

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

**Company Appeal (AT) (Insolvency) No. 185 of 2017**

**IN THE MATTER OF:**

**Mahesh Kumar Panwar**

**...Appellant**

**Versus**

**Neelam Singh & anr.**

**...Respondents**

**Present:**

**For Appellant :**

**Mr. S. Gosh and Mr. Abhishek Nahata, Advocates  
Mr. Arvinder Kumar, Chartered Accountant**

**For 1<sup>st</sup> Respondent:**

**Mr. Anukul Raj, Mr. Rahul Shukla and Ms. Nikita  
Raj, Advocates**

**For 2<sup>nd</sup> Respondent:**

**Mr. Kumar Dushyant Singh, Advocate**

**O R D E R**

**20.03.2018**        The respondent – Mrs. Neelam Singh, w/o Dr. Narendra Nath Singh filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “I&B Code”) for initiation of ‘Corporate Insolvency Resolution Process’ against M/s. Megha Soft Infrastructure Pvt. Ltd. The Adjudicating Authority (National Company Law Tribunal), New Delhi by impugned order dated 23<sup>rd</sup> August, 2017 admitted the application, passed the order of moratorium and appointed Insolvency Resolution Professional giving rise to the present appeal.

2.        Learned counsel appearing on behalf of the appellant submits that the respondent is not a ‘financial creditor’ within the meaning of sub-section (7) read with sub-section (8) of Section 5 of the I & B Code. On the other hand, according

to the learned counsel appearing on behalf of the 1<sup>st</sup> Respondent, Mrs. Neelam Singh is a 'financial creditor' within the meaning of the aforesaid provision.

3. The aforesaid issue was raised by the Corporate Debtor before the Adjudicating Authority and after going through the record the Adjudicating Authority accepted that the respondent is a 'financial creditor'.

4. The parties has brought to our notice the Agreement dated 26<sup>th</sup> June, 2014 reached between the 1<sup>st</sup> respondent (financial creditor) and M/s. Mega Soft Infrastructure Pvt. Ltd. (corporate debtor), relevant portion of which reads as follows:

*“AGREEMENT*

*This agreement is made at NOIDA on 26<sup>th</sup> day of June, 2014 but agreement is effective from 01<sup>st</sup> day of June 2014 by and between :*

***M/s. Mega Soft Infrastructure (P) Ltd.** a company incorporated under the Companies Act, 1956 having its Corporate Office at No. 16-17, First Floor, C Block Market, Sector 41, NOIDA 201301 through its Director Shri Mahesh Kumar Pawar (who is empowered to execute this agreement vide its resolution dated 30.05.2014, (hereinafter called the **“First Party”**, which expression shall, unless it be repugnant to the context of meaning therefore, be deemed to include their legal heirs, successors, representatives, nominees and permitted assigns) of the First Party;*

AND

**Mrs. Neelam Singh W/o Dr. Narendra Nath Singh, R/o B-21/128-129, Bhairav Nath Gali, Kamachcha, Varanasi 221005**, (hereinafter referred to as the **“Second Party”** which expression shall, unless it be repugnant to the context or meaning therefore, be deemed to include their legal heirs, successors, representatives, nominees and permitted assigns) of the second party;

The **“FIRST PARTY”** and **“SECOND PARTY”** are collectively being referred to as the **“PARTIES”**

In terms of the clause No. B and 8 of the earlier valid agreement dated 06.10.2008 entered between the same parties, the first party was to handover the vacant possession of space of about 2004 sq. ft. on 3<sup>rd</sup> floor in tower 1 in the proposed IT complex cum corporate hub to be constructed at plot No. 02/02 situated at sector – 154, in the name & style **“The Grid”** of the unit duly completed in all respect by 30.06.2011.

It is ascertained and agreed by the first party that till date no construction work has started. Consequent upon the factual position both the parties have agreed for the amicable settlement.

**NOW THEREFORE IT IS AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS :**

1. Both the parties agreed and settled for a sum of Rs.1,34,00,988/-(Rupees One Crore Thirty Four Lacs Nine Hundred Eighty Eight Only) which includes booking amount paid, compensation, commitment, services rendered, appreciation etc.

The First Party has handed over post dated Cheque No. 617815 dated 01.02.2015 amounting to Rs.29,61,261/- & Cheque No. 617818 amount to Rs.1,04,39,727/- both drawn at Corporation Bank, Noida total amounting to Rs.1,34,00,988/-(Rupees One Crore Thirty Four Lacs Nine Hundred Eighty Eight Only) to the second party in discharge of his liability and post dated cheques for interest of deferred payment applicable as per the agreement reckoning from 1<sup>st</sup> June 2014 as per details hereunder :-

The details of cheque are given below:-

Sl. No.	Cheque No.	Dated	Amount	Bank
1.	617803	01.08.2014	251268.00	Corporation Bank, Noida
2.	617804	01.10.2014	251268.00	Corporation Bank, Noida
3.	617809	01.12.2014	251268.00	Corporation Bank, Noida
4.	617812	01.02.2015	251268.00	Corporation Bank, Noida

2. *The First Party has agreed to pay to the Second Party the outstanding amount on every due date as indicated above along with the interest @12.5% p.a. reckoned from 01.06.2014 till the actual date of payment is made. However in case First Party makes default in making payment on due date as per this agreement then the rate of interest shall be calculated @15% p.m. on the unpaid due amount & shall be paid only for the outstanding period till the date of actual payment. Further, in case the default continues for a period of 90 days the party of the first part shall discharge his obligation towards the second party by discharging his rights/interest/share in M/s. Mega Soft Infrastructure (P) Ltd. to the extent of outstanding amount including interest thereof without any goodwill whatsoever in the firm in favour of Second Party.*
3. *The total outstanding amount along with the interest has to be fully secured against land, building etc. of M/s. Megasoftware Infrastructure (P) Ltd. in favour of the Second Party till the outstanding amount including interest is not paid in full.*
4. *The second Party shall have absolute right to claim from the assets belongs to M/s. Mega Soft Infrastructure (P) Ltd.*

*against the settlement of unpaid amount including interest as specified in this agreement.*

5. *In case of prepayment which is made out of the outstanding amount before the scheduled time given in the agreement in that case for the adjustment of outstanding balance amount fresh agreement shall be drawn & PDC cheques for the outstanding amount shall be issued.*
6. *That in case of any dispute, the same shall be referred to the arbitration of CA.B.L. Bajaj whose decision shall be final & binding on both the parties.”*

5. From bare perusal of the agreement dated 26<sup>th</sup> June, 2014, we find that the 1<sup>st</sup> respondent has disbursed a sum of Rs.1,34,00,988/- which is against the ‘consideration of time value of money’ i.e. interest @ 12.5% per annum payable from 1<sup>st</sup> June, 2014 and in case of default in making payment, the rate of interest shall be @15% per annum on the unpaid due amount and payable till the date of actual payment. There is a period of default prescribed therein which stipulates that if defaults continues for a period of 90 days, the first party shall discharge his obligation towards the second party by discharging his rights/interest/share in M/s. Mega Soft Infrastructure (P) Ltd. The aforesaid terms of agreement clearly shows that the 1<sup>st</sup> respondent ‘disbursed’ the amount against ‘the time value of money’ and the ‘corporate debtor’ has defaulted to pay the amount in terms of the agreement.

6. Learned counsel appearing on behalf of the appellant submitted that the amount has been repaid but such submission being not based on record cannot be accepted. 1<sup>st</sup> respondent has enclosed the copies of the cheques to show that a sum of Rs.1,34,00,988/- were paid in favour of the 'corporate debtor'. This fact has not been disputed by the 'corporate debtor'.

7. The case of the appellant being covered by the decision of this Appellate Tribunal in "*Nikhil Mehta & sons vs. A.M.R. Infrastructure – Company Appeal (AT) (Insolvency) No. 07 of 2017*" no interference is called for against the impugned order. This apart as the resolution process has already completed and the resolution plan has been approved by the Adjudicating Authority no interference is called for. The appeal is accordingly dismissed. No cost.

[Justice S.J. Mukhopadhaya]  
Chairperson

[ Justice Bansi Lal Bhat ]  
Member (Judicial)

/ns/uk