



2025:DHC:9570



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

Date of decision: 30th OCTOBER, 2025

IN THE MATTER OF:

+ **O.M.P.(I) (COMM.) 446/2025**

DAY1 ADVISORS PRIVATE LIMITED AND ORSPetitioner

Through: Mr. J Sai Deepak, Mr. Debarshi Dutta, Mr. Trinath Tadakambla, Mr. Rajat Pradhan, Mr. Arjun Mookerjee, Mr. Shivam Tiwari, Ms. Mahima Tayal, Advocates

versus

CATALYST TRUSTEESHIP LIMITED AND ORSRespondents

Through: Mr. Rajiv Nayyar, Senior Advocate
Mr. Vivek Shetty, Dr. Abhimanyu Chopra, Ms. Harsha Uppal, Mr. Dhaval Vora, Mr. Kushagra Jain, Advocates for R-1

Mr. Saurabh Seth, Ms. Sumeera Seth, Ms. Neelampreet Kaur, Mr. Abhiroop Rathore, Mr. Kabir Dev, Mr. Sukhvir, Advocates for R-2

Mr. Rajat Malhotra, Mr. Abhishek Swaroop, Mr. Aditya V Singh, Ms. Shreya Chandhoke, Mr. Prathameah Agarwal, Ms. Mashu Singh, Advocates for R-4

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD



JUDGMENT (ORAL)
SUBRAMONIUM PRASAD, J.
I.A. 26522/2025 (Exemption)

Allowed, subject to all just exceptions.

O.M.P.(I) (COMM.) 446/2025

1. The present petition has filed seeking urgent interim reliefs under Section 9 of the Arbitration and Conciliation Act, 1996 to preserve and protect movable properties in the form of dematerialized share in a Public Limited Company, i.e., B9 Beverages Limited/Respondent No. 4, held by the Petitioners.
2. The said shares were pledged by the Petitioners to the Respondent No. 2 in terms of the Amended and Restated Debenture Trust Deed dated 11.08.2025 and the Amended and Restated Deed of Pledge dated 11.08.2025.
3. Shorn of unnecessary details, the facts of the case are that a Debenture Trust Agreement and a Debenture Trust Deed was executed between the Petitioner and Respondent No.1 with respect to 12,500 secured, unrated, unlisted, and non-convertible debentures, each varying a face value of Rs. 1,00,000/- and an aggregate value of Rs. 125,00,00,000/- for cash on a private placement basis.
4. Respondent No.1 was to act as a debenture trustee on behalf of the debenture holder being SMMS Trust/Respondent No.2. In accordance with the debenture trust deed certain other documents were also executed for creating security interest over the issuance of debentures, including the deed of guarantee, a pledge deed, etc.
5. It is pertinent to mention that the Deed of Pledge which was executed in terms of the Debenture Trust Deed on the same date created a first and



exclusive pledge over certain securities of Respondent No. 4. The shares were pledged to secure and discharge the obligation of the Petitioner towards the repayment of debt.

6. The deed was executed as a part of the security arrangements for the Series of A Debentures. Under the Original Deed of Pledge, Petitioner No. 1 pledged 35,05,500 shares, Petitioner No.2 pledged 14,80,000 shares and Petitioner No. 3 pledged 2,60,000 shares of B9 Beverages Limited, being Respondent No.4.

7. In addition to the Original Deed of Pledge, a Deed of Guarantee was also executed between the Petitioner No. 2, 3, and Respondent No.1 in respect of Series A Debentures.

8. It is stated that on 11.08.2025, the Respondent No. 2 subscribed to additional non-convertible debentures. In lieu of the same, Petitioner No. 1 issued additional 300 unlisted, unrated, fully paid-up, secured, redeemable non-convertible debentures of the face value of Rs.1,00,000/- each, aggregating to Rs. 3,00,00,000/- which were categorized as Series B Debentures.

9. To secure the Series B Debentures, the Deed of Pledge was amended and Restated Deed of Pledge dated 11.08.2025 was executed between the parties. The Respondent No. 1 alleging that the Petitioner No.1 has committed default in the manner of repayment of the loan as laid down in the Deed, issued notice on 23.10.2025/Impugned Notice.

10. Paragraph 3 of the Impugned Notice enumerates the events of default which are reproduced as under:

*“3. We note that the following Events of Default have occurred:
(a) Coupon payment default*



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(i) *In terms of paragraph 2.2 of Schedule I of the Debenture Trust Deed, the Company is required to pay the accrued Coupon computed at the Coupon Rate on every Coupon Payment Date.*

(ii) *The Company has failed to pay the Coupon in respect of the Series A Debentures in the month of March, 2025 on March 14, 2025 (being the Coupon Payment Date) and instead, the relevant Coupon of Rs. 1,40,62,500/- (Rupees One Crore Potty Lakh Sixty Two Thousand Five Hundred) (net of TDS) was received on March 27, 2025, thereby resulting in a delay of 13 (Thirteen) days in payment of the Coupon.*

(iii) *In respect of the Coupon payable for the Series A Debentures in the month of April, 2025, the payment of the Coupon has been partly received for Rs. 55,62,500/- (Rupees Fifty Five Lakh Sixty Two Thousand Five Hundred) on April 17, 2025 and the balance amount of Rs. 85,00,000/- (Rupees Eighty Five Lakh) (net of TDS) has still not been received from the Company.*

(iv) *The Company has further failed to make payment of the relevant Coupon in respect of the Series A Debentures on the Coupon Payment Dates occurring in each of the calendar months of May, June, July, August, September and October, 2025.*

(v) *Therefore, the Company has failed to comply with the aforesaid requirement of making payment of the Coupon on the Coupon Payment Dates, which has resulted in the occurrence of an Event of Default in terms of Clause 15. 1 (a) of the Debenture Trust Deed.*



(b) Security Cover

(i) In terms of Clause 8.1 read with paragraph 3 of Part B of Schedule V of the Debenture Trust Deed and with Clause 4.10 of the Deed of Pledge, each of the Company and the Pledgors were required to ensure the creation and perfection of a pledge over such number of Bira Securities, which are sufficient to ensure maintenance of the Minimum Security Cover, i.e. a Security Cover of at least 3.70 times, within 3 (Three) Business Days of the Deemed Date of Allotment in respect of the Series A Debentures.

(ii) Therefore, the Company and the Pledgors have failed to comply with the aforesaid requirement which has resulted in the occurrence of an Event of Default in terms of Clause 15. 1 (o)(iv) and Clause 15.1 (bb) of the Debenture Trust Deed.

c) Failure to fulfil and satisfy the conditions subsequent

(i) In terms of Clause 4.2(b) of the Debenture Trust Deed read with paragraph 1 of Part B of Schedule V of the Debenture Trust Deed, the Company was required to fulfil and satisfy the condition subsequent of causing the Existing Debenture Trustee to effect the release/ discharge of the Existing Encumbrance, including, but not limited to, (a) causing the issuance of a no-dues and no-charge certificate/letter by the Existing Debenture Trustee (to the complete satisfaction of the Debenture Trustee) certifying the redemption, in full of the relevant Existing Debentures and the release of the Existing Encumbrance; and (b) causing the Existing Debenture Trustee to file e-



form CHG-4 with the relevant registrar recording the satisfaction of the Existing Debentures and the release and discharge of the relevant Existing Encumbrance, within 3 (Three) Business Days from the Deemed Date of Allotment in respect of the Series A Debentures.

*(ii) Therefore, the Company has failed to complete the aforesaid condition subsequent set out in Part B of Schedule V of the Debenture Trust Deed which has resulted in the occurrence of an Event of Default in terms of Clause 15.l(bb).
,,*

11. Alleging that there has been a failure on the part of the Petitioner to fulfill their obligations, the Petitioner was called upon *vide* the said Impugned Notice, to fulfil the obligations as laid down in paragraph no. 4 of the Impugned Notice. The relevant extract reads as under :-

“Accordingly, in light of the aforesaid, we wish to inform you as below:

(a) In accordance with Clause 16.2(a) of the Debenture Trust Deed, the Company is hereby called upon to make payment of the Outstanding Amounts (details of which are set out in Annexure II hereto) within 2 (Two) calendar days of receipt of this notice;

(b) In accordance with Clause 9.1 of the Deed of Pledge, each of the Pledgors is hereby informed that the aforesaid Events of Default as set out in paragraph 3 above have occurred in respect of the Series A Debentures;

(c) In accordance with Clause 16.2(b) of the Debenture Trust Deed and Clause 9.1 (a) (ii) of the Deed of



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Pledge, we share that in the event that on the date falling at the expiry of 2 (Two) calendar days from the date of receipt of this notice, if the Company and/ or the Pledgors fail to make payment of the Outstanding Amounts, then the Debenture Trustee shall, without prejudice to any and all rights available to the Debenture Trustee, take all necessary steps to enforce all such rights and remedies as are available to the Debenture Trustee under the terms of the Transaction Documents and/ or Applicable Law, including without limitation, invocation, transfer and/ or sale of the Pledged Shares in accordance with the Transaction Documents. This notice constitutes a 'Notice of Sale' in terms of the Deed of Pledge. "

12. The Petitioner has filed the present Petition apprehending that the pledged shares would be sold and alleging that the notice for sale of the pledged shares is in violation of the of the original procedure as laid down in the Debenture Trust Agreement, the Debenture Trust Deed, and the Deed of Pledge, which according to the Petitioner, mandated a notice to be given by the Respondent No.1 to cure the default prior to imposition of notice of sale of the pledged shares. The instant Petition has been filed with the following prayers:-

"In view of the aforesaid facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

(a) Stay the operation and effect of the Impugned Notice dated 23 October 2025 issued by the Respondent No. 1 to the Petitioners.

(b) Pass an order of injunction restraining the Respondent No. 1 (Catalyst), its officers, agents, representatives or assigns from taking any step or action in furtherance of the Impugned Notice dated 23



October 2025 alleging EOD and seeking sale of the Pledged Shares;

(c) Pass an order of injunction restraining the Respondent No. 1 (Catalyst) from taking any steps towards transferring, alienating, disposing of, selling or otherwise creating any encumbrance or third-party rights over the Pledged Shares in any manner whatsoever;

(d) Pass an order of injunction restraining Respondent No. 3 (NSDL) from effectuating any transfer and/or sale of the Pledged Shares by the Respondent No. 1 (Catalyst) or to record the Respondent No. 1 as a beneficial owner thereof, in the event the Respondent No. 1 (Catalyst) takes steps to transfer and/or sell the Pledged Shares;

(e) Pass an order of injunction restraining Respondent No. 4 (B9 Beverages) from effectuating any transfer and/or sale of the Pledged Shares by the Respondent No. 1 (Catalyst) and/or restrain Respondent No. 4 to record the Respondent No. 1 as a beneficial owner thereof, in the event the Respondent No. 1 (Catalyst) takes steps to transfer and/or sell the Pledged Shares;

(f) Pass ad interim reliefs in terms of the reliefs prayed above pending the hearing and adjudication of the present petition;

(g) Pass such other orders or reliefs as this Hon'ble Court may deem fit and proper."

13. This Court has heard the arguments of Mr. J Sai Deepak, learned Senior Counsel for the Petitioner. All the Respondents are appearing through their respective Counsels.

14. Mr. J Sai Deepak, learned Senior Counsel for the Petitioner vehemently contends that without following the procedure laid down in the



various agreements, the Respondent No. 1 could not have appropriated the shares by debiting them for the purpose of sale. He states that it is yet to be decided as to whether the default event has actually taken place or not and without the adjudication of the same, the shares cannot be sold.

15. He also contends that the effort of the Respondent No.1 is primarily to take the control of the Respondent No. 4 which has been promoted by the Petitioners and that this being the endeavor, the Respondent cannot be permitted to sell the shares. The learned Counsel for the Respondent No.4 also contends that the efforts are made to settle the Section 7 Applications before the NCLT.

16. *Per contra*, Mr. Rajiv Nayyar, Learned Senior Counsel appearing on behalf of the Respondent No.1 contends that the Petitioner has not shown the colour of money in terms of the agreement since April, 2025.

17. He also states that the Petitioner has pledged the shares of Respondent No. 4 which is facing litigation in NCLT under Section 7 of the Insolvency and Bankruptcy Code, 2016. He states that if those applications are admitted, the value of the shares will go down and the Respondent No.1 might not be able to recover any amount of money.

18. He also states that even according the Petitioner, the Petitioner has taken loans from Opus Software Solutions Private Limited, Aquilon Capital Emerging Fund I, and G.K. 91 Private Limited, by pledging the shares of Respondent No.4. Since an amount of Rs. 14.1 crore is outstanding out of the total Rs. 15 crore which has not been paid to G.K. 91, the Company has invoked the pledge.

19. He states that the financial condition of the Petitioner and the Respondent No. 4 is such that any interim relief granted by this Court will



actually cause irreparable loss to the Respondent No. 1 and not to the Petitioner.

20. To decide this issue under a Section 9 petition, this Court will have to adjudicate as to whether an event of default has taken place or not, which is in fact a matter which has to be adjudicated through arbitration in presence of arbitration clauses embedded in the contracts out of which the present dispute has arisen.

21. The Arbitration clause under the Amended and Restated Debenture Trust Deed dated 11.08.2025 is reproduced as under:-

*“27. DISPUTES RESOLUTION AND GOVERNING
LAW*

27.1. Any dispute arising in connection with the interpretation, performance termination of this Deed, or otherwise in connection with this Deed ("Dispute") shall be finally settled by arbitration under the Arbitration and Conciliation Act, 1996. The Parties shall have the right to mutually appoint 01 (One) arbitrator to the tribunal.

27.2. The Parties agree with respect to such arbitration that:

(a) The arbitration proceedings shall be conducted in English;

(b) The place of arbitration shall be New Delhi, India;

(c) The arbitrator may, from time to time, lay down the procedure to be followed in conducting the arbitration proceedings and shall conduct the arbitration proceedings in such manner as they consider appropriate; Without prejudice to the



generality of the foregoing, the arbitrator may, unless consolidation would prejudice the rights of any party, consolidate an arbitration hereunder with any other arbitration under this Deed or any other Transaction Document if the arbitration proceedings raise common questions of law or fact and are between the same parties. If two or more arbitral tribunals under these agreements issue consolidation orders, the order issued first shall prevail;

(d) The arbitration award including any interim awards made by the arbitrator shall be final and binding on the Parties, and enforceable in accordance with its terms. The arbitrator shall state reasons for its findings in writing. The Parties agree to be bound thereby and to act accordingly;

(e) The costs of such arbitration shall be borne as determined in the arbitration award. If a Party is required to enforce an arbitral award by legal action of any kind, the Party against whom such legal action is taken shall pay all reasonable costs and expenses and attorneys fees, including any cost of additional litigation or arbitration incurred by the Party seeking to enforce the award. However, the Debenture Trustee shall not be liable to bear any costs of the arbitration initiated by the Parties unless otherwise directed by the tribunal or court of law; and

(f) When any Dispute occurs which is submitted to arbitration, except for the matter under Dispute, the Parties shall continue to exercise their remaining respective rights and fulfill their remaining obligations under this Deed.”



22. The Arbitration clause under the Amended and Restated Unattested Deed of Pledge dated 11.08.2025 reads as under:-

“14.7. Disputes Resolution and Governing Law

(a) Any dispute arising in connection with the interpretation, performance termination of this Deed, or otherwise in connection with this Deed ("Dispute") shall be finally settled by arbitration under the Arbitration and Conciliation Act, 1996. The Parties shall have the right to mutually appoint I (One) arbitrator to the tribunal.

(b) The Parties agree with respect to such arbitration that:

(i) The arbitration proceedings shall be conducted in English;

(ii) The place of arbitration shall be New Delhi, India;

(iii) The arbitrator may, from time to time, lay down the procedure to be followed in conducting the arbitration proceedings and shall conduct the arbitration proceedings in such manner as they consider appropriate; Without prejudice to the generality of the foregoing, the arbitrator may, unless consolidation would prejudice the rights of any party, consolidate an arbitration hereunder with any other arbitration under this Deed or any other Transaction Document if the arbitration proceedings raise common questions of law or fact and are between the same parties. If two or more arbitral tribunals under these agreements issue consolidation orders, the order issued first shall prevail;



(iv) *The arbitration award including any interim awards made by the arbitrator shall be final and binding on the Parties, and enforceable in accordance with its terms. The arbitrator shall state reasons for its findings in writing. The Parties agree to be bound thereby and to act accordingly;*

(v) *The costs of such arbitration shall be borne as determined in the arbitration award. If a Party is required to enforce an arbitral award by legal action of any kind, the Party against whom such legal action is taken shall pay all reasonable costs and expenses and attorneys fees, including any cost of additional litigation or arbitration incurred by the Party seeking to enforce the award. However, the Debenture Trustee shall not be liable to bear any costs of the arbitration initiated by the Parties unless otherwise directed by the tribunal or court of law; and*

(vi) *When any Dispute occurs which is submitted to arbitration, except for the matter under Dispute, the Parties shall continue to exercise their remaining, respective rights and fulfil their remaining obligations under this Deed.*

(c) *Notwithstanding anything to the contrary contained hereinabove, in the event that whether as any new law having been passed or any amendment having been made to existing law or otherwise the Debenture Holders are entitled to proceed to exercise any rights under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 or the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Pledgors hereby expressly agree and consent that the Debenture Holders shall, at their option, be entitled to exercise the rights available to them thereunder.*



(d) Subject to the aforesaid, for all matters for which the courts of law would have jurisdiction, the courts and tribunals at New Delhi, India shall have exclusive jurisdiction.

(e) This Clause 14.7 (Disputes Resolution and Governing Law) shall survive the termination of this Deed.

23. This Court gave an offer to the Petitioner as to whether the Petitioner can deposit a sum of Rs.25 crores to show its *bone fide* for grant of stay as sought for by the Petitioner so that the matter can be sent to the Arbitration.

24. The Petitioners have shown their inability to deposit a sum of Rs.25 crores which is roughly about 20% of the total amount of the loan advanced by the Respondent No. 2.

25. This Court also cannot shut its eyes to the fact that petitions are being filed before the NCLT by other parties under the Insolvency and Bankruptcy Code, 2016 and if any of those petitions are admitted, the value of the shares will come down considerably.

26. In view of the fact that various Section 7 Applications are being filed against the Respondent No. 4 in the NCLT, and considering the fact that the Petitioner is not able to pay even a sum of Rs.25 crores, this Court is not inclined to pass interim orders at this stage.

27. This Court therefore gave a suggestion to the parties as to whether this Court can appoint an arbitrator and direct the arbitrator to treat the present Petition under Section 9 as one under Section 17 to adjudicate the dispute. Both the parties have agreed to the said suggestion. Resultantly, this Court is inclined to appoint Justice Sudhanshu Dhulia, former Judge of the Supreme Court of India, (Mob:- 9411107879) as the Sole Arbitrator to adjudicate the



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disputes between the parties. The fees of the Arbitrator to be as per the 'FOURTH SCHEDEULE' of the Arbitration and Conciliation Act, 1996.

28. The learned Arbitrator is requested to decide the application within a period of two weeks from entering the Reference.

29. It is made clear that the observations made in this Order are not conclusive and it is for the learned Arbitrator to pass orders on the application under Section 17 of the Arbitration & Conciliation Act after hearing both the sides.

30. In view of the above, the petition stands disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

OCTOBER 30, 2025

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