

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

**COMPANY APPEAL(AT)(INSOLVENCY) NO.128 OF 2017**

**IN THE MATTER OF:**

Sh Sumeet Ahuja

Appellant

Vs

Union Bank of India & another

Respondents

**Present:**

**For Appellant:-**Mr Ankit Singal with Mr Aditya Khamparia, Advocates.

**For Respondents:** - Mr. Aslam Ahmed with Ms Shraddha Chaudhri.

**ORDER**

**16.11.2017** - The petition for substitution has been filed by Mr. Sumeet Ahuja, Director for impleading him as appellant. Learned counsel for the appellant further prays to transpose M/s Paramshakti Steels Ltd through Interim Resolution Professional as the second respondent.

Having heard both the parties the petition for substitution is allowed. Let Shri Sumeet Ahuja be substituted as appellant and M/s Paramshakti Steels Ltd through IRP be transpose as second respondent. Appellant to make necessary corrections in the cause title. I.A. No.860 of 2017 stands disposed off.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member (Judicial)

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**ORDER**

**16.11.2017-** The present appeal has been preferred by the appellant against the order dated 3<sup>rd</sup> July, 2017 passed by the Adjudicating Authority, (National Company Law Tribunal), Mumbai Bench, Mumbai in CP No.727/I&BP/NCLT/MAH/2017 whereby and whereunder the Adjudicating Authority admitted the application preferred by the 1<sup>st</sup> respondent (financial creditor) under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as the "I&B Code"), passed order of moratorium and appointed Interim Resolution Professional (IRP).

2. The main plea taken by the Learned counsel for the appellant is that the application under Section 7 of the I&B Code has been filed by the Power of Attorney holder which according him is not permissible.

3. The 1<sup>st</sup> respondent has refuted such allegations as the application has been filed by the 'authorised person' namely the Deputy General Manager of the Bank.

4. Similar issue fell for consideration before this Appellate Tribunal in the case of *M/s Palogix Infrastructure Pvt Ltd Vs ICICI Bank, Company Appeal (AT) (Insolvency) No.30 of 2017*. In the said case this Appellate Tribunal by its judgement dated 20<sup>th</sup> September, 2017 observed and held as under:

**“36. x x x x x. 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."**

5. As noticed, in the present case the application under Section 7 has been filed by the Deputy General Manager of the Bank, in the authorisation order it is mentioned as Power of Attorney, but that will not change the complex of the instrument which is an order of authorisation. In view of such position of law the submission made by the counsel for the appellant can not be accepted.

6. Learned counsel for the appellant then referred to the impugned order and submitted that the Adjudicating Authority has treated the 1<sup>st</sup> respondent as 'secured creditor' and has made certain observations. However, as it has no

relevancy with admission of the application, we are not expressing any opinion.

We find no merit in this appeal. It is accordingly dismissed. No cost.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member (Judicial)

*bm/unki*