

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insol.) No. 55 of 2017**

**IN THE MATTER OF:**

**Gurcharan Singh Soni &  
Kuldeep Kaur Soni**

**.....Appellants**

**Vs.**

**Unitech Ltd. & Anr.**

**.....Respondents**

**Present: For Appellants:- Mr. G.K.Jain, Chartered Accountant.**

**For Respondents:- Ms. Navneet S. Sehgal and Ms.  
Rishika Katyal, Advocates.**

**ORDER**

**23.08.2017-** Appellants have challenged the order dated 21<sup>st</sup> March, 2017 passed by Ld. Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi in Company Petition No. (IB)-29(PB)/2017, whereby and whereunder application preferred by Appellants-‘Operational Creditor’ has been rejected in terms of order passed in **“Sajive Kunwar v. AMR Infrastructure”** decided on 15<sup>th</sup> February, 2017 by the Adjudicating Authority.

2. When the matter was taken up, Ld. Counsel for the appellants brought to our notice that the State Consumer Disputes Redressal Commission passed an order on 3<sup>rd</sup> October, 2016, directing the respondents-‘Corporate Debtor’ to refund the amount with interest, compensation and litigation expenses. It was submitted that the ‘amount’

due comes within the meaning of 'debt' and due amount having not been paid there is 'default' and therefore, petition under section 9 was maintainable.

3. Notices were issued on respondents- 'Corporate Debtor'. On notice, Ld. Counsel for the respondents submits that notice under Section 8 was not served on the 'Corporate Debtor'. However, from the record we find Section 8 notice was issued and served on 'Corporate Debtor' on 31<sup>st</sup> January, 2017 as reported by Postal Department in the tracking report of the Speed-Post.

4. Ld. Counsel for the respondents next contended that the notice under section 8 was not issued by proper authority but by the Power of Attorney holder who is not competent to issue such notice.

5. In reply, Ld. Counsel for the appellants has brought to our notice that one Mr. Mukesh Chadha has been given General Power of Attorney, to lodge any case and sign on behalf of the appellants.

6. From the General Power of Attorney attested on 4<sup>th</sup> February 2017, by the Notary Chandigarh, we find that the appellants are residing at Canada and on a visit to India and they revoked the earlier General Power of Attorney executed on 27<sup>th</sup> April, 2015 in favour of one Mr. Gulshan Kumar Jain and appointed Mr. Mukesh Chadha, son of Late Shri Inder Raj Chadha, Chartered Accountant as their General Power of Attorney

holder for the purposes of signing on their behalf on all the applications and documents, which may be required in connection with purchase of premises from Unitech Ltd. etc. The said General Power of Attorney also empowers Mr. Mukesh Chaddha to engage, appoint advocates/attorney(s) on their behalf under his own signatures and to sign and verify all types of documents in the Courts etc., relating to Civil and Criminal matters in India. He has also been given the power to move before the Consumer Court etc. to protect their interest. In that view of the matter, we hold that Mr. Mukesh Chadha, General Power of Attorney holder has right to issue notice under section 8 and sign Form -3 showing his relationship with appellants as their General Power of Attorney holder.

7. So far as the decision in the case of **“Sajive Kunwar Vs. AMR Infrastructure”** is concerned as referred to in the impugned judgment, similar finding given by Ld. Adjudicating Authority in **“Nikhil Mehta and Sons. v. AMR Infrastructure Ltd.”** has been overruled by this Appellate Tribunal by judgment dated 21<sup>st</sup> July, 2017 in Company Appeal (AT) (Insol.) No. 07 of 2017. In that view of the matter, the decision of the Ld. Adjudicating Authority based on the earlier case against the **“AMR Infrastructure Limited”** cannot be a ground to reject the application preferred by the appellants.

8. The term ‘debt’ has been defined in Section 3(11) of the I & B Code, which reads as under:

*“debt’ means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt”*

“Default” has been defined in Section 3(12) as:

*“default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be”*

Section 5(20) defines ‘Operational Creditor’ means a person to whom an operational debt is owed, as quoted below:

*“Operational Creditor means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred”*

9. Section 5(21) defines ‘Operational Debt’ means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law, payable to the Central Government, any State Government or any local authority, as quoted below: -

*“Operational debt means a claim in respect of the provision of goods or services including employment or a debt in*

*respect of the repayment 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”*

10. In view of the aforesaid provisions, we hold that there is a ‘debt’ due to the appellants and there is default on the part of the respondents- ‘Corporate Debtor’. However, the appellants do not come within the meaning of “Operational Creditor”.

11. In the case of **“Nikhil Mehta and Sons. v. AMR Infrastructure Ltd.”** this Appellate Tribunal noticed that Nikhil Mehta & Ors. purchased flat/shops from builder pursuant to an agreement. In terms of the said agreement, this Appellate Tribunal held the **“Nikhil Mehta and Sons”** as the ‘Financial Creditor’, as in their case the ‘Financial Debt’ was coming within the meaning of Section 5(8)(f) of the I & B Code. As the agreement reached between the parties pursuant to which amount has been ordered to be refunded by consumer forum is not available before us and appellants have not taken a plea that they are the ‘Financial Creditor’, we are not deciding such question leaving the question open for decision in case the appellants claims to be ‘Financial Creditor’ and moves before the Adjudicating Authority with such plea.

12. For the reasons aforesaid, while we are not inclined to interfere with the impugned order dated 21<sup>st</sup> March, 2017 on the ground that the

Appellants are not 'Operational Creditor', give liberty to the parties to decide their course of action as they may take, in accordance with law.

13. The appeal is dismissed with the aforesaid observations. However, in the facts and circumstances, there shall be no order as to costs.

**(Justice S.J. Mukhopadhaya)**  
**Chairperson**

**( Balvinder Singh)**  
**Member(Technical)**

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