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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P.(I) (COMM.) 7/2025**

RPL CAPITAL FINANCE LIMITED

.....Petitioner

Through: Mr. Mukul Rohatgi, Mr. Rajiv Nayar
and Mr. Dayan Krishnan, Senior
Advocates with Mr. Mahesh Agarwal,
Mr. Rishi Agrawala, Ms. Aanchal
Mullick, Mr. Aroon Menon, Mr.
Saurabh Seth and Mr. Shreedhar
Kale, Advocates.

versus

MANPREET SINGH CHADHA & ORS.

.....Respondents

Through: Mr Sandeep Sethi, Senior Advocate
with Mr. Sumeer Sodhi, Mr. Aman
Nandrajog, Mr. Arjun Nanda and Ms.
Anushka, Advocates for Respondent
no.1.
Mr. Sudhir Nandrajog and Mr.
Manish Sharma, Senior Advocates
with Mr. Divyam Nandrajog, Ms.
Shreeja Pal and Ms. Ankita Singh,
Advocates for Respondent nos. 2,4
and 5.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER: (ORAL)

14.01.2025

I.A.-665/2025 (Early Hearing)

1. By way of present application, the Petitioner/Applicant seeks early hearing of the accompanying petition.

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2. With the consent of the parties, the early hearing application is allowed and the petition is taken up for hearing today itself.
3. The application is disposed of and the next date i.e. 15.01.2025 stands cancelled.
4. Application is disposed of.

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1. By way of present petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as the '*A&C Act*'), the Petitioner seeks interim reliefs with respect to Equity/Sale preference shares held by the Respondents in Wave Beverages Private Limited (hereafter, 'the Target Company').
2. The Petitioner claims to be a Public Limited Indian Non-Banking Financial Company engaged in financial and investment services, who had entered into an agreement with the Respondents for acquiring the ownership and control of the Target Company, by purchasing the shares held by them in the Target Company.
3. Petitioner claims that the agreement between the parties is recorded in a Term Sheet dated 10.07.2024, whereby the Respondent undertook to sell and transfer their aggregate shareholding for a total enterprise value of Rs.730 Crores. Petitioner has claimed that it has earnestly fulfilled its part obligation under Clause 9 of the Term Sheet, by paying a sum of Rs.5 Crores, to the Respondent on 10.07.2024 which is not disputed by the Respondents, consequent upon which, it is entitled to acquire the shares, for which it is ready and willing to pay the balance sale consideration of Rs.725 Crores, and is even willing to match any higher offer which the Respondents may have received.



4. Petitioner claims that in terms of Clause 11, the Term Sheet was valid for a period of 90 days, however, vide an extension letter dated 10.09.2024, the validity period was extended till 09.03.2025, by when, the Petitioner could purchase the shares from the Respondent. The extension was sought by the Petitioner and willfully granted by the Respondents.

5. Petitioner submits that while it has time till 09.03.2025 to purchase the shares, and has been ready and willing to conclude the purchase, the Respondents have decided to breach the Term Sheet and sell their shareholding to some other undisclosed purchaser. Respondents have issued a letter dated 23.12.2024 allegedly terminating the Term Sheet, which is not permissible since the Term Sheet could be terminated only upon the efflux of time and not prematurely by the Respondents. By issuing an alleged termination letter the Respondents have breached the Term Sheet, for which reason the Petitioner's interest should be protected by restraining the Respondent's from alienating their shareholding which they have already committed to sell to the Petitioner under the Term Sheet.

6. Mr. Rohatgi, learned Senior Counsel appearing for the Petitioner, submits that the Term Sheet was a binding document between the parties. It is contended that though the Term Sheet was signed only by Respondent No.1 yet the same was executed with the knowledge and consent of all the Respondents, who have never disputed its execution or denied to be bound by the commitments made therein, as such, the Term Sheet is binding on all of them. In this regard, Mr. Rohatgi referred to clauses 3 and 14 of the Term Sheet which reads as under:

"3. Sale Securities- ... The Seller 3 assures and commits that Seller 1 and Seller 2 shall sell their respective portion of the Sale Shares to the Purchaser as per the terms agreed by Seller 3 with the Purchaser.



xxx

14. Proposed Transaction- The Purchaser shall purchase the Sale Securities and the Sellers shall sell the Sale Securities, on the terms and conditions as set out in this Term Sheet and to be more particularly set forth in the Definitive Agreements (as defined hereinafter) prepared on the basis of the indicative terms and conditions set forth herein, at the Equity Value (as defined hereinafter) to be computed in the manner set out herein ("Proposed Transaction"). Subject to the receipt of the Consideration by each of the Sellers in its designated bank account the Purchaser and/or its nominees shall have the rights as available to the Sellers as per the articles of association of the Company in relation to the management and operations of the Company."

7. Lastly, it is contended that the Terms Sheet provided for reference of disputes to arbitration, which stands invoked on 08.01.2025 in terms of Clause 13 of the Term Sheet. Petitioner is willing to refer to the disputes to the tribunal constituted under the Term Sheet, however need protection in the interim under Section 17 of the A&C Act, to preserve the subject matter of the dispute, i.e. the shares in question.

In support of submissions, reliance is placed on the decisions in Dresser Rand S.A. v. Bindal Agro Chem Ltd., reported as **(2006) 1 SCC 751**, Devender Kumar Sharma vs Mohinder Singh & Ors., reported as **2012 SCC Online Del 4441**, and Speech & Software Technologies (India) Pvt. Ltd. vs Neos Interactive Limited, reported as **(2009) 1 SCC 475**.

8. Mr. Sandeep Sethi, learned Senior Counsel appearing for the Respondent No.1 submits that the Term Sheet is not an enforceable and binding agreement and was executed only to demonstrate an intent to engage with the Petitioner in negotiations for sale of shares. It is contended that the same is a tentative document akin to a letter of intent. Moreover, the Term Sheet required fulfillment of Conditions Precedent in terms of clause 7



thereof which remained unexecuted. On carrying out of these Conditions, a Definitive Agreement was to be executed, which never occurred. Next, it is contended that though the parties to the Term Sheet had agreed for an enterprise value of Rs.730 Crores, the Petitioner had paid only Rs. 5 Crores, which is not even 1% of the value. It is submitted that this sum is insubstantial and another indication that the agreement was not final and binding.

It is further contended that Article 22A of the Articles of Association (“AoA”) of the Target Company, which have admittedly been shared with the Petitioner, gives Kandhari Group the right of first refusal which has not been obtained. He further submits that a special resolution as per Section 114(2) of the Companies Act, 2013 needs to be passed by a 3:1 majority before any type of encumbrance is created on the shares as laid down in Article 22B of the AoA but no such resolution was obtained. He submits that no application has been made to the Coca- Cola Company for their permission and the same is a condition precedent which has not been met. In fact, none of the Conditions Precedent have been complied with and that the Term Sheet itself contemplates that only after the fulfillment of Condition Precedents, the Definitive Agreements were to be signed which have not seen the light of day.

9. It is next contended that even if the Answering Respondent has committed breach of the Term Sheet, the same would entitle the Petitioner only to a refund of Rs.5 Crores i.e, the Advance Consideration, which has already been returned. He submits that the conduct of Petitioner in agreeing to match the price of other potential purchasers on the same terms and conditions as them proves that the price and terms of the agreement were not



settled, which was essential for a finalized contract of sale. Without a concluded contract, there is no question of any injunction.

10. Lastly, it contended that in any case, only Respondent No.1 (described as 'Seller 3' in the Term Sheet) signed the Term Sheet and rest of the four Respondents never signed or consented to it.

In support of submissions, reliance is placed on R. Radhakrishnan & Anr. vs G. Ekambaram & Ors. reported as **2011 (3) MWN (Civil) 411**, M/s HOTZ Industries Pvt. Ltd. vs Dr. Ravi Singh (Since Deceased through LRs, reported as **2018 SCC Online Del 7618**.

11. Mr Sudhir Nandrajog, learned Senior Counsel appearing on behalf of Respondents 2, 4 and 5 submits that the Answering Respondents are not signatories to the Term Sheet and there is no agreement with Petitioner, nor has the Petitioner approached the answering Respondents for their consent to the Term Sheet. He submits that though the Term Sheet includes the names of the answering Respondents however, the acknowledgement and acceptance has been given only by Respondent No.1. It is contended that the answering Respondents being non-signatories to the Term Sheet, they are not party to the Term Sheet, much less the arbitration agreement, which is embedded in the Term Sheet. In the absence of an arbitration agreement between the Respondent No 2 to 4 and Petitioner, no referral to arbitration can be made under Section 11 vis-a-vis these Respondents.

Reference is also made to an order passed by Supreme Court in Zonta Infratech Private Ltd and Anr v. Bauer GMBS and Ors, decided on **11.07.2024** in **Arbitration Petition (Civil) No. 49 of 2023**, where the question of impleadment of a party was left open to be looked into by the Arbitral Tribunal, based on which, it was argued that, arbitral reference



under Section 11, in relation to the non-signatories, would be beyond the jurisdiction of this court.

12. Mr. Manish Sharma, learned Senior Counsel supplemented the submissions on behalf of Respondent No.2 and further relied on decision in South Eastern Coalfields Ltd. v. S. Kumar's Associates AKM (JV), reported as **(2021) 9 SCC 166** to contend that the Term Sheet was a mere letter of intent and did not create a binding contract. Further, the MoU referred to by the Petitioner was signed only by the Kandharis and none of the Chadhas.

13. Notably, Respondent No.3 has remained unrepresented as he is yet to be served.

14. On the binding nature of the Term Sheet, Mr Rohatgi submitted that merely because the Term Sheet refers to entering a definitive agreement in future, does not render the Term Sheet legally unenforceable or non-binding. In support, reliance is placed on the ruling in Kollipara Sriramulu (Dead) v. T. Aswatha Narayana (Dead), reported as **AIR 1968 SC 1028** and KSL & Industries Ltd. v. National Textiles Corporation, reported as **2012 SCC OnLine Del 4189**.

15. Regarding the Respondent No 2 to 5's, being not a party to the Term Sheet, learned Senior Counsel for the Petitioner submitted that the Respondent No.1 executed the Term Sheet for and on behalf of other family members, under their authority and instructions. It would be highly improbable that sale of majority interest in the Target Company is agreed to by the Respondent No 1 without securing the consent of the other selling shareholders. The decision to sell was taken by the Respondents as part of the family's decision to liquidate their shareholding in the Target Company. Respondent No 2 to 5's denial of commitment to sell their shares on the



pretext not signing the Term Sheet is dishonest and an attempt to take unfair advantage of a technical plea. The Respondents' intent to be bound by the Term Sheet is explicitly demonstrated by their conduct. No protest or objection has been raised by them to the existence of Term Sheet or its extension, prior to these proceedings, which is a clear acquiescence of the commitments made therein, assuming, there was no alleged consent at the time of execution of Term Sheet.

16. Lastly, to overcome the non-appearance of Respondent No.3 and counter the Respondent No 4 and 5's objection claiming to be the non-signatories, learned Senior Counsel on instructions, states that at this stage, and without prejudice to their rights and contentions, the Petitioner is neither pressing interim reliefs against them nor is seeking arbitral reference qua them. While emphasizing that Respondent No.2 be referred to arbitration, it is submitted that the Respondent No.1 being the son of Respondent No.2, executed the Terms Sheet with her knowledge and consent. It is submitted that for reference of non-signatories to arbitration, their relationship with the signatories and their course of conduct needs to be seen and in the present case both of these aspects favour reference of Respondent No.2 to arbitration.

17. Reliance is placed on the decisions of Supreme Court in Cox and Kings Private Limited v. SAP India Private Limited & Anr. reported as **(2024) 4 SCC 1** and Ajay Madhusudan Patel & Ors. v. Jyotrindra S. Patel & Ors. reported as **2024 SCC OnLine SC 259**, and Cheran Properties v. Kasturi and Sons Ltd. & Ors. reported as **(2018) 16 SCC 413**. Further, the decision in Zonta (Supra) is sought to be distinguished by stating that the same is not a judgement but just an order based on the facts of the case and



does not deal with the position in law.

18. During the course of arguments, Mr Sethi, on instructions, stated that he has no objection if the Respondent No.1 is referred to arbitration and the present petition is treated as one under Section 17 of the A& C Act.

19. Having heard the submissions of the parties, it is apparent that the reference of disputes under the Term Sheet to Arbitral Tribunal is not a question that should detain this court for too long. Clause 13 of the Term Sheet clearly contemplates resolution of disputes arising out of the Term Sheet by way of arbitration. Rival contentions of the parties regarding the binding nature of the Term Sheet is itself a dispute, that will require an arbitral adjudication, and is beyond the purview of this court under Section 11 of A&C Act.

20. The only question that calls for determination is whether Respondent No 2 to 5, who are non-signatories of the Term Sheet, could be sent for arbitration, along with the signatory, Respondent No. 1. This court has the benefit of the statement made by the Mr Rohatgi, that Petitioner would be satisfied if the arbitral reference is confined to Respondent No. 1 and 2, at this stage, apparently responding to the objections taken by the non-signatories. Even Respondent No. 3 to 5 do not have any objection to such proposal.

21. On the question of referring non-signatories for arbitration, while exercising jurisdiction under Section 11 of the A&C Act, this court is required to enquire about the existence of the arbitration agreement, which is a sine qua non for referring the parties for arbitration. This conclusion, court should be able to reach with minimal enquiry without a detailed analysis. Whether on the principles laid down in Cox and Kings Private Limited v.



SAP India Private Limited & Anr. reported as (2024) 4 SCC 1, a non-signatory can be said to be party to an arbitration agreement, will require a detailed enquiry, which may not be legally appropriate for this court in this jurisdiction to be involved with. As advised in Cox and Kings (Supra), this detailed and comprehensive enquiry is best suited to be to be conducted by the Arbitral Tribunal. For the purpose of this case, this Court is required to only look into as to whether Respondent No.2, a non-signatory, is a veritable party for referring it to arbitration. Although the Term Sheet at serial No.3 notes that Respondent No.1 assured that Respondent No.2 and 3 would sell their respective shares, no such assurance or undertaking has been given on behalf of Respondent No.2 to this effect. No assertion or material has been placed on record to show that the Respondent No.2 ever attended, participated or conveyed her consent during the negotiation process. Moreover, not a single overt act has been attributed to her which would lead the Petitioner to believe that she was bound by the Term Sheet. Merely, by being a mother and in absence of any other material factor, she cannot be held to be covered under any of the parameters set out and discussed hereinabove. On a *prima facie* consideration of facts and circumstances, Respondent No.2 cannot be held to be a veritable party and is thus not referred to arbitration.

22. So, with the consent of the parties, it would be appropriate to refer the disputes for arbitral adjudication. Reference, is confined to Petitioner and Respondent No 1, who are the only apparent signatories, to the Term Sheet.

23. For the stated reason, whether Respondent No 2 to 5 can be subjected to arbitration along with the Respondent No 1, is left for the Arbitral Tribunal to decide, if the Petitioner wishes to arbitrate against Respondent



No 2 to 5 before the tribunal.

24. In the meantime, it is deemed fit to restrain the Respondent No 1 from alienating his shares in the Target Company. This court is *prima facie* convinced, that the Respondent No 1 has committed to sell his shareholding in the Target Company, pursuant to the Term Sheet. Respondent No 1 has agreed to have executed the Term Sheet, however, has sought to deny its enforceability and has also alleged non-fulfilment of its obligations by the Petitioner. Respondent No 1 has claimed to have terminated the Term Sheet and has alleged that he no longer bound by it and is free to deal with his shares in the manner deemed fit by him. Respondent No. 1, has also admitted to have received a part sale consideration of Rs 5 Crores, however, has claimed to have returned the same upon termination of the Term Sheet.

25. Under the circumstances, it is necessary that pending an adjudication by the Arbitral Tribunal, balance of convenience demands that Respondent No 1 is restrained from alienating or creating third party interest in the Target Company. If Respondent No 1 is not restrained, the Petitioner is likely to suffer irreparable injury due to liquidation of the shares, which is the subject matter of dispute between the parties.

26. Both Petitioner and Respondent No.1 have consented to the reference of the disputes to an Arbitral Tribunal comprising of three Arbitrators, where Petitioner and Respondent No.1 each shall appoint one Arbitrator and such appointed arbitrators shall appoint the 3rd Arbitrator. While the Petitioner has proposed the name of Mr. Justice Rajiv Shakdher, former Chief Justice of Himachal Pradesh High Court as its nominee arbitrator, the Respondent No.1 has proposed the name of Ms. Justice Mukta Gupta, former Judge of Delhi High Court. Accordingly, the present petition is



disposed of with the following directions:

- i) The disputes between the parties under the said agreement are referred to the Arbitral Tribunal and the present petition itself could be treated as an application under Section 17 of the A&C Act. The parties shall be at liberty to seek confirmation, variance, modification, vacation of the status quo order before the Arbitral tribunal.
 - ii) Mr. Justice Rajiv Shakdher, former Chief Justice of Himachal Pradesh High Court (Mob. No. 9717495004) and Ms. Justice Mukta Gupta, former Judge of Delhi High Court (Mob. No. 9650788600, 9810450016.) are appointed as the Arbitrators to adjudicate the disputes between the parties who shall chose and appoint the third Arbitrator.
 - iii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the 'DIAC'). The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018 or as the parties may agree.
 - iv) The learned Arbitrators are requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
 - v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim/counter-claim, any other preliminary objection including on jurisdiction, as well as claims on merits of the dispute of either of the parties are left open for adjudication by the Arbitral Tribunal.
 - vi) The parties shall approach the learned Arbitrators within four weeks from today.
27. The petition is disposed of in the above terms.



**MANOJ KUMAR OHRI
(JUDGE)**

JANUARY 14, 2025/rd
(order is released on 27.01.2025)