

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

**Company Appeal (AT) (Insolvency) No. 680 of 2026**

**IN THE MATTER OF:**

**Kamlesh Keshavbhai Gondaliya**

**...Appellant**

**Versus**

**IDBI Trusteeship Services Limited & Anr.**

**...Respondents**

**Present:**

**For Appellant : Mr. Arjun Sheth, Advocate.**

**For Respondents : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Prateek Kumar, Ms. Raveena Rai, Ms. Rashmi Ojha, Advocates for R-1.**

**Mr. Arjun M. Padhiyar, Advocate for R-2.**

**With**

**Company Appeal (AT) (Insolvency) No. 670 of 2026**

**IN THE MATTER OF:**

**Parthil Kamleshbhai Gondaliya**

**...Appellant**

**Versus**

**IDBI Trusteeship Services Ltd. & Anr.**

**...Respondents**

**Present:**

**For Appellant : Mr. Arjun Sheth, Advocate.**

**For Respondents : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Prateek Kumar, Ms. Raveena Rai, Ms. Rashmi Ojha, Advocates for R-1.**

**Mr. Arjun M. Padhiyar, Advocate for R-2.**

**O R D E R**  
**(Hybrid Mode)**

**29.04.2026:** These two appeals have been filed by the Personal Guarantors of the Corporate Debtor against the separate orders passed on

16.03.2026 in Section 95 application filed by the IDBI Trustees ship Services Ltd. By orders of the same date Section 95 applications have been admitted. Prior to admission of Section 95 application, RP was appointed who has submitted a report. In the Section 95 petition, no objection or reply was filed by the Personal Guarantor, however, written submission were filed. The Adjudicating Authority after hearing the parties, by order dated 16.03.2026 has admitted the Section 95 applications.

2. Shri Arjun Sheth, learned counsel for the Appellant raises three submissions. Firstly, he submits that there was no written authorisation in favour of the IDBI Trusteeship Services Ltd. to initiate proceeding under Section 95 and secondly, the power of attorney which was relied for filing the application does not authorise Ms. Gauri Nimkar, Senior Manager to file application under Section 95. Third submission is that the Adjudicating Authority by the order in direction (VI) has directed the Personal Guarantor to deposit an amount of Rs.2 Lakhs to the bank account of the Resolution Professional, which could not have been directed.

3. Shri Abhijeet Sinha, learned counsel appearing for the Respondent referring to Clause 15.2 of the irrevocable and personal guarantee deed submits that the Personal Guarantors have under the guarantee deed provided that if the Debenture Holders so require shall be collected, enforced and received by the Guarantors as trustee for the Debenture Holders and shall be paid over to the Debenture Trustee on account of the payment of secured obligation. It is submitted hat the Debenture Trustee has issued notice to the Personal Guarantor and thereafter application has been filed. It

is not the case that Debenture Holder, at any point to time has objected that no authorisation has been given. Further, Personal Guarantor never filed any reply or objection to the Section 95 application and only in written submission arguments were raised. In respect to power of attorney to Ms. Gauri Nimkar it is submitted that a board resolution was passed on 02.02.2021, in pursuance of which power of attorney was issued to Ms. Gauri Nimkar by the authorised person, hence, there is no flaw or incompetence in filing application by the power of attorney holder. Learned counsel for the Respondent has conceded that the direction in (VI) need to be deleted and amount has to be deposited by the Financial Creditor – IDBI Trusteeship Services Ltd.

4. Learned counsel for the Appellant in support of his submission has relied on judgment of this Tribunal in ***Palogix Infrastructure Private Limited vs. ICICI Bank Limited, 2017 SCC OnLine NCLAT 266***. Learned counsel for the Respondent has relied on judgment of Hon'ble Supreme Court in ***Rajendra Narottamdas Sheth vs. Chandra Prakash Jain & Anr., (2022) 5 SCC 600***, where the ***Palogix Infrastructure Private Limited*** judgment was noticed. It is useful to notice Paras 12, 13 and 14 of the judgment of the Hon'ble Supreme Court, which are as follows:

*“12. The authorisation, in terms of the power of attorney, given by the financial creditor to Mr Praveen Kumar Gupta who has filed the application under Section 7 of the Code has been placed on record. Pursuant to the resolution passed by the Board of Directors of the Bank on 6-12-2008, the power of*

*attorney was executed by the general managers in 2011. By way of the said power of attorney, Mr Praveen Kumar Gupta was appointed by the Bank to act as its constituted attorney with respect to*

*"all the business and affairs of the Bank and to conduct and manage and to assist in the conduct and management of all such businesses and affairs of the Bank, both within and outside India and to do all acts, deeds and things necessary or proper for carrying on the business and affairs of the Bank".*

*Further, Mr Praveen Kumar Gupta has also been authorised to:*

*"commence, prosecute, endorse, defend, answer and/or oppose any suit or other legal proceedings including any civil or criminal proceedings in any court or tribunals and any demand touching any matters in which the Bank may or may hereafter be interested or concerned and also... compromise, refer to arbitration, abandon, submit to judgment or become non-suited, in any such suits or proceedings, to appoint advocate, solicitors and file all applications, complaints, petitions, written statements, vakalatnamas and pleadings as occasion shall require and to make, sign, execute, present a or any other papers expedient or necessary... to be made, signed, executed, presented or filed."*

13. NCLAT in its judgment in Palogix Infrastructure held that a "power-of-attorney holder" is not competent to file an application under Section 7 on behalf of the financial creditor. However, NCLAT made certain further observations, as reproduced below: (SCC OnLine NCLAT para 41)

*"41. Insofar as the present case is concerned, the "Financial Creditor"-Bank has pleaded that by Board's Resolutions dated 30-5-2002 and 30-10-2009, 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" in favour of its officer, 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 "authorisation" 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 "Authorised Representative" for the purpose of filing any application under Section 7 or Section 9 or Section 10 of "I &B Code"."*

14. NCLAT was of the opinion that general authorisation given to an officer of the financial creditor

*by means of a power of attorney, would not disentitle such officer to act as the authorised representative of the financial creditor while filing an application under Section 7 of the Code, merely because the authorisation was granted through a power of attorney. Moreover, NCLAT in Palogix Infrastructure has held that if the officer was authorised to sanction loans and had done so, the application filed under Section 7 of the Code cannot be rejected on the ground that no separate specific authorisation letter has been issued by the financial creditor in favour of such officer. In such cases, the corporate debtor cannot take the plea that while the officer has power to sanction the loan, such officer has no power to recover the loan amount or to initiate corporate insolvency resolution process, in spite of default in repayment. We approve the view taken by NCLAT in Palogix Infrastructure<sup>3</sup>.”*

5. The present is a case where resolution by the board of directors is on the record and in pursuance of the board resolution, the power of attorney was executed. The Hon'ble Supreme Court in similar facts has already upheld the competence of such power of attorney holder to initiate the proceeding. The reliance of learned counsel for the Appellant in **Palogix Infrastructure Private Limited** cannot support the Appellant in the present case where there was board resolution and power of attorney which was already on the record. We, thus, do not find any error in competence in filing of application by power of attorney holder.

6. Learned counsel for the Respondent has also relied on judgment of this Appellate Tribunal in **Sanjeev Kumar Sharma vs. SREI Equipment**

**Finance Ltd. and Anr., 2023 SCC OnLine NCLAT 508.** He has referred to Para 15, which is as follows:

*“15. This now brings us to the issue of tenability and maintainability of the main petition in the eyes of law. It is the contention of the Learned Senior Counsel for the Appellant that this Tribunal in Palogix Infrastructure Pvt. Ltd. Vs. ICICI Bank Ltd. 2017 SCC OnLine NCLAT 266 has held that a company petition could not be instituted on the basis of a PoA which view has also been affirmed by the Hon'ble Supreme Court in Rajendra Narottamdas Sheth vs. Chandra Prakash Jain (2022) 5 SCC 600. We entirely agree with the proposition of law laid down in the above two judgments. But we must add that the Learned Senior Counsel for the Appellant has missed out the point that mere use of the word PoA does not take away the power to file a section 7 application as long as a general authorization has been made for its officers to do the needful in legal proceedings which authorization are present on record in the present matter. That being the case, the above judgements do not come to the avail of the Appellant.”*

The above judgment supports the submission of the Respondent.

7. Further, in so far as submission of the Appellant that there was no written authorisation given by Debenture Holder to the Trustee. There are two reasons not to accept this submission of the Appellant. Firstly, the Appellant choose not to file reply or objection to the Section 95 petition. Had

said reply or objection filed, reply would have come on record. Secondly, in Para 7(i) of the order, Clause 15.2 has been extracted, which is as follows:

*“i) The debenture trustee (applicant) is appointed by the borrower. Clause 15.2 of the irrevocable and personal guarantee deed agreement executed by the applicant with the two personal guarantors, namely Mr Kamlesh Gondalia and Mr Parthil Gondalia on 1 Sept 2020 states: "Any Financial Indebtedness of the Company to the Guarantors, now or hereinafter, if the Debenture Holders so require shall be collected, enforced and received by the Guarantors as trustee for the Debenture Holders and shall be paid over to the Debenture Trustee on account of the payment of Secured Obligations by the Company under the Debenture Trust Deed, and other Transaction Documents but without reducing or affecting in any manner the Guarantors' liabilities hereunder. Any security now or hereafter held by or for the Guarantors from the Company in respect of any liabilities shall be held in trust for the Debenture Trustee for the benefit of the Debenture Holders”*”

8. Applicant invoked the guarantee, issued demand noticed and when no amounts were paid proceeding were initiated under Section 95. It is not the case that Debenture Holder at any point of time had written any letter raising objection that Debenture Trustee was not authorised to file application. We are of the view that said ground cannot be basis for interfering with the impugned order.

9. In so far as the Adjudicating Authority in Para VI of the order has issued direction to the Appellant to deposit Rs.2 Lakhs, the said direction is deleted. Let amount of Rs.2 Lakhs be deposited by the Financial Creditor – Trusteeship Services Limited.

10. The order is modified to the above extent. Subject to above modification, Appeal is disposed of.

**[Justice Ashok Bhushan]**  
**Chairperson**

**[Indevar Pandey]**  
**Member (Technical)**

*Archana/md*