

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

% *Judgment Reserved on: February 19, 2013*  
*Judgment Pronounced on: July 01, 2013*

+ **O.M.P. No.9/2012**

DARPAN KATYAL ..... Petitioner  
Through Mr.Prabhjit Jauhar Adv. with  
Ms.Anupama Kaul, Adv.

versus

M/S D.R.DONALDS PROMOTORS AND DEVELOPERS PVT.  
LTD. & ORS ..... Respondents  
Through Mr.Rohit Varma, Adv.

**CORAM:**  
**HON'BLE MR. JUSTICE MANMOHAN SINGH**

**MANMOHAN SINGH, J.**

1. Mr.Darpan Katyal, petitioner has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 for grant of interim injunction against three respondents, namely, M/s D.R.Donalds Promoters and Developers Pvt. Ltd. – respondent No.1, Mr.Deepak Sharma – respondent No.2 and Mr.Ravi Kumar – respondent No.3, thereby restraining them from creating any third party rights in the property bearing No.HS-18, Sector-12, Pratap Vihar, Ghaziabad (U.P.) (hereinafter called the “Suit Property”).

2. By order dated 6<sup>th</sup> January, 2012, the Court has passed *ex parte* order restraining the respondents from selling, transferring and conveying any right, title or interest or creating any third party rights in respect of the suit property.

3. After filing the reply, the petitioner filed an application for amendment of the petition. Notice was issued to the respondents to file reply.

4. Both parties made their submissions when the matter was listed before Court on 19<sup>th</sup> February, 2013. The petitioner in his petition has referred two documents: (a) Collaboration Agreement dated 16<sup>th</sup> January, 2007, and (b) Agreement dated 7<sup>th</sup> April, 2010, to meet the objection of the respondents that the petition is not maintainable.

5. The Collaboration Agreement dated 16<sup>th</sup> January, 2007 was executed between the parties with regard to development of the properties owned by the petitioner and respondents No.2 & 3. The said agreement was signed by respondent No.1 as Developer through petitioner. It is evident that the petitioner and respondents No.2 & 3 were the Directors of respondent No.1 Company at the time of execution of the said agreement.

6. The details of the properties which are to be developed in view of the Collaboration Agreement dated 16<sup>th</sup> January, 2007 are given as under:-

- (i) Freehold plot measuring 96 Sq. Mtrs. situated on HS-18, Sector-12, Pratap Vihar, Ghaziabad (U.P.), registered vide Sale Deed No.5996 on 2<sup>nd</sup> September, 2006 in the office of Sub Registrar-5, Ghaziabad, in favour of Mr.Darpan Katyal – the petitioner.
- (ii) Freehold plots HS-12, measuring 96 Sq. Mtrs. and HS-20, measuring 120 Sq. Mtrs. situated at Sector-12, Pratap Vihar, Ghaziabad (U.P.), registered vide Sale Deeds No.5999 & 5995 respectively on 2<sup>nd</sup> September, 2006 in the office of Sub

Registrar-5, Ghaziabad, in favour of Mr. Deepak Sharma – respondent No.2.

- (iii) Freehold plots HS-13 and HS-19, each measuring 96 Sq. Mtrs. situated at Sector-12, Pratap Vihar, Ghaziabad (U.P.), registered vide Sale Deeds No.5998 & 5997 respectively on 2<sup>nd</sup> September, 2006 in the office of Sub Registrar-5, Ghaziabad, in favour of Mr. Ravi Kumar – respondent No.3.

7. The relevant details extracted from the Collaboration Agreement are read as under:-

“AND WHEREAS the Owners further represents that the said properties can be developed by carrying out construction thereon for Shops in accordance with the permissions/approvals to be obtained from the concerned authorities and thus has approached the Developer the party of the fourth part to develop the said properties.

AND WHEREAS the Developer is engaged in the business of real estate development and enjoys sound reputation in the real estate promotion business and has intended to promote and develop Shops on the said properties by way of construction of Shops as may be permissible under the Law, details of which are to be mutually decided by both the parties hereto (hereinafter referred to as “the Project”).

AND WHEREAS the Developer has examined the title deeds in respect of the said properties and upon having satisfied about the title of Ownership of the party of the first, second and third part in respect of the said properties and the applicable provisions and stipulations of law and thus has agreed to develop the “said properties” for the purpose of construction of Shops thereon.

AND WHEREAS upon discussions and deliberations on various aspects of the development & collaboration, the

Owners and the developer have mutually agreed to take participation of each other in the development of the said Project on the following terms and conditions.....”

8. There is no arbitration clause in the Collaboration Agreement.
9. On 7<sup>th</sup> April, 2010, another agreement between the parties was executed wherein the details of the shares capital held by them are mentioned. The relevant part reads as under:-

**“WHEREAS**

1. The Company was incorporated by Shri Ravi Kumar, Shri Deepak Sharma and Shri Darpan Katyal who was inducted later on as a director to carry on the business of real estate and development. The Company has an Authorized Share Capital of ₹100000000/ (Rupees one crore only) divided into ten lakh Equity Shares of Rs. 10/- each and an Issued, Subscribed and Paid up Share Capital of Rs. 3075000/ (Rupees thirty lakh seventy five thousand only) divided into (307500) Equity Shares of Rs. 10/- each fully paid up.
2. At present, the shareholding of the Company is as follows:

| <b>Name of Shareholder</b> | <b>No. of Shares</b> | <b>% of shareholding</b> |
|----------------------------|----------------------|--------------------------|
| Gauri Buildwell Pvt. Ltd.  | <u>102500</u>        | 33.33                    |
| Darpan Katyal              | <u>102500</u>        | 33.33                    |
| Ravi Kumar                 | <u>102500</u>        | 33.33                    |

The Board of Directors of the Company at present comprise of Shri Deepak Sharma, (as a nominee director of M/s Gauri Buildwell Pvt. Ltd.), Shri Ravi Kumar, Shri Darpan Katyal and Shri Kashmiri Lal Katyal (as a nominee Director of Shri Darpan Katyal).

3. After its incorporation, the Company has undertaken the project of development of a property at Sector 12, Pratap Vihar, Ghaziabad, U.P. for development, construction and marketing of shops on the said property (hereinafter referred to as “**the said**

**Project”)**. For the said Project, the Company has taken a loan of Rs.25000000/ RS (TWO CRORE FIFTY LAKHS only) from PNB Housing Finance Limited and for securing the said loan, the said Shri Deepak Sharma, Shri Ravi Kumar and Shri Darpan Katyal have given their personal guarantees for repayment of the said loan vide Deed of Guarantee dated 15/06/2007 respectively.

4. Though Shri Darpan Katyal, the Seller herein and his nominee Mr. Kashmiri Lal Katyal have been on the Board of Directors of the Company, however, the day to day functioning and management of the Company including its financial affairs has been in the hands of the other two Directors of the Company viz Mr. Deepak Sharma and Mr. Ravi Kumar, the Purchasers herein, who were also nominated as “Officers in Default” for the purposes of the Companies Act, 1956 and other applicable laws.
5. As the Seller has not been actively involved in the day to day functioning of the Company, the parties have agreed that the Purchasers shall purchase the (102500) equity shares held by the Seller in the Company.
6. The Purchasers and the Company have represented to the Seller and have assured the Seller that the affairs of the Company have been carried out in a fair and proper manner and with due compliance of applicable provisions of law, and that neither the Seller nor his nominee Director on the Board of the Company i.e. Shri Darpan Katyal and Shri Kashmiri Lal Katyal would be subject to any loss or liability arising out of or with respect to the affairs of the Company.”

10. The petitioner by virtue of this agreement has sold equity shares i.e. 102500 of ₹20/- each in favour of the respondents for a total consideration of ₹20,50,000/- as per the following details:-

- “1. The Seller has agreed to sell and the Purchasers have agreed to purchased (102500) equity shares of

Rs.20/- each fully paid and held by the Seller in the Company for a total consideration of Rs.(2050000/) (Rupees twenty lakh fifty thousand only) by delivery by the Seller to the Purchasers of duly stamped and executed instrument or instruments of transfer in respect of the said shares together with the share certificates relating to the said shares against the Purchasers paying to the Seller the purchase price.

2. Upon the execution of this Agreement and transfer of Shares as referred in Clause 1 above, the Seller viz Mr. Darpan Katyal and his nominee, Mr. Kashmiri Lal Katyal shall tender their resignations as Directors of the Company, and the Purchasers and the Company shall hand over to the Seller:

(a) The personal guarantee dated 15/6/2007 executed by Mr. Darpan Katyal in favor of PNB Housing Finance Limited in respect of the loan given by PNB Housing Finance Limited to the Company, duly cancelled and discharged.

(b) A certified copy of the audited balance sheet of the Company upto the period March 2010.

(c) Indemnity Bond by the Purchasers and the Company in favor of Shri Darpan Katyal and Shri Kashmiri Lal Katyal, jointly and severally indemnifying them to the fullest extent from and against all actions, claims, proceedings, costs, damages, etc. relating to or arising out any conduct, action, omission by the Purchasers or the Company or their representatives, officers, employees, etc.”

11. Against the said sale, the respondents have given the following assurance to the petitioner at the time of purchasing the equity shares:-

“3. The Company and the Purchasers have assured the Seller:

(a) That the affairs of the Company have been carried out in a fair and proper manner and that neither the Seller nor its nominee Directors on the Board of the

Company i.e. Shri Darpan Katyal and Shri Kashmiri Lal Katyal would be subject to any loss or liability whatsoever.

- (b) The financial position of the Company has been truly and fully disclosed in the Balance Sheet as on March 2010, and the schedules attached thereto and it has no other assets and liabilities whatsoever nature whether present or contingent apart from what has been disclosed in the said Balance Sheet.
- (c) There are no legal proceedings against the Company and it has not committed any breach or default of any obligation or liability whatsoever and does not anticipate any legal proceedings of any nature.
- (d) There is no loan standing in the balance sheet of Company in the name of Shri Darpan Katyal or Shri Kashmiri Lal Katyal.
- (e) The personal guarantee dated 15/06/2007 executed by Mr. Darpan Katyal in favor of PNB Housing Finance Limited in respect of the loan given by PNB Housing Finance Limited to the Company is duly cancelled and discharged. The Purchasers and the Company shall also jointly and severally, indemnify and keep indemnified Shri Darpan Katyal from and against all liabilities and obligations in respect of the said guarantee.
- (f) Within 90 days of the execution of this Agreement, the Purchasers and/or the Company shall provide to the Seller certified copies of the Minutes of the Meeting of the Board of Directors of the Company approving the aforesaid share transfer and accepting the resignations of Shri Darpan Katyal and Shri Kashmiri Lal Katyal.
- (g) Within 90 days of the execution of this Agreement, the Purchasers and/or the Company shall provide to the Seller certified copies of Form 32 filed with the Registrar of Companies, with respect to the resignation of Shri Darpan Katyal and Shri Kashmiri Lal Katyal as directors of the Company.”

12. The following terms and conditions were also agreed between the parties at the time of execution of the agreement dated 7<sup>th</sup> April, 2010:-

“4. It is made clear that the Seller shall not be liable to or responsible for any claim and/or liability by any vendor of the Company and/or buyer of any real estate or property or shops which are being proposed to be sold by the Company.

5. The Company, the Seller and the Purchasers further agrees to render full co-operation to each other in order to give full effect to intention expressed herein and do and execute and perform all other acts, deeds and things as may be necessary go give full effect to the terms and intent of this Agreement.

6. The Purchasers and/or the Company acknowledge that the Seller or his nominees Directors are not in possession of any papers and/or property belonging to the Company.

7. The Company and the Purchasers shall, jointly and severally, indemnify, defend and hold harmless the Seller and his nominee on the Board of Directors of the Company Shri Kashmiri Lal Katyal from and against any and all losses, which may be incurred or suffered by the Seller and the said nominee or may result out of or result from;

- i. Any breach of any undertakings made by the Company and the Purchasers contained in this Agreement.
- ii. Any and all actions, suits, proceedings, claims, demands, costs, expenses, including without limitation, legal fees and expenses, incurred in enforcing this indemnity.

8. The Stamp duty and other charges payable in respect of transfer of the said shares shall be borne and paid by the Purchasers.

9. That if any provision of this Agreement is inconsistent with the purpose of this Agreement, the

same shall be deemed to have been amended/deleted to the extent necessary to confirm to the applicable law and the remaining provisions of this Agreement shall remain valid and enforceable in accordance with their terms.”

13. Under this agreement, there is an arbitration clause to the effect that all the disputes and differences whatsoever arising between the parties or any of them under or relating to this agreement shall be referred to the sole Arbitrator.

14. In nut-shell, the petitioner's case now is that on 26<sup>th</sup> December, 2011, the respondents after paying the loan amount clandestinely in connivance with each other took away the title deeds of the freehold properties of the petitioner from the PNB Housing Finance Ltd. within intimating the petitioner. It was obligatory on the part of the respondents to handover the original title deeds of the said property to the petitioner who is the sole legal owner of the said property. As per the terms and conditions of the agreement, the respondents had to indemnify the petitioner from all sorts of liabilities or claims arising out of the advancement of loan of ₹2.5 crores taken from the PNB Housing Finance Ltd. for which the personal guarantee of the petitioner as well as the title deeds of the freehold properties of the petitioner was given to the PNB Housing Finance Ltd. The respondents in due compliance of the agreement ought to have returned the original title deeds to the petitioner relating to the said property. The respondents had intentionally taken away the title deeds of said property clandestinely and mischievously from the PNB Housing Finance Ltd. so that the respondents can create third party rights in the said property belonging to the petitioner. It is submitted that the respondents have no right to create any sort of third party in respect of the said property.

15. In their reply, the respondents have stated that the petitioner, in fact, is guilty of making the false statement. It is stated that plot No.HS-18, Sector-12, Pratap Vihar, Ghaziabad (UP) measuring 96 Sq. Mtrs. was purchased from the funds of respondent No.1 Company. The entire sale consideration was paid to the Ghaziabad Development Authority by the Company, as it is evident from the statement of account pertaining to the respondent No.1 Company. The details of the same, as mentioned in the reply, are given as under:-

“...The consideration to the Vendor of the said Plot was made by the respondent No.1 Company from its HDFC Bank Account(s) No. 00322000018084 & 0322000018074 vide the following modes:

| <b>Sr.No.</b> | <b>Draft No.</b> | <b>Date</b> | <b>Amount</b>           | <b>Favoring</b> |
|---------------|------------------|-------------|-------------------------|-----------------|
| 1.            | 034266           | 27.01.2006  | Rs.02,44,000.00         | G.D.A.          |
| 2.            | 034256           | 28.01.2006  | Rs.02,00,000.00         | G.D.A.          |
| 3.            | 035515           | 30.04.2006  | Rs.13,39,200.00         | G.D.A.          |
| 4.            | 035756           | 25.05.2006  | Rs.02,14,272.00         | G.D.A.          |
| 5.            | Cash             | 17.08.2006  | Rs.01,78,560.00         | (Stamp Papers)  |
| 6.            | Cash             | 17.08.2006  | Rs.2,000.00             | (Fee)           |
| 7.            | Cash             | 17.08.2006  | Rs.5,100                | (GDA Receipt)   |
| <b>Total</b>  |                  |             | <b>Rs.21,83,132.00”</b> |                 |

16. It is stated by the respondents that the petitioner fraudulently and dishonestly misappropriated the funds of the respondent No.1 Company for his personal use and benefits and got executed and registered the sale deed pertaining to the said plot No.HS-18 in his own name by playing a fraud upon the respondents. According to the respondents, the sale deed ought to have been executed in favour of the Company. The respondents have also

denied that they have approached the Tehsildar as well as Patwari to create third party interest qua the said property, as alleged by the petitioner.

17. It is also stated by the respondents that the shops constructed on plot No.HS-18, the subject matter of the instant petition, were sold much earlier to the *ex parte* ad-interim order passed by this Court. The petitioner deliberately and intentionally concealed this fact from the Court. The following are the dates and names of persons who purchased the shops:-

| <b><u>Sr.No.</u></b> | <b><u>Name</u></b> | <b><u>Shop No.</u></b> | <b><u>Date of Allotment</u></b> |
|----------------------|--------------------|------------------------|---------------------------------|
| 1.                   | Sh.Mahesh Pansari  | LGF-22                 | 08.10.2006                      |
| 2.                   | Ms.Sadhna Gupta    | MGF-19                 | 10.02.2006                      |
| 3.                   | Sh.Luv Jasuja      | MGF-22                 | 01.04.2007                      |
| 4.                   | Sh.N.K.Yadav       | LGF-19                 | 27.12.2006                      |
| 5.                   | Ms.Sudesh Yadav    | LGF-20                 | 27.12.2006                      |
| 6.                   | Shri K.S.Kohli     | UGF-19                 | 26.06.2010                      |
| 7.                   | Shri K.S.Kohli     | UGF-19                 | 26.06.2010                      |
| 8.                   | Shri G.L.Gupta     | UGF-20                 | 27.05.2011                      |
| 9.                   | Shri K.S.Kohli     | MF-20                  | 26.06.2010                      |

18. The petitioner after execution of the agreement dated 7<sup>th</sup> April, 2010 resigned from the directorship of respondent No.1 on 6<sup>th</sup> June, 2010. He has also sold all his shares to respondents No.2 & 3 against consideration. He has not stake in the respondent No.1 Company. He has indulged in litigation with the respondents without any reason in order to harass them.

19. After having considered the rival submissions of the parties and the material placed on the record, I am of the considered view that the petition filed by the petitioner under Section 9 of the Act is not maintainable and the same is liable to be dismissed due to the following reasons:-

- (i) The subject matter of the Collaboration Agreement dated 16<sup>th</sup> January, 2006 does not contain the arbitration clause.
- (ii) The Agreement dated 7<sup>th</sup> April, 2010, which contains the arbitration clause, does not have the reference of plot No.HS-18, Sector-12, Partap Vihar, Ghaziabad. The said agreement is only pertaining to selling of share equity by the petitioner and terms and conditions thereof and also with regard to the loan taken by respondent No.1 from PNB Housing Finance Ltd. The plot number was not mentioned in the said agreement. Both the agreements dated 16<sup>th</sup> January, 2006 and 7<sup>th</sup> April, 2010 are two distinct and separate agreements having different subject matters.
- (iii) The agreement dated 7<sup>th</sup> April, 2010 is not an addendum to the agreement dated 16<sup>th</sup> January, 2006. Both the agreements were executed between the parties on different occasions and in reference to the different subject matters or context.
- (iv) It is not denied by the petitioner that the shops constructed on plot No.HS-18, the subject matter of the present petition, were sold much earlier to the *ex parte* interim order passed by this Court, i.e. in the year 2006 onwards. The petitioner did not mention the said fact in the petition. When most of the shops were sold in the year 2006 and 2007, the petitioner was one of the Directors. Even, at the time of Collaboration Agreement, he signed the same on behalf of respondent No.1. He also did not mention that the amount for purchasing the plot No.HS-18

was paid by the Company, the details of which are mentioned in the reply.

- (v) Even, in view of the facts mentioned above, the petitioner has no *prima facie* case for grant of interim order, as the balance of convenience also lies in favour of the respondents and against the petitioner. If the petitioner has any grievance against the respondents, he may take action in accordance with law. However, as far as the present petition is concerned, there is no arbitration clause in the Collaboration Agreement dated 16<sup>th</sup> January, 2006 on the basis of which the petitioner has filed the present petition.

20. The petition is not maintainable and the same is accordingly dismissed. The interim order granted on 6<sup>th</sup> January, 2012 is vacated.

**I.A.No.13707/2012 (u/o VI, R.17 CPC, by petitioner)**

In view of the order passed in the main petition where the parties have made their submissions despite of pendency of the amendment application, the same is also dismissed.

**(MANMOHAN SINGH)  
JUDGE**

**JULY 01, 2013**