

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III
(IB) – 22(ND)/2024**

IN THE MATTER OF:

CANARA BANK

..... Applicant/Financial Creditor

VERSUS

INTERNATIONAL PRINT-O-PAC. LTD. Respondent/Corporate Debtor

Under Section 7 of the IBC, 2016

Order Pronounced On: 23.02.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Abhishek Naik, Mr. Gulafsha Kureshi, Advs.

For the Respondent : Mr. Sumesh Dhawan, Mr. Swapnil Gupta,
Mr. Abhinav Mishra, Mr. Vaibhav Mehniratta, Advs.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

- 1.** The present Application has been filed under Section 7 of IBC, 2016, by Canara Bank, the Applicant/Financial Creditor herein seeking initiation of CIRP against the M/s. International Print-o-Pac. Ltd., the Respondent/Corporate Debtor herein.
- 2.** Pursuant to the order dated 16.01.2024 passed by this Adjudicating Authority, notices were served upon the Respondent/Corporate Debtor and reply affidavit has been filed.

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3. Mr. Sumesh Dhawan, Learned Counsel appearing for the Respondent/Corporate Debtor submitted that the Application under Section 7 of the Code is incomplete and ought to be dismissed as not maintainable. Although no objections have been raised in the reply affidavit filed by the Corporate Debtor with respect to the maintainability of the present application, Mr. Dhawan made a orally raised objections with regard to the maintainability during the course of the arguments. Accordingly, we have heard the submissions made by the Learned Counsel for the parties on the issue of maintainability of the present application.
4. Mr. Sumesh Dhawan, submitted that the present application has been filed without proper authority. He has pointed out various discrepancies in filing of the application stating that the affidavit in support of the application under Section 7 of IBC has been sworn in by one Mr. Asheish Thakur whereas the letter of authority dated 07.11.2023 issued by one Mr. Anand Srivastava, Assistant General Manager, shows that the authority has been given to one Mr. Asheish Kumar, Chief Manager of Canara Bank SAM Branch, New Delhi. He further submitted that the letter of authority has been issued, without any Board Resolution and therefore not valid. He therefore, submitted that the present application under Section 7 ought to be rejected as it has been filed without any authority. In support of his arguments, he has placed reliance on the following judgments.

- *State Bank of Travancore versus Kingston Computers India Private Limited (2011) 1 SCC 524.*

- *Palogix Infrastructure Private Limited versus ICICI Bank Limited, 2017 SCC Online NCLAT 266.*
 - *Rajendra Narottamdas Sheth versus Chandra Prakash Jain, (2022) 5 SCC 600.*
5. The Learned Counsel appearing for the Applicant/Financial Creditor, on the contrary has submitted that the defects/discrepancies pointed out by the Respondent are trivial in nature and are curable.
6. We have heard the submissions made by the Learned Counsel appearing for both the parties.
7. At this stage, it is pertinent to refer to the sub-section 5 of Section 7 of the Code.

(I) Sub-section 5 of Section 7 reads as follows:-

“(5) Where the Adjudicating Authority is satisfied that –

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.”

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(II) Proviso to Clause b of sub-section 5 of Section 7 stipulates that notice to be given to the Applicant to rectify the defects within seven days of receipt of the notice from this Adjudicating Authority.

(III) The Clause b of sub-section 5 of Section 7 says that in case default has not occurred or the application under sub-section 2 is incomplete or any disciplinary proceeding is pending against the proposed Resolution Professional, the Adjudicating Authority by an order can reject such application.

8. According to our considered view, the present case will fall under Clause b of sub-section 5 of Section 7 in as much as the deficiency pointed out by the Respondent/Corporate Debtor appears to be a curable defect. We, therefore, in order to meet the ends of justice and in exercise of the power conferred under Rule 11 of NCLT Rules, 2016, inclined to give an opportunity to the Applicant to rectify the defect within seven days as prescribed under the proviso to Clause b of sub-section 5 of Section 7 of IBC, 2016.
9. The Applicant is therefore, directed to file relevant documents and to rectify/cure the defects in the application within seven days.

List the matter on **29.02.2024**.

Sd/-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**