016 for payment of USD 450,000, Respondent No. 1 again approached Appellant No. 1 to execute further documents for completing the sale and transfer of shares.

29. Having perused the plaint of CS(COMM) No. 1314/2016, we find that it is a matter of record that no RBI permission was required by Respondent No. 1 for effecting the transfer of USD 50,000 to Appellant No. 1 for

---

[17] In CS (COMM)1314/2016 at paragraph 12 to 14 of the plaint

Closing the sale of the Aperam Shares. To this extent, the challenge of the Appellants to the finding of the learned Single Judge is well founded.

There is no dispute by Respondent No. 1 that no RBI permission was required by Respondent No. 1 for effecting the transfer of USD 50,000 to Appellant No. 1.

30. Respondent No. 1 in its plaint has stated that it followed up with Appellants for obtaining documents, which were unduly delayed and has relied upon this fact to justify the non-transfer of USD 50,000 towards the consideration of USD 50,000 share transfer. However, we find this stand in the plaint is negated by the documents, as discussed hereinafter.

31. The Settlement Agreement terms recorded at Article 3(1), stipulated that the transactions would be closed between the parties within 30 days or on any Closing date mutually decided between the parties.

In this background, we have reviewed the correspondence exchanged amongst the parties, through their respective counsel, between February 2014 to December 2014. The e-mail dated 07.08.2014[18] at 13:26 issued by the counsel of the Appellants to the counsel of the Respondents records that all documents sought by the Respondents for completing the transfer of shares inter-se the parties *as well as* for seeking permission from RBI for remittance of USD 450,000 stood executed and submitted to the counsel of the Respondents. The Appellants' counsel also provided the details of the two-bank account(s) to which the payment(s) had to be transferred and specifically inquired about the status of the transfer.

In response, *vide* e-mail dated 09.08.2014,[19] the counsel for the

---

[18] Email at printed page no. 191 in Pleadings II of the present appeal
[19] Email at printed page no. 191 in Pleadings II of the present appeal

Respondents sought further documents relevant for Closing the share transfer transaction. Appellants' counsel, *vide* reply e-mail dated 11.08.2014[20] at 01:54 PM, sought time to provide the additional documents. However, in this e-mail, it specifically sought response from Respondents as regard their financial position to make payment for USD 450,000 and also recorded that he understands that Respondent No. 1 has the financial capacity to make payment of USD 50,000 readily. Respondent's counsel replied to the said e-mail on the same date i.e., 11.08.2014[21] at 02:34 PM and stated that it would revert regarding the financial position of Respondent No.2/IUP to make the payment of USD 450,000. Appellant's counsel, *vide* reply e-mail dated 13.08.2014[22] issued at 04:38 PM, conveyed that all pending documents will be provided by end of August 2014 and suggested that the Closing of the transaction be scheduled in first week of September 2014. Respondents counsel in its e-mail dated 25.08.2014[23] issued at 10:42 AM, stated that Respondents have to apply to the RBI for remittances to be made by Respondent No.2/IUP for USD 450,000 and it is only then, once it gets permission, will be in a position to plan the Closing.

Appellants' counsel, *vide* e-mail dated 30.09.2014[24] issued at 01:18 PM, communicated that *all* documents requested from the Appellants *stand delivered to the Respondents* and sought a call for deciding the Closing. *Vide* e-mail dated 06.10.2014[25] issued at 02:29 PM, Respondent No. 1's counsel informed the Appellants counsel that Respondent No. 1 would Close the

[20] Email at printed page no. 37 of defendant's document in CS(COMM) 1314/2016
[21] Email at printed page no. 38 of defendant's document in CS(COMM) 1314/2016
[22] Email at printed page no. 39 of defendant's document in CS(COMM) 1314/2016
[23] Email at printed page no. 40 of defendant's document in CS(COMM) 1314/2016
[24] Email at printed page no. 41 of defendant's document in CS(COMM) 1314/2016
[25] Email at printed page no. 49 of plaintiff's document in CS(COMM) 45/2017

transaction once revalidation of the invoices of Appellant No. 2/Imphy was received from the RBI, which was taking time. In response, Appellants counsel, *vide* e-mail dated 06.10.2014[26], issued at 03:28 PM expressed the anxiety of the Appellants with respect to the delay in Closing the transactions and reiterated that Respondents are under an obligation to pay for the shares and the equipment received. It sought indication as regards the time when the payments shall be made. Appellants counsel received no response and followed up with an e-mail dated 08.10.2014[27] to enquire about the Closing. Respondent No.1's counsel *vide* e-mail dated 18.11.2014[28] informed the Appellants that documents in respect of revalidation of invoices of Appellant No. 2/Imphy had been submitted to SBI[29], the authorized dealer.

32. The review of the correspondence exchanged between the parties in the year 2014 shows that vis-à-vis the transaction of share transfer from Appellant No. 1 to Respondent No. 1, all documents sought by Respondent No. 1 had been provided by Appellant No. 1 and were retained in custody of Respondent No. 1's counsel, as documented in the last e-mail dated 30.09.2014. However, Respondent No. 1 wilfully, without any reasonable cause, did not close this transaction and instead pursued permission from RBI for remittance of USD 450,000 for making payments to Appellant No. 2/Imphy.

33. Respondent No. 1's counsel *vide* e-mail dated 01.12.2014[30] sought an

---

[26] Email at printed page no. 42 of defendant's document in CS(COMM) 1314/2016
[27] Email at printed page no. 43 of defendant's document in CS(COMM) 1314/2016
[28] Email at printed page no. 50 of plaintiff's document in CS(COMM) 45/2017
[29] State Bank of India
[30] Email at printed page no. 46 of plaintiff's document in CS(COMM) 45/2017

undertaking from Appellant No. 2/Imphy that it would not charge any interest on the delayed payment of USD 450,000 for equipment; it was stated that this undertaking had to be submitted to the RBI. Appellant No. 2's counsel replied *vide* e-mail dated 18.12.2014[31] and clarified that it was signing the undertaking only for the purpose of expediting the payment of USD 450,000 and asserted that receiving the said payment as per the Settlement Agreement was not conditional on the approval from RBI. Further e-mails were exchanged on this issue of undertaking on 15.01.2015, and the final draft of the undertaking required by RBI was shared by Respondent No. 1's counsel on 23.01.2015. Appellants' counsel, *vide* e-mail dated 12.10.2015[32] expressed concern at the amount of time taken to achieve the Closing and requested that the same be completed within the next couple of weeks. Further e-mails were exchanged between the parties with Appellants' counsel *vide* e-mail dated 16.10.2015[33] expressing concern about the time taken for RBI permission to make payment of USD 450,000, stating that the RBI permission was not a condition of the Settlement Agreement.

34. The review of the aforesaid correspondence shows that Appellants, even in the year 2015, expressed concern over the time taken for the Closing of the transactions and repeatedly sought an early Closing.

35. The RBI approval for remittance of USD 450,000 by Respondent No.2/IUP to Appellant No. 2/Imphy was finally received by Respondent No. 1 on 28.01.2016. However, Respondent No.2/IUP even then, did not remit the aforesaid amount of USD 450,000 to Appellant No.2/Imphy and did not

[31] Email at printed page no. 189 in Pleadings II of the present appeal
[32] Email at printed page no. 245-246 in Pleadings II of the present appeal
[33] Email at printed page no. 46 of defendant's document in CS(COMM) 1314/2016

even inform the Appellants about the receipt of the permission for about a month and a half.

Vide e-mail dated 09.03.2016[34], Respondents' counsel communicated receipt of RBI approval to Appellants counsel but it did not remit USD 450,000 to Appellant No.2/Imphy or offer to remit USD 450,000. Instead, in this e-mail Respondents' counsel sought *fresh* documentation from Appellant No. 1 for Closing the share transfer transaction of USD 50,000 between Appellant No. 1 and Respondent No. 1 within March 2016.

There is no clarity on record with respect to further documents required by Respondent No. 1 on 09.03.2016 for Closing share transfer, as all documents admittedly stood deposited with Respondent No. 1's counsel on 30.09.2014.

36. It is at this stage on 16.04.2016[35], Appellants' counsel on behalf of Appellant No. 1 communicated its unwillingness to proceed with sale/transfer of the Aperam Shares for USD 50,000 on the plea that the price is grossly undervalued and alleged misrepresentation. It sought the return of the documents of share transfer executed by Appellant No. 1, which were lying in the custody of the counsel for the Respondents in trust since 30.09.2014.

However, on behalf of Appellant No.2/Imphy the counsel communicated its willingness to accept USD 450,000 for the equipment and requested that the payment be made forthwith to avoid interest liability.

Respondent No.2/IUP issued a response on 03.06.2016[36] to the

---

[34] Email at printed page no. 53 of plaintiff's document in CS(COMM) 45/2017
[35] Email at printed page no. 43 of plaintiff's document in CS(COMM) 45/2017
[36] Email at printed page no. 86 of plaintiff's document in CS(COMM) 1314/2016

aforesaid communication dated 16.04.2016 and stated that due to technical glitches, the transaction of USD 450,000 under the Settlement Agreement could not be completed. It stated however, that since the RBI permission has been received, Appellant No. 1 should provide the documents requested *vide* e-mail dated 09.03.2016 so that the share purchase transaction can be concluded. In this letter dated 03.06.2016, the Respondent No.2/IUP did not offer to make the payment of USD 450,000 but insisted that Appellant No. 1 complete the share transfer transaction with Respondent No. 1.

37. There was further correspondence exchanged between the parties between June to August 2016 where Appellant No. 2/Imphy continued to demand payment of USD 450,000 and Appellant No. 1 separately sought to withdraw from the share transfer transaction and sought return of the documents executed and handed over to the Respondent No. 1's counsel.

38. Ultimately on 13.09.2016 Appellant No. 2/Imphy issued a letter and sought remittance of USD 450,000. And, by a separate letter dated 13.09.2016 Appellant No.1 terminated the Settlement Agreement with respect to the transaction of share transfer for USD 50,000 prompting the Respondent No. 1 to file CS(COMM) No. 1314/2016 for specific performance of the transaction of share transfer for USD 50,000.

39. The facts show that the transaction of share transfer between Appellant No.1 and Respondent No. 1 for USD 50,000 was not subject to any permission from the RBI. Appellant No. 1 had executed all documents sought from it by Respondent No. 1 on or before 30.09.2014 and deposited the said documents with the counsel for Respondent No. 1. Appellant No. 1

repeatedly, *vide* e-mail dated 07.08.2014, 13.08.2014, 06.10.2014, 08.10.2014, followed up for early Closing of the transaction. However, the Respondent No. 1's counsel, by its e-mail dated 06.10.2014, stated that the transaction would be closed only once it received revalidation of the invoices from the RBI for payment to Appellant No. 2/Imphy. The application for permission with RBI was filed only on 31.10.2014. Appellant No. 2/Imphy provided all necessary documentation to Respondents for the permission sought from RBI. Appellants, *vide* e-mails dated 12.10.2015 and 16.10.2015, expressed concern about the delay in receipt of RBI permission and the consequent delay in payment. The RBI permission for payment of USD 450,000 to Appellant No. 2/Imphy was received on 28.01.2016 however, this fact was communicated to the Appellants only on 09.03.2016. Even at this stage, Respondent No. 1 did not remit USD 50,000 to Appellant No. 1 for the share transfer transaction and instead, *vide* e-mail dated 09.03.2016, sought further documentation. So also, Respondent No.2/IUP did not remit USD 450,000 to Appellant No. 2/Imphy despite having RBI permission, whereas this was the sole ground for not making the payments.

40. The impact of the delay in performance from 2013 to 2016 on the unwillingness of the Respondent No. 1 to close the transaction of shares transfer is apparent and requires consideration.

41. In our considered opinion, the review of the e-mails and documents exchanged between the parties shows that Respondent No. 1 unilaterally linked the share transfer transaction with Appellant No. 1 for consideration of USD 50,000 with the repayment obligation of Respondent No.2/IUP to pay Appellant No. 2/Imphy USD 450,000. Respondent No.1 wilfully

declined to pay USD 50,000 to Appellant No. 1 in 2014, even though all documents required from Appellant No. 1 for share transfer stood executed and deposited with its counsel as on 30.09.2014. Again, in 2015, it failed to make payment despite Appellant No. 1 following up for payments. Thereafter, when on 28.01.2016 the RBI permission for making payment of USD 450,000 was received, even at this stage Respondent No. 1 failed to make payment of USD 50,000 to Appellant No.1. Respondent No. 1 merely issued an e-mail dated 09.03.2016 to Appellant No. 1 to execute further documents. No details of the alleged documents are evident.

42. The record shows that there was no legal impediment for Respondent No. 1 to make payment of USD 50,000 to Appellant No. 1 at any time after execution of the Settlement Agreement in December 2013. The payment was withheld entirely at the discretion of Respondent No. 1 as no statutory permission was required for the said payment. The transaction had to be closed as per the Settlement Agreement within 30 days i.e., 20.01.2014 or any Closing date decided between the parties mutually. The justification for non-payment is only discernible for the period until 30.09.2014, as Respondent No. 1 was awaiting execution of the documents from Appellant No. 1 and its nominee directors in terms of the Settlement Agreement. However, since the said documents were also entirely received as on 30.09.2014 by the counsels for the Respondents, the withholding of USD 50,000 thereafter by Respondent No. 1 has been entirely its unilateral decision, which prima facie shows its unwillingness to perform the contract.

43. The understanding of Respondent No. 1 that it is obliged to make the payment of USD 50,000 to Appellant No. 1 immediately upon receiving

duplicate share certificates and is not linked to payment of USD 450,000 by Respondent No.2/IUP to Appellant No. 2/Imphy is also clear from paragraph 11 of the plaint of CS(COMM) No. 1314/2016, wherein relevant portion of paragraph 11 reads as under: -

> "11. Some of the important clauses of the settlement agreement are:
> (i) Plaintiff and Defendant No. 1 could not pursue the Joint Venture and therefore wished to close the agreement.
> (ii) The parties acknowledged that Defendant No. 1 and its directors had not participated in the management of Defendant No. 1 company from March 2009 onwards.
> (iii) The Closing date was to be the date falling in 30 days from the Settlement Agreement or any other date mutually agreed between the parties. Further, the following chronological events are to take place on the closing date:
>
> > **(a) Defendant No. 1 will get the duplicate share certificates issued and submit all the other documents for transfer of shares.**
> > **(b) Simultaneously, on receipt of duplicate share certificates, the Plaintiff will remit the Purchase price to Defendant No. 1.**
> > (c) Defendant No. 1 nominees will resign from the Board of Defendant No. 3 company.
> > (d) Defendant No. 3 company will make a payment of USD 450000 to Defendant No. 2 for the supply of materials received by the Defendant No. 3
> > (e) Defendant No. 3 company will provide draft of amended articles of association to Defendant No. 1
> > (f) Board meeting and Shareholders meeting will take place to give effect to transfer of shares and other consequential requirements.
>
> iv) The Settlement Agreement shall be binding upon the parties to the said agreement."
>
> [Emphasis supplied]

44. Respondent No. 1 in its e-mail dated 01.07.2014[37] sought the bank account details of Appellant No. 1 for effecting transfer of the share price. Respondent No. 1's e-mail dated 02.07.2014[38] addressed to Appellant No. 1 records at paragraph 5 that duplicate share certificates have been received and are in the possession of Respondent No. 1. Thus, as on 01.07.2014

[37] Email at printed page no. 183 in Pleadings II of the present appeal
[38] Email at printed page no. 182 in Pleadings II of the present appeal

Respondent No. 1 expressly represented to the Appellant No. 1 that it is ready and willing to transfer USD 50,000, subject to Appellant No. 1 executing further documents required from it. All the documents required stood executed by Appellant No. 1 as on 30.09.2014 admittedly. Respondent No. 1 had no basis for not making the payment of USD 50,000 after 01.07.2014 and/or 30.09.2014. There is no explanation by Respondent No. 1 in the documents or the plaint. In these facts, the Respondent No. 1's assertion of readiness and willingness in the plaint cannot be accepted as an undisputed fact so as to entitle the Respondent No. 1 to a decree of specific performance under Order XIII A CPC. In our opinion Appellant No. 1's challenge to the said assertion in the written statement has a real prospect of successfully defending against the claim of specific performance. Therefore, in our opinion the Respondent No. 1's application for summary judgment is liable to be dismissed on this ground.

45. We are of the considered opinion that the aforesaid e-mails fail to prima facie show that Respondent No. 1 was willing to perform the Settlement Agreement. In fact, despite demands from Appellant No. 1 in 2014 and 2015 for remittance of USD 50,000, Respondent No. 1 unilaterally, and without any cause, withheld the said payment.

46. The learned Single Judge has held at paragraphs 56 and 58 that the communications dated 11.08.2014 and 12.10.2015 addressed by the Appellants indicate that the time for performance was extended. We are unable to agree with this conclusion, as even in its e-mail dated 12.10.2015, the Appellants expressed their distress at the non-closing of the transactions. As discussed hereinabove, the documents required to be executed by

Respondent No. 1, as per the agreement, as per the Settlement Agreement for effecting the share transfer stood executed and delivered to Appellant No. 1 as on 30.09.2014. Respondent No. 1 ought to have transferred a sum of USD 50,000 to Appellant No. 1 immediately thereafter to close the share transfer transaction.

47. The finding of the learned Single Judge at paragraph 58 that Respondent No. 1, upon receiving RBI permission, immediately called upon Appellant No. 1 to perform its part and, on the refusal of Appellant No. 1, filed this suit is factually incorrect. This finding is prima facie incorrect for the following reasons:

a) No RBI permission was required by Respondent No. 1 for making the payment of USD 50,000. This payment could have been made by Respondent No. 1 immediately after it had received all documents from Appellant No. 1 for the said transfer in 2014. It is a matter of record that all relevant documents stood executed and delivered by Appellant No. 1 to Respondent No. 1 as on 30.09.2014.

b) The RBI permission was required by Respondent No. 2/IUP for making payment of USD 450,000 to Appellant No. 2/Imphy;

c) Notwithstanding the above, even after the RBI permission dated 28.01.2016 for remitting USD 450,000 was received, Respondent No. 1 did not make payment of USD 50,000 to Appellant No. 1 and instead, by an e-mail dated 09.03.2016, called upon Appellant No. 1 to furnish further documents; and

d) The inaction of Respondent No 1 from 28.01.2016 to 09.03.2016 is unexplained and unjustified. Moreover, the demand for further documents by Appellant No. 1 is also not bona fide because all documents required by Respondent No. 1 for completing the share transfer stood executed by Appellant No. 1 and its nominee directors in September, 2014. The said documents stood deposited with the counsels for the Respondents in trust, awaiting the remittance of USD 50,000. This is duly documented in the e-mails exchanged between Appellants and Respondents between July, 2014 to September, 2014, and the e-mail dated 30.09.2014 is critical.

For the reasons noted above, the finding of the learned Single Judge at paragraph 45 of the impugned judgment that sale of shares could not take place without RBI permission is factually incorrect and is hereby set aside.

48. In CS(COMM) No. 1314/2016, Respondent No. 1 approached the Court seeking specific performance of the transaction of share transfer against Appellant No. 1 and sought directions only to this effect.

Respondent No. 2, however, did not independently approach the Court to offer payment to Appellant No. 2/Imphy. In this suit, Respondent No. 1 did not seek any direction to Respondent No. 2/IUP to make payment of USD 450,000 to Appellant No. 2/Imphy. This further shows that the transaction of share transfer between Appellant No. 1 and Respondent No. 1 is distinct and capable of completion on a standalone basis; and therefore, Respondent No. 1 prima facie had no legal basis for withholding performance of this transaction of USD 50,000 while awaiting the RBI permission for remittance of USD 450,000 by Respondent No. 2/IUP to

Appellant No. 2/Imphy.

49. Moreover, if Respondent No. 1 was indeed willing to complete the overall settlement and was treating the payment of USD 450,000 to Appellant No. 2/Imphy as inextricably linked with the transfer of the Aperam Shares, there was no explanation for its failure, after the RBI approval dated 28.01.2016, to ensure that Respondent No. 2/IUP forthwith remitted the said amount to Appellant No. 2/Imphy. The sole justification advanced by Respondent No. 1 for withholding the Closing of the transaction until 2016 was the pendency of RBI approval for the remittance of USD 450,000. Once that approval had admittedly been obtained, Respondent No. 1 neither caused Respondent No. 2/IUP to discharge its admitted obligation of remitting USD 450,000 nor itself remitted the consideration of USD 50,000 payable for the transfer of shares. Instead, it sought further documentation from Appellant No. 1, despite the admitted position that all documents required for effecting the transfer of shares had already been executed and delivered by 30.09.2014. This conduct raises a substantial triable issue as to whether Respondent No. 1 was itself in default of its contractual obligations.

50. In view of the aforesaid discussion, we are unable to sustain the findings recorded by the learned Single Judge in paragraphs 45, 56, 57 and 58 of the impugned judgment to the effect that Respondent No. 1 was continuously ready and willing to perform its obligations under the Settlement Agreement, thus violating Section 16(c) of the Act of 1963, and that the delay in completion of the transaction stood satisfactorily explained by the requirement of RBI approval. The impugned findings are,

accordingly, set aside.

ISSUE III: WHETHER THE SETTLEMENT AGREEMENT CONSTITUTED A SINGLE LUMP-SUM TRANSACTION OR TWO DISTINCT AGREEMENTS, AND WHETHER THE SHARE TRANSFER AGREEMENT WAS VALIDLY VOIDED BY THE APPELLANT NO. 1

51. Appellants have contended that the learned Single Judge erred in concluding that the agreed consideration for the transfer of the Aperam Shares was a lump-sum amount of USD 500,000. It is submitted that, on a plain reading of the Settlement Agreement, the consideration for the transfer of shares by Appellant No.1 to Respondent No.1 was expressly fixed at USD 50,000, whereas the separate amount of USD 450,000 was payable by the Respondent No.2/IUP to Appellant No. 2/Imphy towards outstanding dues for goods supplied. It is contended that these constitute two distinct and independent arrangements between different parties under the Settlement Agreement, and therefore the learned Single Judge wrongly treated the entire sum of USD 500,000 as consideration for the transfer of Aperam shares. The Appellants further submit that the finding that, the amount of USD 450,000 was merely appropriated towards payment for supplied goods due to foreign exchange regulations is contrary to the express terms of the Settlement Agreement sought to be specifically enforced.

52. The Appellants have further contended that, in any event, the agreement for transfer of the Aperam Shares stood validly voided by Appellant No.1 upon discovery of the alleged fraud and misrepresentation regarding the valuation of the shares. It is submitted that Appellant No.1, by its communication dated 13.09.2016, validly rescinded the agreement relating to the transfer of shares while continuing to affirm the independent obligation of Respondent No.2/IUP to pay USD 450,000 to Appellant No.

2/Imphy towards the goods supplied. It is, therefore, submitted that the agreement relating to the transfer of shares had ceased to be enforceable against Appellant No.1.

FINDING ON ISSUE NO. III

53. We note that, in paragraphs 44 and 49 of the impugned judgment, the learned Single Judge proceeded on the premise that the consideration for the transfer of the shares held by Appellant No.1 in Respondent No.2/IUP was USD 500,000, with the payments of USD 50,000 and USD 450,000 being split into two transactions merely for regulatory convenience. However, this is neither the case pleaded by Respondent No.1 in the plaint nor by Respondent No.2/IUP in its written statement in CS (COMM) No.45/2017. We are, therefore, unable to sustain the rationale of the impugned judgment which is based on a factual premise not arising from the pleadings. A plain reading of the Settlement Agreement prima facie indicates two distinct obligations between different parties, namely, the transfer of the Aperam Shares by Appellant No.1 to Respondent No.1 for a consideration of USD 50,000 and the independent obligation of Respondent No.2/IUP to pay USD 450,000 to Appellant No. 2/Imphy towards the admitted dues for goods supplied. Consequently, the finding that the consideration for the transfer of shares from Appellant No. 1 to Respondent No. 1 was for a lump-sum amount of USD 500,000 cannot be sustained. Respondent No. 1 and Respondent No. 2 are, admittedly, distinct juristic entities and they are not an alter ego. The reasons in the impugned judgment, however, treats Respondent Nos. 1 and 2 as alter egos.

54. Equally, once the agreement relating to the transfer of Aperam shares

is viewed as a distinct contractual arrangement, the Appellants' plea that the said agreement of shares transfer, due to lack of readiness and willingness, was validly voided raises a substantial defence which requires adjudication and cannot be rejected on the assumption that the Settlement Agreement constituted one indivisible bargain for USD 500,000. These issues, therefore, constitute triable questions, which could not have been conclusively determined in summary proceedings.

ISSUE IV: WHETHER THE AMENDMENT TO THE SPECIFIC RELIEF ACT 1963 WILL APPLY RETROSPECTIVELY OR PROSPECTIVELY IN THE PRESENT CASE

55. The learned Single Judge, at paragraph 58 of the impugned judgment, held that the amendments introduced to the Specific Relief Act, 1963 ['Act of 1963'] by the Specific Relief (Amendment) Act, 2018 ['2018 Amendment'], being procedural in nature, would apply retrospectively to the present case, notwithstanding that CS (COMM) No. 1314/2016 had been instituted prior to the amendment. Proceeding on this basis, the learned Single Judge observed that, after the 2018 amendment, the grant of specific performance is no longer a discretionary relief but is to be enforced by the Court subject only to the limitations contained in Sections 11(2), 14 and 16 of the Act of 1963. Since none of the aforesaid statutory bars were found to be attracted and Respondent No.1 was held to have been ready and willing to perform its obligations under the Settlement Agreement, the learned Single Judge concluded that the contract was liable to be specifically enforced.

56. On this proposition of law, we would like to take note of the few landmark judgments of Supreme Court.

56.1 In **Katta Sujatha Reddy v. Siddamsetty Infra Projects Pvt. Ltd.**[39], the Supreme Court authoritatively settled the question regarding the applicability of the 2018 Amendment to contracts and proceedings arising from transactions executed prior to the amendment. The Court held that the 2018 Amendments are substantive in character and not merely procedural, since they fundamentally alter the legal framework governing the grant of specific performance by transforming what was previously an equitable and discretionary remedy into a statutory remedy that the Court is ordinarily bound to enforce, subject only to the exceptions expressly provided under the Act. The Supreme Court observed that the true test is not the nature of the parent enactment but whether the amendment itself creates new rights, obligations or takes away vested rights. Applying this test, it held that the amended Section 10 and the corresponding changes to the Act significantly reinforced the sanctity of contracts by creating enforceable rights and corresponding obligations that did not exist under the pre-amended regime.

While considering the observations made in **Adhunik Steels Ltd. v. Orissa Manganese & Minerals (P) Ltd.**[40], the Supreme Court expressly held that the reliance placed by several courts on the said decision to characterize the Act of 1963 as purely procedural was misplaced. It clarified that Adhunik Steels was decided in the context of the scope of Section 9 of the Arbitration and Conciliation Act, 1996, and merely recognised that injunction is a form of specific relief; it did not lay down as a proposition of law that the provisions of the Act of 1963 are, *stricto sensu*, procedural or that amendments thereto would necessarily operate retrospectively.

---

[39] (2023) 1 SCC 355, at paragraph nos. 43 to 59.
[40] (2007) 7 SCC 125, which was also relied upon by the learned Single Judge at paragraph 58 of the impugned judgment.

The Supreme Court expressly disapproved the reasoning that the 2018 amendments were procedural in nature and, therefore, retrospective. Relying upon the settled principle that amendments affecting substantive rights are presumed to operate prospectively unless the legislature expressly provides otherwise or such intention arises by necessary implication, the Court held that the 2018 Amendment creates new substantive rights and obligations and, consequently, applies prospectively with effect from 01.10.2018. It was accordingly held that the amended provisions do not govern contracts or transactions entered into prior to the said date, nor do they affect the substantive rights of parties which had accrued under the unamended law.

Relevant paragraphs of the judgement read as under: -

> "48. We do not subscribe to the aforesaid reasoning provided by the High Court for the simple reason that after the 2018 Amendment, specific performance, which stood as a discretionary remedy, is not (*sic* now) codified as an enforceable right which is not dependent anymore on equitable principles expounded by Judges, rather it is founded on satisfaction of the requisite ingredients as provided under the Specific Relief Act. For determination of whether a substituted law is procedural or substantive, reference to the nature of the parent enactment may not be material. Instead, it is the nature of the amendments which determine whether they are in the realm of procedural or substantive law.
>
> … …
>
> 57. In the light of the aforesaid discussion, it is clear that ordinarily, the effect of amendment by substitution would be that the earlier provisions would be repealed, and amended provisions would be enacted in place of the earlier provisions from the date of inception of that enactment. However, if the substituted provisions contain any substantive provisions which create new rights, obligations, or take away any vested rights, then such substitution cannot automatically be assumed to have come into force retrospectively. In such cases, the legislature has to expressly provide as to whether such substitution is to be construed retrospectively or not.
>
> 58. In the case at hand, the Amendment Act contemplates that the said substituted provisions would come into force on such date as the Central Government may appoint, by notification in the Official Gazette, or different

dates may be appointed for different provisions of the Act. It may be noted that 1-10-2018 was the appointed date on which the amended provisions would come into effect.

59. In view of the above discussion, we do not have any hesitation in holding that the 2018 Amendment to the Specific Relief Act is prospective and cannot apply to those transactions that took place prior to its coming into force."

[Emphasis supplied]

56.2 This judgment on merits of the dispute was, however, recalled by the Supreme Court hearing the review in **M/s Siddamsetty Infra Projects Pvt. Ltd. v. Katta Sujatha Reddy & Ors.[41].** While the Court revisited its findings on the interpretation of the contractual clauses, readiness and willingness under Section 16(c) of the Act of 1963, and the exercise of discretion in granting specific performance, the aforesaid observation on principles of law that, the 2018 Amendment to the Act of 1963 is prospective in operation and does not apply to transactions or suits governed by the unamended Act, was expressly, neither recalled nor diluted. On the contrary, the Court proceeded to determine the claim for specific performance under the unamended provisions of the Act and reiterated that, in suits governed by the pre-amendment regime, the grant of specific performance continues to be an equitable and discretionary relief. Relevant paragraph of the judgement read as under: -

"**F. *Specific performance***

38. The next issue is whether the petitioner is entitled to a decree for specific performance. This Court held that the 2008 amendment to Section 10 of the Specific Relief Act does not apply retrospectively and decided the matter based on Section 10 before the amendment. Section 10, before the amendment, conferred courts with the discretion to provide a decree for specific performance. In exercise of review jurisdiction, we must not disturb a

[41] (2024) 20 SCC 140, at paragraph no. 32.

finding unless there is an error apparent on the face of the record. Even assuming that the grant of relief of specific performance continued to be discretionary to a suit instituted before the date of the amendment, we are of the opinion that this Court committed a grave error in its analysis of whether the Court ought to use its discretionary power in this matter."

[Emphasis supplied]

Thus, the legal position enunciated in **Katta Sujatha Reddy** (supra) regarding the prospective operation of the 2018 amendment, was not disturbed in the judgment passed in review. Though, the decision on merits of the dispute was recalled.

56.3 This was also clarified by the Supreme Court in **Annamalai v. Vasanthi**[42], wherein the Court reiterated that the Specific Relief (Amendment) Act, 2018 is prospective in operation and does not govern suits arising out of transactions entered into prior to 01.10.2018. The Supreme Court observed that although the judgment in **Katta Sujatha Reddy** (supra) was subsequently reviewed in **M/s Siddamsetty Infra Projects Pvt. Ltd. v. Katta Sujatha Reddy** (supra), the review judgment did not hold that the amended provisions of Act of 1963 would apply to suits instituted prior to the amendment.

57. Accordingly, the rights and liabilities of the parties for transactions entered into or suits instituted prior to the 01.10.2018, are required to be adjudicated under the unamended provisions of the Act of 1963, under which the grant of specific performance continued to be an equitable and discretionary relief to be exercised on settled judicial principles and the facts and circumstances of each case. The Court is not bound to decree specific

[42] (2026) 3 SCC 769, at paragraph no. 47.

performance merely because the contract is otherwise enforceable in law but must examine whether the plaintiff has established continuous readiness and willingness to perform its obligations under Section 16(c) of the Act of 1963, whether the conduct of the parties justifies the grant of equitable relief, and whether the circumstances warrant the exercise of discretion in favour of specific performance.

Pertinently, Section 16(c) exists on the statute even post the 2018 Amendment and therefore, the test of readiness and willingness has to be satisfied by the buyer, i.e., the Respondent No. 1.

58. Since the Settlement Agreement in the present case was executed on 20.12.2013 and CS (COMM) No. 1314/2016 was instituted well before 01.10.2018, the learned Single Judge was not justified in applying the amended provisions of the Act of 1963 on the premise that they were procedural in nature. The present dispute is liable to be adjudicated under the unamended Act, wherein the question whether specific performance ought to be granted necessarily falls for consideration on the touchstone of the equitable and discretionary principles embodied in the unamended Act of 1963.

59. The Settlement Agreement was executed between the parties in December 2013. The value for the share transfer, determined at USD 50,000, was agreed between the parties in September 2012, with the parties expecting to close the agreement within 30 days. Respondent No. 1 failed to make the said payment till 2016 even though Appellant No. 1 demanded payment, when Appellant No. 1 finally terminated the transaction *vide* notice dated 13.09.2016. The Respondent No. 1 approached the Court in

September 2016 seeking specific performance, and the impugned decree was passed on 16.07.2019. Though there is no stay of the said decree, Respondent No. 1 has not approached this Court offering to deposit the payment of USD 50,000 with the Court or make the payment directly to Appellant No. 1.

These facts fail to persuade this Court to exercise its power to grant the discretionary relief of specific performance in favour of Respondent No. 1 by way of a summary judgment.

CONCLUSION

60. In view of the detailed discussion and conclusions recorded in Issue No. I of this judgment, we uphold the findings of the learned Single Judge that the Appellants have failed to establish that their consent to the Settlement Agreement, insofar as it records the consideration of USD 50,000 for the transfer of the Aperam Shares, was procured by fraud or misrepresentation. The issue is decided finally against the Appellant No. 1 and in favour of Respondent No. 1.

61. However, in view of our findings on the issue of lack of prima facie proof of Respondent No. 1's willingness to pay the sum of USD 50,000 we are unable to concur with the findings of learned Single Judge that Respondent No. 1 was not in default of its obligations under the Settlement Agreement and, was ready and willing to perform the same.

In view of the said finding, we are inclined to allow this appeal and set aside the decree of specific performance of the Settlement Agreement granted in favour of Respondent No. 1 in CS(COMM) No. 1314/2016.

62. Accordingly, the decree of specific performance granted by the

learned Single Judge in the impugned judgment at paragraph 67(A) in CS(COMM) 1314/2016 is hereby set aside and the matter is remanded back to the learned Single Judge for trial, only on the issue of readiness and willingness.

The Respondent No. 1 will have to prove at trial the reasons for not transferring USD 50,000 in the year 2014 itself, despite receipt of all relevant documents from Appellant No. 1 for effecting the share transfer transaction as on 30.09.2014. It would also have to justify at trial the validity of its demand for further documents from Respondent No. 1 *vide* e-mail dated 09.03.2016. It would also have to explain the reasons for its inaction between 28.01.2016 (i.e. receipt of RBI permission) and the issuance of the e-mail dated 09.03.2016.

63. In view of our aforesaid findings, the appeal is allowed. Pending applications, if any, are disposed of.

64. The Registry is directed to list this suit before the Roster Bench on 24.07.2026 for directions.

CS(COMM) 45/2017

65. Learned Single Judge by the impugned judgment in exercise of its suo moto powers, decreed CS(COMM) 45/2017 in favour of Appellant No. 2/Imphy and directed Respondent No. 2/IUP to pay a sum of USD 450,000 in terms of the directions set out at paragraph 67(B). Similarly, though there is no stay of the said decree, Respondent No. 2/IUP has not approached this Court offering to deposit the payment of USD 450,000 with the Court or make the payment directly to Appellant No. 2/Imphy. There is no

explanation whatsoever from Respondent No. 2 for the aforesaid non-payment.

66. Learned Single Judge, at paragraph 63 of the impugned judgment, directed the payment of USD 450,000 on the finding that this payment is expressly linked to the decree of specific performance. Respondents also submit that payment of USD 450,000 can only be made after the transaction of share transfer is concluded. Since we have set aside the decree of specific performance of share transfer granted in CS(COMM) 1314/2016 not accepted the finding that the two transactions are related, we also remand this suit, this decree for payment of USD 450,000 is also set aside for fresh consideration.

67. Moreover, learned senior counsel appearing on behalf of the Appellant at the hearing held on 15.04.2026 had submitted on instructions that indeed if the decree of specific performance is set aside in CS(COMM) 1314/2016 and the matter is remanded to trial, the Appellants have no objection to the decree for payment of USD 450,000 also being set aside.

68. There can be no doubt with the proposition laid down by the Division Bench in **Bright Enterprises Private Ltd. and Ors. v MJ Bizcraft LLP and Ors**[43] that the jurisdiction under Order XIII-A of CPC is an exceptional one and can be exercised only where the Court is satisfied that the defendant has no real prospect of successfully defending the claim and there exists no other compelling reason for directing a trial.

Accordingly, in view of the aforesaid facts, we clarify that it shall be

[43] 2017:DHC:67-DB

open to the parties to invoke the remedy under Order XIII A CPC, to decide the claim of the agreed amount of USD 450,000 afresh. Any such application shall be considered and decided independently by the learned Single Judge on its own merits, having regard to the pleadings, documents and other material placed on record.

69. In view of the aforesaid, the decree of payment of USD 450,000 along with interest passed in CS(COMM) 45/2017 is hereby set aside, and the matter is remanded back to the learned Single Judge.

70. The Registry is directed to list this suit before the Roster Bench on 24.07.2026 for directions.

MANMEET PRITAM SINGH ARORA, J

V. KAMESWAR RAO, J

JULY 15, 2026/msh/AJ/AM