NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.201
Execution Petition/1(MP)2025
in
CP/9(MP)2021

Order under Section 241-242

IN THE MATTER OF:

Rajesh Agrawal alias Raju Agrawal & Ors ....**Applicant**
V/s
Makhija Construction & Engineering Pvt Ltd & Ors ....**Respondent**

Coram:

Hon'ble Shri Brajendra Mani Tripathi, Member (J)
Hon'ble Shri Man Mohan Gupta Member (T)

PRONOUNCEMENT OF ORDER
Delivered on 17/08/2026

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-	Sd/-
MAN MOHAN GUPTA **MEMBER (TECHNICAL)**	**BRAJENDRA MANI TRIPATHI** **MEMBER (JUDICIAL)**

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THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH

Execution Petition No. 1 of 2025
IN
CP/9(MP)2021

(An Application filed under Section 424 (3) of the Companies Act,2013 r.w. Rule 56 of NCLT Rules,2016.)

IN THE MATTER OF:

1. MR. RAJESH AGRAWAL
alias RAJU AGRAWAL
370, Saket Nagar, Indore
MP-452018 **... Applicant**

Versus

1. M/S MAKHIJA CONSTRUCTION AND ENGINEERING PVT. LTD.
404, Alankar Point, Geeta Bhawan,
A.B. Road Indore
MP-452001

2. MR. CHANDRAKUMAR MAKHIJA
Flat No. 101, Block Heaven,
Grande Exotica, Near Agrawal
Public School, Bicholi Mardana
Indore MP 452001

3. MR. PRAKASH MAKHIJA
1st floor, 82 Paliwal Nagar,
Near Manishpuri, Indore

4. (a) MRS. SUMAN SACHDEV
(Legal Representative of Late
Mr. Dayaram Makija -R4)
U-13, Someshwar Park-3, Near

Sun-N-Step Club, Ghatlodia,
Ahmedabad, Gujrat-380061

4. (b) MRS. POOJA PRAJNESH YAJNIK
(Legal Representative of Late
Mr. Dayaram Makija -R4)
Unit-202-6444, Finch Avenue West,
Etobicoke, Ontario, Canada M9V1T4

4. (c) MR. PRAKASH MAKHIJA
(Legal Representative of Late
Mr. Dayaram Makija -R4)
Flat No. 110, Sanjhi Chhat, Near Khajrana
Square, Indore (M.P.)

5. MR. MURLIDHAR THAKURDAS MAKHIJA
C-8, County Walk, Jhalaria,
Indore MP

6. MR. PURSHOTTAM MAKHIJA
C 9, County Walk Colony, Near
Shishu Kunj School, Jhalaria
Indore MP 452016

7. MR. MOHAN MAKHIJA
G-189, County Walk, Jhalaria,
Indore MP

8. MR. KAPIL MAKHIJA
B C-8, County Walk, Jhalaria,
Indore

9. REGISTRAR OF COMPANIES, GWALIOR
03rd Floor, 'A' Block, Sanjay Complex
Jayendra Ganj, Gwalior MP **... Respondents**

C O R A M:

HON'BLE SH. BRAJENDRA MANI TRIPATHI, MEMBER (J)

HON'BLE SH. MAN MOHAN GUPTA, MEMBER (T)

Order Pronounced on 17.08.2026

Appearance:

For the Applicant : Mr. Pratik Tripathi, PCS

For the Respondent : Mr. Rajat Lohia, Adv

Mr. Navin Khandelwal, PCA (R-3)

O R D E R

SUBMISSIONS OF THE APPLICANT

1. Background and Genesis of the Dispute

The Applicant, Mr. Rajesh Agrawal alias Raju Agrawal (Petitioner No. 1), along with four other Petitioners, had filed Company Petition No. CP/9(MP)2021 under Sections 213, 241 and 242 read with Section 244 of the Companies Act, 2013, alleging oppression and mismanagement by Respondent No. 1 Company and its directors. It was averred that the Respondent Company had converted the Petitioners' share application money of Rs. 34,75,450/- into an unsecured loan without their knowledge or consent, thereby depriving them of their entitlement to 47,608 equity shares constituting 61.34% post-allotment shareholding. It was further alleged that after the petition was filed, the Respondents illegally increased the shareholder base from 38 to 58 by transferring shares on an unknown date and filed a manipulated and forged shareholder list with the Registrar of Companies on 30.12.2021.

2. The Order dated 03.02.2025

The Hon'ble NCLT, Indore Bench, by its order dated 03.02.2025, directed the Respondent Company to refund the entire share application money (reflected as an unsecured loan) within one month, together with interest at 12% per annum from 01.06.2014. Paragraph 18 of the order further directed that if the Respondent failed to refund the amount with interest within the stipulated period, it would stand obligated to allot equity shares on the basis of that share application money within a month thereafter.

3. Case for Execution

The Applicant's case is that since the Respondent Company failed to refund the amount within the one-month period prescribed under Paragraph 17, the alternative direction contained in Paragraph 18 came into effect, entitling the Petitioners to allotment of 47,608 equity shares of Rs. 10/- each at a price of Rs. 73/- per share, against the share application money of Rs. 34,75,450/- already lying with the Respondent Company. The Applicant contends that this direction has not been complied with and, accordingly, seeks execution under Order 21 Rule 10 of the Code of Civil Procedure, 1908, read with Section 424(3) of the Companies Act, 2013 and Rule 56 of the NCLT Rules, 2016.

4. Clarification Regarding Pending Appeal

By way of affidavit accompanying the Execution Application, the Applicant states that he has filed Company Appeal No. 91 of 2025 before the Hon'ble NCLAT against the order dated 03.02.2025, but clarifies that the subject matter of that appeal is confined to prayers (d) to (n) of the original petition, which were not adjudicated in the order dated 03.02.2025, and does not overlap with or obstruct execution of Paragraph 18. It is further stated that no appeal has been filed by the Respondents against the order.

SUBMISSIONS OF THE RESPONDENTS

1. Submissions of Respondent No. 3

Respondent No. 3, a Director of Respondent No. 1 Company, submits that he had no role, knowledge, or participation whatsoever in the acts relating to the issuance and allotment of shares that form the subject matter of the Execution Application, and that the Execution Application is misconceived insofar as it seeks to fasten liability on him for acts carried out unilaterally by Respondent Nos. 1 and 5 to 8. He states that he has himself invoked the Tribunal's jurisdiction under Sections 241-242 of the Companies Act, 2013, alleging oppression and mismanagement (including illegal dilution of his own shareholding) at the hands of Respondent Nos. 5 to 8, and that the conduct complained of in the Execution Application is a continuing extension of that oppression.

On the validity of the underlying corporate action, Respondent No. 3 submits:

- Violation of Section 173(3) of the Companies Act, 2013 and Secretarial Standard-1 (SS-1): no notice of the Board Meeting allegedly approving the share allotment, nor of the Board Meeting dated 04.04.2025, was served on him, rendering the meeting and any resolution passed therein non-est and void, and consequently invalid under Section 179(3) for want of a validly convened Board.
- Violation of Section 96: six Annual General Meetings (30.09.2015, 30.09.2016, 29.09.2017, 30.09.2018, 30.09.2019 and 31.12.2020) were held without notice to him, rendering them null and void.
- Violations in the allotment process itself: no offer was made to existing shareholders as required under Section 62; no Private Placement Offer and Application Letter in Form PAS-4 was issued

as required under Section 42 read with Rule 14 of the Prospectus and Allotment of Securities Rules, 2014; no special resolution was passed and no valuation report from a registered valuer was obtained as required under Rule 12 of the Share Capital and Debentures Rules, 2014; and no Registered Valuer was validly appointed or its report shared with him as required under Section 247.

- Shares were illegally issued to Cemacon Consultant Pvt. Ltd., stated to be a defunct entity, without consideration, while Cemacon Infrastructure Pvt. Ltd. (Petitioner No. 2 in company petition) — the entity said to be entitled under the order dated 03.02.2025 — was not allotted shares at all, amounting to non-compliance with and misuse of the execution process.
- Material documents (the valuation report, pricing basis, complete allottee list, and statutory filings) were withheld from him despite his being a Director and shareholder, evidencing lack of transparency and mala fide intent.

Reliance is placed on Dale & Carrington Investment (P) Ltd. v. P.K. Prathapan, Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd., and Parmeshwari Prasad Gupta v. Union of India for the proposition that share allotments made without following statutory procedure, or to alter control, amount to oppression and are void. On this basis, Respondent No. 3 submits that he bears no liability for the acts or omissions forming the subject matter of the Execution Application.

2. Submissions of Respondent Nos. 5, 6, 7 and 8

Respondent Nos. 5, 6, 7 and 8 (Directors and shareholders of Respondent No. 1 Company) oppose the Execution Application on two principal grounds — maintainability and merits.

On maintainability, it is submitted that the Applicant has himself filed Company Appeal (AT) No. 91 of 2025 before the Hon'ble NCLAT against the very order dated 03.02.2025 sought to be executed, and that an order under active appellate scrutiny cannot simultaneously be made the subject of execution. It is contended that the Tribunal, having passed the order, is functus officio, and that pursuing both an appeal (to set aside the order) and an execution petition (to enforce it) at the same time amounts to approbation and reprobation, warranting summary dismissal with punitive costs. It is further submitted that the order contains no coercive, monetary, or executory decree susceptible to enforcement under Rule 56 of the NCLT Rules, 2016, so that no residuary execution jurisdiction is attracted.

On merits, it is submitted that the operative direction under Paragraph 18 of the order — allotment of shares against the share application money — has already been fully complied with. Form SH-1 share certificates dated 04.04.2025 were issued to Mukesh Agrawal, Raju Agrawal, Yogesh Agrawal, Cemacon Consultant Pvt. Ltd. and Naresh Agrawal, and intimation for collection of the certificates was dispatched to the shareholders (including by email dated 13.09.2025) and to the Applicant's registered address, which communication was returned as 'Refused' by the Applicant. It is submitted that the Applicant, having voluntarily declined to collect the certificates, is estopped from alleging non-execution, and that the Execution Application is factually incorrect, vexatious, and an abuse of the process of the Tribunal. The Respondents pray for dismissal of the Execution Application with exemplary costs.

Submissions in Rejoinder

Petitioner filed a rejoinder denying each and every averment made in the Respondents' reply, and states that the conduct of the Respondents amounts to a mockery of the judicial system and, in particular, of the order dated 03.02.2025. The Petitioner also points out that Respondent No. 1, the Company itself, was never represented in the original Petition No. 9 of 2021, in the Execution Petition, or in the appeal before the NCLAT, yet an allotment of 303 equity shares was purportedly made against the Petitioners' actual entitlement of 47,608 equity shares.

The Rejoinder sets out a detailed chronology of the Respondents' conduct going back to 2014, which the Petitioner describes as a well-thought-out and systematic fraud and scheme to deprive the Applicants of their rights in Respondent No. 1 Company, with the alleged allotment of a mere 303 equity shares being a willful and cunning act of disobedience and defiance of the order dated 03.02.2025. This chronology is set out in the table below.

Chronology of Events

S.N	Date	Event
1	07.12.2017	Backdated, fraudulent conversion of Rs.34,75,450 share application money (received from Petitioners) into an unsecured loan, shown in FY 2013-14.
2	20.08.2021	Petition under Sections 241-242 filed by Petitioners — filed by more than 10% of shareholders (5 of the company's 38 total shareholders).
3	16.10.2021	Respondent Nos. 3 and 4 filed their reply, admitting the Petitioners' claim and consenting to allotment of shares to them.
4	30.12.2021	Respondents filed the FY 2020-21 annual return, allegedly fraudulently manipulating the shareholder list

S.N	Date	Event
		— inflating shareholders from 38 to 58 to push the Petitioners below the 10% threshold.
5	09.03.2022	Respondent Nos. 2, 5, 6, 7 and 8 filed a separate reply claiming Petitioners failed to meet the Section 244 numerical requirement, based on the (allegedly forged) annual return filed 30.12.2021.
6	23.07.2022	Petitioners filed a rejoinder reiterating their claim to 47,608 equity shares at Rs.73/share (book value as on 31.03.2013) — a valuation the Petitioner says the Respondents never disputed, and thus effectively admitted.
7	03.02.2025	NCLT pronounced its final order.
8	20.03.2025	Petitioners filed Appeal No. 91 of 2025 before NCLAT against the 03.02.2025 order — except as to Paras 17 and 18 of that order.
9	07.08.2025	Petitioners filed the present Execution Petition, seeking compliance/execution of the NCLT order and allotment of the 47,608 equity shares per Para 18 of the 03.02.2025 order.
10	13.09.2025	Respondents sent an email directing Petitioners to prove their identity and collect share certificates for the 303 shares — despite the shares allegedly being allotted to a company (M/s Cemacon consultant Pvt. Ltd.) struck off the ROC register on 28.01.2008.
11	16.09.2025	Respondents allegedly sent a letter to the Petitioners, cited as further evidence of their attempt to show “compliance” while actually defying the order.
12	12.01.2026	Respondents filed their reply, claiming 303 shares had already been allotted to the Petitioners on 04.04.2025.

According to the Petitioner, none of the Respondents has filed any appeal against the order dated 03.02.2025, and instead of complying with it, they have chosen to manipulate its execution. On the question of maintainability, the Petitioner deals with the

Respondents' contention that the pendency of the appeal renders the Execution Petition infructuous. Relying on the judgment of the Hon'ble NCLAT in Employees' Provident Fund Organisation versus Rachna Jhunjhunwala, the Petitioner submits that the mere pendency of an appeal, without a stay having been granted, does not prevent the underlying order from continuing to bind and apply.

The Petitioner also relies on the judgment of the Hon'ble Supreme Court in Chakardhari Sureka versus Prem Lata Sureka through SPA and others (Civil Appeal No. 11840/2025), which holds that questions of executability of an award may be examined by the Execution Court as objections are raised, but that it would not be proper for the Execution Court to defer consideration of the execution application merely because an appeal is pending, when no interim order operates against the underlying order. On this basis, the Petitioner submits that the Execution Petition is very much maintainable in the absence of any interim order staying the operation of the order dated 03.02.2025, and further submits that the subject matter and reliefs sought in Appeal No. 91 of 2025 are entirely different from those in the Execution Petition, since the appeal was preferred only against specific points and not against the entire order, and expressly does not challenge the direction for allotment of 47,608 shares.

On the question of compliance, the Petitioner examines the share certificates annexed to the Respondents' reply, which record allotments of 57 shares to Mukesh Agrawal, 180 shares to Raju Agrawal, 26 shares to Yogesh Agrawal, 5 shares to Cemacon Consultant Private Limited, and 35 shares to Naresh Agrawal, aggregating to 303 equity shares at a face value of Rs.10 each. The Petitioner submits that this falls drastically short of the Petitioners' entitlement to approximately 47,608 equity shares against their investment of Rs.34,75,000, which entitlement is recorded in the final order of the Tribunal and in Annexure-B to the Execution Petition, and further submits that this entitlement has attained finality since neither the Petitioners' appeal nor any appeal by the Respondents challenges that part of the order. The Petitioner alleges that the Respondents have failed to disclose the basis or manner of valuation used to arrive at the 303 shares, that the allotment of shares to a struck-off, non-existent company demonstrates unethical, irrational and fraudulent conduct amounting to a mockery of the Tribunal's order, and that the purported compliance is merely an eyewash.

The applicant reiterates that the appeal before the NCLAT relates to reliefs distinct from the Execution Petition and does not seek to set aside the order dated 03.02.2025, and further reiterating that, in the absence of any stay by the Appellate Tribunal, the order remains enforceable and executable.

OBSERVATIONS AND ANALYSIS

We have heard the Learned Counsel for the Applicant and perused the Petition, the Affidavit in Reply filed by the Respondents, the Rejoinder filed by the Applicant, and the documents annexed thereto.

On the objection to maintainability raised by Respondent Nos. 5, 6, 7 and 8, it is seen that the appeal preferred by the Applicant before the Hon'ble NCLAT, being Company Appeal (AT) No. 91 of 2025, is, confined to prayers (d) to (n) of the original petition and does not assail Paragraphs 17 and 18 of the order dated 03.02.2025, which alone form the subject matter of the present Execution Petition. No appeal has been preferred by any of the Respondents against the order, and it is not disputed that no interim order or stay has been granted by the Appellate Tribunal qua the order dated 03.02.2025 or any part thereof. In these circumstances, and having regard to the settled position that the mere pendency of an appeal, absent a stay, does not suspend the operation or enforceability of the order under challenge, and that questions touching the executability of an order are to be examined by the Executing Authority as and when raised rather than deferred merely on account of a pending appeal, the objection to maintainability does not survive, and the Execution Petition is held to be maintainable.

Insofar as Respondent No. 3 is concerned, his submissions, rather than assisting Respondent Nos. 1, 5, 6, 7 and 8 in establishing compliance, in fact reinforce the case set up by the Applicant. Respondent No. 3, himself a Director and shareholder of Respondent No. 1 Company, has placed on record specific allegations, not controverted in terms by Respondent Nos. 1, 5, 6, 7 and 8, that the Board Meeting of 04.04.2025, in purported pursuance of which the 303 shares came to be allotted, was convened and held without notice to him in violation of Section 173(3) of the Companies Act, 2013 and Secretarial Standard-1, and that the allotment process proceeded without compliance with Sections 62, 42 and 247 of the Act and the Rules framed thereunder. Respondent Nos. 1, 5, 6, 7 and 8 have, in their submissions, confined themselves to asserting that share certificates were issued and dispatched, without meeting these specific allegations touching the validity of the very meeting and process by which those certificates came to be issued. The consequence is that the allotment which Respondent Nos. 5, 6, 7 and 8 rely upon as discharge of the obligation under Paragraph 18 stands clouded, on the Respondents' own showing, by serious and unanswered questions as to its procedural validity.

Independent of the question of procedural validity, the allotment relied upon falls demonstrably short, in substance, of what Paragraph 18 of the order dated 03.02.2025 required. The order contemplated allotment of equity shares to the Petitioners on the basis of the share application money of Rs. 34,75,450/- lying with Respondent No. 1 Company. What has actually been allotted is 303 equity shares of face value Rs. 10/- each, a fraction of that entitlement, and that too with 5 shares purportedly allotted to Cemacon Consultant Pvt. Ltd., an entity shown to have been struck off the register of the Registrar of Companies as far back as 28.01.2008, while Cemacon Infrastructure Pvt. Ltd., the entity actually named as Petitioner No. 2 in main company petition and entitled under the order, has not been allotted any shares at all. No valuation report, board resolution, or statutory filing disclosing the basis on which the figure of 303 shares was arrived at has been placed on record by any of the Respondents, nor has any explanation been offered for the allotment made in favour of a struck-off entity in place of the Petitioner actually entitled. On this state of the record, the allotment of 303 shares cannot be treated as compliance, whether full or partial, with the direction contained in Paragraph 18 of the order dated 03.02.2025, and the plea of estoppel founded on the Applicant's refusal to collect certificates for those 303 shares does not assist the Respondents, since a refusal to accept part performance that falls demonstrably short of what was due cannot amount to a waiver of the balance entitlement.

Paragraphs 17 and 18 of the order dated 03.02.2025 read as under:

"17. *However, pursuant to the enactment of the Companies Act, 2013, the respondent No. 1 company was under obligation to allot the equity shares against such share application money pending allotment within next 60 days and if that could not be possible then it had to refund the entire share application money within next 15 days. We note that this has not been done by respondent company, we also note that Companies Act, 2013 has come into effect from 01.04.2014. Therefore, we direct the respondent company to refund the entire share application money, which is being reflected now as unsecured loan, within one month from the date of this order along with interest @ 12% p.a from 01.06.2014.*

18. In case, the respondent fails to refund the aforesaid money together with interest as stated herein above within the said specified time, then, they are directed to allot the equity shares on the basis of that share application money within a month thereafter."

The Execution Petition, in substance prays for a finding that the alternative obligation contained in Paragraph 18 of the order dated 03.02.2025 has become operative on account of Respondent No. 1 Company's failure to refund the share application money with interest within the time stipulated under Paragraph 17 of that order, and for consequential directions compelling Respondent No. 1 Company to allot to the Petitioners equity shares against the share application money of Rs. 34,75,450/- already lying with it, together with such further and other orders, including costs, as the facts and circumstances of the case may warrant.

The preliminary objection to the maintainability of the Execution Petition, raised on the ground of the pendency of Company Appeal (AT) No. 91 of 2025 before the Hon'ble NCLAT and on the plea that the order dated 03.02.2025 contains no coercive or monetary decree susceptible to execution under Rule 56 of the NCLT Rules, 2016, is rejected for the reasons recorded above, and the Execution Petition is held to be maintainable.

The prayer for a finding that the direction contained in Paragraph 18 of the order dated 03.02.2025 remains unexecuted is allowed. The allotment of 303 equity shares purportedly made on 04.04.2025 is held not to constitute compliance, whether full or partial, with the direction contained in Paragraph 18, for the reasons already recorded.

In light of the foregoing, Respondent No. 1 Company, acting through its Directors, is liable to allot and transfer to the Petitioners equity shares to make up their full entitlement of equity shares against the share application money of Rs. 34,75,450/- already lying with Respondent No. 1 Company, at the same price that was applicable and formed the basis of computation on the date of passing of the order, that is, 03.02.2025, and not at any revised, current, or subsequently determined price or valuation.

ORDER

In view of the foregoing discussion and for the reasons recorded above, this Tribunal hereby passes the following operative order:

1. Respondent No. 1 Company, acting through its Directors, is directed to allot and transfer to the Petitioners equity shares so as to complete their entitlement of equity shares against the share application money of Rs. 34,75,450/- already lying with Respondent No. 1 Company, at the price being applicable and forming the basis of computation as on the date of passing of the order, that is, 03.02.2025, and not at any revised, current, or subsequently determined price or valuation.
2. The allotment and transfer directed above shall be completed within thirty days from the date of this order, after due compliance with the applicable provisions of the Companies Act, 2013 and the Rules framed thereunder, including issuance of notice to all Directors and shareholders.
3. The Execution Petition No. 1 of 2025, stands allowed and disposed of.

Sd/-

MAN MOHAN GUPTA
(MEMBER TECHNICAL)

Sd/-

BRAJENDRA MANI TRIPATHI
(MEMBER JUDICIAL)

Vanshika-LRA