

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

Company Appeal (AT) (Insolvency) No. 1188 of 2022

[Arising out of Order dated 31.08.2022 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench-VI, in IB-1082/ND/2020]

IN THE MATTER OF:

Sameer Bansal **...Appellant**
Director (Suspended) of NSP Associates (India) Pvt.
Ltd.

Versus

Canara Bank & Anr. **...Respondents**

Present:

For Appellant: Advocate Gaurav Mitra, Advocate Pranav Khanna.

For Respondents: Advocate PBA Srinivasan, Advocate Parth Tandon.

JUDGMENT
(14th October , 2022)

Ashok Bhushan, J.

1. This Appeal has been filed by the Suspended Director of the Corporate Debtor challenging the order dated 31.08.2022 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Bench-VI, admitting Section 7 Application filed by the 'Canara Bank' (erstwhile Syndicate Bank). The Financial Creditor filed Application under Section 7 alleging default of Rs. 59,34,96,998.55/- inclusive of interest. The Adjudicating Authority after hearing the parties found the debt and default and has admitted the

Application. Challenging the order admitting Section 7 Application, this Appeal has been filed by the Suspended Director of the Corporate Debtor.

2. Shri Gaurav Mitra, Learned Counsel appearing for the Appellant challenging the impugned order has raised only one submission i.e. Application under Section 7 filed by the Financial Creditor was not filed by an authorised person. It is submitted that Section 7 Application was supported by a Power of Attorney dated 24.01.2005. It is submitted that there was no Resolution by Board of Directors authorising the person who has filed Section 7 Application, hence, the Application was not maintainable and ought to have been rejected by the Adjudicating Authority. It is submitted that although the submission with regard to incompetency of Section 7 Application was raised but the Adjudicating Authority has not considered the submission in right perspective rather has held that Power of Attorney executed by Syndicate Bank is valid authority for filing present Application by Canara Bank.

3. Learned Counsel appearing for the Bank refuting the submissions of the Learned Counsel for the Appellant contends that there was no defect in the Application filed under Section 7. The Application was filed by the Chief Manager, Canara Bank who was duly authorised to file Section 7 Application. It is submitted that the Power of Attorney which was filed alongwith Section 7 Application itself clearly mention the Resolution of the Board of Directors in pursuance of which Power of Attorney was issued.

4. Learned Counsel for the Appellant placed reliance on the two judgments of this Tribunal as well as one judgment of the Hon'ble Supreme Court which shall be referred to while considering the submissions in detail.

5. Rule 4(1) of the 'Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016' empowers a financial Creditor to make an application against the Corporate Debtor under Section 7 of the Code in Form 1. Rule 4(1) is as follows:-

“4. Application by financial creditor.—(1) A financial creditor, either by itself or jointly, shall make an application for initiating the corporate insolvency resolution process against a corporate debtor under section 7 of the Code in Form 1, accompanied with documents and records required therein and as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.”

6. The Application under Section 7 was filed by the Financial Creditor has been brought on record which is in Form-1 as per the aforesaid Rule. In Part-1 of Form-1, Column 5 requires “particulars of person authorised to submit Application”. Column 5 of the Application is as follows:-

S. No.	Particulars	Details
5.	Name and address of the person authorized to submit application on its behalf (enclose authorization)	Mr. Sachendra Kumar Vimal, Chief Manager, Canara Bank The present application is being submitted by Avdhesh Bairwa, Advocate, who is authorized to file the present application. Address of Canara Bank, SAM Branch At C-34 2 nd Floor DDA

		<p><i>Office Near Mool Chand Hospital New Delhi 110024.</i></p> <p><i>Email:</i> <u>samb.delhi@syndicatebank.co.in</u> <i>A copy of Power of Attorney (POA) is attached with the petition.</i></p>
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7. The copy of the Power of Attorney referred to in Column 5 is attached along with the Application. The submission which has been pressed by the Counsel for the Appellant is that the authorisation of Power of Attorney is not authorisation which is recognised by law. Submission of the Learned Counsel for the Appellant is that the authorisation has to be by Board of Directors of the Company. Learned Counsel for the Appellant has also referred to the Notification dated 27.02.2019 issued by the Ministry of Corporate Affairs, which is to the following effect:-

**“MINISTRY OF CORPORATE AFFAIRS
NOTIFICATION**

New Delhi, the 27th February, 2019

S.O. 1091(E).—In exercise of the powers conferred by sub-section (1) of section 7 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), 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*
 (v) *a person duly authorised by the Board of Directors of a Company.”*

8. To support his submission, Learned Counsel for the Appellant placed reliance on the judgment of this Tribunal in **‘Palogix Infrastructure Pvt. Ltd. vs. ICICI Bank Ltd.- Company Appeal (AT) (Ins.) No. 30 of 2017’**. In the above case also, the question was as to whether Section 7 Application filed by the Power of Attorney Holder was a valid Application. This Tribunal in paragraphs 36, 38 to 41, following was observed:-

“36. In so far as, the present case is concerned, the 'Financial Creditor'-Bank has pleaded that by Board's Resolutions dated 30th May, 2002 and 30th 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'.

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.

40. In view of reasons as recorded above, while we hold that a 'Power of Attorney Holder' is not empowered to file application under section 7 of the 'I&B Code', we further hold that an authorised person has power to do so.

41. For the reasons aforesaid, we find no ground to interfere with the impugned order(s). All the appeals are dismissed, the order of admission of application under section 7 is affirmed. However, in the facts and circumstances of the case, there shall be no order as to cost."

9. In the above case, this Tribunal has noted that Financial Creditor- Bank by Board Resolution has authorised his officer to do the needful in the legal proceeding and mere mention of word Power of Attorney by delegating such

power shall not take away the authority of such officer. This Tribunal accepted that the person who had filed Section 7 Application was entitled to file and order of the Adjudicating Authority admitting Section 7 Application was not interfered with.

10. Another judgment of this Tribunal which has been relied by the Counsel for the Appellant is **“Ramesh Chander Gupta vs. Punjab National Bank- Company Appeal (AT) (Ins.) No. 179 of 2017”** which in essence has relied on **‘Palogix Infrastructure Pvt. Ltd.’** (supra). This Tribunal in paragraphs 6 and 7 found Senior Manager of the Bank entitled to file the Application.

11. We may notice the Notification relied by Counsel for the Appellant dated 27.02.2019. The said Notification has been issued in pursuance of sub-section (1) of Section 7. Sub-section (1) of Section 7 is as follows:-

“7. Initiation of corporate insolvency resolution process by financial creditor.

(1) A financial creditor either by itself or jointly with [other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.”

12. By Act 26 of 2018 in place of expression “other financial creditors” insertion was made which is noted in the bracketed portion of Section 7(1) as above. The Notification dated 27.02.2019 has been issued in exercise of power under Section 7(1) as conferred by substituted provision of Act 26 of 2018. The expression of ‘any other person on behalf of the financial creditor as may be notified by the Central Government’ are in addition to the main provision

in Section 7(1) that Financial Creditor either by himself or jointly may file Section 7 Application. The Notification dated 27.02.2019 does not confine to the cases where the persons authorised under Notification can alone file the Application rather the said Notification is in addition to what was permitted by main Section as enacted by Code, 2016.

13. As noted above, under Rule 4 of the 'Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016' read with Form-1, any person authorised by Financial Creditor can file the Application.

14. We may also notice the judgment of the Hon'ble Supreme Court in "**Rajendra Narottamdas Sheth & Anr. vs. Chandra Prakash Jain and Anr.- (2022) 5 SCC 600**". The Hon'ble Supreme Court has examined the question as to whether an Application under Section 7 of the Code through Power of Attorney Holder for initiating CIRP is permissible. An Application under Section 7 was filed where objection was raised by the Corporate Debtor that Application on the basis of Power of Attorney was not maintainable. Submission of the Counsel for the Appellant was noted in paragraph 9 of the judgment, which is to the following effect:-

"Maintainability of the application under Section 7 when filed by a power of attorney holder

9. Mr. Rana Mukherjee, learned Senior Counsel appearing for the Appellants, submitted that the application filed on behalf of the Financial Creditor under Section 7 of the Code was on the basis of a power of attorney. He relied upon a judgment of the NCLAT in Palogix Infrastructure Private Limited v. ICICI Bank Limited¹ in which it was held that an 'authorised person', distinct from a 'power of

attorney holder’, can file an application under Section 7 and that a ‘power of attorney holder’ is not competent to file an application on behalf of a financial creditor. According to Mr. Mukherjee, the defect in filing of the application by an unauthorised person is not curable. Assuming it is curable, the Financial Creditor failed to rectify the defect within the time stipulated under Section 7 (5) of the Code, in spite of an order passed by the Adjudicating Authority on 22.01.2020 granting time to the Financial Creditor. He submitted that the person who filed the application under Section 7 of the Code is not the authorised representative of the Financial Creditor and therefore, the application was liable to be dismissed.”

15. The Hon’ble Supreme Court rejected the objection of the Appellant and while noticing the judgment of this Tribunal in **‘Palogix Infrastructure Pvt. Ltd.’** (supra) has approved the observations made in paragraph 41. Paragraphs 13, 14 & 15 of the judgment are as follows:-

“13. The NCLAT in its judgment in Palogix Infrastructure (supra) held that a ‘power of attorney holder’ is not competent to file an application under Section 7 on behalf of the financial creditor. However, the NCLAT made certain further observations, as reproduced below:

“41. In so far as the present case is concerned, the ‘Financial Creditor’-Bank has pleaded that by Board’s Resolutions dated 30th May, 2002 and 30th 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' 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 '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'."

14. *The 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, the NCLAT in Palogix Infrastructure (supra) 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 the NCLAT in Palogix Infrastructure (supra).

15. In the present case, Mr. Praveen Kumar Gupta has been given general authorisation by the Bank with respect to all the business and affairs of the Bank, including commencement of legal proceedings before any court or tribunal with respect to any demand and filing of all necessary applications in this regard. Such authorisation, having been granted by way of a power of attorney pursuant to a resolution passed by the Bank's board of directors on 06.12.2008, does not impair Mr. Gupta's authority to file an application under Section 7 of the Code. It is therefore clear that the application has been filed by an authorised person on behalf of the Financial Creditor and the objection of the Appellants on the maintainability of the application on this ground is untenable."

16. The above judgment of the Hon'ble Supreme Court clearly holds that an Application under Section 7 even if it is on the basis of Power of Attorney which is referable to the Resolution of the Board is fully maintainable.

17. In the present case, we have looked into the Power of Attorney which has been brought on record and in paragraph 20 of the Power of Attorney, there is a clear mention that Power of Attorney was executed by Director of Bank on the basis of Resolution dated 24.01.2005 passed by the Board of Directors in the meeting held at Bangalore. The above part which is in paragraph 20 of the Power of Attorney dispels all doubt regarding maintainability of the Application.

18. At this stage, we may also notice one more fact. In Section 7 Application filed in Form-1 in Column 5 details of the person who was authorised and filed Application under Section 7 was noted. A reply of Section 7 was filed by the Corporate Debtor. While replying on merits in paragraph 2, following has been stated by the Corporate Debtor:-

“2. The Contents of Part-1 of Form 1 pertains to the details of the Applicant and therefore, requires no reply.”

19. The statement in Column 5 of Part-I of Section 7 Application was clearly with regard to person authorised to file Section 7 Application. In reply filed to Section 7 Application, none of the contents of Part-I was denied. It was stated by the Corporate Debtor that it does not require any reply. Submission of the Learned Counsel for the Appellant that Bank may be directed to produce the Resolution cannot be entertained at this stage especially when in the reply it was not even contended that no Resolution has been passed as mentioned in the Power of Attorney.

20. We, thus, do not find any merit in any of the submissions of the Counsel for the Appellant.

21. Learned Counsel for the Appellant lastly contended that Appellant has submitted One Time Settlement to the Bank on 12.08.2022. We make it clear that admission of Section 7 Application and rejection of this Appeal may not come in the way of the Appellant and the Bank in considering the One Time

Settlement. The route under Section 12A of the IBC is always open in event the Bank- Financial Creditor accept the OTS.

22. With the observations as made above, we dismiss the Appeal.

**[Justice Ashok Bhushan]
Chairperson**

**[Dr. Alok Srivastava]
Member (Technical)**

**[Barun Mitra]
Member (Technical)**

New Delhi
Anjali