

**IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

**Company Appeal (AT) (Insolvency) No. 24 of 2018**

[Arising out of Order dated 15<sup>th</sup> December, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai in CP Nos. 1371 & 1372/I&BP/NCLT/MAH/2017]

**IN THE MATTER OF:**

**Mr. Vijay Kumar Jain**

**...Appellant**

**Vs.**

**DBS Bank Limited**

**...Respondent**

**Company Appeal (AT) (Insolvency) No. 52 of 2018**

[Arising out of Order dated 15<sup>th</sup> December, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai in CP Nos. 1371 & 1372/I&BP/NCLT/MAH/2017]

**IN THE MATTER OF:**

**Mr. Vijay Kumar Jain**

**...Appellant**

**Vs.**

**Standard Chartered Bank Ltd.**

**...Respondent**

**Present: For Appellant: - Dr. U.K. Chaudhary, Senior Advocate with Mr. Abhay Jadeja, Ms. Shruti Katakey, Mr. Himanshu Vij, Ms. Manisha Chaudhary, Mr. Abhishek Kumar, Mr. Amish Tandon, Ms. Samridhi Gogia, Mr. Jay Zaveri and Mr. Ayush Beotra, Advocates.**

**For Respondent: - Mr. Arun Kathpalia, Senior Advocate with Ms. Pooja Kshivsagar and Mr. Hridhay Khurana, Advocates.**

**J U D G M E N T****SUDHANSU JYOTI MUKHOPADHAYA, J.**

In both the appeals as common question of law is involved and have been preferred against common judgment dated 15<sup>th</sup> December, 2017 passed by the Adjudicating Authority (National Company Law Tribunal) Mumbai Bench, Mumbai in Company Petition Nos. 1371 & 1372/I&BP/NCLT/MAH/2017, they were heard together and are being disposed of by this common judgment.

2. Standard Chartered Bank Limited ('Financial Creditor') filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") against 'Ruchi Soya Industries Limited' ('Corporate Debtor'). Another application under Section 7 of the 'I&B Code' was filed by 'DBS Bank Limited' ('Financial Creditor') against the same 'Corporate Debtor' i.e. 'Ruchi Soya Industries Limited'. Both the applications were heard together and disposed of by common impugned order dated 15<sup>th</sup> December, 2017. The application preferred by 'Financial Creditor' has been admitted, order of 'Moratorium' has been passed and 'Interim Resolution Professional' has been appointed.

3. The Appellant- Mr. Vijay Kumar Jain, Director and Shareholder of the 'Ruchi Soya Industries Limited' ('Corporate Debtor') have preferred these appeals against the common impugned order dated 15<sup>th</sup> December, 2017.

4. The main ground taken by the Appellant is that Mr. Pallav Sangal who filed the application under Section 7 of the 'I&B Code' (In Form-1) on behalf of Standard Chartered Bank Limited was not competent to file the application having not been authorised by the Board of Directors of the Bank.

5. Similar plea has been taken with regard to Mr. Pankaj Jain, who filed the application under Section 7 of the 'I&B Code' (In Form-1) on behalf of 'DBS Bank Limited'.

6. Before the Adjudicating Authority, Mumbai Bench, the 'Corporate Debtor' had raised different objections based on which following question of law was framed and answered against the 'Corporate Debtor':-

*“12. Now the points for consideration are as follows:*

*a. Whether the Power of Attorney given to Pallav Sangal is defective or not?*

*b. Whether Statement of Accounts have been properly certified as envisaged under Bankers' Books of Evidence Act, 1891?*

*c. Whether the certificate of Registration of Charge over the assets of the Debtor Company is defective or not?*

*d. Whether Facility Agreement has been adequately stamped or not, if not stamped adequately, whether*

*such defect would deprive this petitioner from filing this Company petition or not?*

*e. Whether an Appeal over an order dismissing winding up CP 570/2016 filed by IDFC Bank Ltd against this Corporate Debtor will have any bearing on this Adjudicating Authority passing an order under Section 7 of the Code or not?*

*f. Whether the Reserve Bank of India directives pursuant to the Banking Regulations (Amendment) Act, 2017 will have any bearing on this application or not?*

*g. Whether Insolvency & Bankruptcy Code is applicable to the Agreement for ECB facility said to have been governed by English Law or not?"*

7. Similar objection was raised in the case of 'DBS Bank Limited'. However, except the first question relating to 'Power of Attorney' and maintainability of applications under the signatures of Mr. Pallav Sangal and Mr. Pankaj Jain, learned Senior Counsel has not pressed nor argued any other issue in these appeals.

8. Learned Senior Counsel appearing on behalf of the Appellant submitted that the Power of Attorney holder cannot file application under Section 7 of the 'I&B Code' (In Form 1). Reliance has been placed on decision of this Appellate Tribunal in "**Palogix Infrastructure Private**

***Limited Vs. ICICI Bank Limited—Company Appeal (AT) (Insolvency) Nos. 30, 37 & 54 of 2017***

9. In the case of Standard Chartered Bank Limited, learned Senior Counsel referred to Form-1 to show that Mr. Pallav Sangal, Team Leader, Group Special Assets Management has signed Form-1 and submitted that he was not the authorised person to sign the application.

10. Learned Senior Counsel appearing on behalf of the Respondent-‘Standard Chartered Bank Limited’ referred to the ‘Power of Attorney’ (authorisation letter) (Page 964-965) and submitted that Mr. Pallav Sangal was authorised to move the application. Relevant portion of the ‘Power of Attorney’ reads as follows:

**“POWER OF ATTORNEY**

*We, Standard Chartered Bank (“the Bank”), being a company incorporated in England by Royal Charter, with reference number ZC18, and whose principal office is at 1 Basinghall Avenue, London, EC2V 5DD, do hereby appoint **Pallav Sangal** presently employed as **Team Leader** by **Standard Chartered Bank** to be our true and lawful attorney (the “Attorney”) to sign or execute and deliver in our name and on our behalf any deed, agreement, instrument or other document and to do or perform any other action of any kind in connection with all or any of the following acts and things:*

(1)

a) *To act as Bank's nominee / "Authorized Representative" for the purposes of and as contemplated under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the "Act") or any enactment or amendment thereof for the enforcement of security interest of the Bank and to do all acts in relation thereto as enlisted below:*

b) *To ask, demand, claim, petition for, follow up, recover and enforce payment, and require delivery, transfer or possession of moveable and immovable property held as security by the Bank or otherwise in lieu of the financial facility extended, ensure execution of all debts, monies, securities for money and claims of all kinds, conduct sale of moveable or immovable properties through auction or such other modes prescribed under the Act and issue sale / discharge certificate to the buyer/auction purchaser of such properties.*

c) *power to sign, register and de-register various security and execute all contractual documents, agreements, forms, settlements, releases, security documents and statutory filings in connection with lending, any restructuring of debt to various customers.*

d) *file, institute, prosecute, conduct, defend, continue with, appear and represent*

*the Bank in any suits, actions, petitions and all other proceedings, civil or criminal (“Proceedings”), in any court, tribunal and/or forums or before any authority on behalf of the Bank (which, for the avoidance of doubt, shall include, but are not limited to, any Proceedings pursuant to the Insolvency and Bankruptcy Code, 2016 (the “IBC”) and for such purpose to sign any pleadings, execute or attest plaints, petitions, appeals or other petitions for review or revision and other documents that may be necessary therefore and to verify the same, to swear to affidavits and to defend any suit, action, petition or proceeding that may be filed against the bank in any court, tribunal, forum or before any authority and prosecute or defend to the highest court of appeal or review, revision or reference and to do and execute all such acts and things as may be requisite and/or become necessary in that behalf:*

*e) accept service of summons, notices, processes or other papers in respect of such suits, actions, petitions and other proceedings and also to file caveats and all other applications in connection therewith.*

*f) retain and remunerate Advocates, Solicitors, Attorneys, or other agents (which, for the avoidance of doubt, shall include, but are not limited to, the retention of any insolvency professional pursuant to the IBC)*

*on behalf of the bank for the above matters and to sign, give and deliver all mandates, vakalatnamas all such authorizations as may be necessary for the above purpose and to cancel the same at any time.*

*g) represent the Bank fully in the above suits, actions, petitions and other proceedings in all courts, tribunals, forums or before any authority and to file all documents writings and deeds in connection therewith and to withdraw / take return of such documents, writings and deeds and to lead evidence for the above matters in all courts, tribunals, forums or before any authority.*

*h) To file winding up company petition under Sections 272 of the Companies Act, 2013.*

*[2] To do all such other things as may be considered incidental or conducive to the attachment of the above objects or any of them.*

*We undertake to ratify and confirm any act or thing whatsoever that the Attorney shall do or lawfully cause to be done in the proper exercise of any power under this Power of Attorney and to indemnify the Attorney against all liabilities, costs and expenses incurred in the proper exercise of any power under this Power of Attorney.*

*The authority of the Attorney under this Power of Attorney shall cease upon the earliest of:*



- (a) *Maximum of three years from the date of issue; or*  
 (b) *the Bank giving written notice of revocation to the Attorney; or*  
 (c) *the Attorney ceasing to be employed by Standard Chartered Bank in the aforementioned position.*

*This Power of Attorney is executed as a deed and shall be governed by and construed in accordance with English law.*

*Sd/-*

.....

*Executed as a deed by Zarin Daruwala for and on behalf of Standard Chartered Bank under a power of attorney dated 1 April 2016 in the presence of:"*

11. Learned Senior Counsel appearing on behalf of the Appellant pointed out that 'Mr. Zarin Daruwala' has executed the Power of Attorney and not the Board of Directors. It was pointed out by learned Senior Counsel for the Standard Chartered Bank Limited that Mr. Zarin Daruwala is the Chief Executive Officer (CEO) of Standard Chartered Bank Limited, who has been authorised by the Bank to execute such Power of Attorney in favour of another person. Reliance has been placed on 'Power of Attorney' executed by the Standard Chartered Bank Limited in favour of Mr. Zarin Daruwala on 1<sup>st</sup> April, 2016, relevant portion of which reads as follows:

**“POWER OF ATTORNEY**

*We, Standard Chartered Bank (“the Bank”), being a company incorporated in England by Royal Charter, with reference number ZC18, and whose principal office is at 1 Basinghall Avenue, London, EC2V 5DD, do hereby appoint **Zarin Daruwala**, presently employed as **Chief Executive Officer, India** to be out true and lawful attorney (“the Attorney”) to manage and conduct our business and affairs and to sign or execute and deliver in our name and on our behalf any deed, agreement, instrument or other document relating to the business and affairs of the Bank and without limiting the generality of the foregoing authority we declare that our Attorney shall have full power to do, perform and concur in all or any of the following acts and things:*

- 1. To receive moneys on deposit, current account or otherwise, with or without allowance of interest, and otherwise to borrow, raise or take up money and to lend or advance money or grant or provide credit or financial accommodation, with or without security, to such persons and on such terms as may be deemed expedient.*
- 2. To issue letters of credit, circular notes, certificates of deposit, bills, drafts and other instruments and securities, whether to bearer or otherwise, and whether providing for the payment of money or the delivery of bullion or otherwise, and to*

*make the same or any of them assignable free from equities.*

3. *To draw, make, accept, endorse, discount, negotiate, execute and issue bills of exchange, promissory notes, debentures and other negotiable or transferable instruments.*
4. *To discount, buy, sell, broke and deal in securities and investments of all kinds, bills of sale, bills of lading, coupons, draft, warrants, debentures, scrip and other instruments and securities whether transferable or negotiable or otherwise and to buy, sell, broke and deal in bullion and specie, to underwrite, subscribe for, guarantee the subscription of, purchase or otherwise acquire and sell, dispose of, issue on commission and deal in shares, stocks, funds, debentures, debenture stocks, bonds, securities, obligations and other investments, rights and interests of all kinds, to negotiate loans and advances, to effect credit guarantees or credit insurance, and to receive money, securities, title deeds, and other valuables on deposit or for safe custody or otherwise and to collect the transmit moneys or securities.*
5. *To act as and undertake the duties of an executor or administrator of estates, trustee of wills and settlements and of trust deeds or other instruments*

*constituting debentures, debenture stocks, bonds and other securities, and to act as and undertake the duties of custodian trustee for pension, benevolent or other funds, and as manager or director of businesses or companies whether limited or unlimited, and generally to act in a fiduciary capacity of any sort including the undertaking of all duties normally undertaken by a trust corporation and either with or without remuneration.*

- 6. To acquire, take options over, construct, sell, improve, manage, develop, exchange, lease, mortgage, dispose of, turn to account, create an interest in or otherwise deal with any estate, interest, property (whether real or personal) or rights of any kind which may appear to be necessary or convenient for any business of the Bank including shares and other interests in any company.*
- 7. To enter into any guarantee, contract of indemnity or suretyship and in particular (without prejudice to the generally of the foregoing) to guarantee the payment of any principal moneys, premiums, interest and other moneys secured by or payable under any obligations or securities and the payment of dividends and premiums on, and the repayment of the capital of,*

*stocks and shares of all kinds and descriptions.*

8. *To make, sign or execute and deliver discharges, releases, transfers, release of mortgage reconveyances, reassignments, release of debentures, withdrawal of caveat and other instruments of like nature in respect of the total or partial satisfaction of any security favouring us.*
9. *To make, sign or execute and deliver all contracts, receipts, deeds conveyances, charges, transfers, mortgages, assurances, assignments, caveats, documents and instruments of whatsoever nature.*
10. *To execute the right to foreclose, sell, and dispose of all lands, houses, buildings, goods merchandise and property of every description mortgaged to us or given to us as security and also to enforce any rights or remedies incident to any mortgages, charges or security in our favour.*
11. *To settle, compromise, discharge, compound or arrange or submit to arbitration all accounts, debts, losses and claims and disputes of all kinds, including insurance claims, whether claimable by or against us and to give effectual receipts and discharges thereof.*
12. *To commence, prosecute and defend all actions, suits or legal proceedings whether civil or criminal including proceedings in*

*bankruptcy and winding up of any persons, firms or companies, to make proof of debts on our behalf, vote and take part in all meetings and proceedings and to enforce by all lawful means any judgement, decree or order or to discontinue or abandon any proceedings.*

*13. To engage, employ and control in all respects employees, agents, officers, clerks, servants and independent contractors and others and to dismiss or terminate the services of such employees, agents, officers, clerks, servants and independent contractors whether engaged by you as Attorney or any other attorney or by the Court of Directors of the Bank or otherwise.*

*14. To act as representative of the Bank, to manage the activities of any representative offices of the Bank in India including but not limited to the maintenance of an establishment for the purpose of performing liaison and related services in connection with the business activities of the Bank, collecting information and carrying on preparatory and auxiliary work to develop relations with banks, governmental organisations and agencies and enterprises.*

*15. To appoint any person as an attorney of the Bank with authority on such terms as the Attorney thinks fit to do anything*

*within the scope of this Power of Attorney, either in whole or in part, except for the powers set out in this paragraph 15 or those set out in paragraph 16 and to revoke any such appointment.*

*16. To appoint any person as a sub-attorney of the Attorney under this Power of Attorney to whom the Attorney may delegate his or her powers hereunder to do anything within the scope of this Power of Attorney, either in whole or in part, except for the powers set out in this paragraph 16 or those set out in paragraph 15 and to revoke any such appointment.*

*17. To do all such other acts or things as may be considered incidental or conducive to the attainment of the above objects or any of them.*

*We undertake to ratify and confirm any act or thing whatsoever that the Attorney or any person duly appointed under paragraph 15 or 16 shall do or lawfully cause to be done in the proper exercise of any Power of Attorney or by virtue of any authority under paragraph 15 or 16 and to indemnify the Attorney and any such person as aforesaid against all liabilities, costs and expenses incurred in the proper exercise of any power under this Power of Attorney or any authority given under paragraph 15 or 16.*

*The authority of the Attorney under this Power of Attorney shall cease upon the earliest of:*

- (a) *four years from the date of issue; or*
- (b) *the Bank giving written notice of revocation to the Attorney, or*
- (c) *the Attorney ceasing to be employed as Chief Executive Officer, India.*

*This Power of Attorney is executed as a deed and shall be governed by and construed in accordance with English law.*

The Common Seal of  
STANDARD CHARTERED BANK  
Was affixed hereto  
In the presence of

*Sd/-*

.....

*Sealing Officer*

*Sd/-.....*

*Sealing Officer*

*Date issued: / April, 2016”*

12. In so far as the case of ‘DBS Bank Limited’ is concerned, learned counsel for the Respondent- DBS Bank Limited referred to Power of Attorney dated 26<sup>th</sup> June, 2013 given by DBS Bank Limited in favour of Mr. Pankaj Jain, relevant portion of which is as follows:



**“POWER OF ATTORNEY**

*POWER OF ATTORNEY given on the 26<sup>th</sup> Day of June 2013 by DBS BANK LTD., a company incorporated in the Republic of Singapore and having its registered office at 12 Marina Boulevard, Marina Bay Financial Centre Tower 3, Singapore 018982 (hereinafter called the “**Bank**”).*

*WHEREAS:*

*(1) The Bank carries on business in the Republic of Singapore and has established branches in India and may establish additional branches in India (each a “**Branch**”).*

*(2) The following are Branch staff:*

<u>Name</u>	<u>Passport No.</u>
PANKAJ JAIN	L1705946

*(hereinafter called “the Officer”)*

*(3) The Bank is desirous of conferring on the Officer the powers and authorities hereinafter contained.*

*NOW THIS DEED WITNESSETH that the Bank hereby appoints the Officer, each of them acting singly, to be the true and lawful attorney of the Bank to act for the Bank at any Branch and on behalf of and for and in the name of the Bank or in his own name to do and perform all or any of the following acts and things in India, that is to say:-*

1. *To ask, demand, sue for, at law or in equity, recover, receive, enter upon, seize and take possession of, all lands, goods, chattels, stocks, funds, moneys, securities, real and personal estate and property of any description, which the Bank holds, is entitled to or interested in, whether as owner, or under or by virtue of any bond, mortgage charge, lien, pledge or security, or otherwise howsoever.*
2. *To ask, demand, sue for, either at law or in equity or otherwise, and recover, all moneys now due or owing or payable or which shall hereafter be or become due or owing or payable to the Bank on any account whatsoever, and to receive and give good receipts or releases for all of such moneys as aforesaid whether the time for payment thereof shall or shall not have arrived and to satisfy all record judgments in favour of the Bank, and all mortgages and liens whatsoever in or as to which the Bank is, or may hereafter be, the mortgagee or lien holder or pledgee.*
3. *To use, exercise, and enforce, all powers, rights and remedies in respect of any lands, goods, chattels, merchandise, stocks, funds, moneys, shares, securities and personal estate or property of any kind whatsoever or any account, matter*

*or thing whatsoever, which the Bank can, or could use, exercise, or enforce.*

4. *To commence and carry on, or concur any actions suits or other proceedings of every description, at law or in equity including bankruptcy or insolvency or liquidation or winding up or otherwise and to accept service of any writ of summons or other legal process and to enter an appearance in, defend, represent the Bank in or oppose any actions, suits or other proceedings as aforesaid, which may be.*

*IN WITNESS WHEREOF the Bank has caused its Common Seal to be hereunto affixed this 26<sup>th</sup> day of June Two Thousand and Thirteen (2013).*

*The Common Seal of        )  
DBS BANK LTD.            )  
was hereunto affixed     )  
in the presence of:-      )*

- *Director*

*Piyush Gupta (Mr)*

- *Secretary*

*Goh Peng Fong (Mr)”*

13. Learned Senior Counsel for the Respondent also relied on the decision of this Appellate Tribunal in **“Palogix Infrastructure Private**

**Limited (Supra)**”, wherein similar issue fell for consideration before this Appellate Tribunal and by judgment dated 20<sup>th</sup> September, 2017, this Appellate Tribunal observed and 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'.*

*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."*

14. In both the cases, we find that the Officers of the respective Banks have been authorised by the Competent Authority to file the application. Mr. Pallav Sangal is an Officer of the Standard Chartered Bank Limited, who has been authorised by the Chief Executive Officer of the Bank. The Chief Executive Officer has been authorised by the Standard Chartered Bank to authorise any person for taking action in accordance with law.

15. Similarly, in the case of DBS Bank Limited, we find that Mr. Pankaj Jain has been authorised by the Board of Directors of the DBS Bank Limited.

16. In view of the fact that the application has been filed by the authorised persons, we hold that both the applications on behalf of the 'Financial Creditors' were maintainable. In any case if one of the application is admitted, the 'Corporate Insolvency Resolution Process' starts. In such case, it is not necessary to admit the other application, who (2<sup>nd</sup> Applicant) is entitled to file claim before the 'Resolution Professional'.

17. We find no merit in these appeals. They are accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member(Judicial)

NEW DELHI

26<sup>th</sup> March, 2018

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