

**NATIONAL COMPANY LAW TRIBUNAL,
COURT-I, HYDERABAD BENCH**

CP (IB) No.249/7/HDB/2022

UNDER SECTION 7 OF THE
INSOLVENCY & BANKRUPTCY
CODE, 2016

IN THE MATTER OF:

Axis Bank Limited

Regd Office: Trishul
3rd Floor, Opp. Samartheshwar Temple
Law Garden, Ellis Bridge
Ahmedabad – 380 006.

Branch Office:

Corporate Banking Branch
1st Floor, No.6-3-789/B
G. Pulla Reddy Building
Greenland, Begumpet
Hyderabad – 500 016.

... **Petitioner**
Financial Creditor

Versus

Karvy Forde Search Pvt Ltd

Regd Office: Karvy Gateway
Plot No.38 & 39
Financial District, Nanakramguda
Hyderabad – 500 032.

... **Respondent**
Corporate Debtor

Date of Order: 5th March 2024

Coram:

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA
HON'BLE MEMBER (JUDICIAL)**

**SHRI CHARAN SINGH
HON'BLE MEMBER (TECHNICAL)**

Parties/Counsels present:

For Petitioner : Mr. V.V.S.N.Raju, Advocate with
Mr. Srikanth Rathi, Advocate.
For Respondent : Ms. Kopal Shareef, Advocate

PER BENCH

ORDER

This is a Petition filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as IBC) by Axis Bank Limited (hereinafter referred as Financial Creditor) against M/s. Karvy Forde Search Pvt Ltd (hereinafter referred as Corporate Debtor) for initiation of Corporate Insolvency Resolution Process

(CIRP), alleging that the Corporate Debtor availed credit facilities from the Financial Creditor amounting to Rs.15,00,00,000/- (Rupees Fifteen Crores Only) and defaulted in paying the same. It was stated that an amount of Rs.16,22,02,417.07 (Rupees Sixteen Crores Twenty-Two Lakhs Two Thousand Four Hundred and Seventeen Rupees and Seven Paise only) is outstanding on behalf of Corporate Debtor payable to the Petitioner/Financial Creditor as on 31.05.2022.

2. The maintainability of the present petition itself since firmly, questioned, on the pleas that;

(a) that the *signatory* to the present petition being the holder of a ‘power of attorney’ which power since was not backed by any Board Resolution, the company petition filed on the strength of the said power of attorney is not maintainable,

(b) There is no proper compliance of Regulation 20(1A) (Information Utilities) Regulation, 2017, as such the *record of default* filed *subsequent* to the filing of the present company petition cannot be taken into consideration, *consequently* the present company petition is liable to be rejected.

3. We therefore intend to *first* deal with the above pleas, before embarking on other pleas raised/involved in this matter, as the finding on the above pleas has a clear bearing on the other issues involved in this *lis*.

4. Therefore, the short, yet an important Points that arose for our consideration are:

POINTS :

(1) Whether the present petition filed under section 7 I& B Code, 2016 by the holder of a Power of

Attorney not backed by Board Resolution is *not maintainable*? if so, whether the present Company Petition is liable to be *rejected*?

(2) Whether record of default filed post filing of the Company Petition by the financial creditor, cannot be *looked into* for not making necessary pleadings by way of an *amendment*?

5. We have heard Mr. V.V.S.N. Raju, Learned Counsel for Financial Creditor and Ms.Kopal Shareef, the Learned Counsel for the Respondent, perused the record, the written submission and the case law.

Point (1) :

Whether the present petition filed under section 7 IBC by the holder of a Power of Attorney not backed by the board resolution is *not maintainable*? if so, whether the present company petition is liable to be *rejected*?

The factual Matrix

6. Admittedly, the present company Petition, which is under section 7 of IBC, has been filed on behalf of the financial creditor by the holder of a ‘Power of Attorney’ dated 23.08.2011, which power has not been backed by the resolution of the Board of Directors of the principal, hence the very *maintainability* of the same became the central issue, as according to the respondent, in absence of a resolution the power of attorney, the agent/signatory to the present petition Mr. Raghuram Moguluru, is not competent to file the present application on behalf of the Financial Creditor.

The Submissions

7. Refuting the contention that the present company petition is not maintainable, Ld. Counsel for the

respondent vehemently contends that non-filing of the Board Resolution in respect of the Power of Attorney dated 23.08.2011, is a ‘curable defect’ and the same having been cured by filing the Board Resolution dated 23.08.2017, the so called objection stands rectified. Hence the plea that the agent/signatory to the present power of attorney Mr. Raghuram Moguluru, is not competent to file the present application on behalf of the Financial Creditor.

8. Ld. Counsel, also placed reliance on the ruling in, Vijay Kumar Singhania vs Bank of Baroda, wherein it was held as below:

“The Power of Attorney was signed by Nidhi Kumar in favour of Shri. Pawan Sharma on 22.12.2021 as it is clear from documents filed at Page Nos. 1502-1507. The Power of Attorney refers to Power of Attorney dated 01.09.2021 which empowers Nidhi Kumar

to nominate, constitute and appoint. Following statement in Power of Attorney given by Nidhi Sharma is as follows: -

"NOW KNOW YE AND THESE PRESENTS WITNESS that by virtue of the said Power to substitute contained in the said Power of Attorney dated 1st September 2021 for all or any of the Powers contained therein and enabling me, I hereby nominate, constitute and appoint Mr. Pawan Sharma, (EC No. 102555), now in the service of the Bank as Senior Manager at Zonal Stressed Asset Recovery Branch (ZOSARB), New Delhi and who has been identified for posting at Zonal Stressed Asset Recovery Branch (ZOSARB), New Delhi to be the true and lawful attorney of the Bank at New Delhi or any place or places in India (including Head office at Baroda) or at any other place or places abroad for and on behalf of the Bank and in the name of the Bank or in my name to do and perform all or any of the acts, matters, powers and things set out in the Schedule hereto which I am authorised to do and perform by virtue of the said Power of Attorney dated 1st September 2021 in the same manner and as effectively as the Bank or as I might now do them or any of them or the said Mr. Pawan Sharma could have done them or any of them if he had in my stead received authority thereto under the Power of Attorney dated 1st September 2021."

53. Nidhi Kumar was fully empowered to nominate, constitute and appoint any one as lawful attorney of the bank at New Delhi. Pawan Sharma himself was Senior Manager, Zonal Stressed Assets Recovery Branch as noted above. We, thus, do not find any error in filing the application duly signed by Pawan Sharma supported by Affidavit of Pawan Sharma and submission of the Appellant that NCLT has no jurisdiction to entertain application filed by Pawan Sharma is to be rejected'

and contended that, the present application is maintainable.

9. However, the Ld. Counsel for the respondent, while reiterating the contention that, in the absence of any Board resolution of the principal, ratifying the power of attorney dated 23.08.2011, the petition filed on the strength of the said power of attorney is not maintainable, placed reliance on the ruling in, Palogix Infrastructure Private Limited vs ICICI Bank Limited (2017) SCC Online, wherein it was held that:

“36 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".

10. 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.

11. 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'.

12. At this stage, it is desirable to refer Section 65 of 'I&B Code' which relates to 'fraudulent and malicious initiation of proceedings', by a person who initiates the Insolvency Resolution Process or Liquidation proceeding fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be. In such case, the Adjudicating Authority is empowered under sub section (2) of Section 65 to impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.

13. In a case where it is noticed that the Insolvency Resolution proceeding has been initiated by a person fraudulently or with malicious intention for personal act on the part of an individual, can a Power of Attorney

Holder be punished? This is one of the reasons we have noticed to hold that a 'Power of Attorney holder' cannot file any application under Section 7 or Section 9 or Section 10 of 'I&B Code'.

Reliance also has been placed on the ruling of Hon'ble NCLAT in *M. Sai Eswara Swamy vs. Siti Vision Digital Media Pvt. Ltd. (Company Appeal (AT) (Ins) No. 706 of 2021)* , wherein it was held that,

“6. ...So far as the Petition under Section 7 of the IBC is concerned, there is a specific notification by the Central Government under sub-section (1) of Section 7 of the IBC that on behalf of the Financial Creditor a guardian, an executor or administrator of an estate of a financial creditor, a trustee and a person duly authorized by the board of directors of a company may file Application for initiation of CIRP against the Corporate Debtor. In such situation, doctrine of derivative action cannot be applied in Petition under Section 7 of the IBC. Thus, we are affirmed the findings of Ld. Adjudicating Authority that there is no Board Resolution authorizing the petitioner to file the Petition. Therefore, the Petition is not maintainable.

7. Ld. Adjudicating Authority has also held that no Board Resolution was filed in regard to advance loan to Corporate Debtor Company as required under Section 186 of the

Companies Act, 2013. In this regard, Ld. Sr. Counsel for the Appellant submitted that the Corporate Debtor Company in his balance sheet acknowledged the debt. Therefore, such resolution is not required to maintain the petition under Section 7 of the IBC. We are not convinced with this argument. We found no flaw in the findings of Ld. Adjudicating Authority.

8. With the aforesaid, we are of the view that Ld. Adjudicating Authority has rightly held that the Petition is not maintainable.”

Ld. Counsel also relied on the Notification issued by the Central Government (Ministry of Corporate Affairs) Notification (S.O. 1901(E)) dated 27.02.2019, in exercise of its powers under Section 7(1) of the IBC, where in it notified the *specific category persons* who may file an application on behalf of a financial creditor and the same is as below.

“...the Central Government hereby notifies following persons who may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority, on behalf of the financial creditor: -

- (i) a guardian;*
- (ii) an executor or administrator of an estate of a financial creditor;*
- (iii) a trustee (including a debenture trustee); and*
- (iv) a person duly authorised by the Board of Directors of a Company.**”*

Ld. Counsel also relied on Section 200 of the Indian Contract Act, 1872, which says that;

“200.Ratification of unauthorized act cannot injure third person. An act done by one person on behalf of another, without such other persons authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.”

Our Analysis & findings.

14. At the outset, we wish to quote and also rely on the ruling of the Hon’ble Supreme Court of India, *in re*, Innoventive Industries Limited v. ICICI Bank and Anr, 2017 SCC OnLine SC 1025” wherein it was held that;

*“On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable **unless interdicted by some law** or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction*

of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.” (Emphasis is Ours)

Thus, it is clear from the above ruling that the ‘debt’ which is due and payable by the corporate debtor when *interdicted by some law*, then the petition under section 7 of IBC cannot lie.

Insofar as the present petition is concerned, our judicial scrutiny being limited to the extent of examining the *maintainability* of the present Company Petition, on the grounds we referred above, before we proceed further with the said exercise, we usefully refer to section 7 (5) (a) and (b) of IBC, which says that, the Adjudicating Authority when *satisfied* that;

“Initiation of corporate insolvency resolution process by financial creditor.

7. (1) to (4)

(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.”

15. Thus, it very clear from the above provision, that the Adjudicating Authority while adjudicating a petition filed under section 7 IBC, can either ‘**admit**’ if the requirement envisaged under *sub section 2 (a)* are satisfied or ‘**reject**’, if the ingredients envisaged under *sub section 2 (b)* exist in a petition filed under section 7 IBC, but it cannot **dismiss** the said Petition. Needless to say, that un like in cases of **dismissal**, in cases of **rejection**, a party has a right to present a fresh petition.

In order to appreciate of the rival contentions properly, we usefully refer to *subsection (2)* of section 7 of IBC, which says that:

“Initiation of corporate insolvency resolution process by financial creditor.

7. (1)

*(2) The financial creditor shall make an application under subsection (1) in such **form and manner** and accompanied with such fee as may be prescribed.”*

The *form* and the *manner* in which an application under section 7(2) and 7(3) of the IBC, is to be filed by a 'Financial Creditor' has been provided in **Form-1** of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

Entries 5 & 6 of Part I of Form-1 under sub-rule (1) of Rule 4 of Insolvency and Bankruptcy (Application to

Adjudicating Authority) Rules, 2016 mandates the Financial Creditor to submit the name and address of the *person authorised*, to submit application on its behalf.

The Rule also mandates that the authorization letter is to be enclosed. The signature block of the aforementioned *Form-1* also provides for the authorised person's details to be stated and also the status of the *authorised person* in relation to the Financial Creditor.

It is pertinent herein to refer to the Notification issued by the Central Government (Ministry of Corporate Affairs) Notification (S.O. 1901(E)) dated 27.02.2019, in exercise of its powers under Section 7(1) of the IBC, where in it notified the *specific category persons* who may file an application on behalf of a financial creditor and the same is as below.

“...the Central Government hereby notifies following persons who may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority, on behalf of the financial creditor: -

- (i) a guardian;
- (ii) an executor or administrator of an estate of a financial creditor;
- (iii) a trustee (including a debenture trustee); and
- (iv) a person duly authorised by the Board of Directors of a Company.**”

Therefore, it is clear from the above Form-1 refers **only** to an ‘**authorised person**’. It can be seen that ‘**Power of attorney holder**’ is **expressly not included** in the above Rules. Hence, it is *necessary* for us to find whether a ‘power of attorney holder’ is *distinct* from an ‘authorised person’?, *if so*, whether the agent under a power of attorney is *disentitled* to maintain an application under section 7 of IBC?.

In Palogix Infrastructure Private Limited (supra), Hon'ble NCLAT, has observed that,

“if there was a resolution of the Board of Directors authorising its officers to do the needful in legal proceedings, mere use of the word ‘power of attorney’ while delegating such power would not take away the authority of such officer, which would be treated as authorization by the financial creditor in favour of its officer”. This ruling in re, *Palogix*, was approved by Hon'ble Supreme Court, in *Rajendra Narottamdas Sheth and Anr. vs. Chandra Prakash Jain and Anr.* ((2022) 5 SCC 600), wherein Hon'ble Supreme Court observed that the;

“authorisation given by the Bank by way of a power of attorney pursuant to a resolution passed by the Bank’s Board of Directors would not impair an individual’s authority to file an application under Section 7 of the IBC”.

Therefore, an *exception* has been carved out to the above referred Rule under the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and the Government of India, Ministry of Corporate Affairs Circular dated 27.02.2019, by Hon'ble Supreme Court of India, in re, *Rajendra Narottamdas Sheth (supra)*. Hence, unquestionably an agent of a power of attorney can

maintain a petition under section 7 of IBC, *provided* such power of attorney is ratified by the Board of Directors of the company.

16. That apart, the ruling in re, *Rajendra Narottamdas Sheth (supra)*, also establishes that whenever a petition under section 7 IBC is filed by a Power of Attorney holder, the *requirement* that such a power of attorney shall be accompanied by a duly passed “Board Resolution” is not a *mere* a “technicality” but mandatory legal requirement, as the noncompliance of which renders the said agent of such power of attorney incompetent to file an application under section 7 of IBC.

17. Insofar as the present case is concerned, a perusal of the copy of the power of attorney filed along with the

Company Petition in this case, discloses that the same has been executed on 28.08.2011 in the favor of one Mr. Raghuram Moguluru, who by virtue of the said power of attorney *signed & verified* the present Company Petition. Admittedly, no Board Resolution, authorizing the execution of the said power of attorney in favor of Mr. Raghuram Moguluru, by the Principal, either *pleaded* or *filed* along with the petition.

In so far as the Board Resolution dated 23.08.2017, whereunder Mr. Raghuram Moguluru, who signed the Company Petition, has been authorized to file the Applications under the I&B Code, 2016, is concerned, the same does not refer to the Power of attorney dated 23.08.2011 basing on which the present proceedings are initiated. Therefore, in the absence of any reference to

the power of attorney dated 23.08.2011 in the Board Resolution dated 23.08.2017, the submission of the Ld. Counsel for the financial creditor that, the power of attorney dated 23.08.2011 stands ratified by virtue of the Board Resolution dated 23.08.2017 is incomprehensible. Moreover it is pertinent to note that pleadings of the company petition since remain unamended, the petitioner is not entitled plead ratification.

18. We, therefore, in the light of our discussions as above, are unhesitant, to hold that the present Company Petition signed and verified by Mr. Raghuram Moguluru, the agent/ power of attorney holder, which power was not backed by the Board Resolution, is *not maintainable*.

The point is answered accordingly.

Point (2) :

Whether record of default filed post filing of the company petition by the financial creditor, cannot be *looked into* for not making necessary pleadings by way of an *amendment*?

19. According to the Ld. Counsel for the Petitioner /financial creditor, the “defect” of not filing the ‘*record of default*’ in terms of Section 7(3)(a) of IB Code, has been cured by *subsequently bringing* the same on record, in due compliance of the order of this Tribunal dated 11.12.2024, as such the said plea can no longer survive. However, the Ld. Counsel for the respondent/ corporate debtor contends that that this Adjudicating Authority, by virtue of its power under the proviso to Section 7(5)(b) of the I&B Code, 2016 has called upon the Financial

Creditor to rectify the *defect* of non-filing of the record of default, but the Petitioner has *failed to rectify* the said defect in a manner provided under law, by failing to ***amend its pleadings***, as the applicant simply find a *memo*, signed by the counsel of the Financial Creditor *without any pleading*.

In this context, Ld. Counsel relied on the ruling of Hon'ble Supreme Court, in *Kotak Mahindra Bank Limited vs. Kew Precision Parts Pvt. Ltd. and Ors. (Civil Appeal No. 2176 of 2002)*, wherein, while considering the proviso to Section 7(5)(b) Hon'ble Supreme Court has held that,

“...If notified of the proposal to close the proceedings, the Appellant Financial Creditor might have got the opportunity to rectify the defects in its application under Section 7 by filing additional pleadings and/or documents.”.

20. Ld. Counsel also relied on the *following* rulings, in this regard:

(i). Surendra Trading Company vs. Juggilal Kamlapat Jute Mills Company Limited and Ors. ((2017) 16 SCC 143), wherein it has held that;

“26. .. if the objections are not removed within seven days, the applicant while refilling the application after removing the objections, should file an application in writing showing sufficient case as to why the applicant could not remove the objections within seven days. Only if the adjudicating authority is satisfied that sufficient cause is shown in not removing the defects would it entertain the application, otherwise it will have right to dismiss the application”.

(ii) Dena Bank vs. C. Shivakumar Reddy and Anr. (Civil Appeal No. 1650 of 2020), wherein it was held that:

“the Adjudicating Authority calls upon the Applicant to cure some defects, such defects have to be rectified within 7 days, and thereafter “the Adjudicating Authority may accept the cured application”.

In the above ruling it was further held that,

“such averments were duly incorporated by way of amendment, and the Adjudicating Authority rightly looked into the amended pleadings”.

Admittedly, at the time of filing the present Application, the Financial Creditor had failed to file a record of default as required by Regulation 20(1A) of the IBBI (Information Utilities) Regulation, 2017, which was inserted vide notification dated 14.06.2022. This Tribunal had, vide its Order dated 11.12.2023, recorded that the Financial Creditor accepted non-compliance on its part, and in terms of the proviso sub section (5) of section 7 of the I&B Code, 2016 granted the Petitioner 7 days' time "to rectify the defect", observing further that, in default, the Company Petition would stand rejected. Pursuant thereto, the Financial Creditor had filed Memo dated 13.12.2023, just seeking to bring on record a copy of the record of default from National E-Governance Services

Limited (NeSL Certificate). However, no fresh pleadings relating to the *record of default* have been made.

21. As already stated Hon'ble Supreme Court of India, *in re, Dena Bank, supra*, held that,

“such averments were duly incorporated by way of amendment, and the Adjudicating Authority rightly looked into the amended pleadings”,

thereby clearly indicated that, the Adjudicating Authority *can* look into when the pleadings are *amended* and are duly brought on record. Admittedly, no amendment was made to the pleadings in this case.

22. Therefore, in view of our discussions as above, we hold that applicant has not complied with the *provision* relating to filing of record of default as required under Regulation 20(1A) of IBBI (Information Utilities), 2017 and envisaged under section 7 (3) (a) of IBC.

The point is answered accordingly.

23. Since, we firmly held that the company petition is not maintainable, we refrain from entering into any discussion on the *merits* of the matter, *especially* on whether or not a financial *debt* and its *default* by the respondent exists. Further, we hereby clarify that, since we are ***rejecting*** this Company Petition, *solely* on the ground of its *non-maintainability*, the financial creditor herein is ***not precluded*** from filing *fresh* Company Petition under Section 7 of I&B Code, 2016 against the respondent herein, provided, the financial creditor is otherwise entitled for the same under law.

24. In the result, this Company petition is hereby ***rejected***. However, ***without costs***.

Sd/-

CHARAN SINGH
MEMBER (TECHNICAL)

Sd/-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA
MEMBER (JUDICIAL)

Pavani/ karim