
(2016) 05 DEL CK 0236

DELHI HIGH COURT

Case No: CS(COMM) No. 379 of 2016 and I.A. No. 4768 of 2016

Mr Sanjay Gambhir

APPELLANT

Vs

M/s Beekman Helix
India Consulting Pvt Ltd

RESPONDENT

Date of Decision: May 4, 2016

Citation: (2016) 8 ADDelhi 287

Hon'ble Judges: Mr. Vipin Sanghi, J.

Bench: Single Bench

Advocate: Mr. Mohit Chaudhary and Ms. Damini Chawla, Advocates, for the Plaintiffs

Final Decision: Dismissed

Judgement

Mr. Vipin Sanghi, J.—The plaintiffs have filed the present suit to claim the following reliefs:

"A. Pass decree of permanent and mandatory injunction restraining defendant No. 5 through itself or through any other defendant from selling/transferring/alienating/mortgaging/ changing the nature of and/or creating any third party interest in respect of properties belonging to defendant No. 5 company at Sector 77, Faridabad, Haryana, and/or;

B. Pass decree of permanent and mandatory injunction restraining defendant No. 5 from altering the shareholding pattern of the company in any form and manner; and/or;

C. Pass decree of permanent and mandatory injunction restraining defendant No. 3 from selling/transferring/ alienating/mortgaging and/or creating any third party interest in respect of the shares of defendant No. 5 company held in its name; and/or ;

D. Pass a decree of declaration that share purchase agreement dated 15.02.2010, and all related transactions between the defendants with regard to the shares of DD Housing Limited as illegal, being void, non effective, honest, and nullity and further holding that

any subsequent transfer thereof is nullity in law and cancel the same; and/or;

E. Pass a decree of declaration that passing of resolution dated 15.02.2010 effecting change in registered office of company from Okhla to Malviya Nagar address is illegal, nonest, void ab-initio and nullity and cancel the same; Further cancel resolution dated 06.10.2010, where the address of company is changed from Malviya Nagar to M-11 Connaught Circus, and/or

F. Pass a decree of declaration that issuance of 5000 Nos of debentures on 26.02.2010, in favour of defendant No. 4 is illegal, nonest, void ab-initio and nullity and cancel the same; and/or

G. Pass a decree of declaration that plaintiffs are entitled to the percentage of their shareholdings as it existed prior to 15.02.2010, more particularly shown in Annual Return pursuant to AGM of September 2009; and/or

H. Pass a decree of declaration that the transfer of shares (originally belonging to the plaintiffs) from defendant No. 1 to defendant No. 3 on 28.09.2010, is illegal, nonest, void ab-initio and nullity in law and cancel the same; and/or

I. Pass a decree of declaration that increase made in authorised capital of the company from 6 crores to 15 crores vide resolution dated 03.09.2010, is illegal, nonest, void ab initio and nullity and further holding that any subsequent allotment thereof is nullity in law and cancel the same; and/or

J. Pass a decree of declaration that issuance of further share in terms of Section 81(1) of the Companies Act and allotment thereof in favour of defendant No. 3 being 22,67,215 number of shares, is illegal, nonest, void ab-initio and nullity in law and cancel the same; and/or

K. Pass a decree of declaration declaring the alleged undertakings dated 02.03.2010 to be bad in law and being noneffective and cancel the same; and/or

L. Declare agreement and documents detailed out at para No. 21 all dated 16.02.2011, being illegal, nonest, void ab-initio and nullity in law as the same is without consideration and is in violation of law and cancel the same; and/or

M. Declare agreement and documents detailed out at para No. 21 all dated 16.02.2011, being obtained by fraud, coercion and undue-influence being non effective in the eyes of law and being illegal, nonest, void ab-initio and nullity in law and cancel the same; and/or

N. Declare agreement and documents detailed out at para No. 21 all dated 16.02.2011, are not binding documents due to breach by the defendants, thus being non effective in the eyes of law and being illegal, nonest, void ab-initio and nullity in law and cancel the same; and/or

O. Pass a decree in favour of plaintiff(s) and against defendant No. 1, 2, 3 and 5 commanding them to render true and proper accounts of the money received from the transfer of shares belonging to the plaintiffs and further with regards to the accounts of the company along with the details of transaction(s) if any entered into by and on behalf of company, and/or;

P. Pass a decree of damages, for a sum of Rs. 2 crores in favour of plaintiff(s) and against defendants, and/or;"

(Emphasis supplied)

2. There are four plaintiffs in the suit, namely Mr. Sanjay Gambhir (plaintiff No. 1), Mr. Karan Gambhir (plaintiff No. 2), Mr. Kanishraaj Gambhir (plaintiff No. 3) and M/s D.D. Township Limited (plaintiff No. 4), now known as D.D. Global Capital Pvt. Ltd. ि ½ a company incorporated under the Companies Act, 1956.

3. The defendants in the suit are:

(i) M/s Beekman Helix India Consulting Private Limited (defendant No. 1);

(ii) Mr. Manish Parwani (defendant No. 2);

(iii) M/s Rose Infracon Private Limited (defendant No. 3);

(iv) M/s TMW ASPF I Cyprus Holding Company Limited (defendant No. 4);

(v) M/s D.D. Housing Limited (defendant No. 5);

(vi) Director, Town & Country Planning, Haryana (defendant No. 6); and

(vii) Mr. Kabul Chawla (defendant No. 7).

4. The gist of the background facts in which the present suit has been filed, as narrated by the plaintiffs in the plaint, is as follows.

5. The plaintiffs No. 1 to 3 are the family members and original promoters and shareholders of defendant No. 5/M/s D.D. Housing Limited (DDHL), which was incorporated in 2006 to undertake development of an integrated township project spread over an area of 150 Acres of land in Sector-77, Faridabad. The name of defendant No. 5 now stands changed to M/s BPTP Parkland Pride Limited.

6. The plaintiffs claim that they appointed defendants No. 1 & 2 as the sole and exclusive intermediary and advisor to render services for raising funds for the integrated township project initiated by them in August 2006. Defendant No. 1, acting through defendant No. 2, started negotiating with the plaintiffs on behalf of the foreign investors and required the plaintiffs to sign a mandate agreement. The mandate agreement entered into between

Mr. Sanjay Gambhir (plaintiff No. 1) and M/s Beekman Helix India Consulting Private Limited (defendant No. 1) has been filed on record. The plaintiff No. 1 signed the same as the Managing Director of M/s D.D. Housing Limited (defendant No. 5) on 23.08.2006, even though defendant No. 5 was incorporated as a company only in September 2006. This mandate agreement obliged the promoters of DDHL to undertake several obligations, such as execution of a "Call Option Agreement" to pledge the shares of the promoters of DDHL in favour of defendant No. 1 by executing a Share Pledge Agreement (SPA), and; to cooperate with defendant No. 1 to provide defendant No. 1 with all information necessary for defendant No. 1 to render its services. The plaintiffs state that the mandate letter dated 23.08.2006 was executed to safeguard the material interest of the plaintiffs and of the foreign investors, who proposed to make investment in DDHL in the form of mandatory and automatically fully convertible debentures.

7. The plaintiffs state that a foreign investor TMW and defendant No. 4 agreed to make investment in DDHL by subscribing to mandatory and automatically fully convertible debentures (FCD) equivalent to Rs. 1,12,50,00,000/- with a coupon rate of 4% per annum in terms of the Debenture Subscription Agreement (DSA) dated 16.10.2006 entered into between TMW (defendant No. 4) and DDHL (defendant No. 5).

8. The plaintiffs state that they and other promoters of defendant No. 5 entered into with the foreign investors the DSA and the Share Holders Agreement (SHA) in pursuance of the aforesaid transaction on 16.10.2006. Under this agreement, upon conversion into equity shares, the foreign investors were to hold 63% of the fully paid up equity capital of defendant No. 5.

9. The plaintiffs state that after the execution of the DSA and SHA dated 16.10.2006, the plaintiffs executed a Call Option Agreement, a deed of pledge and a power of attorney in favour of the defendant. They claim that it was represented to them that the said documents would not be acted upon by the defendant No. 1, and the same was a mere formality for the purpose of release of the first tranche of investment in favour of the defendant No. 5, and for mental satisfaction of the foreign investors. The Call Option Agreement as executed on 18/19.10.2006 in favour of the defendant No. 1, and the Share Pledge Agreement and irrevocable power of attorney were similarly executed on 19.10.2006 by the plaintiffs and other promoters of defendant No. 5. The plaintiffs state that the first tranche of investment of Rs. 76,50,00,000.00 was received by defendant No. 5 on 23.10.2006 from TMW, and the second tranche of Rs. 36,00,00,000.00 was received by defendant No. 5 on 03.03.2007.

10. The plaintiffs state that they entered into a further supplementary DSA on 07.08.2008 vide which TMW invested additional funds of Rs. 11,82,00,000/- in defendant No. 5 and TMW was issued additional fully convertible debentures in terms of the DSA dated 16.10.2006. It was agreed that upon conversion of all the debentures, the same shall constitute 74.99% of the fully paid up equity shares of defendant No. 5. The plaintiffs stated that the date for automatic conversion of fully convertible debentures was initially

22.08.2009, which was extended to 21.11.2009 vide a second amendment agreement dated 20.08.2009 between defendant No. 5 and TMW. The plaintiffs state that defendants No. 1 & 2 made the plaintiffs sign amendments to the Call Option Agreement with a mala fide intent to bring the call option price to a negligible amount of Rs. 100/-. The plaintiffs state that the defendants "forced upon the plaintiffs to execute restated Call Option Agreement dated 18.06.2009 in order to reduce the call option price to Rs.100/- only". The plaintiffs further state that "the defendant after the first call option agreement dated 18/19.10.2006 subsequently coerced upon the plaintiffs to sign various amendments to the call option agreements, deeds of pledge and power of attorney".

11. The plaintiffs state that on 29.01.2010, defendant No. 1 issued a default notice to the plaintiffs on behalf of defendant No. 4/TMW i.e. the foreign investor, alleging default in payment of coupon rate of 4% per annum. On 06.02.2010, a call option notice was issued by defendant No. 1 stating that the call option event had taken place, namely the default in payment of interest at the coupon rate.

12. The plaintiffs claim that defendant No. 2 abused his fiduciary position and his close relationship with the plaintiffs and their family members to get a large number of documents signed from plaintiff No. 1, which were not given to him.

13. The plaintiffs state that defendant No. 1, under instructions from defendant No. 2, acted upon the documents executed by the plaintiffs, the result of which was that the entire shareholding of the plaintiffs/promoters in defendant No. 5 was transferred without any valid consideration. In furtherance of call option notice, on 15.02.2010, defendant No. 1 illegally transferred the entire shareholding of the plaintiffs to itself for a consideration of a paltry amount of Rs. 100/-. The power of attorney issued by the plaintiffs was allegedly misused by defendants No. 1 & 2. On the same day, i.e. 15.02.2010, a Share Purchase Agreement was entered for Rs. 100/- on behalf of the plaintiffs by the attorney. The said transactions of the year 2010 are sought to be challenged in the present suit, as noticed here in above.

14. The plaintiffs state that they are putting to challenge "the entire transaction in 2010" in the present suit on the ground of "large scale fraud" led by the defendants (presumably by defendants No. 1 & 2) on its principals, i.e. the plaintiffs. The plaintiffs state that after acquiring their 100% shares in defendant No. 5, the defendants got the title of the lands transferred in the name of defendant No. 5 in connivance with defendant No. 6, namely, the Director, Town & Country Planning, Haryana. The plaintiffs claim that the defendants No. 1 & 2 illegally got the sale deeds registered in favour of the defendant No. 5 in respect of the land on the basis of revoked power of attorneys. The plaintiffs state that in February 2011 they "were compelled to sign a set of documents in which a second sale deed with respect to the land in question was made to be executed under fraud and coercion by the defendants whereby the illegal sale deed(s) dated 22.12.2010 were reinforced".

15. The plaintiffs state that the defendants created liability over defendant No. 5 by issuing further debentures of Rs. 22.5 Crores of defendant No. 5. On 22.11.2010, an FIR No. 645/2010 was registered before P.S. Faridabad Central against plaintiff No. 1 and his associates, including all the Directors of plaintiff No. 4, M/s Forging Ltd., D.D. Auto Private Ltd. and M/s Daulat Ram Dharambir Auto Pvt. Ltd. The defendants took, inter alia, the following steps after the alleged illegal transfer of shareholding of the plaintiffs to defendant No. 1 in the defendant No. 5 company:

"(a) Change in registered office of company from Okhla to Malviya Nagar by passing the resolution dated 15.02.2010.

(b) Transfer of shares from defendant No. 1 to defendant No. 3 for a consideration of Rs. 2.23 Crores on 27.09.2010.

(c) Increase was made in authorised capital of the company from 6 crores to 15 crores vide resolution dated 03.09.2010. Here it is relevant to note that shareholding of the plaintiffs (illegally transferred) was misused to vote on such resolution.

(d) Transfer of 6 number of shares from Defendant No. 3 to own proxies namely Ms. Sonia Bali, Mr. Anant Sutoo, Mr. Ajay Kumar Takru, Mr. Deepal Prasad, Ms. Sarita Bist and Mr. Vivek Seth."

(emphasis supplied)

16. It is claimed that these acts were "done by the defendants No. 2 & 7 as an act to reap benefit of fraud by increasing the number of their proxies in the shareholders list". The defendants state that further allotment of shares was made in favour of defendant No. 3 of 22,67,215 shares in defendant No. 5 company. The registered office of defendant No. 5 company was shifted from Malviya Nagar to M-11, Connaught Place vide resolution dated 06.10.2010.

17. The plaintiffs state under the heading "Documentation of 2011" from paragraph 20 onwards of the plaint, that defendant No. 2 with active connivance of defendants No. 7 made plaintiff No. 1 to sign a large number of documents, which included a back dated letter dated 02.03.2010 ratifying the alleged illegal takeover of shares of the plaintiffs vide a Share Purchase Agreement and all actions of defendant No. 1 taken under the Call Option Agreements/power of attorneys and deeds of pledge.

18. The plaintiffs state that a back letter dated 02.03.2010 was taken to the effect that the management has handed over the original records to the defendant No. 1. The plaintiffs state that the documents were handed over after putting signatures "as the plaintiffs wanted to buy peace and there was a constant threat and police pressure upon the family of plaintiff No. 1 due to illegal criminal complaints that defendant No. 2, defendant No. 7 and the other promoters of defendant No. 3 company got registered against the plaintiff".

19. The plaintiffs state that "by playing fraud on the plaintiffs and under the garb of taking care of the entire liability of the refund to the investors, plaintiffs were made to sign 2011 documents". The particulars and date of the documents disclosed by the plaintiffs, which they had executed in 2011, have been set out in paragraph 21 and the same reads as follows:

	Particulars	Date	Remarks
i.	Irrevocable Power of Attorney (Already revoked vide Letter dated 31.05.2014)	15.02.2011 Though signed on 16.02.2011 but was an antedated to 15.02.2011	- Appointing Defendant No. 5 as lawful Attorney to represent/act on behalf of Plaintiff No. 4 before Defendant No. 6, HUDA etc. with respect to license/permission not limited to License No. 30 dated 01.04.2010. - Acknowledgement that land in question is solely owned by Defendant No. 5. ? Authorization given on 18.06.2009 by New Age to Plaintiff No. 4 withdrawn.

ii.	Non Compete Agreement The said Agreement is without any consideration and is hit by Section 27 of the Indian Contract Act. Further, the said Agreement has not been acted upon by the parties namely the signatories, therefore is not enforceable. Further, an alleged understanding is breached by the Defendants themselves.	16.02.2011	• Plaintiffs to provide all necessary assistance to Defendant No. 5. for its operations and shall also comply with certain non-compete. • Company to pay compensation. • Cl. 2.1: Non-compete clause. ? Clause 2.2: Compensation • Cl. 4.2.8, 4.2.9 & 4.2.10-are factually incorrect
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iii.	Payment Mechanism Agreement No consideration. Not related to Plaintiffs as no payment is being paid through the Plaintiffs as the plaintiffs are being used to launder the burden of old customer of Project at Sector 77, Faridabad, Haryana. The said ratification is signed under coercion and duress and the same is without consideration. Further, an illegal act cannot be ratified in the manner adopted.	16.02.2011	• Clause 2 provides for Mechanism • Schedule I provides for details of payments and refund amounts.
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iv.	Ratification by Plaintiff No. 1 The said ratification is signed under coercion and duress and the same is without consideration. An illegal act cannot be ratified in the manner adopted.	16.02.2011	- Confirmed execution of Call Option Agreements along with amendments, Pledge, Power of Attorney whereby Defendant No. 1 was appointed as lawful attorney, - Further confirmed the termination of Shareholders Agreement dated 16.10.2006 with effect from 15.02.2010. - Further acknowledged that consideration received for sale of shares, same adequate.
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v.	Confirmation of cancellation of call option rights by Plaintiff No. 1 on behalf of Plaintiff No. 4. The said confirmation is signed under coercion and duress and the same is without consideration. An illegal act cannot be ratified in the manner adopted.	16.02.2011	• Not to exercise any call option/buy back/purchase rights with respect to securities of Company under: a. Shareholders Agreement dated 16.10.2006 b. Ratification Letters dated 02.03.2010 • Acknowledgement to the effect that Shareholders Agreement & letter stands terminated. • Acknowledgement as to transfer of shares from Defendant No. 1 to Defendant No. 3.
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vi.	Undertaking to the effect that neither Plaintiff No. 1 nor Promoter Companies hold any original documents in respect of property (as defined in Assignment Deed dated 19.05.2008)	Undated	Undertaking indemnifying Defendant No. 5 for any losses and damages that may be suffered by Defendant No. 5 on account of breach of present undertaking.
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vii.	Confirmation with respect to collaboration Agreement The said confirmation is signed under coercion and duress and the same is without consideration. An illegal act cannot be ratified in the manner adopted.	16.02.2011	Acknowledgement given to the effect that: • Apart from Collaboration Agreement(s) dated 08.05.2008 between Land Owning Companies & D.D. Township and Assignment Deed dated 19.05.2008 between DD Township & Land Owning Companies; no other agreement creating third party interest has been entered into w.r.t. Land in question. • Collaboration Agreement constitutes a valid and legally binding obligation of DD Township. • All the rights pertaining to land under Collaboration Agreement validly transferred to DD Township. • Vide Assignment Deed rights in land transferred to DD Housing.
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viii.	Confirmation with respect to collaboration Agreement 6 similar acknowledgement(s) by Land Owning Companies.	16.02.2011	Acknowledging Rights of DDHL (not limited to Development rights) w.r.t. land in question and that License to be transferred in its name.
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ix.	Confirmation of Sale and transfer of 14,50,000 equity shares of the DDHL by Plaintiff No. 4 and cessation of all rights in company. Similar letter (s) confirming/ratifying illegal acts (sale of shares by execution of Shareholders Agreement dated 15.02.2010) done pursuant to misusing of Power of Attorney dated 19.10.2006 given by: a. Sanjay Gambhir (20,100 equity shares) b. Kanish Raaj Gambhir (8000 equity shares) c. Karan Gambhir (10,000 equity shares)	16.02.2011	Ratification of execution of SHA dated 16.10.2006 (with amendments), Call Option Agreement dated 16.10.2006, Deed of Pledge and its termination w.e.f. 15.02.2010 and SHA dated 15.02.2010 by Defendant No. 1 on behalf of plaintiff No. 1.
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x.	Letter to DTCP withdrawing complaint(s) dated 26.08.2010 & 26.10.2010	16.02.2011	The said Complaints were with regard to illegal transfer of license No. 30 of 2010 to Defendant No. 5
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xi.	Deed of Settlement	16.02.2011 There are two identically worded Deed of Settlement one is shown to bear the date of 11.03.2011 and another one of 16.02.2011. In fact both the documents were signed on 16.02.2011, but for the reasons known to Defendant No. 7 one of it is ante-dated.	Plaintiff No. 1 was made to sign the said documents under coercion and undue influence by Defendant Nos. 2 & 7. Vide the Settlement Agreement, Defendant No. 5 agreed to withdraw all the civil suits filed against Plaintiff No. 4 & Promoter Group Companies. Defendant No. 7 and 3 in name of Defendant No. 5 further promised to withdraw illegal and frivolous complaint under FIR No. 645/2010 lodged before PS Faridabad Central.
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20. Thus, the effect of execution of the "Documentation of 2011", undeniably, was to settle all possible disputes and claims that the plaintiffs may have had in respect of the earlier documents executed between the parties and the conduct of the parties.

21. In paragraph 22(ii), the plaintiffs state that they became aware of the illegal and mala fide intentions of defendants No. 2 & 7 when they got complaints against the plaintiffs and former promoters and Directors before the Economic Offences Wing (EOW) of Delhi Police and F.I.R. No. 43/2011 was registered against the plaintiff No. 1, Mrs. Reena Gambhir along with her wife, and the Directors of plaintiff No. 4. The plaintiffs state that in September 2011, one of the Directors of plaintiff No. 4 Mr. Tarun Kumar was arrested by the EOW in the afore stated F.I.R. The plaintiffs state that "it was at this juncture, that the plaintiffs became aware of the large scale fraud played on them by the defendants when it came to their knowledge that defendants have even failed to honor their commitments under the "2011 agreements" and making plaintiffs to sign "2011 set of documents" was an act of fraud".

22. In paragraph 24 of the plaint under the heading "Disputes Arose Between The Parties", the plaintiffs state that plaintiff No. 1 sent an e-mail dated 01.12.2011 requesting defendant No. 5 to pay to them an amount of Rs. 39 Crores payable under the non-compete agreement dated 16.02.2011. It is stated that "However, to the utter disbelief and shock of the plaintiffs, the defendant No. 5 in order to escape from their liability of refunding the money of the customers refused to reimburse and pay the amount due to be paid to the plaintiff No. 4". In this regard, letters dated 01.12.2011 and 29.12.2011 of the defendants have been placed on record.

23. The plaintiffs state that "In view of the above, dispute(s) arose between the parties and on 19.12.2011, a notice invoking arbitration clause was served for adjudication of disputes". The plaintiffs state that since no arbitrator was appointed, an arbitration petition under Section 11 of the Arbitration & Conciliation Act, 1996 was preferred "by the plaintiffs herein before this Hon'ble Court". The same was got registered as Arb. Pet. No. 113/2012. The plaintiffs state that in the said petition, they "were seeking appointment of arbitrator for adjudication of disputes between the parties". The said arbitration petition was dismissed on 22.05.2015 holding that no arbitrable dispute survives between the parties. Consequently, the present suit had been filed by the plaintiffs.

24. The averment against defendant No. 6 is that the said defendant acted in connivance with defendant No. 7. On 17.11.2011, defendant No. 6 on the basis of the "fraudulent documentation of 2011" transferred the License No. 30/2010 in favour of the defendant No. 5. The plaintiffs state that despite defendant No. 6 being put to notice on 10.08.2012 regarding non-fulfilment of undertaking dated 20.06.2011, no action was taken.

25. The plaintiffs allege breach of trust/fraud/coercion at the hands of the defendants, including defendants No. 2 & 7 in paragraph 26 of the plaint. Under the said heading, the plaintiffs have referred to acts and events which were taken and which transpired in 2011.

26. In paragraph 29 of the plaint, the plaintiffs have set out the cause of action in the following terms:

"29. Cause of Action:

It is humbly submitted that there is a continuous cause of action in hands of Plaintiff against the defendants, lastly it arose on 05.02.2016, when the order was passed by the office of Defendant No. 6 relying upon the documentation of 2011, and the status quo order dated 14.08.15 came to be vacated.

Prior to this date the cause of action arose on 22.05.2015, when an order was passed by this Court in Section 11 petition, where arbitrator was sought to be appointed at instance of Plaintiffs, where relying upon 2011 documentation, court took the view that there exists no arbitrable dispute between the parties.

Prior to this date the cause of action arose on 16.02.2011 (on which date another set of documents were being made to sign) and on 15.02.2010 (on which date the documents impugned were illegally misused to transfer the shares of the Plaintiffs). All the actions of 15.02.2010 and 16.02.2011 culminated into a Notice u/s 21 of the Arbitration Act dated 19.12.2011.

From 19.12.2011 plaintiffs were in court (i.e. in the proceedings u/s 11 of the Arbitration Act) and remained there till 22.05.2015, on which date Arbitration Petition No. 113 of 2012 came to be dismissed.

As the transaction of shares with Defendant No. 3 which connects the entire thread, was received by the Plaintiffs for the first time on 09.03.2015 i.e. upon receiving the copy of Charge-sheet in the FIR No. 645/2011, PS Faridabad Central."

(Emphasis supplied)

27. In paragraph 31, the plaintiffs have pleaded on the issue of limitation in the following manner:

"31. Limitation:

It is humbly submitted that suit is within limitation as the cause of action arose in plaintiffs favor on 05.02.2016, when the order was passed by the office of Defendant No. 6 relying upon the documentation of 2011, and the status quo order dated 14.08.15 came to be vacated.

Prior to this date the cause of action arose on 22.05.2015, when an order was passed by this Court in Section 11 petition, where arbitrator was sought to be appointed at instance of Plaintiffs, where relying upon 2011 documentation, court took the view that there exists no arbitrable dispute between the parties. Thus, the Plaintiffs have no option but to prefer

the present suit humbly seeking for the prayers sought herein after. In terms of Section 14 of the Limitation Act, plaintiffs are entitled to get exclusion of time from the date of sending of Notice u/s 21 of the Arbitration Act till the disposal of the Petition i.e. till 22.05.2015.

From 16.02.2011 (on which date another set of documents were being made to sign) and even from 15.02.2010 (on which date the documents impugned were illegally misused to transfer the shares of the Plaintiffs), the Suit plaint is in limitation as these actions culminated into a Notice u/s 21 of the Arbitration Act dated 19.12.2011. From 19.12.2011 plaintiffs were in court (i.e. in the proceedings u/s 11 of the Arbitration Act) and remained there till 22.05.2015, on which date Arbitration Petition No. 113 of 2012 came to be dismissed.

As the transaction of shares with Defendant No. 3 which connects the entire thread, was received by the Plaintiffs for the first time on 09.03.2015 i.e. upon receiving the copy of Charge-sheet in the FIR No. 645/2011, PS Faridabad Central. Thus, the suit is within limitation."

28. From the above narration of the pleadings as well as on a perusal of the reliefs sought in the plaint, it would be seen that the transaction in respect whereof the plaintiffs seek reliefs of declaration and injunction date back to 2006 when the mandate agreement was entered into on 23.08.2006 (that too only between plaintiff No. 1 Sanjay Gambhir and defendant No. 1 Beekman Helix India Consulting Pvt. Ltd). As noticed herein above, plaintiff No. 1 had signed this agreement "for and behalf of the DD Housing Limited" by showing plaintiff No. 1 as the "Managing Director", even though on the said date of execution of this mandate letter, i.e. 23.08.2006, DD Housing Limited $\frac{1}{2}$ defendant No. 5 had not been incorporated and registered as a company under the Companies Act, 1956. This mandate letter $\frac{1}{2}$ subject matter whereof was "in relation to the identifying potential investors to invest into instruments issued by the Special Purpose Vehicle (SPV) proposed" to be set up by plaintiff No. 1 Sanjay Gambhir, contain an arbitration agreement, which inter alia, provided that "any dispute, controversy or claim arising out of or relating to this mandate letter or any related agreement or other document or the validity, interpretation, breach, or termination thereof ("dispute"), including claims seeking restraints or ascertaining rights under applicable law, shall, be resolved and finally settled in accordance with the provisions of the Indian Arbitration & Conciliation Act, 1996 as may be amended from time to time or its reenactment (the "Arbitration Act")".

29. Being conscious of the aforesaid position, the plaintiffs herein filed Arbitration Petition No. 113/2012 sometime around 03.03.2012 under Section 11 of the Arbitration & Conciliation Act, 1996 for appointment of an Arbitrator under the mandate letter dated 23.08.2006, impleading only defendant No. 1 M/s Beekman Helix India Consulting Pvt. Ltd as the party respondent. None of the other defendants to the present suit were parties to the said Arbitration Petition. This Arbitration Petition, i.e. Arbitration Petition No. 113/2012 was dismissed by this Court on 22.05.2015. While dismissing the petition, the

Court returned, inter alia, the following findings:

(i) Mr. Sanjay Gambhir could not have signed/accepted the contents of the mandate letter on behalf of an entity which was not in existence (this finding was returned in view of the fact that the plaintiff No. 1 Sanjay Gambhir sought to sign the mandate letter for and on behalf of the DD Housing Limited ½ Defendant No. 5 herein, which was not even incorporated under the Companies Act as on 23.08.2006).

(ii) The other petitioners, i.e. Mr. Karan Gambhir, Mr. Kanishraaj Gambhir and D.D. Global Capital Pvt. Ltd. (who are impleaded as plaintiffs No. 2 to 4 in the present suit as well) are not parties to the mandate letter dated 23.08.2006 and, thus, not party to the Arbitration Agreement contained therein.

(iii) The Call Option Agreement executed in pursuance of the mandate letter dated 23.08.2006 does not have an arbitration clause. However, the disputes between petitioner No. 1 Sanjay Gambhir, and the respondent in the Arbitration Petition M/s Beekman Helix India Consulting Private Limited ½ defendant No. 1 herein, were arbitrable in relation to the Call Option Agreement dated 18/19.10.2006.

(iv) The petitioner No. 1 Sanjay Gambhir having confirmed in writing of having received full and final settlement of all the claims, he has no outstanding claims and, as such, there are no arbitrable dispute(s) between petitioner No. 1 and the respondent, which could be referred to arbitration.

30. Since the defendants No. 2 to 7 had, in any event, not been impleaded in the said Arbitration Petition as party respondents ½ as they were, admittedly, not party to the mandate letter dated 23.08.2006, the plaintiffs were not prevented from initiating civil proceedings against them in respect of the cause of action claimed against them in the present suit. Similarly, since plaintiffs No. 2 to 4 were not parties to the mandate letter dated 23.08.2006, the question to be considered is, whether their filing the Arbitration Application would save their present action from the bar of limitation. The issue thus arises: whether the present suit filed by the plaintiffs against the defendants to seek reliefs, as aforesaid, is not barred by limitation, and lack of cause of action.

31. The purpose of setting out here in above the extracts from the pleadings made by the plaintiffs in their plaint is only to show that cause of action, if any, arose in favour of the plaintiffs in relation to the transactions and documents executed by them, and in relation to the alleged acts/omission and conduct of the defendants, on the dates of such transactions/acts/ omission and conduct.

32. The submission of Mr. Chaudhary, learned counsel for the plaintiff is that a Deed of settlement was entered into between:

New Age Town Planning Limited (formerly DD Housing Limited) i.e. defendant No. 5 and Rose Infracon Pvt. Ltd., i.e. defendant No. 3 on the one hand, and; DD Auto Pvt. Ltd., DD

Township Pvt. Ltd., i.e. plaintiff No. 4 and few others on the other hand, on 16.02.2011, where under the plaintiffs undertook to withdraw the complaint to the DTCP and confirmed that the license issued in favour of DD Township Ltd. (plaintiff No. 4) shall be transferred in the name of New Age Town Planners Ltd. (defendant No. 5). All the parties had undertaken that they shall withdraw any/all other complaints/suits/application filed by the first party against the second party, and vice versa, in any Court or before any authority before the date of the said settlement.

33. Mr. Chaudhary submits that the defendants sought to resile from the said settlement on the allegation that the plaintiffs had misrepresented while entering into the said deed of settlement with regard to withdrawal of litigation by them. He submits that in this background, even the plaintiffs were not bound by the said deed of settlement dated 16.02.2011.

34. Mr. Chaudhary submits that in 2011 itself the arbitration agreement contained in the mandate letter 23.08.2006 was invoked and thus the arbitration stood commenced and limitation stopped running. He submits that the arbitration petition preferred by the petitioners i.e. the plaintiffs herein, was dismissed only on 22.05.2015 and the period spent by the plaintiffs between the date of invocation of arbitration and the passing of the order in Arbitration Petition No. 113/2012 on 22.05.2015 is liable to be excluded for purpose of computation of limitation under Section 14 of the Limitation Act, on the ground that the plaintiffs were pursuing the said remedy bona fide. In support of his aforesaid plea, he has placed reliance on **Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department and ors., (2008) 7 SCC 169**. He further submits that after the dismissal of Arbitration Petition No. 113/2012 on 22.05.2015, further cause of action has arisen in favour of the plaintiffs, when the appeal preferred by the plaintiff No. 4 i.e. being Appeal No. 22/2014 seeking cancellation of transfer of license No. 30/2010 and restoration of the same in favour of plaintiff No. 4, was dismissed by the Secretary to the Govt. of Haryana, Town and Country Planning Department, Chandigarh on 05.02.2016.

35. Having perused the plaint, the documents relied upon by the plaintiffs including the judgment passed in Arbitration Petition No. 113/2012 and the judgment of the Supreme Court in Consolidated Engineering Enterprises (supra), I am of the view that the reliefs sought in the present suit are either barred by limitation, or the plaintiffs have no cause of action in respect of the same other reliefs prayed for in the suit.

36. In relation to the relief "D" sought in the plaint, it is seen that the Share Purchase Agreement dated 15.12.2010 and all related transactions were entered into between the concerned parties with regard to the sale of shares of defendant No. 5 on 15.02.2010. Similarly, the resolution effecting change in the registered office of defendant No. 5 company was passed on 15.02.2010, and the resolution changing the registered office of the company from Malviya Nagar to Connaught Place is of 06.10.2010. The cause of action in relation to the said Share Purchase Agreement of 15.02.2010 and all other

related transactions arose on the date of the transaction itself. The limitation for seeking the declaratory relief in relation to the Share Purchase Agreement dated 15.02.2010, and all its related transactions being three years, expired in February 2013. In any event, even according to the plaintiffs, they became aware of the alleged fraud played by the defendants and their illegal and malafide intentions in 2011 when FIR No. 43/2011 was registered against plaintiff No. 1, Reena Gambhir and the directors of plaintiff No. 4. In fact, the plaint states that in September 2011, one of the directors of plaintiff No. 4 Tarun Kumar was arrested by the EOW in the aforesaid FIR. As noticed herein above, the plaintiffs themselves admits that they became aware of the large scale fraud played on them by the defendants when it came to their knowledge that the defendants had failed to honour their commitments under the 2011 agreement, and the signing of the 2011 set of documents was an act of fraud.

37. The said Share Purchase Agreement and related transactions, firstly, do not fall within the scope of the mandate letter dated 23.08.2006. The scope of the mandate letter was only to identify the potential investor who could invest into instruments issued by the Special Purpose Vehicle proposed to be set up by the plaintiff No. 1. As noticed above, the Special Purpose Vehicle, namely, defendant No. 5 was set up much after the execution of the mandate letter on 23.08.2006. The purpose of the mandate letter was to grant mandate to defendant No. 1 to identify the potential investor, and, so as to secure the interest of the potential investor and grant comfort to the potential investor, plaintiff No. 1 undertook to execute the "Call Option Agreement", "Share Pledge Agreement" and to cooperate with defendant No. 1 and provide defendant No. 1 with all necessary information to enable defendant No. 1 to render its services. The arbitration agreement, as noticed by the learned Single Judge in his judgment 22.05.2015, related firstly to the disputes arising under the mandate letter, and secondly to disputes arising under any related agreement or other documents. In arbitration, the plaintiffs could possibly not have sought the relief in respect of the "Share Purchase Agreement dated 15.02.2010 and all related transactions between the defendants with regard to the shares of DD Housing Limited" in the arbitration petition, as the Share Purchase Agreements dated 15.02.2010 and all related transactions went beyond the scope of the mandate letter. Under the mandate letter, defendant No. 1 was obliged to secure investments by defendant No. 4 in the defendant No. 5 company in the form of automatically fully convertible debentures having coupon rate of 4%. Thus, with the subscription being made by defendant No. 4 to the automatically fully convertible debentures as noticed herein above, the contract contained in the mandate letter stood discharged upon performance. On account of the default in payment of interest on the debentures to the investors, the shares of the plaintiffs stood transferred as agreed by the plaintiffs. The dispute with regard to the transfer of the said shares from the plaintiffs to defendant No. 1 clearly fell outside the scope of the arbitration agreement contained in the mandate letter. Thus, the plaintiffs were obliged to avail of their remedy before a civil Court within the period of limitation in respect of the Share Purchase Agreements dated 15.12.2010 and other related transactions and cannot take the cover of the invocation of arbitration agreement

contained in the mandate letter dated 23.08.2006. The limitation in respect to the Share Purchase Agreements dated 15.02.2010 and other related transactions commenced when the said Share Purchase Agreements and other related transactions were entered into, and expired on 14.02.2013. The plea premised on Section 14 of the Limitation Act is, therefore, not available in respect of the aforesaid relief.

38. Secondly, even if the Share Purchase Agreements dated 15.02.2010 could remotely be considered as stemming from the mandate letter dated 23.08.2006, which contains an arbitration agreement, this Court held that no arbitrable dispute survived under the said agreements and the documents executed under the said agreement (mandate letter). The relevant extract from the judgment dated 22.05.2015 delivered in Arbitration Petition No. 113/2012 reads as follows:

"48. $\frac{1}{2}$ $\frac{1}{2}$ $\frac{1}{2}$ But a further question/issue would arise in view of the facts pleaded by the respondent, whether any dispute exist as on date between the petitioner No. 1 and the respondent to be arbitrated. The said facts are;

(i) on March 4, 2010 the petitioners including petitioner No. 1 handed over the entire original records of the company including but not limited to the ROC documents, cheque books, vouchers and bank statements, income tax files, original IDS files to the respondent against proper receipts;

(ii) the petitioner No. 1 vide undertaking dated March 2, 2010 resigned from the Board of Directors of the Company with effect from February 01, 2010 and undertook to indemnify the Company, its shareholders, directors etc. against losses, liabilities incurred, claims etc.;

(iii) vide share subscription and transfer agreement dated September 27, 2010, the respondent sold, transferred the shares held by it in the company to M/s Rose INfracore Pvt. Ltd;

(iv) on February 16, 2011, the petitioner No. 1 acknowledged that he did not have any right title, interest, liabilities or options of any nature whatsoever with respect to the securities of the Company;

(v) the petitioner No. 1 irrevocably agreed and confirmed that he shall not seek to exercise any call option/buy back/purchase rights with respect to the securities of the Company under the Shareholders Agreement dated October 16, 2006 or the letter dated March 02, 2010;

(vi) the securities of the Company can be freely transferred and the petitioner No. 1 do not have and shall not raise in future any objection/claim/hindrance with regard to the securities of the Company or the sale/disposal/transfer of securities of the Company to any person;

39. It is not the plaintiffs case that the aforesaid findings of the Court have not attained finality. The same, thus, bind the plaintiffs in the present suit as well. Therefore, in any event, no cause of action survived in favour of the plaintiffs in relation to the Share Purchase Agreement dated 15.02.2010 and all related transactions with regard to the

transfer of shares in defendant No. 5. The said relief "D" is, therefore, clearly barred by limitation, and also barred as no cause of action could arise in respect of the said transactions mentioned therein, as the parties expressly stated that no claims or disputes survive in relation thereto.

40. For the same reason, the reliefs sought in prayer "E" are also clearly barred by limitation. The resolutions passed by the defendant No. 5 company on 15.02.2010 and 06.10.2010 effecting change of its registered office from Okhla to Malviya Nagar and from Malviya Nagar to Connaught Place, in any event, do not fall within the scope of the mandate letter dated 23.08.2006, and thus, a dispute in relation thereto was never an arbitrable dispute. The plea premised on Section 14 of the Limitation Act is, therefore, not available to the plaintiffs in respect of the said relief.

41. Relief "F" sought by the plaintiffs to seek a declaration that issuance of 5000 debentures on 26.02.2010 in favour of defendant No. 4 is also barred by limitation. The plaintiffs are not parties to the said transaction. The said transaction is a transaction between defendant No. 5 company and defendant No. 4, and the said transaction does not fall within the scope of the mandate letter dated 23.08.2006. The limitation to seek a declaration in respect of issuance of the said 5000 debentures on 26.02.2010, in any event, expired on the expiry of three years, i.e. on 25.02.2013. The plea premised on Section 14 of the Limitation Act is, therefore, not available to the plaintiffs in respect of the said relief.

42. For the same reasons, as aforesaid, the declarations sought under prayers "G", "H", "I", "J", "K", "L", "M" & "N" are also barred by limitation. The cause of action in relation to the said reliefs arose in 2010 & 2011 and expired in 2013 & 2014, i.e. much prior to filing of the present suit. The acts/omissions complained of which are claimed to be the foundation of each of the aforesaid reliefs, are not in respect of "any related agreement or other document" to the mandate letter dated 23.08.2016. The plea premised on Section 14 of the Limitation Act is, therefore, not available to the plaintiffs in respect of the said relief.

43. The plaintiffs have sought reliefs "A", "B" and "C" in relation to the management and business of defendant No. 5 company. The plaintiffs, as of date, have absolutely no stake/shareholding in the defendant No. 5 company, and they are rank outsiders. That being the position, no such prayer is maintainable at the instance of the plaintiffs against defendant No. 5 company. Being ranked outsiders, the plaintiffs cannot interfere with the management of its affairs by defendant No. 5. No cause of action has arisen, or can possibly arise, in favour of the plaintiff in respect of the said reliefs.

44. The claim of the plaintiffs that cause of action has lastly arisen on 05.02.2016 when the order was passed in the office of defendant No. 6, dismissing the appeal of plaintiff No. 4 on the aspect of transfer of License No. 30/2010 is also equally misplaced. At the highest, the dismissal of the appeal of plaintiff No. 4 by the Additional Secretary,

Govt. of Haryana, Chandigarh on 05.02.2016 may give a cause of action to plaintiff No. 4 alone to take further proceedings in respect of the said order dated 05.02.2016 in a Court having jurisdiction over defendant No. 6. Defendant No. 6 was only dealing with the appeal in relation to the transfer of License No. 30/2010 and, obviously, the scope of the proceedings before him did not, and possibly could not, include the grievances of the plaintiffs in respect whereof the plaintiffs have sought reliefs in the present suit. Thus, the dismissal of the said appeal by the Govt. of Haryana on 05.02.2016 has no bearing on the other reliefs sought in the present suit.

45. So far as defendant No. 6 is concerned, it is not located within the jurisdiction of this Court. Pertinently, the plaintiffs have not even sought any relief in the present suit in relation to the said order.

46. So far as relief "O" is concerned, qua defendants No. 2, 3 & 5, the said relief, in any event, is barred by limitation. Even in relation to defendant No. 1, the said relief is barred by limitation (even though defendant No. 1 was a party to the mandate letter dated 23.08.2006), since plaintiffs acknowledged that there were no outstanding claims or disputes between the parties, as taken note of by this Court in Arbitration Petition No. 113/2012 decided on 22.05.2015. The transfer of shares, in respect whereof accounts are being sought by the plaintiffs, took place in 2010 and 2011 and the relief for accounts could have been sought within the three years, if at all. The plaintiffs have no locus standi to require defendant No. 5 company to render accounts to the plaintiffs, who are not even shareholders of the said company.

47. The relief of damages claimed under relief "P" is clearly barred by limitation. Damages are claimed by the plaintiffs on the basis of allegations of fraud, coercion, undue influence and breach of faith, etc. As noticed in the aforesaid narration, all such alleged actions of the respondent were undertaken latest by 2011 and the limitation for claiming compensation/ damages, thus, expired in 2014, i.e. prior to filing of the present suit. The plea premised on Section 14 of the Limitation Act is, therefore, not available to the plaintiffs in respect of the said relief.

48. Reliance placed by learned counsel for the plaintiffs on **Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department & Others, (2008) 7 SCC 169**, to invoke Section 14 of the Limitation Act is wholly misplaced. The parameters applicable for invocation of Section 14 of the Limitation Act were noticed by the Supreme Court in paragraph 21 of the said decision, which reads as follows:

"21. Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:

(1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;

- (2) The prior proceeding had been prosecuted with due diligence and in good faith;
- (3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;
- (4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;
- (5) Both the proceedings are in a court."

49. As noticed here in above, the arbitration agreement contained in the mandate letter was only between the plaintiff No. 1 and the defendant No. 1. Therefore, the arbitration agreement was binding only on plaintiff No. 1 and defendant No. 1, and thus, the other plaintiffs, in any event, had no justification not to undertake civil action within the period of limitation in respect of the causes of action which, according to them, arose in their favour lastly in 2011. Similarly, reliefs against defendants No. 2 to 7, in respect whereof COA had arisen upto 2011, the reliefs should have been sought within the period of limitation. The plea premised on Section 14 of the Limitation Act is, therefore, not available to the plaintiffs in respect of the said relief. So far as plaintiff No. 1 is concerned, the failure of the earlier proceedings, namely the Arbitration Petition No. 113/2012 was not on account of a defect of jurisdiction or other cause of like nature. The Arbitration Petition under Section 11 was dismissed on merits after returning a definite finding that no cause of action survives in favour of the petitioner/plaintiff No. 1 and against the respondent, as there was no surviving dispute which could be arbitrable.

50. For all the aforesaid reasons, it is absolutely clear to me that the present is a patently frivolous and vexatious suit filed by the plaintiffs. The filing of such litigation before a Court places undue burden on the Court with the result that more deserving causes suffer. The hearing in this case consumed a good part of the morning session of the Court, and the preparation of this judgment has also taken considerable time. In these circumstances, while dismissing the suit as being barred by limitation and lacking cause of action, the plaintiffs are subjected to costs of Rs. 2 lakhs to be deposited with the Delhi Legal Services Authority. The costs be deposited within three weeks. A copy of the judgment be communicated to the Delhi Legal Services Authority. In case the costs are not so deposited, they shall send a report in this regard which shall be placed before the Court by the registry.