

**IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

**Company Appeal (AT) (Insolvency) No. 179 of 2017**

**[arising out of Order dated 30<sup>th</sup> August, 2017 by NCLT, Chandigarh Bench, Chandigarh in C.P. No. (IB) No. 49/Chd/Hry/2017]**

**IN THE MATTER OF :**

**Ramesh Chander Gupta**

**(Suspended Director, Arcee Ispat Udyog Ltd.)**

**...Appellants**

**Vs.**

**Punjab National Bank**

**...Respondent**

**Present:**

**For Appellant -**

**Shri Alok Dhir, Ms. Varsha Banerjee and Shri  
Milan Singh Negi , Advocates.**

**J U D G M E N T**

**SUDHANSU JYOTI MUKHOPADHAYA, J.**

The appellant – Ramesh Chander Gupta, one of the Director of Arcee Ispat Udyog Ltd. (the Corporate Debtor) has preferred this appeal against the order dated 30<sup>th</sup> August, 2017 passed by the Adjudicating Authority (National Company Law Tribunal) Chandigarh Bench, Chandigarh. By the impugned order, the application preferred by the respondent – Punjab National Bank (Financial Creditor) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I & B Code') has been admitted, order of moratorium has been declared, the case has been adjourned for appointment of Interim Resolution Professional and for further directions.

2. Learned counsel for the appellant while assailing the impugned order submitted that the application filed under Section 7 of the I & B Code is not maintainable as it was not filed by the authorised person of the Financial Creditor, but by a power of attorney holder. It was further submitted that there is no authorisation made by the Financial Creditor – Punjab National Bank in favour of the person concerned who filed the application and the Adjudicating Authority failed to consider the fact that letter dated 28<sup>th</sup> March, 2017 issued by the Chief Manager, Punjab National Bank would not amount to sufficient authority to initiate the proceedings under Section 7 of the I & B Code.

3. On the other hand, according to the learned counsel for the respondent, the application under Section 7 was maintainable as it was filed by one of the authorised officer of the Punjab National Bank.

4. Similar issue was fell for consideration before this Appellate Tribunal in “Palogix Infrastructure Private Limited vs. ICICI Bank Limited - Company Appeal (AT) (Insol.) No. 30 of 2017” etc. The Appellate Tribunal by common judgment dated 20<sup>th</sup> September, 2017 held as follows :

“31. As per Section 7 of the ‘I&B Code’ an application for initiation of ‘Corporate Insolvency Resolution Process’ requires to be filed by ‘Financial Creditor’ itself. The form and manner in which an application under section 7 of the ‘I&B Code’ is to be filed by a ‘Financial Creditor’ is provided in ‘Form-1’ of the Adjudicating Authority Rules. Upon perusal of the Adjudicating Authority Rules and Form-1, it may be duly noted that the ‘I&B Code’ and the Adjudicating Authority Rules recognize that a ‘Financial Creditor’ being a juristic

*person can only act through an “Authorised Representative”. Entry 5 & 6 (Part I) of Form No.1 mandates the ‘Financial Creditor’ to submit “name and address of the person authorised to submit application on its behalf”. The authorization letter is to be enclosed. The signature block of the aforementioned Form 1 also provides for the authorised person’s detail is to be inserted and also includes inter alia the position of the authorised person in relation to the ‘Financial Creditor’. Thus, it is clear that only an “authorised person” as distinct from “Power of Attorney Holder” can make an application under section 7 and required to state his position in relation to “Financial Creditor”.*

32. *The ‘I&B Code’ is a complete Code by itself. The provision of the Power of Attorney Act, 1882 cannot override the specific provision of a statute which requires that a particular act should be done by a person in the manner as prescribed thereunder.*
33. *Therefore, we hold that a ‘Power of Attorney Holder’ is not competent to file an application on behalf of a ‘Financial Creditor’ or ‘Operational Creditor’ or ‘Corporate Applicant’.”*

5. In the said case of Palogix Infrastructure Private Limited (Supra), the Appellate Tribunal notice the pleadings made by the Bank who authorize one of the officer to do the needful but at the top of the authorization letter the word “Power of Attorney” was written. Having noticed the aforesaid fact, the Appellate Tribunal by the aforesaid judgment dated 20<sup>th</sup> September, 2017 observed and further held as follows :

- “36. *In so far as, the present case is concerned, the ‘Financial Creditor’-Bank has pleaded that by Board’s Resolutions*

*dated 30<sup>th</sup> May, 2002 and 30<sup>th</sup> October, 2009, the Bank authorised its officers to do needful in the legal proceedings by and against the Bank. If general authorisation is made by any 'Financial Creditor' or 'Operational Creditor' or 'Corporate Applicant' in favour of its officers to do needful in legal proceedings by and against the 'Financial Creditor' / 'Operational Creditor'/'Corporate Applicant', mere use of word 'Power of Attorney' while delegating such power will not take away the authority of such officer and 'for all purposes it is to be treated as an 'authorization' by the 'Financial Creditor'/'Operational Creditor'/'Corporate Applicant' in favour of its officer, which can be delegated even by designation. In such case, officer delegated with power can claim to be the 'Authorized Representative' for the purpose of filing any application under section 7 or Section 9 or Section 10 of 'I&B Code'.*

- 37. As per Entry 5 & 6 (Part I) of Form No.1, 'Authorised Representative' is required to write his name and address and position in relation to the 'Financial Creditor'/Bank. If there is any defect, in such case, an application under section 7 cannot be rejected and the applicant is to be granted seven days' time to produce the Board Resolution and remove the defect.*
  
- 38. This apart, if an officer, such as senior Manager of a Bank has been authorised to grant loan, for recovery of loan or to initiate a proceeding for 'Corporate Insolvency Resolution Process' against the person who have taken loan, in such case the 'Corporate Debtor' cannot plead that the officer has power to sanction loan, but such officer has no power to recover the loan amount or to initiate 'Corporate Insolvency Resolution Process', in spite of default of debt.*

39. *If a plea is taken by the authorised officer that he was authorised to sanction loan and had done so, the application under section 7 cannot be rejected on the ground that no separate specific authorization letter has been issued by the 'Financial Creditor' in favour of such officer designate.*
40. *In view of reasons as recorded above, while we hold that a 'Power of Attorney Holder' is not empowered to file application under section 7 of the 'I&B Code', we further hold that an authorised person has power to do so."*

6. In the present case, the appellant has enclosed the so-called "Power of Attorney" of the Punjab National Bank like ICICI Bank. As noticed in the case of Palogix Infrastructure Private Limited, in the present case also we find that by an instrument dated 5<sup>th</sup> November, 2015 the committee of Board of Directors empowered an officer of the Bank and delegated him power to move before a Court on behalf of the Bank, with power to do everything requisite for the purpose mentioned therein, including borrowing money from the Reserve Bank of India and financial institutions of big authorities in India and also to appear and take action on behalf of the Bank in any Court of original jurisdiction, court of appeal, revision, civil, criminal, revenue courts, tribunals and office/offices and to engage counsel on behalf of the Bank for such courts, tribunal and offices. In view of the aforesaid Board's Resolution by letter dated 28<sup>th</sup> March, 2017 the Chief Manager, Branch Head, MCB Hisar was authorised to file petition before the Adjudicating Authority under Section 7 of the I & B Code and named the IRP for appointment. From the application

filed under Section 7 in Form 1 filed by the respondent – Financial Creditor we find that the authorised officer of the Bank has signed the document.

7. In the aforesaid circumstances, as the case in hand is covered by the decision of this Appellate Tribunal in Palogix Infrastructure Private Limited (Supra) and as the Senior Manager of the Bank has filed the application under Section 7, we find no ground to interfere with the impugned order.

8. The appeal is accordingly dismissed, the order of admission of application under Section 7 is affirmed. However, in the facts and circumstances of the case, there shall be no order as to costs.

[Justice S.J. Mukhopadhaya]  
Chairperson

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

[ Balvinder Singh ]  
Member (Technical)

NEW DELHI

17th October, 2017

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