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

Reserved on: 13.08.2013
Pronounced on: 24.10.2013

\+ **CS (OS) No. 2535 of 2010**

M/s GOLD DEVELOPERS PRIVATE LTD. ... Plaintiff
Through Mr. Taru dua, Ms. Deeksha Khurana and Mr. Anant Garg, Advocates.

Versus

K. N. SHUKLA & ORS. ... Defendants
Through Mr. Raman Kumar, Advocate for D3 to D5.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. Arguments have been heard in the suit. The defendants no. 1 and 2 entered appearance but did not file their reply in spite of opportunity and have not appeared thereafter, they were proceeded ex parte by order dated 26.02.2013. Defendant no 3 to 5 are supporting the plaintiff, thus were directed not to file a written statement by the abovementioned Order. The present suit has been filed by the plaintiff seeking the relief of Declaration and permanent injunction against the Defendant no. 1 and 2.

2. The plaintiff contends that, it is a company incorporated under the provisions of Companies Act, 1956 and is engaged in the business of

development of properties, hotel resorts and residential and commercial establishments. The plaintiff states that during the pendency of the suit the name of the company has been changed from "Gold Developers Pvt. Ltd." to "Experion Developers Pvt. Ltd." The plaintiff contends that the plaintiff concern is a wholly owned subsidiary of M/s Experion Holdings PTE Ltd. (earlier known as Gold Hotels & Resorts PTE Ltd.), a Singapore Company, engaged in the business of development of properties, hotel resorts, residential and commercial establishments. The plaintiff further contends that its paid up share capital is Rs. 90,29,960/ Rs. 1,35,65,130 divided into 9,02,996/ 13,56,513 equity shares of Rs. 10/- each. The distribution of shareholding is:

Shareholder	No. of Shares held
GHRPL	8,99,995/13,56,512
Defendant no. 1	3000
Mr. Suneet Puri, one of the director of plaintiff concern	1

It seems that the shareholding pattern has been changed subsequently as appears from the ex parte evidence of Mr. Suneet Puri, Director of the plaintiff concern.

3. The plaintiff contends that Defendant No. 1 is the husband of

Defendant No. 2. Defendant no. 3 is a company incorporated under the Companies Act, 1956 engaged in the business of development of properties, hotel resorts, residential & commercial establishments and is a wholly owned subsidiary of the plaintiff company wherein 9,999 shares are held by Plaintiff and 1 share is held by one Mr. J. N. Gupta (erstwhile Director of Plaintiff company) for and on behalf of the plaintiff itself. Defendant no. 3 to 5 have been impleaded as proper parties in this suit by the plaintiff, however, no relief is prayed against them.

4. It is further contended that Defendant No. 1 was a director of the plaintiff concern till 06.12.2010, while both Defendant no. 1 & 2 were the directors of Defendant No. 3 till 15.02.2011. Defendant no. 1 & 2 were erstwhile shareholders in defendant no. 3, but subsequently, they sold their entire shareholding to the plaintiff company and they ceased to be the directors of Defendant no. 3 since 15.02.2011. At present Defendant no. 4 and 5 are the directors of Defendant no.3 alongwith two other directors.

5. It is the contention of the plaintiff that in and around April, 2007, Defendant no. 3, through Defendant no. 1 and 2 approached the plaintiff concern and represented to Mr. J. N. Gupta that defendant no. 3 was in possession of certain parcels of land in the upcoming township of Gurgaon and expressed its desire to develop this land with the plaintiff. It is further contended by the plaintiff, that the plaintiff and defendant no. 3 agreed to jointly develop the land and

entered into a Joint Development Agreement (JDA) on 01.05.2007. The copy of the Joint Development Agreement between the plaintiff and the defendant no. 3 has been placed on record as Exhibit PW- 1/9.

6. According to the JDA dated 01.05.2007 entered into by the parties, it was agreed that defendant no. 3 shall provide the land measuring 5.13125 acres, situated in Village Chouma, Sector- 112, Gurgaon, Haryana, which shall be free from all encumbrances, suitable and ready for the purpose of development by the plaintiff company. Plaintiff paid an advance of Rs. 53,60,88,660/- to defendant no. 3 on various dates. The plaintiff contends that according to the terms agreed in the JDA, defendant no. 3 shall also obtain and ensure all necessary permissions for the change of land use from the appropriate governmental authorities. Further it was agreed that development related sanctions shall be obtained by the plaintiff.

7. The plaintiff contends that since 2007 up till their removal on 15.02.2011, defendant no. 1 and 2 along with Mr. J. N. Gupta had been in charge of the affairs of defendant no. 3 till 15.02.2011. It is the contention of the plaintiff that the defendant no. 1 and 2 during their tenure as directors did not provide the plaintiff concern complete information and documents relating to the business operations and affairs of the plaintiff and defendant no. 3. On persistence, the JDA was provided to the plaintiff.

8. Subsequently Mr. Suneet Puri was appointed as a Director of the Plaintiff in March 2010 while Mr. Deepak Mawandia was appointed

as Additional Director of defendant No.3 vide resolution dated 14.6.2010.

9. Further, the minutes of the meeting dated 14.06.2010 were provided according to which responsibility of filing the necessary documents with the Registrar of Companies were given to defendant no. 1 and 2. It is the contention of the plaintiff, that defendant no. 1 and 2 did not fulfil their necessary obligations of filing the documents including Form 32, therefore, plaintiff issued a notice dated 19.10.2010 calling upon the directors to do the necessary compliances as mentioned in para 5 (v) of the plaint. In the reply to the said notice, defendant no. 1 and 2 blamed Mr. J. N. Gupta to be the reason for non- compliance saying that he was in possession of the relevant documents.

10. It is the contention of the plaintiff that they received a special notice dated 27.10.2010 from its shareholders for removal of Defendant no. 1 as its Director. Further, a notice dated 03.11.2010 was issued to the defendant no. 1 calling for a meeting to be held on 08.11.2010 with the Agenda of the meeting being his removal. Defendant no. 1 failed to attend the said meeting. Pursuant to the Board Meeting dated 08.11.2010 the plaintiff contends that the defendant no. 1 was informed by a notice dated 09.11.2010 that the resolution for removal of Defendant no. 1 as Director from the plaintiff company shall be taken up in the Extra Ordinary General Meeting of the members of the plaintiff company to be held on 06.12.2010. An Original copy of notice issued by the plaintiff to hold the EGM of its members on 06.12.2010 alongwith explanatory notes with the postal receipts is

placed on record as Exhibit PW- 1/19. It is further contended that defendant no. 1 absented himself in this meeting as well. It is contended by the plaintiff that the defendant no. 1 was removed from the Board of Directors of the plaintiff company on 06.12. 2010.

11. Defendant No.3 issued a notice dated 9.11.2010 for holding the Board Meeting of defendant No.3 company on 11.11.2010.

12. Defendant no. 1 in their reply dated 11.11.2010 to the notice issued by the plaintiff questioned the appointment of the newly appointed additional directors on the Board of Defendant no. 3. It is contended by the plaintiff that the defendant no. 1 questioned the said newly made appointments only after acquiring knowledge that the process for removal of defendant no. 1 has been initiated by the plaintiff company.

13. It is the contention of the plaintiff that the objections in the above letter dated 11.11.2010 were raised malafidely only as an afterthought and as a counter blast after knowing that shareholders seek removal of defendant no. 1 as Director of plaintiff. Plaintiff replied to the said letter on 23.11.2010. Defendant no. 3 also replied to the wrongful allegations of defendant no. 1 and 2 vide letters dated 23.11.2010 and 24.11.2010.

14. It is the contention of the plaintiff that the plaintiff received a letter dated 18.11.2010 on 23.11.2010 issued on behalf of defendant no. 3, wherein it stated that Defendant no. 1 sought to terminate the Joint Development Agreement (JDA) between Defendant no. 3 and the

plaintiff concern dated 11.05.2007. The plaintiff mentions here that as per the records, plaintiff and defendant no. 3 had entered into a JDA dated 01.05.2007 and not 11.05.2007. The plaintiff thus contended that the breach of obligations as alleged in the said termination letter could not be co-related with the obligations under the corresponding clauses in the JDA dated 01.05.2007. It is stated that both the plaintiff and defendant no. 3 have refuted the alleged termination of the JDA.

15. Hence, the present Suit has been filed by the plaintiff to declare the said letter dated 18.11.2010 issued by defendant No.1 purportedly on behalf of defendant No.3 as illegal, void, ab initio and of no consequences whatsoever. Other similar reliefs were sought pertaining to the said letter dated 18.11.2010.

16. Mr. Suneet Puri has led evidence on behalf of plaintiff as PW1. He has pointed out that during the pendency of the present Suit the name of the plaintiff company has changed from Gold Developers Private Limited to Experion Developers Private Limited. The Memorandum and Articles of Association of the plaintiff company have been placed on record as Ex.PW1/3. He has also averred that Mr. Gaurav Maheshwari and Mr. Arun Tiku were appointed as Directors of defendant No.3 in the EGM of defendant No.3 held on 15.2.2011 and at that time the persons who were appointed as Directors of defendant No.3 are Mr.Suneet Puri, Mr.Deepak Mawandia and Mr.Gaurav Maheshwari. A copy of the Annual Report of defendant No.3 showing the present shareholding and Directors is exhibited as Ex.PW1/6. It is further averred in the evidence that the letter issued

by defendants No.1 and 2 dated 18.11.2010 seeking to terminate the Joint Development Agreement dated 11.5.2007 is illegal and it is only a counterblast to the effect that defendant No.1 has been removed as a Director of the plaintiff. It is pointed out that the alleged communication terminating the Joint Development Agreement does not have the mandate either of the Board of Directors or shareholders of defendant No.3 Company. The said termination letter has been issued by defendants No.1 and 2 on their own without any validity whatsoever. Hence, it is stated that the said letter is illegal and void. Plaintiff holds 100% share in defendant No.3 Company. It is pointed out that a large sum has been expended by plaintiff in the Joint Development Agreement being the amount towards development of the land measuring 16.28 acres.

17. A perusal of the above facts would show that defendants No.1 and 2 have acted without any authority of the Board of Directors of defendant No.3. This averment which is made by the plaintiff is again rebutted by defendants No.1 and 2 as defendants No.1 and 2 have no authority to act beyond their power to terminate the Agreement dated 11.5.2007. The plaintiff is hence entitled to the relief that the plaintiff has sought.

18. In view of the above, a decree of declaration is passed that letter dated 18.11.2010 issued by defendant No.1 is illegal and void and has no consequence. A decree of permanent injunction is also passed in favour of the plaintiff and against defendants No.1 and 2 restraining

them to give effect to the said letter dated 18.11.2010. A decree of permanent injunction is also passed in favour of the plaintiff and against defendants No.1 and 2 restraining them from dealing/ negotiating and/or entering into any transaction relating to the property which is subject matter of the Joint Development Agreement dated 11.5.2007. No order as to costs.

JAYANT NATH, J

OCTOBER 24, 2013
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