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

Pronounced on: 15.12.2023

+ CS (OS) 439/2023 and IA No.13566/2023 (Stay)

TEJINDER PAL SETIA

..... Plaintiff

Through: Mr. Mohit Chaudhary, Mr. Kunal Sachdeva and Ms. Srishti Bajpai,
Advs.

versus

KONE ELEVATORS INDIA PVT. LTD.

AND ANR.

..... Defendants

Through: Mr. Aditya Soni, Adv. for D-2.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The present suit has been filed by the plaintiff who is a member of the erstwhile board of directors of 'Chandigarh Overseas Private Limited' ("COPL"), which has been admitted into the Corporate Insolvency Resolution Process ("CIRP") *vide* order dated 27.02.2022 passed by the NCLT Chandigarh Bench in CP(IB) No. 248/Chd/Chd/2019.

2. The plaintiff has *inter alia* prayed for the following reliefs:

- A. "A declaratory decree to the effect that the purported 'Assignment Deed dated 03.02.2023' is invalid and non-est in the eyes of law and thus is not binding upon the rights of the Plaintiff.
- B. A decree of permanent and mandatory injunction injuncting the Defendant No.2 / Mr. Sanjeev Chadha to act upon the purported assignment deed dated 03.02.2023.
- C. Direct the Defendant No.1 to produce books of accounts of 'Chandigarh Overseas Pvt. Ltd.' depicting the amount due as per the terms of settlement agreement dated 27.09.2021.



- D. Award damages to the tune of Rs. 1,40,000/- to be awarded in favour of the plaintiff and against the Defendants.*
- E. Pass a decree of awarding cost and litigation expenses of the present litigation.*
- D. Pass any other orders that this Hon'ble Court may deem fit and proper."*

3. The subject matter of the present suit is an assignment deed dated 03.02.2023, which is stated to have been executed between the defendant no.1 and defendant no.2, whereby the defendant no.1 has assigned the debt owed to it by COPL, to defendant no.2 i.e., Mr. Sanjeev Chadha.

4. The plaintiff, by means of the present suit has sought that the said assignment deed dated 03.02.2023 be declared as invalid and *non-est* in law and thus not binding upon the plaintiff. The plaintiff has also prayed that defendant no.1 be directed to produce books of accounts with respect to COPL, depicting the amount due as per the terms of a settlement agreement dated 27.09.2021 stated to have been executed between the plaintiff and defendant no.1.

5. The background of the impugned assignment deed dated 03.02.2023 is that in 2013, 'Future Colonizers and Construction Private Limited' ("FCCPL") had approached the defendant no.1 company for supply, installation, testing and commissioning of KONE elevators in FCCPL's project site, which was owned by COPL. An invoice of Rs.82,68,620/- was raised by defendant no.1 for the said services, towards which part payment of Rs. 10,30,000/- was made by FCCPL, leaving an amount of Rs.72,38,620/- payable to defendant no.1. Due to certain disputes between COPL and FCCPL, FCCPL abandoned the project site and did not make the balance payment to defendant no.1 as aforesaid. COPL being the owner of the site, acknowledged the dues of defendant no.1 and assured defendant



no.1 in 2013 that an amount of Rs. 72,10,000/- shall be paid to defendant no.1 by COPL.

6. The aforesaid amount remained unpaid to defendant no.1 despite COPL's acknowledgment and assurance that an amount of Rs. 72,10,000/- shall be paid to defendant no.1 by COPL. Further, certain cheques which had been issued by COPL in favour of defendant no.1, were dishonored.

7. Thereafter, a fresh contract dated 14.03.2015 was entered into between COPL and defendant no.1 and *vide* letter dated 25.11.2015; COPL acknowledged that a sum of Rs. 92,70,000/- was payable to defendant no.1 by COPL and assured that the aforesaid sum shall be paid by 15.02.2016.

8. The aforesaid dues continued to remain unpaid by COPL, and hence, a petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC") came to be filed by defendant no.1 against COPL at NCLT Chandigarh in 2019.

9. It is submitted on behalf of the plaintiff that after filing of the aforesaid Section 9 petition, a settlement agreement dated 27.09.2021 was executed between the COPL and defendant no.1, wherein it was agreed that COPL shall pay a sum of Rs. 60,00,000/- as full and final settlement with respect to the debt owed by COPL to defendant no.1. As per the said settlement agreement executed between COPL and defendant no.1, the payment of Rs. 60,00,000/- was to be carried out by COPL to defendant no.1 in three tranches, *i.e.*, *via* a demand draft dated 27.09.2021 for an amount of Rs. 25,00,000/-, a cheque dated 15.12.2021 for an amount of Rs. 20,00,000/- and a cheque dated 15.03.2022 for an amount of Rs. 15,00,000/-.

10. It was also agreed in the aforesaid settlement agreement dated 27.09.2021 that in case the cheques offered by COPL to defendant no.1 were



dishonored on their first presentation, the defendant no.1 shall be entitled to continue with the existing Section 9 proceedings before the NCLT Chandigarh and shall be entitled to claim the entire amount of Rs.92,70,000/- (after adjusting the amount received). It was also agreed between the parties that after final payment was received by defendant no.1, COPL and defendant no.1 would make a joint request before the NCLT to dispose of the pending Section 9 petition filed by defendant no.1.

11. Thereafter, two cheques for Rs. 20,00,000/- and Rs. 15,00,000/- issued by COPL as aforesaid, were dishonored and as a result, the settlement agreement dated 27.09.2021 stood breached by COPL. The NCLT *vide* order dated 27.02.2023 passed in the Section 9 petition *inter alia* observed that due to the non-adherence of the settlement agreement dated 27.09.2021 by COPL, the total operational debt which was due and payable by COPL to defendant no.1 was now Rs. 92,70,000/- and resultantly, the Section 9 petition preferred by defendant no.1 was admitted *vide* order dated 27.02.2023 passed by the NCLT, Chandigarh.

12. The plaintiff herein preferred an appeal bearing Company Appeal (AT) (Insolvency) No. 262 of 2023 against the order dated 27.02.2023 passed by the NCLT Chandigarh, wherein the plaintiff undertook to deposit an amount of Rs. 35,00,000/- which was payable in terms of the settlement agreement dated 27.09.2021. The NCLAT *vide* order dated 02.03.2023 passed in the aforesaid appeal, issued notice and *inter alia* directed that no further steps shall be taken in pursuance of the impugned order dated 27.02.2023. Further, homebuyers who sought liberty to file an application to press their claims against COPL were also granted liberty to file the same *vide* the aforesaid order.



13. On 13.03.2023, an application was filed by the defendant no.2 herein (Mr. Sanjeev Chadha) in the Company Appeal (AT) (Insolvency) No. 262 of 2023, seeking to be impleaded in the aforesaid company appeal as respondent no.3 therein, while stating that he shall be a necessary party for adjudication of the appeal in view of a purported assignment deed dated 03.02.2023 which was executed between defendant no.1 and defendant no.2, whereby the defendant no.1, for a mutually agreed consideration with defendant no.2, assigned all of its rights, title and interest with respect to the outstanding debt owed to it by COPL to the assignee, *i.e.*, defendant no.2 herein.

14. It is averred that the plaintiff learnt about the existence of the said assignment deed dated 03.02.2023 when it was filed alongwith the impleadment application of defendant no.2 before the NCLAT, Delhi.

15. It is on the said basis that the plaintiff has sought to invoke the territorial jurisdiction of this court, and has filed the present suit.

16. Before the suit can proceed forward, the two preliminary objections of the defendant no. 2 with respect to the lack of territorial jurisdiction and subject matter jurisdiction of this court to try the present suit are required to be determined.

17. It is submitted by the learned counsel for the plaintiff that as per Section 20 (c) of the Code of Civil Procedure, 1908, the cause of action in the present suit has arisen within the territorial jurisdiction on the following grounds:

- i. The impugned assignment deed dated 03.02.2023 emanates from a settlement agreement dated 27.09.2021 which is subject to Delhi Jurisdiction.



- ii. The existence of the assignment deed dated 03.02.2023 came to the knowledge of the plaintiff when the impleadment application bearing I.A. No. 1122/2023 came to be filed by defendant no.2 on 13.03.2023 before the NCLAT, New Delhi Bench. It is submitted that since the plaintiff learnt about the existence of the assignment deed dated 03.02.2023 when it was filed in NCLAT, New Delhi, the cause of action has arisen in New Delhi.

18. *Per contra*, the learned counsel for the defendant no.2 opposes the present suit on the ground that this court lacks the jurisdiction to adjudicate the present suit and therefore, the present suit is not maintainable before this court. It is averred by the learned counsel for the defendant no.2 that this court lacks the jurisdiction to adjudicate the present suit on two counts:

- i. Territorial jurisdiction - No part of cause of action has arisen within the territorial jurisdiction of this court; and
- ii. Subject matter jurisdiction - The suit is barred in view of Section 231 of the Insolvency and Bankruptcy Code, 2016.

19. It is submitted on behalf of defendant no.2 that the settlement agreement dated 27.09.2021, on the strength of which the plaintiff is attempting to invoke the territorial jurisdiction of this court was executed in Gautam Buddha Nagar, Uttar Pradesh. It is further submitted that in the said settlement agreement between defendant no.1 and COPL, the address of defendant no.1 is of Gautam Buddha Nagar, Uttar Pradesh and COPL's address is of Chandigarh. It is further submitted that the project of COPL where lifts were to be installed by defendant no.1 was in Mohali, Punjab.

20. It is submitted on behalf of defendant no.2 that the place of knowledge cannot create jurisdiction of this court; it is averred by the



learned counsel for the defendant no.2 that if this argument of the plaintiff was to be accepted, any document filed before any Court could create jurisdiction of that Court.

21. The learned counsel for the defendant no.2 submits that the averment of the plaintiff that the plaintiff got to know about the purported assignment deed dated 03.02.2023 when it was filed by defendant No. 2 in NCLAT, New Delhi is false. It is submitted that in Ground “A” of the Company Appeal (AT) (Ins.) No. 262/2023 filed by the plaintiff before NCLAT, New Delhi, it has been categorically pleaded by the plaintiff that the debt owned by defendant no.1 was assigned to defendant no.2 prior to the passing of order dated 27.02.2023 in the Section 9 proceedings bearing No. CP(IB) No. 248/Chd/2019 before NCLT Chandigarh. It is therefore submitted that the plaintiff had prior knowledge of the assignment of debt.

22. The learned counsel for defendant no.2 further submits that the proceedings before NCLAT were appellate proceedings emanating from the Section 9 proceedings filed by defendant no.1 in NCLT, Chandigarh and the plaintiff has already submitted to the jurisdiction of Chandigarh.

23. The learned counsel for defendant no.2 has placed reliance upon the judgment dated 23.08.2023 passed by the NCLAT, New Delhi, wherein the NCLAT was pleased to *inter alia* observe as under with respect to the settlement agreement dated 27.09.2021:

“15. There are two reasons due to which we are of the view that insolvency resolution process initiated against the Corporate Debtor need not be closed. Two reasons are as follows:

(i) Firstly, the sequence of events and the facts which have been mentions in the Settlement Agreement dated 27.09.2021 clearly indicate that the Corporate Debtor has not been able to clear the dues of the Operational Creditor in last 8 years and the cheques



given by the Corporate Debtor were dishonoured and Settlement Agreement dated 27.09.2021 was breached. The facts clearly indicate that the Corporate Debtor needed resolution of its insolvency. The fact that after the Appeal was dismissed by this Tribunal admitting CIRP process and after the order of Hon'ble Supreme Court dated 14.07.2023, Corporate Debtor for the first time in an application I.A. No. 1571 of 2023 has come forward with case that he shall make payment as per the Settlement Agreement of the dues, does not absolve the Corporate Debtor from its breaches and failure, which has been noted above.

ii) Secondly, the Homebuyers who have been impleaded by the Adjudicating Authority by order dated 25.07.2023 in I.A. No. 1571 of 2023 are now respondent in this Appeal and they have stated that Section 7 application has been filed by the Homebuyers against the Corporate Debtor in the year 2020 which proceedings have been going against the Corporate Debtor from 2020. The Homebuyers have filed the Section 7 proceeding for an amount of more than Rs.121 Crores. Learned counsel for the IRP who has received the claims in the CIRP process has collated the claims and has published the list of unsecured Financial Creditors as on 21.07.2023 which indicate total claims admitted are of Rs.137,68,87,945/-, which list has been brought on the record by the Appellant itself as Annexure A11. The above also indicate that there are huge liabilities against the Corporate Debtor which reinforces our opinion that insolvency resolution of the Corporate Debtor is imminent."

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We further notice that even offer of payment of Rs.20 lakhs was not treated to be complete in liquidating the operational debt, hence, the operational debt remained due and unpaid, in which default was committed by the Corporate Debtor. Hence, no exception can be taken to the admission of Section 9 Application. It is further relevant to notice that at the time of admission of the Appeal, the Appellant offered to deposit an amount of Rs. 35 lakhs, which according to the Appellant was the amount due and payable and for which the default was committed, but as noted above, there being breach in the Settlement Agreement and Corporate Debtor having failed to make the payment as per the Settlement Agreement, the amount for which the Application was initiated became due and the payment of Rs.35 lakhs in no manner can satisfy the entire debt and due. **The Settlement Agreement having breached, the Appellant cannot insist to accept the Settlement Agreement at this stage.**"



24. The learned counsel for the defendant no.2 submits that an appeal against the aforesaid judgment dated 23.08.2023 was preferred by the plaintiff before the Supreme Court, wherein the Supreme Court, *vide* its order dated 06.09.2023 observed as under:

“Appellant – Tejinder Pal Setia has offered to pay Rs.1.45 crores to the operational creditor, that is, the respondent – Kone Elevator India Pvt. Ltd., who have assigned their dues to respondent no. 3 – Sanjeev Chadha. However, the reasoning given by the National Company Law Appellate Tribunal in paragraph 15(ii) of the impugned judgment dated 23.08.2023, which refers to the claim of the home buyers, paints a grim picture.

Keeping in view all aspects, it will not be appropriate for this Court to entertain the present appeals and the same are accordingly dismissed.”

25. Having heard the learned counsels for the parties and having perused the record, this court finds merit in the submissions made on behalf of defendant no.2.

26. It is evident from the aforementioned judgment dated 23.08.2023 and order dated 06.09.2023 that the settlement efforts made by the plaintiff have all come to a nought and the same has been pronounced upon in the proceedings before NCLT/ NCLAT. *Vide* order dated 04.07.2023 passed by the NCLAT, which was subsequently upheld by the Supreme Court, it has been held that since the cheques given by the plaintiff in terms of the settlement agreement dated 27.09.2021 were dishonored, the settlement agreement was breached, and that therefore *“The Settlement Agreement having breached, the Appellant cannot insist to accept the Settlement Agreement at this stage.”*.

27. The reliance placed by the counsel for the plaintiff on the settlement agreement dated 27.09.2021 to invoke jurisdiction of this court is entirely misplaced not only for the reason that the same has been pronounced upon



by the NCLAT at the behest of the plaintiff itself, but also because *ex-facie*, the same has no nexus with the assignment deed dated 03.02.2023, with regard to which prayers have been sought in the present suit. The said assignment deed dated 03.02.2023 has admittedly been executed in Chandigarh between defendant no.1 and defendant no.2. Defendant no.1, as recorded in the assignment deed has its registered office in Kancheepuram District in Tamil Nadu, and its authorized signatory is stated to be a resident of Faridabad. Defendant no.2 is recorded to be a resident of Chandigarh. Further, the entire dispute between COPL and defendant no.1 has also arisen with respect to amounts due to defendant no.1 for supply, installation, testing and commissioning of elevators by defendant no.1 in FCCPL's project site which was located in Mohali, Punjab. Further, COPL also has its registered office in Chandigarh. The Section 9 petition filed on behalf of defendant no.1 was filed in NCLT, Chandigarh, wherein the order admitting COPL into CIRP was passed.

28. As such, this Court has no territorial jurisdiction to entertain the prayers of the plaintiff with respect to the assignment deed dated 03.02.2023, which is the fulcrum of the present suit. The contention of the plaintiff that it became aware of the assignment deed when it was filed as a document before the NCLAT, would not confer any jurisdiction for the purpose of Section 20 of the CPC.

29. Also, crucially, particularly with respect to prayer 'C' of the plaintiff, since COPL is undergoing CIRP, the present suit is precluded/barred under Section 231 of the IBC.

30. It would be relevant to consider the following provisions of the IBC:



“60. (1) The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located.

(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or bankruptcy of a personal guarantor of such corporate debtor shall be filed before such National Company Law Tribunal.

(3) An insolvency resolution process or bankruptcy proceeding of a personal guarantor of the corporate debtor pending in any court or tribunal shall stand transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.

(4) The National Company Law Tribunal shall be vested with all the powers of the Debt Recovery Tribunal as contemplated under Part III of this Code for the purpose of sub-section (2).

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

(6) Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded.

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63. No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code. Civil court not to have jurisdiction.

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231. No civil court shall have jurisdiction in respect of any matter in which the Adjudicating Authority is empowered by, or under, this Code to pass any order and



no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by such Adjudicating Authority under this Code.”

31. Sections 63 and 231 IBC create a bar on the jurisdiction of the civil court in respect of any matter in which the NCLT and NCLAT has jurisdiction under the IBC and the adjudicating authority under the Code is competent to pass any order. Further, clause (c) sub-Section (5) of Section 60 of the Code vests the jurisdiction in NCLT to entertain and dispose of any question of priorities or any question of law or fact, arising out of or in relation to the insolvency resolution for liquidation proceedings. Therefore, the jurisdiction vested in NCLT while dealing with a resolution plan is of wide ambit and any question of law or fact in relation to the insolvency resolution has to be determined by the NCLT.

32. *Ex-facie*, the controversy sought to be raised in the present suit is a subject matter of proceedings before the NCLT/NCLAT. As such, the bar under Section 60 and Section 231 would squarely apply to the present suit.

33. In the circumstances, the plaint is returned, with liberty to the plaintiff to take appropriate remedies as may be available to him under law.

34. All pending applications also stand disposed of.

35. Needless to say, the observations made hereinabove, shall not be construed as an expression of opinion of this Court on the merits of the dispute/s between the parties.

SACHIN DATTA, J

DECEMBER 15, 2023

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