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

% *Date of Decision: 18th September, 2025*

+ **ARB. A. (COMM.) 50/2025, CAV 354/2025 & I.A. 23038/2025**

DHANUKA AGRITECH PRIVATE LIMITEDAppellant

Through: Mr. J. Sai Deepak, Sr. Advocate, Mr. NPS Chawla, Mr. Sujoy Datta, Mr. Surekh Kant Baxy, Ms. Mahima Shekhawat, Ms. Ayushi Jain and Mr. R. Abhishek, Advocates.

versus

**IOTECHWORLD AVIGATION
PRIVATE LIMITED & ORS.**

.....Respondents

Through: Mr. Abhinav Bajaj, Mr. Saksham Ojha, Ms. Geetashi Chandna and Ms. Kriti Bishnoi, Advocates.

**CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL**

AMIT BANSAL, J. (Oral)

I.A. 23038/2025

1. The present appeal has been filed under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 (hereinafter 'Act'), challenging the order passed by the Arbitral Tribunal dated 18th August 2025 in an application under Section 17 of the Act filed by the appellant. The said Arbitral Tribunal comprises three (3) arbitrators.



2. In terms of the order passed by the majority comprising two (2) arbitrators, the decision of the respondent no.1 company to appoint M/s SC Verma and Co. as the Auditor of the respondent company was upheld and hence, interim relief sought by the appellant under Section 17 of the Act was denied.
3. *Per contra*, the minority in its order of even date, has held that the resolution passed in the Board Meeting of the respondent company dated 9th May, 2025, appointing M/s SC Verma and Co. as the Auditor in the respondent no.1 company, is in contravention of Clauses 3.3.9 and 3.4.1 of the Shareholder's Agreement (hereinafter 'SHA'). Further direction has been issued to the respondents to convey the fresh Board Meeting for the appointment of Statutory Auditor in compliance of the provisions of the SHA.
4. Counsel for the parties have been heard at length on the stay application.
5. Mr. J. Sai Deepak, senior counsel appearing on behalf of the appellant submits that in terms of Clauses 3.3.9 and 3.4.1 of the SHA, an affirmative vote of the nominee director of the appellant in the Board of Directors of the respondent no.1 company would be required for the purposes of appointment of an Auditor.
6. It is contended that the appellant has invested Rs. 30 crores in the respondent no.1 company in pursuance of definitive agreements between the parties, which include the aforesaid SHA. In these circumstances, certain safeguards were incorporated in the SHA for the protection of the interest of the appellant company. It is pointed out that the SHA included not only the



shareholders of the respondent no.1 company, but also the respondent no.1 company itself.

7. It is submitted that the majority order of the Arbitral Tribunal suffers from a patent illegality inasmuch as it has ignored not only the aforesaid contractual provisions but also the relevant legal principles. It is submitted that the correct view has been taken in the minority order.

8. *Per contra*, Mr. Bajaj, counsel appearing on behalf of the respondents, submits that there is no perversity or illegality in the majority order of the Arbitral Tribunal. He submits that the majority order has correctly appreciated the provision of law that unless the clauses of the SHA are incorporated in the Articles of Association (hereinafter 'AoA') of the respondent no.1 company, the same cannot be given effect to. He further submits that if there is a discrepancy between the provisions of the AoA and the SHA, the provisions of the AoA shall prevail. In this regard, he relies upon the judgment of the Coordinate Bench in ***World Phone India P. Ltd. and Others v. WPI Group Inc., USA***¹.

9. He submits that the majority order has correctly appreciated the provisions of law as well as the relevant provisions of the agreement to come to the right conclusion. He further submits that the appellant has waived the requirement of an affirmative vote by conduct under the SHA.

10. Matter was heard on 16th September 2025 and after a brief hearing, counsel for the respondent was asked to take instructions if the respondent is agreeable to an auditor being appointed, which is acceptable to the appellant

¹ 2013 SCC OnLine Del 1098



as well. Counsel for the respondent has returned with instructions that the respondent is not agreeable to the said proposal.

11. The judgment of the Supreme Court in *Vodafone International Holdings BV v. Union of India*² has been relied on behalf of the counsel for both sides. Therefore, I deem it appropriate to refer to the relevant paragraphs from the said judgment:-

“Shareholder’s agreement

261. Shareholders' Agreement (for short “SHA”) is essentially a contract between some or all other shareholders in a company, the purpose of which is to confer rights and impose obligations over and above those provided by the company law. SHA is a private contract between the shareholders compared to the articles of association of the company, which is a public document. Being a private document it binds parties thereof and not the other remaining shareholders in the company. Advantage of SHA is that it gives greater flexibility, unlike the articles of association. It also makes provisions for resolution of any dispute between the shareholders and also how the future capital contributions have to be made. Provisions of the SHA may also go contrary to the provisions of the articles of association, in that event, naturally provisions of the articles of association would govern and not the provisions made in SHA.

*262. The nature of SHA was considered by a two-Judge Bench of this Court in V.B. Rangaraj v. V.B. Gopalakrishnan [(1992) 1 SCC 160] . In that case, an agreement was entered into between shareholders of a private company wherein a restriction was imposed on a living member of the company to transfer his shares only to a member of his own branch of the family, such restrictions were, however, not envisaged or provided for within the articles of association. **This Court has taken the view that provisions of the shareholders' agreement imposing restrictions even when consistent with company legislation, are to be authorised only when they are incorporated in the articles of association, a view we do not***

² (2012) 6 SCC 613



subscribe to.

263. This Court in *Gherulal Parakh v. Mahadeodas Maiya* [AIR 1959 SC 781 : 1959 Supp (2) SCR 406] held that freedom of contract can be restricted by law only in cases where it is for some good of the community. The Companies Act, 1956 or the FERA, 1973, RBI Regulation or the IT Act do not explicitly or impliedly forbid shareholders of a company to enter into agreements as to how they should exercise voting rights attached to their shares.

264. ***Shareholders can enter into any agreement in the best interest of the company, but the only thing is that the provisions in SHA shall not go contrary to the articles of association.*** The essential purpose of SHA is to make provisions for proper and effective internal management of the company. It can visualise the best interest of the company on diverse issues and can also find different ways not only for the best interest of the shareholders, but also for the company as a whole.

265. In *Shanti Prasad Jain v. Kalinga Tubes Ltd.* [AIR 1965 SC 1535 : (1965) 2 SCR 720] this Court held that agreements between non-members and members of the company will not bind the company, but there is nothing unlawful in entering into agreement for transferring of shares. Of course, the manner in which such agreements are to be enforced in the case of breach is given in the general law between the company and the shareholders. A breach of SHA which does not breach the articles of association is a valid corporate action but, as we have already indicated, the parties aggrieved can get remedies under the general law of the land for any breach of that agreement.

266. SHA also provides for matters such as restriction of transfer of shares i.e. right of first refusal (RoFR), right of first offer (RoFO), dragalong rights (DARs) and tag-along rights (TARs), pre-emption rights, call option, put option, subscription option, etc. SHA in a characteristic joint venture enterprise may regulate its affairs on the basis of various provisions enumerated above, because joint venture enterprise may deal with matters regulating the ownership and voting rights of shares in the company, control and manage the affairs of the company, and also may make provisions for resolution of disputes between the shareholders.”

12. The judgment of the Coordinate Bench in ***Premiere Hockey***



Development Pvt. Ltd. vs. Indian Hockey Federation³ has held as under:

"34. Therefore, even if the company is not a party to the shareholders agreement, that by itself, does not prevent the shareholders, inter se, from enforcing their agreement in relation to the transfer of shareholding. At the same time, the court recognized the position that, if the company is a party to an agreement relating to allotment of new shares, the said agreement can be enforced against the company. The Supreme Court observed that the decision in Shanti Prasad Jain (supra) does not, in any way, hold that the transfer of shares agreed to between the shareholders, inter se, does not bind them or that it cannot be enforced like any other agreement. The Supreme Court held that the decision in Rangaraj (supra) was entirely distinguishable on facts, as in the shareholders agreement in the case of Madhusoodhanan (supra), described as karar, did not impose restrictions of the kind found in the case of Rangaraj, on the transferability of shares.

36. Pertinently, the position in the case in hand is materially different from that before the Supreme Court in Rangaraj (supra). The petitioner company is a party to the Subscription and Shareholders Agreement dated 31.12.2004. The other two parties to the agreement are ESS and IHF. The said agreement provides in Article 3.1 that "the obligation of the parties to complete the subscription for the subscribed shares is subject to the fulfillment, prior to and simultaneously at completion (or at time specified below) of the following conditions, any one or more of which may be waived by the parties in writing....". Article 4 defines the expression "Completion". ", and Article 4.1 states that completion shall take place at New Delhi or such other time and place as the party may mutually agree in writing. Article 4.2, inter alia, states that at completion, the company shall: "4.2.4 call for an Extraordinary General Meeting to cause the amendment of existing Articles to incorporate the relevant provisions contained in this Agreement in a form acceptable to the Parties. "

*37. Therefore, in the present case, **the petitioner company was bound to amend the existing articles to incorporate the relevant provisions contained in the Subscription and Shareholders Agreement, which would include Articles 10.3.2 and 10.3.3.***

³ (2011) 180 DLT 530



39. *In the present case as well, there is no Articles pointed out by the petitioner, in the Articles of Association of the petitioner company, which conflicts with Articles 10.3.2 and 10.3.3 of the Subscription and Shareholders Agreement. The said articles are also not in contravention of any legal provision in the Companies Act or Rules. Merely because the Companies Act does not prescribe a minimum period for which a notice for calling a board meeting should be given, it does not mean that the promoter shareholders (who are the only shareholders of the private limited company), and the company cannot agree between themselves with regard to the minimum period for which the notice for calling a board meeting should be given; the requirement that the agenda should specifically set out the business to be transacted in the meeting; and that no business, not specifically set out in the agenda, shall be considered in the board meeting, without the consent of the members of the board of directors. **Such an agreement would clearly bind not just the shareholders, but also the company, as the company is also a party to the Subscription and Shareholders Agreement.***

13. Relying upon the aforesaid judgments, the minority order has taken note of the fact that the respondent no.1 company itself is a party and signatory to the SHA and therefore, its provisions would be binding on the company as well as the shareholders.

14. The judgment relied upon by the respondents, *i.e. World Phone India P. Ltd.* (supra) has been dealt with by the minority order and has been distinguished on the ground that in the said case, the company was not a party to the SHA and the judgment in *Vodaphone International* (supra) has not been considered in the said judgment.

15. At this stage, it may be necessary to refer to the relevant Clauses of the SHA, which are set out below:

“3.3.9 The Company may hold Board or Shareholder meetings and the Parties may participate and vote in such meetings by video conferencing or other audio-visual means or any other means of



contemporaneous communication, in the manner as permitted under Laws. Notwithstanding the aforesaid, it is clarified that in relation to any Affirmative Vote Matters, the written approval of the DAL shall always be required, prior to the relevant meeting (in which such Affirmative Vote Matters is to be tabled) before the Board/Shareholders may transact or take any decision in relation to the Affirmative Vote Matters.

3.4.1 Notwithstanding anything contained in this Agreement, no resolution passed at a meeting of the Board of Shareholders with respect to any of the Affirmative Vote Matters as specified in Annexure “C” shall be valid, unless it has received the written consent of DAL Directors at a meeting of the Board/committees of the Board, and if any such matter requires the approval of the Shareholders, unless DAL have voted in favour of the relevant resolution.

ANNEXURE “C”

AFFIRMATIVE VOTE MATTERS

12. *Any change of the statutory or internal auditors.”*

16. A reading of these clauses clearly indicates that in respect of ‘affirmative vote’ matters, as specified in Annexure C, there has to be a written consent of the directors of the appellant at the board meeting. It is quite normal in SHAs to have clauses of this nature to protect the interest of minority shareholders/investors.

17. Having heard the counsel for the parties, in my *prima facie* view, the minority order correctly appreciates the judgment of the Supreme Court in *Vodafone International* (supra) and of this Court in *Premiere Hockey* (supra), and has correctly come to the conclusion that merely because the terms of the SHA have not been recorded in the AoA, it cannot be held that



the terms of the SHA cannot be given effect to. In this regard, paragraph 62 of the minority order is set out below:

“62. I may also note that the Company itself is a party and signatory to the SHA. As such, it is bound by its terms of the agreements. Having acted upon the SHA and the SSA and having derived benefit in the form of 30 crores the respondents cannot take benefit of its own wrongs of not having amended the AOS especially when the onus was on the respondents to amend the AOA.”

18. The respondents have failed to incorporate the terms of the SHA in the AoA of the company and therefore, cannot take advantage of their own wrong. In this regard, reference may be made to Clause 8.6 of the SHA, which is set out below:-

“8.6 The Company shall, and the Promoters shall ensure that the Company shall, make all necessary amendments to the Articles to ensure the inclusion of provisions contained in this Agreement and shall at all times exercise their voting rights in such manner as to ensure that the terms of this Agreement are fully effective.”

19. In the present case, on a *prima facie* view, there is no inherent conflict between the provisions of the SHA and the AoA. The SHA merely requires an additional requirement in the form of an affirmative vote in certain specified matters, which includes the appointment of an Auditor. Any other interpretation would result in the provisions of the SHA becoming redundant and nugatory.

20. On the other hand, the majority order fails to appreciate the position of law elucidated in the aforesaid judgments. Admittedly, the SHA was entered into between the petitioner and the respondents no.2 and 3, who were the promoter and director of the respondent no.1 company. Therefore, the SHA is binding on them.



21. As regards the submission made by the respondents that the appellant has waived the requirement of an affirmative vote by conduct, reference may be made to Clause 10.2 of the SHA. The said clause is set out below:

“10.2 Waiver

*If at any time any Party shall waive its rights accruing to it, due to breach of any of the provisions of this Agreement, such waiver shall not be construed as constituting waiver of other breaches of the same kind or other provisions of this Agreement. **None of the terms of this Agreement shall be deemed to have been waived or altered, unless such waiver or alteration is in writing and is signed by all the Parties.**”*

22. A perusal of the aforesaid clause reveals that the waiver of the terms of the SHA has to be made by the parties in writing. In the present case, the appellant has not waived the requirement of an affirmative vote in writing. Therefore, there cannot be any waiver of the terms of the SHA.

23. In view of the aforesaid narration of facts, a *prima facie* case has been made out on behalf of the appellant.

24. Accordingly, there shall be a stay of the operation and effect of the majority order dated 18th August, 2025 and the board resolution dated 9th May 2025 appointing M/s SC Verma and Co. as the statutory auditor, till the disposal of the appeal.

25. Mr. Bajaj submits that irreparable loss and injury would be caused to the respondent no.1 company if the order of the majority is stayed, as the company would miss the statutory deadlines of completing the Audit by 30th September, 2025.

26. Since there is a serious dispute between the shareholders and the



Court is inclined to stay the appointment of Statutory Auditor, it would always be open for the parties to seek an extension from the regulatory authorities.

27. The application stands disposed of.

ARB. A. (COMM.) 50/2025

28. Issue Notice.

29. Notice is accepted by Mr. Abhinav Bajaj, counsel appearing on behalf of the respondents.

30. Reply(ies) be filed within four (4) weeks.

31. Rejoinder thereto, if any, be filed within two (2) weeks thereafter.

32. List on 20th November, 2025.

33. Both sides shall file written submissions at least one (1) week before the next date of hearing.

AMIT BANSAL, J

SEPTEMBER 18, 2025

Vivek/-