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

\+ O.M.P.(I) (COMM.) 95/2025

KALAIKOVAN BALAKRISHNAN & ANR.

.....Petitioners

Through: Mr. Manik Ahluwalia, Advocate.

versus

DICE ENTERPRISES PRIVATE LIMITED & ORS.

.....Respondents

Through: Mr. Karan Malhotra, Mr. Ayush Pratap Singh and Mr. Anant Shankar Tripathi, Advocates.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

O R D E R

% **02.04.2025**

1. This petition is filed on behalf of the Petitioners under Section 9 of the Arbitration and Conciliation Act, 1996 ('1996 Act') seeking a direction to restrain the Respondents from in any manner, whether directly or indirectly, selling, transferring, alienating or creating any encumbrance or lien or third party rights in the 1274 shares till disposal of the arbitration proceedings or in the alternative issue a direction to them to deposit an amount of Rs. 8.18 crores equivalent to current valuation of the said 1274 shares with this Court.

2. Issue notice.

3. Mr. Karan Malhotra, learned counsel accepts notice on behalf of the Respondents.

4. Learned counsels for the parties, on instructions, submit that this Court may appoint a Sole Arbitrator in this petition to adjudicate the disputes between the parties. Counsel for the Petitioners, however, submits that there is a serious apprehension that Respondents will encumber and/or alienate 1274 shares and therefore, in order to preserve the subject matter of the arbitration, direction be issued restraining them from selling, alienating or in any manner encumbering the shares till the conclusion of arbitration proceedings.

5. Heard learned counsels for the parties.

6. Case of the Petitioners as set out in the petition is that Petitioners, being the original subscribers and co-founders of Respondent No. 1, incorporated the company on 12.01.2018 with equal shareholding of 25% each i.e., 2,500/- shares each, along with Respondents No. 2 and 3. Prior to incorporation, Founder's Agreement dated 08.11.2017 was executed *inter alia* stipulating conditions for transferability and vesting of shares. Petitioners urge that they entered into a Share Purchase Agreement (SPA-1) dated 18.08.2020 with Respondents No. 2 and 3, whereby they transferred 1752 shares each at a face value of Rs. 10/- per share and the transfer was effectuated through duly executed Share Transfer Forms (SH-4).

7. It is further averred that additionally, Deferred Consideration for Services Agreement (DCA) was executed under which 637 vested shares each (part of transferred 1752 shares) were subject to payment under deferred consideration and Respondents No. 2 and 3 undertook to pay to the

Petitioners Rs. 70 Lakhs each under the DCA, in instalments spanning from March, 2021 to March, 2023. DCA further provided that on failure to make payment within the stipulated timeframe, Respondents No. 2 and 3 would be liable to re-transfer 637 shares each to the Petitioners at face value. Grievance of the Petitioners is that despite categorical admissions and repeated assurances, Respondents have wilfully defaulted in making payments under the DCA and since they have failed to comply, transaction remains an "Agreement to Sell" under Section 4(3) of the Sale of Goods Act, 1930 and is liable to be set aside and consequently, Petitioners are entitled to return of their shares or in the alternative receive a sum of Rs. 8.18 crores, reflecting their current valuation.

8. It is in this backdrop that learned counsel for the Petitioners urges the Court to restrain the Respondents to sell, transfer or encumber the shares and preserve the subject matter of arbitration so that rights of the Petitioners are not frustrated and defeated. It is submitted that once the Arbitrator appointed by this Court enters upon reference, Petitioners shall file an application under Section 17 of 1996 Act for interim relief, however, till such time, interim relief be granted in favour of the Petitioners.

9. Learned counsel for the Respondents refutes the averments and allegations in the petition and submits that the consent of the Respondents for appointment of the Sole Arbitrator is without prejudice to their rights and contentions to contest the case set up by the Petitioners.

10. With the consent of the parties, Mr. Adit Subramaniam Pujari, Advocate (Mobile No. 9811611205) is appointed as a Sole Arbitrator to adjudicate upon the disputes between the parties in connection with the Share Purchase and other related Agreements. Arbitration will be conducted

under the aegis of Delhi International Arbitration Centre (DIAC) and will be governed by its procedures. Fees of the learned Arbitrator shall be in accordance with DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.

11. Learned Arbitrator shall give disclosure under Section 12 of the 1996 Act before entering upon reference.

12. It is directed that till the learned Arbitrator takes up the application filed by the Petitioners under Section 17 of 1996 Act and if the same is filed within two weeks from the date the learned Arbitrator enters upon reference, Respondents shall not sell, transfer, or alienate and/or create any encumbrance on 1274 shares, which are the subject matter of the arbitration, whether directly or indirectly. After the learned Arbitrator takes up the application for consideration, it will be open to the leaned Arbitrator to continue, vacate or modify this order in accordance with law and after hearing the parties.

13. It is made clear that this Court has not expressed any opinion on the merits of the case and all rights and contentions of the respective parties with respect to their claims/counter claims are left open to be adjudicated by the learned Arbitrator.

14. Petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

APRIL 2, 2025
S.Sharma