

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

**Company Appeal (AT) (Insolvency) No. 617 of 2019**

**IN THE MATTER OF:**

Mahesh Kumar Panwar

.... Appellant

Vs

M/s Mega Soft Infrastructure  
Pvt. Ltd. (In Liquidation) & Anr.

.... Respondents

**Present:**

**For Appellant:            Mr. Arun Khatri, Advocate.**

**For Respondents:**

**ORDER**

**10.06.2019**            The Appellant, Director of M/s Mega Soft Infrastructure Pvt. Ltd. filed an application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (I&B Code) r/w Rule 11 of the NCLT for removal of the 'Resolution Professional'/ 'Liquidator', Mr. Abhishek Anand, which was rejected by the Adjudicating Authority (National Company Law Tribunal) New Delhi Bench on 2<sup>nd</sup> May, 2019.

2.     The Appellant/Directors were not co-operating with the 'Resolution Professional'/ 'Liquidator', therefore, the 'Resolution Professional' invoked power under Section 425 of the Company Act, 2013 (Companies Act) r/w Sections 70 and 72 of the I&B Code and filed an application before the Adjudicating Authority. It was alleged that despite directions by the Adjudicating Authority from time to time, the Ex-Directors of the 'Corporate Debtors' were willfully dis-obeying to co-operate. In fact, title deeds of the

property have surfaced, which were suppressed. One of them, Mr. Mahesh Panwar (Appellant herein) was forced to handover the title deed pertaining to the Noida land. He intentionally withheld the title deeds of the Baghpat property. As the application was filed under Section 425 of the Companies Act, which relates to initiation of contempt proceedings, it was alleged that the contemnor has taken resort to legal proceedings by filing a collusive petition for mandatory injunction in a desperate bid to avoid liquidation proceedings. This was done to procure some order of the Court to justify injunction over the property to keep it out of the arena of liquidation.

3. It appears that forensic audit was also conducted and its report received. A copy of the same was given to the Ex-Directors including the Appellant, who has the interest as well.

4. Contempt proceedings has been initiated by the Adjudicating Authority against the Appellant and other Directors, in which non-bailable warrants have been issued, as the Appellant and other Directors were not co-operating. At the stage of liquidation, two applications were filed by Ex-directors, including the Appellant being CA 493/2019 for recalling the non-bailable warrants issued against the Directors, namely- Mr. Mahesh Kumar Pawar (Appellant) and Mr. Ramesh Kumar Pawar (other Ex-Director). The Adjudicating Authority having noticed their conduct and continued absence from the Court and reluctant attitude in assisting the proceedings, the application was dismissed by impugned order dated 22<sup>nd</sup> April, 2019.

5. Another CA being CA No.494/2019 was filed by the Ex-Directors (including Appellant herein) questioning the working of the 'Liquidator'. The

Adjudicating Authority also dismissed the said application as the Ex-Directors have no locus to file an application on behalf of others by impugned order dated 22<sup>nd</sup> April, 2019.

6. Learned Counsel appearing on behalf of the Appellant submitted that the Appellant and Directors always co-operated with the 'Resolution Professional', but the 'Resolution Professional'/ 'Liquidator' was not co-operating and therefore, they asked for his removal. It is further submitted that the Appellant never prayed for removal of 'Resolution Professional'/ 'Liquidator' but in the CA No.494/2019, the Appellant has requested for handing over certain documents to the Appellant. However, we are not going into the question of removal of 'Resolution Professional'/ 'Liquidator' nor inclined to give any finding with regard to handover of any documents to the Appellant.

7. In the present case, as we find that the Appellant has not co-operated with the 'Resolution Professional'/ 'Liquidator' and is still not co-operating and the Adjudicating Authority has already initiated the contempt proceedings under Section 425 of the Companies Act and intends to order for penal action under Section 70 and 72 of the I&B Code, we allow the Appellant to raise all the issues before the Adjudicating Authority. If any issue the Appellant intends to raise, he and other Directors should appear in person and may file reply and the Adjudicating Authority thereafter will decide whether the Appellant and the other Directors are liable for punishment in terms of Section 425 of the Companies Act or their case is to be referred to the Special Court for action under Section 70 r/w Section 72

of the I&B Code. The Appeal is dismissed with the aforesaid observations.

No cost.

[Justice S. J. Mukhopadhaya]  
Chairperson

[Justice A.I.S. Cheema]  
Member (Judicial)

[Kanthi Narahari]  
Member (Technical)

Ash/SK