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

+ O.M.P.(I) (COMM.) 330/2018

GLOBAL BUILDWELL

..... Petitioner

Through: Mr.Ankit Jain, Mr.Aniket Jain, Advs.

versus

PUSHPA JAIN

..... Respondent

Through: Mr.H.S.Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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28.01.2019

1. This petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner *inter alia* praying for the following reliefs:

“Pass an order injuncting the Respondent from alienating or creating any third-party rights/interests in the 3rd floor, roof rights and half stilt parking of the building situated at UP-88, Pitampura, Delhi-110034.”

2. It is the case of the petitioner that the respondent had entered into a “Collaboration and Joint Venture Agreement” dated 03.07.2015 with M/s Global Buildwell, a partnership firm of which Mr.Sarthak Gupta was a partner along with Mr.Dhruav Kumar Goel and Mr.Prabhu Dayal Sharma. Mr.Prabhu Dayal Sharma, has authorized Mr.Sarthak Gupta to file the present petition on behalf of the partnership firm. It is further asserted that Mr.Dhruav Kumar Goel has since retired from partnership.

3. The petitioner asserts that the partnership firm has 50% share in the third floor of the property being UP-88 situated at Pitampura, 110034, which was the subject matter of the Collaboration Agreement.

4. It is further asserted that in terms of Clause 4(e) neither party can enter into any kind of Sale Agreement or accept earnest money for the portion of the third floor with roof right without the permission of the other party. In spite of this stipulation, the petitioner has learnt that the respondent is intending to enter into a sale transaction with a third party thereby depriving the petitioner of its rights under the Collaboration Agreement.

5. Counsel for the respondent submits that the Collaboration Agreement filed along with the petition is not the true copy of the original. He submits that the original Collaboration Agreement was not signed by Mr.Sarthak Gupta but was signed by Mr.Dhruav Kumar Goel. He further submits that in paragraph in recital 6 of the Collaboration Agreement, a handwritten note has been added to the Collaboration Agreement.

6. Counsel for the petitioner refutes the above submissions. He submits that Mr.Sarthak Gupta had also signed the Agreement at the time of its execution though a copy of the same given to the respondent may not be bearing his signatures. Further, he has placed on record the copy of the Partnership Deed showing Mr.Sarthak Gupta as a equal partner in M/s Global Buildwell, as also the Retirement Deed whereby Mr.Dhruav Kumar Goel had retired from the partnership business. The petitioner had also filed certain additional documents which are not on record, and has handed over a copy of the same during the course of hearing. These *inter alia* include a copy of the Retirement Deed as also a Sale Deed executed by the respondent with respect to the second floor of the property.

The said Sale Deed has been witnessed by Mr.Sarthak Gupta.

7. Having perused the said documents, in my opinion, Mr.Sarthak Gupta has been able to *prima facie* establish that he is a partner in the partnership firm named M/s Global Buildwell. In any case, the respondent does not deny the Collaboration Agreement with M/s Global Buildwell, which was described as a partnership firm. Whether Mr.Sarthak Gupta can validly represent the partnership firm would be an issue to be determined by the Arbitral Tribunal.

8. In view of the above, the petitioner has also been able to make out a *prima facie* case in its favour.

9. Interim order dated 17.08.2018 is directed to continue for a further period of four weeks and shall be subject to other and further orders being passed by the Arbitrator that may be appointed to adjudicate the disputes between the parties.

10. The Arbitrator shall be free to vacate/modify the interim order so passed above upon hearing the parties on an appropriate application being moved by either party before him.

11. I may note that the petitioner contends that it has already filed an application under Section 11 of the Act seeking appointment of an Arbitrator. The petitioner shall give an intimation of the date of listing of such application to the counsel for the respondent as also to the respondent personally.

12. The petition is allowed in the above terms with no order as to costs.

NAVIN CHAWLA, J

JANUARY 28, 2019/RN