



NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
SPECIAL BENCH (COURT-III)

(IB)-2836 (ND)2019

IN THE MATTER OF:

M/s Welldone Estate Projects Private Limited

Having correspondence and
Halwasiya Market, 4th Floor,
Flat No. 6, Hazratganj
Lucknow UP 226001

... Applicant/Operational Creditor

VERSUS

M/s REIN Constructions Private Limited

Having correspondence and
Registered office at:
2nd Floor, C-3, Pocket-8,
Vasant Kunj, Delhi - 110070

... Respondent

Section: 9 of the IBC, 2016

Order Delivered on: 18.05.2023

CORAM:

SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Mr. Sumit Babbar, with Mr. Saubhagya Aggarwal,
Advocates.

For the Respondent : Mr. Sougat Advocate.

ORDER

1. The present petition has been filed by M/s Welldone Estate Projects Pvt. Ltd. (Applicant) under Section 9 of the IBC, 2016 with the prayer to initiate CIRP against *M/s Rein Constructions Pvt. Ltd.*, (Corporate



Debtor), declare the Moratorium and appoint an Interim Resolution Professional.

2. It is stated by the Applicant in Part IV of the application that the total amount of Operational Debt is Rs. 2,99,00,000/- along with interest @ 12% per annum, which is due and payable by the Corporate Debtor to the Applicant, consequent upon a settlement agreement arrived at between M/s. Arora Associates and Infradevelopers Private Limited, M/s. Arora and Associates Realty Limited, Mr. Kanwarjeet Arora, Mr. Rajesh Arora and M/s. Rein Constructions Private Limited on the one part and M/s. Welldone Estate Projects Private Limited and Welldone Infrastructure Private Limited on the other part.

3. The Applicant has claimed that amount towards interest @ 12% per annum from the date it became due is Rs. 2,85,07,562/- up to the date of issuance of notice. The Corporate Debtor is liable to make the payment from the date of the settlement agreement dated 11.01.2012. As such the debt became due from the date of the settlement agreement i.e., from 11.01.2012. It is submitted that the Corporate Debtor has made part payment of debt on various dates i.e., 12.01.2012, 04.08.2012, 09.12.2013 & 16.12.2013, and also as per the latest order dated 14.05.2019 passed by the Hon'ble Allahabad High Court, Lucknow Bench, and thus acknowledged the outstanding debts from time to time and therefore, the debt has been crystallized in terms of the settlement made earlier.

4. The Corporate Debtor has filed a reply. The main objections raised by the Respondent are as follows:

I. There is no debt due and outstanding to be paid by the Respondent to the Applicant.



II. The entire application is based on a settlement agreement dated 11.01.2012. It is not disputed that the Respondent is a party to the said agreement. The narrations in Clause 7, 8 and 9 of the settlement agreement dated 11.01.2012 would show that the Applicant had invested a sum of Rs. 5,19,00,000/- and booked an area in the complex in Ludhiana City Centre. Further, a suit for recovery of Rs. 5,19,00,000/- has been filed before the Hon'ble High Court of Delhi in Suit CS(OS) No. 2601/2008 by M/s Welldone Estate Projects Pvt. Ltd. against M/s. Today Homes and Infrastructures Private Limited (Defendant No. 1), One G.K. Gambhir (Defendant No. 2), Mr. Rajesh Arora (Defendant No. 3), and Ludhiana Improvement Trust (Defendant No. 4) for recovery a sum of Rs. 7,95,69,000/-. The Applicant has averred in the plaint that a sum of Rs. 5,19,00,000/- was paid by the Applicant in a Joint Escrow Account/Designated Bank Account namely **"Today Homes Infrastructure Private Limited" – City Centre – LIT** and the said amount was duly received and utilized by Defendant Nos. 1 to 4. The said suit was dismissed by the Hon'ble High Court of Delhi vide order dated 16.10.2017, since, the Applicant/Plaintiff failed to produce any evidence to prove the averments made in the plaint.

III. Further, the Hon'ble High Court of Delhi has held in the said order that no materials are on record to infer as to what terms and conditions, the plaintiff had agreed to pay the huge amount of Rs. 5,19,00,000/- to Defendant No. 1. Thus the Applicant has failed to prove the factum of payment of Rs. 5,19,00,000/- on which the basis of the settlement agreement dated 11.01.2012 was executed.

IV. Since the Applicant has failed to prove the factum of payment in OS(OS) 2601/2008, the Respondent is not liable to pay any amount to the Applicant.



V. The Applicant has issued the demand notice after a period of over seven years on the basis of a settlement agreement dated 11.01.2012 and relying on the order dated 14.05.2019 passed by the Hon'ble High Court of Judicature at Allahabad in Company Appeal No. 3/2009 vide which the appeal filed by One Welldone Infrastructure Private Limited against one Arora and Associates Infra Developers Private Limited was disposed of as settled and neither the Applicant nor the Respondents are parties to the said appeal. Therefore, the disposal of the said appeal based on the settlement between the parties therein does not accrue any fresh cause of action in favour of the Applicant herein.

VI. It is submitted that there is no acknowledgment of debt that is claimed by the Applicant in the present application. The Respondent has received payment of Rs. 2.95 crores from one M/s. Universal Buildwell Private Limited who was then interested in the project and the Respondent has advanced the said payment to the Applicant (to the extent of Rs.2.20 crores) and another entity namely M/s. BNB Construction Pvt. Ltd. (Rs. 75 Lakhs). No payment was received from M/s. Universal Buildwell Pvt. Ltd. in view of the disputes in the project which could not be revived by M/s. Ludhiana Improvement Trust and Today Homes. The Respondent cannot be forced to buy out the Applicant on the basis of the said Settlement Agreement more so when the Applicant itself has been unable to prove its investment of Rs. 5.19 crores in the said project.

VII. The Respondent also contended that the present petition is barred by limitation.



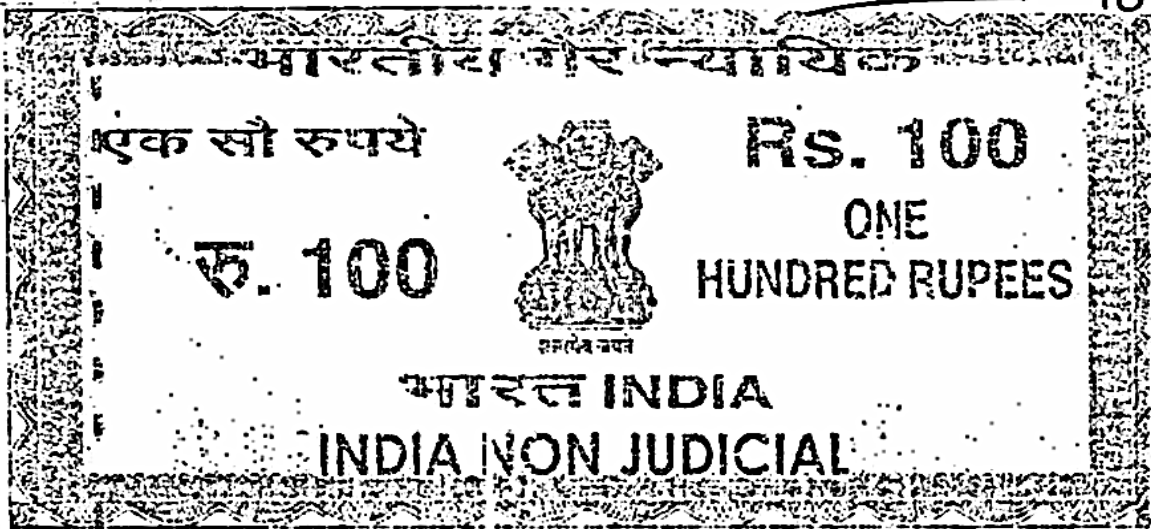
5. We have heard the submissions made by Mr. Sumit Babbar, Learned Counsel appearing for the Applicant as well as Mr. Sougat Sinha, Learned Counsel appearing for the Corporate Debtor and perused the records.

6. From a perusal of Part IV of the application, it is observed that there is no mention of any supply of goods or the rendering of services by the Applicant to the Respondent. In fact, the entire claim of the Applicant is arising out of the settlement deed dated 11.01.2012 and the very same date has been relied as the date of default by the Applicant.

7. It is a matter of record that the present application is filed on 22.10.2019, which is much after the limitation period of three years from the date of default i.e., 11.01.2012. Since the date of default itself is arising on the basis of a settlement agreement, we would first like to examine whether the settlement agreement is based on any “Operational Debt” subsisting in the present application. Accordingly, we refer to the settlement agreement dated 11.01.2012 (annexed at pages no. 16 to 27 of the application), the relevant extracts of which are reproduced below:



Annexure 1 16



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B 926404

Settlement Agreement

This Settlement Agreement has been arrived on this the 11th day of January, 2012 at New Delhi.

BETWEEN

M/s. Arora and Associates Infra-developers Pvt. Ltd., a company formerly known as M/s. Manik Enterprises Pvt. Ltd., incorporated under the provisions of the Companies Act, 1956, having its Registered Office at 103, Ground Floor, World Trade Center, Babar Road, Connaught Place, New Delhi - 110 001, through Mr. Rajesh Arora, Managing Director, duly authorized vide Board Resolution dated 3rd January 2012, certified copy of the Resolution is attached as Annexure A (hereinafter referred to as "Arora and Associates") (which expression shall unless repugnant to the context or meaning thereof be deemed to include its successors, managers, legal representatives and assigns) of the FIRST PART;

AND

Arora and Associates Realty Ltd., a company incorporated under the provisions of the Companies Act, 1956, having its Registered Office at 131, Ground Floor, World Trade Centre, Babar Road, Connaught Place, New Delhi - 110 0001, through Mr. K.J. Arora,

Arora
[Circular stamp]

[Circular stamp]

[Signature]

[Circular stamp]

[Signature]

Director, duly authorized vide Board Resolution dated 5th Jan, 2012 (hereinafter referred to as "Arora Realty") (which expression shall unless repugnant to the context or meaning thereof be deemed to include its successors, group companies, subsidiaries, directors, affiliates, managers, legal representative and assigns) of the **SECOND PART**;

AND

M/s. Welldone Infrastructure (P) Limited, a company incorporated under the provisions of the Companies Act, 1956, having its Registered Office at Halwasiya Court, Hazratganj, Lucknow (UP) – 226 001, through Mr. Bharat S Halwasiya, the Director, duly authorized vide Board Resolution dated 10th January, 2012, certified copy of the Resolution is attached as Annexure B (hereinafter referred to as "Welldone") (which expression shall unless repugnant to the context or meaning thereof be deemed to include its successors, managers, legal representatives and assigns) of the **THIRD PART**.

AND

M/s. Welldone Estate Projects Private Limited, a company incorporated under the Companies Act, 1956, having its Registered Office at Halwasiya Court, Hazratganj, Lucknow – 226 001 and having its Corporate Office at A-10, Sanskrit Bhawan, Qutub Institutional Area, Aruna Asaf Ali Marg, New Delhi – 110 067, through Mr. Bharat S Halwasiya, duly authorized vide Board Resolution dated 10th January, 2012, certified copy of the Resolution is attached as Annexure C (hereinafter referred to as "Welldone Estate") (which expression shall unless repugnant to the context or meaning thereof be deemed to include its successors, managers, legal representatives and assigns) of the **FOURTH PART**

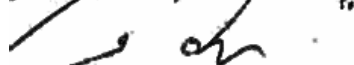
(Welldone and Welldone Estate shall hereinafter collectively referred to as the "Welldone Group").


AND

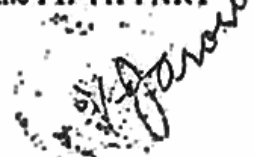
Mr. Kanwarjeet Arora, son of Late. Shri NARAI DAS ARORA, resident of E-114, Malcha Marg, Diplomatic Enclave, Chanakypuri, New Delhi (hereinafter referred to as "Kanwarjeet Arora") (which expression shall unless repugnant to the context or meaning thereof be deemed to include its legal heirs and assigns) of the **FIFTH PART**

M/s. Welldone Estate Projects Private Limited

M/s. Welldone Infrastructure (P) Ltd.


Authorized Signatory


Director





AND

Mr. Rajesh Arora, son of Mr. Kanwarjeet Arora, resident of E-114, Malcha Marg, Diplomatic Enclave, Chanakyapuri, New Delhi (hereinafter referred to as "Rajesh Arora") (which expression shall unless repugnant to the context or meaning thereof be deemed to include its, legal heirs and assigns) of the SIXTH PART

AND

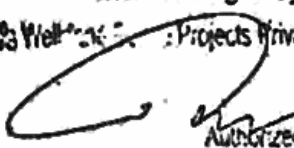
M/s. Rein Constructions Pvt. Ltd., a company incorporated under the provisions of the Companies Act, 1956, having its Registered Office at S-337, Basement, Greater Kailash, Part-II, New Delhi - 110 048, through Mr. SANTI THOMAS, Director, duly authorized vide Board Resolution dated 3rd Jan, 2012, (hereinafter referred to as "Rein Constructions") (which expression shall unless repugnant to the context or meaning thereof be deemed to include its successors, managers, legal representatives and assigns) of the SEVENTH PART

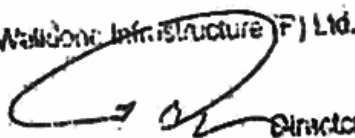
WHEREAS:

1. That Arora Realty has invested by way of loan a sum of Rs.1,18,75,000/- (Rupees One Crore Eighteen Lakhs and Seventy Five Thousand only) and Kanwarjeet Arora invested by way of loan a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) aggregating Rs.1,38,75,000/- (Rupees One Crore Thirty Eight Lakhs and Seventy Five Thousand only) in Welldone Infrastructure details of the interest free loans made to Welldone by Arora Realty and Kanwarjeet Arora are attached in Schedule B and the aforesaid amounts were advanced for the sole purpose that there are sufficient funds with Welldone undertake and execute the construction and sale of a Building in Gomti Nagar, Lucknow, Uttar Pradesh (hereinafter referred to as the ("Gomti Nagar Project").

2. Arora and Associates subscribed to 1,25,000 (One Lakh and Twenty Five Thousand) Equity Share of Welldone Infrastructure and paid Welldone Infrastructure a sum of Rs.12,50,000/- (Rupees Twelve Lakhs and Fifty Thousand only) which is duly acknowledged by it.

Arora Well-done Projects Private Limited vs. Welldone Infrastructure (P) Ltd.


Authorized Signatory


Director







3. That disputes arose between the Parties on various issues, particularly between Welldone and Arora and Associates with regard to issuance of original Share Certificates thereby evidencing that Arora and Associates owns 1,25,000 (One Lakh and Twenty Five Thousand) Equity Share of Rs.10/- (Rupees Ten only) aggregating Rs.12,50,000/- (Rupees Twelve Lakhs and Fifty Thousand only) and for correction of the Register of Members maintained by Welldone and consequently Arora and Associates filed a Company Petition No.13/111/2008 (ND) against Welldone under Section 111 of the Companies Act, 1956 (hereinafter referred to as the "Act") before the Company Law Board, Northern Bench, New Delhi (hereinafter referred to as the "CLB") seeking directions from the CLB that Welldone be directed to issue the Original Share Certificates evidencing issuance of 1,25,000 (One Lakh and Twenty Five Thousand) Shares of Welldone in favour of Arora and Associates at par value of Rs.10/- (Rupees Ten only) each, aggregating Rs.12,50,000/- (Rupees Twelve Lakhs and Fifty Thousand only), and make appropriate correction in Register of Members Welldone to include the same of Arora and Associates as the Shareholder of Welldone;
4. The Hon'ble Member, of the CLB, Mrs. Vimla Yadav of the CLB granted the prayer in the Company Petition No. 13/111/2008 (ND) and passed an Order dated June 4, 2009 directing Welldone according to the Prayer Clause;
5. Concurrently, Arora and Associates filed a Company Petition No. 50ND of 2008 under Sections 237, 397 and 398 of the Act, before the CLB;
6. That Welldone filed a Company Appeal bearing No.3 of 2009 in the Hon'ble High Court of Judicature at Allahabad, sitting at Lucknow, challenging the Order dated June 4, 2008 passed by the Hon'ble Member Mrs. Vimla Yadav of the CLB which is currently pending;

7/ That Welldone Estate had invested a sum of Rs. 5,19,00,000/- (Rupees Five Crores Nineteen Lakhs Only) and booked area in the complex (hereinafter referred to as the "Said Investment") in "Ludhiana City Centre" and due to disputes between the Promoters, M/s. Today Homes and Infrastructure Private Limited and Ludhiana Improvement Trust with regard to the development of the Project "Ludhiana City

Welldone Estate Projects Private Limited
[Signature]
Authorized Signatory

M/s Welldone Infrastructure (P) Ltd.
[Signature]
Director




Centre” and the same are still pending. Welldone Estates had filed a Suit for recovery of Rs.5,19,00,000/- (Rupees Five Crores and Nineteen Lakhs only) before the Hon'ble High Court in Suit CS(OS) No.2601 of 2008 and made Rajesh Arora party to the Suit as Defendant No.3.

8. That pursuant to this Settlement Agreement have now decided to settle and Arora and Associates and Welldone shall withdraw all pending disputes/litigation, details of which are listed in Schedule A (which shall be part of this Settlement Agreement) and Welldone shall return all the Loans given by Arora Realty, Kanwarjeet Arora and Arora and Associates
9. That upon Receipt of Rs. 5,19,00,000/- (Rupees Five Crores and Nineteen Lakhs only) from Rein Constructions by Welldone Estates, Welldone Estates shall have no further claim or right on the said investment of Rs.5,19,00,000/- (Rupees Five Crores and Nineteen Lakhs only) and Welldone Estates hereby confirms and undertakes that it shall execute all the necessary papers, documents, surrender letter/Deeds, Power Of Attorney etc. in favour of Rein Constructions required to claim the said investment from the Promoter and any other authority and Trust

Arora and Associates, Welldone, Arora Realty, Rajesh Arora and Kanwarjeet Arora are hereinafter collectively referred to as the “Parties:” and individually as “Party”.

NOW THIS AGREEMENT WITNESSTH AS FOLLOWS:

1. THE AGREEMENT, DEFINITIONS

The Recitals and words defined in the Recitals shall form an integral part of this Settlement Agreement whenever used in this Settlement Agreement, unless the context requires otherwise.

2. PURPOSE OF THE SETTLEMENT AGREEMENT

That the Parties hereto without getting into the merits of the pending litigation filed by the Welldone Group and Arora Group against each other are and have agreed to amicably settle there disputes withdrawing the litigations before the Hon'ble High



Welldone Estate Projects Private Limited

[Signature]
Authorized Signatory

M/s Welldone Infrastructure (P) Ltd.

[Signature]
Director





8. On perusal of the above extracts of the agreement, it is observed that the Settlement Agreement was executed between 07 parties namely, Arora and Associates Infradevelopers Private Limited, Arora and Associates Realty Limited, Welldone Infrastructure Private Limited, Welldone Estate Projects Private Limited, Mr. Kanwarjeet Arora, Mr. Rajesh Arora and Rein Constructions Private Limited. Further, clause 7 of the agreement reflects that M/s Welldone Estate had invested a sum of Rs.5,19,00,000/- and booked area in the complex in “Ludhiana City Centre” and due to disputes between the Promoters, M/s Today Homes and Infrastructure Private Limited and Ludhiana Improvement Trust with regard to the development of “Ludhiana City Centre”, which is still stated to be pending.

9. We further notice that the Settlement Agreement is based on an investment of Rs.5,19,00,000/- by M/s Welldone Estate in Ludhiana City Centre and pursuant to clause 9 of the settlement agreement, the Respondent shall have no liability towards the Applicant on the payment of the aforesaid amount.

10. In order to determine, whether the aforesaid transaction can be constituted to be an “operational debt”, we refer to Section 5(21) of IBC, 2016, which reads thus:

“5. Definitions. –

(21) “operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the 2 [payment] of dues arising under any law for the time being in force



and payable to the Central Government, any State Government or any local authority”

11. From the perusal of the above, it is evident that the debt in order to be constituted as an Operational Debt must be a claim in respect of provisions of the goods or services.

12. In the instant case, neither in the settlement agreement nor in Part IV of the Application, we do not find any instance of supply of goods or services between the parties. The investment made by the Applicant and the resultant Settlement Agreement will not categorize the claim of the Applicant as an Operational Debt.

13. The Applicant has stated in Part IV of the application that the Respondent made the last part payment on 16.12.2013. Further, the Applicant has annexed extracts of the balance sheets of the Respondent for the Financial Year 2017-2018 to show acknowledgment of liability. However, we do not find any conclusive proof of part payment on 16.12.2013 viz Bank Statements on record, which could extend the period of limitation for another three years from the date of default on 11.01.2012. Further, the balance sheet for the year 2017-18 cannot be taken into account for extending the limitation since neither there is any proof of part payment nor any acknowledgment of debt between 2012 and 2015. Thus, we find the present application also barred by limitation.



14. Accordingly, we conclude that the claim of the Applicant is neither an Operational Debt nor the present application is filed within the limitation period. The application is accordingly **dismissed**.

Sd/-

(L. N. GUPTA)
MEMBER (T)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (J)