

13, 14 & 15

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

+ CO.PET. 380/2008

M/S WELLDONE ESTATE PROJECTS PVT. LTD. Petitioner
Through Mr. Vivek Kohli & Mr. Vardhan
Tulsian, Advocates.

versus

M/S TODAY HOMES & INFRASTRUCTURE PVT.LTD.
..... Respondent
Through Mr. Jayant Bhushan, Sr. Advocate
with Mr. Vivek Sibal, Ms. Pooja M. Saigal,
Mr. Rahul Sharma & Mr. Vikas Chandel,
Advocates.

+ CO.PET. 8/2009

SUNIL KOTHARI Petitioner
Through Mr. Chetan Sharma, Sr. Advocate
with Mr Nahush Shah & Ms. Ramni Taneja,
Advocates.

versus

TODAY HOMES AND INFRSTRUCTURE PRIVATE LTD
..... Respondent
Through Mr. Mr. Sandeep Sethi, Sr. Advocate
with Mr. Vivek Sibal, Ms. Pooja M. Saigal,
Mr. Rahul Sharma & Mr. Vikas Chandel,
Advocates.

+ CO.PET. 107/2009

BALWANT SINGH Petitioner
Through Mr. Jagjit Singh, Advocate.

versus

TODAY HOMES & INFRASTRUCTURE PVT LTD
..... Respondent
Through Mr. Arvind K. Nigam, Sr. Advocate
with Mr. Vivek Sibal, Ms. Pooja M. Saigal,
Mr. Rahul Sharma & Mr. Vikas Chandel,

Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

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13.12.2010

This common order is being passed in Co. Pet. No. 380/2008, *M/s Welldone Estate Projects Private Limited versus M/s Today Homes and Infrastructure Private Limited*, Co. Pet. No. 8/2009, *Sunil Kothari versus Today Homes and Infrastructure Private Limited* and Co. Pet. No. 107/2009, *Balwant Singh versus Today Homes and Infrastructure Private Limited*.

Co. Pet. No. 380/2008

2. I am not inclined to entertain the Co. Pet. No. 380/2008 filed by Welldone Estate Projects Private Limited in spite of the fact that the respondent company has admitted receipt of Rs.5,19,00,000/-, which was paid through banking transactions.

3. The respondent in the reply has taken the defence that they had entered into a contract with Ludhiana Improvement Trust (LIT, for short) under a concession agreement dated 24th May, 2005 to develop and market the project "Ludhiana City Centre". It is further stated that a tripartite agreement dated 25th August, 2005 was entered among the respondent company, LIT and HDFC Limited and in terms of which an escrow account is opened in HDFC Bank. 30% of the sale proceeds from the said account were to be credited to LIT and balance 70% to the respondent company. The respondent company has alleged that amount was paid through one Mr. Rajesh Arora and the respondent company had no direct dealing with the petitioner. It is stated that there are disputes and differences between the respondent company and LIT/Government of Punjab and the later have illegally revoked power of attorney issued in favour of the respondent company and have frozen the escrow account

by virtue of communication dated 5th October, 2006. It is further alleged that LIT has withdrawn Rs.23,48,28,128/- representing 30% of the amount received in the escrow account. In the reply, the respondent has pointed out that litigation between them and LIT/Government of Punjab is pending. It is stated that a Special Leave Petition filed by the respondent company is pending before the Supreme Court.

4. In the present case, there is no written contract between the petitioner and the respondent. We do not know what was the exact nature of the transaction between the two parties pursuant to which Rs.5,19,00,000/- was paid by the petitioner to the respondent. The amount paid is substantial but strangely the petitioner did not feel that it was necessary to enter into a written agreement. In the absence of written contract it cannot be ascertained, what was the exact nature of transaction between the petitioner and the respondent and what is the effect of inter se disputes between the respondent and LIT/Government of Punjab and whether the oral understanding between the parties had any condition or precondition, disclaimer or clauses regarding the transaction. We do not know what was agreed and settled between the parties and whether there was a clause/condition for refund. As parties are relying upon oral understanding/agreement, rival contentions cannot be examined and gone into in the summary proceedings before the Company Court. Accordingly, Co. Pet. No. 380/2008 filed by M/s Welldone Estate Projects Private Limited is dismissed. It is clarified that this Court has not expressed any opinion on merits as it is stated that a civil suit is already pending between M/s Welldone Estate Projects Private Limited and Today Homes and Infrastructure Private Limited. Observations made in the present order will not influence the decision in the civil suit.

Co. Pet. No. 8/2009

5. Co. Pet. No. 8/2009 is filed by Mr. Sunil Kothari. There is a written agreement/memorandum of understanding dated 26th August,

2006 between the parties, which has been placed on record as Annexure

P-2. Relevant clauses of the said written agreement are as under:-

“2) The Company confirms to sale/enter into an agreement for joint development for the Anchor stores to the Purchaser at a return of 14.11 Percent of the Annual rental revenue which shall be the net of all statutory outgoings. The Company confirms to enter into an agreement for Sale/Joint Development for the Non-Anchor stores to the Purchaser at a return of 14.50 percent of the Annual rental revenue which shall be the net of all statutory outgoings. Hence, the entire sale consideration comes to Rs.185.06 Crores (Rupees one hundred eighty five crores six lacs only).

3) The Company shall satisfy the Purchaser in all respects of its title. The Purchaser shall after complete satisfaction and due diligence within 10 working days from the date of signing of this MOU, enter into a specific Agreement for Sale/Joint Development of the respective areas in the L.C.C. which shall be leased to the Anchor or Non Anchor as the case may be.

XXXXX

XXXXX

Whereas the Company is a Developer of various real estate projects and is in the business of development. Whereas the Purchaser is a company in the business of properties and investments and is interested for investments/buying some of its properties which are under development and the Company has intended to enter into an arrangement for selling its properties on the basis of the understanding which the parties are desirous to bring them in writing.

The Company is a Developer of City Centre at Ludhiana known as Ludhiana City Center (LCC).

The Company has already started entering into leasing arrangements with the retailers for the developed areas in the L.C.C. and has entered into various MOU's or Agreements to Lease or Letters of Intent and provide the agreed area in the L.C.C. to the retailers. The Company has already started the development of the Project and has assured that the retailers will be given the space on its agreed time as committed in arrangement to Lease.

XXXXX

XXXXX

8) The Purchaser has given to the Company a demand draft No. 724757 of Rs.99,00,000/- (Rupees Ninety Nine Lacs only) and demand draft No. 724759 of Rs.12,00,000/- (Twelve Lacs only), totaling to Rs.1,11,00,000/- (Rupees One Crore Eleven Lacs only), both drawn on ING Vysya Bank Ltd as a token advance for signing of this MOU. The said token advance shall be adjusted in the sale/Joint Development Agreement between the Purchaser and the Company.

9) The Company shall refund the advance token to the Purchaser in case the Purchaser is not satisfied in respect of the title of the Property.

XXXXX

XXXXX

14) This MOU shall be cancelled by the seller if the buyer fails to make the total payment of Rs.30,00,00,000/- (Rupees Thirty Crores only), (inclusive of the first Rupee five crores) by 5th October 2006 plus seven days grace period and the buyer shall not be able to legally enforce this MOU. However if the payment is made in time, this MOU cannot be cancelled by any party. ”

(emphasis supplied)

6. Annexure B to the agreement/memorandum of understanding is a schedule of payment, which was agreed upon by the parties.

7. As there is a written agreement between the parties, the terms and conditions agreed/settled are clearly decipherable. Mr. Arvind Nigam, Sr. Advocate appearing for the respondent in Co. Pet. No. 8/2009 has submitted that the payments received from the petitioner were deposited in an escrow account, which was to be shared between the respondent and LIT in the ratio of 70:30. It is alleged that the said escrow account has been illegally frozen. It is further alleged that the agreement/memorandum of understanding was signed, on behalf of LIT, by the respondent on the basis of power of attorney dated 29th August, 2005. It is stated that because of the inter se disputes between the respondent and LIT, which are in public domain, nothing can be done and the petitioner should await the result of the disputes between the respondent and the LIT/Government of Punjab.

8. During the course of hearing, Mr. Arvind Nigam, Sr. Advocate has tried to contend that the respondent had acted as an agent of LIT and an agent is not liable. The agreement/memorandum of understanding executed by the respondent was as an agent and respondent had disclosed the identity of the principal, i.e., the LIT, therefore, in case of non-payment, the agent is not responsible and payment should be recovered by the petitioner from LIT, i.e., the principal. This defence has to be rejected for the following reasons:-

(1) This defence is not specifically pleaded in the reply filed to the company petition on 18th August, 2009. The defence is clearly an afterthought and as a result of legal opinion or advice. This was not what was the intention of the parties when they had entered into a transaction and even when the reply was filed to the company petition.

(2) Secondly, the agreement/memorandum of understanding does not

state/record that the respondent was merely acting as an agent and was not responsible and liable for the money received from the petitioner. Several clauses of the agreement/memorandum of understanding between the parties have been quoted above. The said written agreement specifically states that the petitioner was making payment to the respondent for purchase of space in the building, which was being constructed at Ludhiana. Paragraph 2 of the agreement talks of minimum return, which was assured by the respondent to the petitioner. Paragraph 3 of the agreement states that the petitioner wanted to satisfy themselves about title of the respondent and execution of a further agreement thereafter, which admittedly was not executed. Paragraphs 8 and 9 of the agreement state that the petitioner had given two demand drafts totaling Rs.1,11,00,000/- to the respondent as a token advance in terms of signing of the Memorandum of Understanding, which was to be adjusted against the sale and joint venture agreement to be executed between the petitioner and the respondent. It is further stated that the respondent shall refund the advance token to the petitioner in case the petitioner was not satisfied about the title of the property. Clause 14 talks about cancellation of the agreement/Memorandum of Understanding if Rs.30 crores was not paid by 5th October, 2006 plus seven days grace period. It states that in case payments were made in time, the Memorandum of Understanding would not be cancelled. The aforesaid clauses do not at all give a hint or impliedly or expressly state that the respondent was acting as an agent of LIT and the payments made to the respondent would not be refunded by them and the liability of refund would be that of LIT/Government of Punjab. The Memorandum of Understanding does not talk of any escrow account or any understanding that in case of refund, the same

would be made only if LIT agrees to make payment. The respondent is bound by the terms of the Memorandum of Understanding and has to adhere to the same. It cannot wriggle out of their obligations in the Memorandum of Understanding.

(3) Thirdly, during the course of hearing, it was submitted that the Memorandum of Understanding/agreement was entered into by mistake by the respondent and 71 separate and distinct agreements have been entered into between other/third parties and the respondent. This argument does not help the respondent but rather supports the case of the petitioner that there was/is a specific understanding in the present case. The agreement in the present case is a principal to principal agreement and not an agreement with the respondent, acting as an agent of a third party with no personal rights and liabilities. The respondent has expressly accepted personal liability and has agreed to refund the amounts paid.

(4) Fourthly, the respondent in their letter dated 27th September, 2006 have admitted that they had received Rs.4,02,00,000/- from the petitioner, Mr. Sunil Kothari. The letter talks of revised understanding under which the petitioner was liable to pay further sum of Rs.25.98 crores within 21 days of the sale of the property being confirmed in their favour by LIT and necessary documents provided in this respect by the respondent to the petitioner. It further states that save and except above modification, other terms and conditions, including payment plan would remain in force and binding on the parties. This letter is an admission by the respondent to the petitioner about the payment. It establishes and proves that the respondent had taken the obligation to get confirmation of allotment from LIT in favour of the petitioner and furnish the said document from LIT to the petitioner. It confirms

and reiterates that the agreement between the two parties was as principals.

9. In response to this letter, the petitioner, Mr. Sumit Kothari had written that they shall arrange for payment once LIT approval was done. Admittedly, the LIT approval never came through and disputes arose between the LIT and the respondent on 5th October, 2006 when as per the respondent the LIT/Government of Punjab revoked the authority of the respondent. The petitioner Mr. Sunil Kothari thereafter wrote another letter dated 20th October, 2006 informing the respondent that they had not crystallized the legal document.

10. Learned counsel for the respondent has submitted that the respondent is a profit making company and has several employees and workers. It is submitted that an order of winding up is discretionary and should not be passed in the present case. It is urged that the respondent has undertaken several other new projects and an order appointing provisional liquidator or issue of citations will adversely affect other third parties and will not be in the interest of justice.

11. The contention of the respondent is squarely answered by the judgment of the Supreme Court in Civil Appeal No. 8230 of 2010 in ***M/s IBA Health (I) Private Limited versus M/s Infor-Drive Systems Sdn. Bhd.*** While dealing with the question of commercial solvency, the following observations are appropriate:-

“21. Appellant company raised a contention that it is commercially solvent and, in such a situation, the question may arise that the factum of commercial solvency, as such, would be sufficient to reject the petition for winding up, unless substantial grounds for its rejection are made out. A determination of examination of the company’s insolvency may be a useful aid in deciding whether the refusal to pay is a result of the bona fide dispute as to liability or whether it reflects an inability to pay, in such a situation,

solvency is relevant not as a separate ground. If there is no dispute as to the company's liability, the solvency of the company might not constitute a stand alone ground for setting aside a notice under Section 434(1)(a), meaning thereby, if a debt is undisputedly owing, then it has to be paid. If the company refuses or pay on no genuine and substantial grounds, it should not be able to avoid the statutory demand. The law should be allowed to proceed and if demand is not met and an application for liquidation is filed under Section 439 in reliance of the presumption under Section 434(1)(a) that the company is unable to pay its debts, the law should take its own course and the company of course will have an opportunity on the liquidation application to rebut that presumption.

22. An examination of the company's solvency may be a useful aid in determining whether the refusal to pay debt is a result of a bona fide dispute as to the liability or whether it reflects an inability to pay. Of course, if there is no dispute as to the company's liability, it is difficult to hold that company should be able to pay the debt merely by proving that it is able to pay the debts. If the debt is an undisputedly owing, then it should be paid. If the company refuses to pay, without good reason, it should not be able to avoid the statutory demand by proving, at the statutory demand stage, that it is solvent. In other words, commercial solvency can be seen as relevant as to whether there was a dispute as to the debt, not as a ground in itself, that means it cannot be characterized as a stand along ground."

12. The supreme court in *Madhusudan Gordhandas & Co. v. Madhu Woollen Industries (P) Ltd.*, (1971) 3 SCC 632 has observed as under:

20. Two rules are well settled. First, if the debt is bona fide disputed and the defence is a substantial one, the court will not wind up the company. The court has dismissed a petition for winding up where the creditor claimed a sum for goods sold to the

company and the company contended that no price had been agreed upon and the sum demanded by the creditor was unreasonable. (See *London and Paris Banking Corporation*) Again, a petition for winding up by a creditor who claimed payment of an agreed sum for work done for the company when the company contended that the work had not been properly was not allowed. (See *Re. Brighton Club and Horfold Hotel Co. Ltd.*)

21. Where the debt is undisputed the court will not act upon a defence that the company has the ability to pay the debt but the company chooses not to pay that particular debt, see *Re. A Company*. Where however there is no doubt that the company owes the creditor a debt entitling him to a winding up order but the exact amount of the debt is disputed the court will make a winding up order without requiring the creditor to quantify the debt precisely See *Re Tweeds Garages Ltd.* The principles on which the court acts are first that the defence of the company is in good faith and one of substance, secondly, the defence is likely to succeed in point of law and thirdly the company adduces prima facie proof of the facts on which the defence depends.

13. Thus, when a winding up petition is filed under Section 433(e) read with Section 434(1)(a) of the Act, the first aspect that which has to be examined is whether the debt is bonafidely and substantially disputed by the respondent company. In case a debt is bonafidely and substantially disputed by the respondent company, it does not amount to failure and neglect to pay and, therefore, the presumption under Section 434(1)(a) even when statutory notice is delivered does not apply. However, once the Court comes to the conclusion that the debt is not bonafidely disputed by the respondent company and notice in terms of Section 434(1)(a) has been delivered, the presumption under the said Section applies. The question of commercial solvency etc. has to be examined in the light of the observations of the Supreme Court in paragraphs 21 and 22 in the case of *M/s IBA Health (I) Private Limited* (supra). The respondent has pleaded that they have started new projects

and persons/third parties who have invested in the new projects will be adversely affected. This cannot be a ground to deny and refuse payment to creditors. Earlier Creditors cannot suffer and denied amounts due and payable because the respondent has made investments in new projects and third parties have made investments. The Act and the law require that a company with limited liability should pay the dues of the creditors and not avoid payment on sham or unsustainable grounds. A company cannot be permitted to withhold payment and deny payment, which is due to a creditor merely because the Directors/management does not want that the payment should be made. A company under law is required to make payment to the creditor once the creditor demands payment by issue of notice under Section 434(1)(a) of the Act. This is the statutory obligation of the company otherwise consequences flow from the presumption or the deeming effect created by the said Section. However suitable directions have been given below to protect interest of the respondent and third parties at the same time ensuring that the petitioner Mr. Sunil Kothari is not deprived of his money.

Co. Pet. No. 107/2009

14. In Co. Pet. No. 107/2009 filed by Mr. Balwant Singh, the respondent has issued several receipts, which have been placed on record. The receipts mention that the amount paid in installments. The receipts have been issued by the respondent. The petitioner had issued notice dated 17th April, 2007 to the respondent. In the notice, the petitioner Mr. Balwant Singh had stated that he had booked office space of 1239 square feet for Rs.50,17,350/-. In response to this notice, the respondent denied allegations of fraud, mischief etc on their part. It was denied that the booking amount was wrongly collected. In paragraph 3 and 4 of the reply dated 17th May, 2007 to notice dated 17th April, 2007, it is stated by the respondent as under:-

“3. That we extend our high regards to your

client if he had entrusted and deposited his hard earned money and faith in Today Homes and Infrastructure Pvt. Ltd. for the purpose of booking an office space for instance 1239 sq ft in the City Center – Ludhiana but this is wrong to baselessly say/allege that we have cheated your client in any manner whatsoever.

4. So far the refund of the booking amount your client had deposited with us is concerned, we hereby would like to clarify and inform that this is a matter subject to the terms of booking/refund policy of the company which was already conveyed to your client at the time of booking of the above said space which says “at any point of time after making payment of the booking amount/earnest money, if the intending purchaser wishes to pull out from the deal and doesn’t want to make further due payments, the booking/deal stands cancelled and the amount paid upto 10% of the basic sale price of the office/space, constituting the earnest money stands forfeited and the balance amount, if any, paid over and above the Earnest Money is refunded to the intending Purchaser without any interest.” We are ready to adhere and abide by the abovementioned policy to fulfill our commitment regarding the same.”

(emphasis supplied)

15. The aforesaid reply is a clear admission on the part of the respondent that the petitioner had booked 1239 square feet of space in City Centre Ludhiana. It was agreed that there was an understanding for refund of the booking amount by the respondent to the petitioner. It is stated that as per the policy of the respondent, the persons who had booked spaces were entitled to refund after deduction of upto 10% of the basic sale price of the office/space constituting earnest money but the balance amount was refundable. The respondent in their letter dated 10th May, 2007 have again stated that the petitioner had booked a unit bearing tentative No. 829, saleable area 1239.24 square feet on 8th Floor, of the

office tower in Ludhiana City Centre, Ludhiana. It is stated that the total sale consideration as per the agreed terms was Rs.42,44,397/-, out of which the respondent had received Rs.10,03,000/-.

16. In view of the aforesaid documentation on record, it is apparent that the petitioner had booked office space in the complex in Ludhiana and because of the disputes between the respondent and LIT/Government of Punjab, the respondent is unable to complete the said complex/project. The petitioner is asking for refund of the amount paid by him. The petitioner is entitled to the said refund. There is no document or any other paper to show and suggest that the respondent had ever collected the said payment merely acting as an agent of LIT.

Brochure, Cheque and Privity of Contract

17. Mr. Sandeep Sethi, Sr. Advocate, who is appearing for the respondent in Co. Pet. No. 107/2009 has drawn my attention to Annexure P-1 filed by the petitioner. This Annexure P-1 is a copy of the brochure taken out by the respondent. Reference was made to this annexure in support of the contention that the respondent company was merely acting as an agent in the entire transactions between the petitioner and the LIT. The brochure at page 10F refers to Ludhiana City Centre being developed by the respondent company in “partnership” with LIT. The brochure does not state that the respondent was acting as an agent. Reference was made by Mr. Sandeep Sethi, Sr. Advocate to the receipts issued by the respondent to the petitioner Mr. Balwant Singh. On top of the receipts it is mentioned; Ludhiana City Centre, a joint venture project of Ludhiana Improvement Trust/Government of Punjab and Today Homes Infrastructure Private Limited. The receipts do not show that the respondent was acting as an agent and the transaction between the petitioner and the respondent was an agreement between a principal and an agent of a third party or LIT was the principal.

18. My attention was drawn to some cheques/demand drafts, which

have been issued by or on account of the petitioners-Mr. Balwant Singh and Mr. Sunil Kothari. These cheques/demand drafts have been issued in favour of Today Homes and Infrastructure Private Limited, the respondent company. In some of the cheques/demand drafts, the words City Centre LIT are also mentioned. This does not mean that demand drafts/cheques were issued by the two petitioners to third parties and not the respondent. Name of the respondent appears on all instruments.

19. There was a privity of contract between the two petitioners and the respondent company. The doctrine of privity in the common law of contract provides that a contract cannot confer rights or impose obligations arising under it on any person or agent except the parties to it. Cheshire and Fifoot in the Law of Contract, Thirteenth Edition, have put the Doctrine of Privity of Contract as:

"The doctrine of privity, while in principle, at least it prevents a third party beneficiary from suing on a contract, operates with equal logic to forbid the contracting parties to enforce obligations against a stranger. It has long been an axiom of the common law that a contract between A and B cannot impose a liability upon C."

20. The Doctrine of Privity of Contract has been explained in **L. Shiv Dayal Kapoor and Ors. Vs. Union of India (UOI), New Delhi and Anr**, AIR 1963 P&H 538 as under:

"16. I may now consider the implications of the rule underlying the doctrine of privity of contract, which means the relationship subsisting between two contracting parties. "Privity" in this context implies a mutuality of will and is an interaction of parties and their successors. It creates a legal bond or tie or a vinculum juris. The rule of privity of contract is that no one but the parties to a contract can be bound by it or entitled to find it. In the words of Pollock,

"A third person cannot become entitled by the contract itself to demand performance of any duty under the contract,"

Salmond and Winfield put in thus : -

"No man can enforce a contract to which he is not a party, even though he has. direct interest in the performance of it."

17. The doctrine of 'privity of contract', as above stated, is well settled in England, but it has certain exceptions. There is deemed to be an artificial privity in the case of a trustee and beneficiary and also principal and agent. The rule of common law was expanded by engrafting fictions in order to prevent the rigour of the law. The leading case on the subject is *Tweddle v. Atkinson*, (1861) I.B. and Section 393, settling the rule that the third person cannot sue on a contract made by the contracting parties for his benefit and confirmed the rule in *In Price v. Esston* (1833) 4 B. : Ad. 433, that a contract cannot confer rights on strangers. Lord Haldane in *Dunlop Pneumatic Tyre Co., Ltd. v. Selfridge and Co. Ltd.* (1915) AC. 847 at p. 853 stated the principle thus :

"In the law of England certain principles are fundamental. One is that only a person who is a party to a contract can sue on it. Our law knows nothing of a *jus quaesitum tertio* arising by way of contract. Such a right may be conferred by way of property, as for example, under a trust, but it cannot be conferred on a stranger to a contract as a right to enforce the contract in *perso-nam*."

.....Pollock in his book on Contracts puts it thus :-

"A contract cannot be annexed to goods so as to follow the property in the goods either at common law or in equity".

(vide 13th edition at page 187).

At page 162 the matter was put thus :

"It is obvious on principle that it is not competent to contracting parties to impose liabilities on other persons without their consent."

The principle that when an obligation is founded upon a contract the assent of a person to be bound is at the root of the matter and is indispensable as the third party is not an assenting party he cannot be called upon to bear the burden of the contract. It is thus open to the plaintiffs to say to the Government that under contract with Captain S. Kirpa Ram you could have taken the materials, stores etc, brought by him on the site but it is not open as a defence to the plaintiffs' claim with respect to their assets as not being contracting parties they had not incurred that obligation. According to Anson, "it is a trite principle of law that a person cannot be subjected to the burden of a contract to which he is not a party." (Vide Anson's Law of Contract, 21st edition, page 161). The principle is firmly established that contractual liabilities cannot be imposed upon a party who is not a privy to the contract. It is the counter-part of the principle that a third party cannot acquire rights under a contract.....”

21. The petitioners in the present cases are not concerned with disputes and differences between the respondent and a third party. The petitioners are not parties to the dispute between the respondent and LIT or the Government of Punjab. The petitioners are not responsible for the said dispute. The petitioners have entered into an agreement with the respondent and this is for the respondent to adhere and act upon the said agreement. The respondent company is bound by the terms of the contract between them and the petitioners and cannot wriggle out of the said terms, because it has disputes with a third party

22. In these circumstances, I am inclined to admit Co. Pet. No. 8/2009, *Sunil Kothari versus Today Homes and Infrastructure Private Limited* and Co. Pet. No. 107/2009, *Balwant Singh versus Today Homes and Infrastructure Private Limited*. However, I defer order on admission, appointment of Provisional Liquidator and publication of citations for a period of six weeks in order to enable the respondent to

negotiate with the petitioners or deposit the principal amounts in the Court. The question of interest is left open.

Re-list on 1st February, 2011.

SANJIV KHANNA, J.

DECEMBER 13, 2010
VKR/NA