

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH, KOCHI**

**I.A No.105/KOB/2020**

**in**

**IBA/25/KOB/2020**

(Under Rule 32 of NCLT Rules, 2016)

Order delivered on 24.09.2020

Coram:

**Shri Ashok Kumar Borah, Member (Judicial)**

**Applicants/Respondents (Corporate Debtor):**

**M/s Platino Classic Motors (India) Pvt.Ltd.**

**Versus**

**Respondents/Applicant/Financial Creditor:**

**Federal Bank Limited**

**Parties/Counsels Present (through Video Conferencing):**

For Applicants	:	Adv. Jithin Saji Isaac
For Respondents	:	Adv. Leo George

**ORDER**

This IA has been filed by the Applicant who is Corporate Debtor in IBA/25/KOB/2020 raising the maintainability of the IBA, as a preliminary issue.

2. The learned counsel for the Applicant/Corporate Debtor and Respondent/Financial Creditor appeared through video conferencing. The Corporate Debtor without filing counter in IBA/25/KOB/2020, raised the question of maintainability of the IBA before this Tribunal through this IA/105/KOB/2020.

Submission made by the Applicant herein/Corporate Debtor.

3. The learned counsel for the Applicant submitted that the IBA/25/KOB/2020 has been filed by the Financial Creditor alleging non-payment of a term loan of ₹10 crores granted by the Financial Creditor to the Corporate Debtor. The Corporate Debtor in the application specifically disputes the existence of a debt and also the default of debt. There is no debt which is due and payable by the Applicant herein/ Corporate Debtor stating that this is not legally enforceable debt in between the Financial Creditor and the Corporate Debtor.

4. The learned counsel for the Applicant further submitted that the Financial Creditor is a juristic person and can be represented only through an authorized representative. The Application has been filed by Smt. Maya C. who is General Power of Attorney Holder of the Financial Creditor without any specific authorization. Smt. Maya C. has been given a Power of Attorney by Federal Bank Ltd in the year 2009. The Power of Attorney produced by the Respondent herein/Financial Creditor in the application is not specifically authorized Smt. Maya.C. to lodge application/petition under the IBC, 2016. No authorization whatsoever has been granted by the Financial Creditor in the Power of Attorney as filed and given to Smt. Maya C. The pre-requisites under the IBC are mandatory and requires to be complied with strictly. In the absence of a specific authorization, the application cannot be entertained by this Bench. Hence the Corporate Debtor prayed that the application filed by the Financial Creditor as IBA/25/KOB/2020 is to be dismissed at the threshold.

Submission made by the Respondent herein/Financial Creditor

5. The Respondent/Financial Creditor submitted that the Power of Attorney Holder has also been authorized by the Financial Creditor to appear before any Judicial or Quasi-Judicial body including any Court of Law, Forum, Tribunal etc, and represent the Financial Creditor and to institute suits, or Applications or other proceedings either Civil or Criminal for and on its behalf. The said Power of Attorney has been produced before this Bench along with the paper book pertaining to the above IBA as well. The IA has been filed by the Corporate Debtor seeking dismissal of the above IBA with the contention that there is no specific authorization given to the Power of Attorney Holder by the Financial Creditor to lodge the above IBA.

6. The learned counsel for the Respondent submitted that the above IBA has been filed by the Financial Creditor in its name. The Power of Attorney Holder only verified, signed and presented the same for and behalf of the Financial Creditor as one of its Principal Officer who is able to depose as to the facts of the case and also as permitted in the aforesaid Power of Attorney. Hence, the contention of the Applicant that the above IBA has been filed without specific authorization given to Power of Attorney Holder is irrelevant and unsustainable.

Findings:

6. I have heard the learned counsel for both the parties through video conferencing. Learned counsel for the Applicant to fortify his argument submitted the decision of Hon'ble NCLAT in *Palogix Infrastructure Pvt. Ltd. v. ICICI Bank Ltd* (2017 SCC Online NCLAT 266). On the other hand, learned counsel for the Respondent

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submitted that the facts and circumstances of the present case is different from the facts of the case law submitted by the Applicant.

7. In this application the Financial Creditor themselves presented the application through their Principal Officer Smt. Maya C. (Assistant Vice President & Br.Head). The learned counsel has referred to paragraph 16 of the Power of Attorney in which it is mentioned that: -

*16. "To appear before any judicial or quasi-judicial body including any Court of Law, Forum, Tribunal, Arbitrator and Banking Ombudsman, represent the Bank and act as Presenting Officers before Debt Recovery Tribunals/Debt Recovery Appellate Tribunals/Company Law Board and other such judicial/quasi-judicial bodies/offices, institutes suits or appeal as or applications or other proceedings either civil or criminal, compromise, refer disputes to arbitrator, defend suits or appeals or applications or other proceedings either civil or criminal filed against Bank, sign Vakalathnama or plaints or petitions or written statements or affidavits or appeal memorandums in suits or appeals or applications or other proceedings either civil or criminal filed by or against the Bank, participate and bid the security properties in any public auction conducted by Tribunal/Court/Forum or the authorized officer, receive documents or copies of documents from Courts, Governments Offices or other offices in connection with civil or criminal matters, complaints filed or against the Bank, give evidence or execute decrees or surrender or reassign insurance policies,*

*receive amounts from Courts or Forums or Tribunals or Ombudsman or from any judicial or quasi-judicial body or land acquisition board or State and Central Government Office or Life Insurance Corporation of India or other Insurance Companies and from any other offices”.*

8. It is very clearly stated in the Power of Attorney that the Power of Attorney Holder therein can “...appear before any judicial or quasi-judicial body including any Court of Law, Forum, Tribunal, Arbitrator and Banking Ombudsman, represent the Bank and act as Presenting Officers before Debt Recovery Tribunals/Debt Recovery Appellate Tribunals/Company Law Board and other such judicial/quasi-judicial bodies/offices, institutes suit or appeals.....” Therefore, this IBA has been filed by the Assistant Vice President of the Financial Creditor who is the Power of Attorney Holder of the Financial Creditor. I have also gone through the decision of Hon’ble NCLAT as cited above. From a reading of the same, it is seen that in paragraph 41 of the said order it is stated as under:

*“41. 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’.”*

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9. In view of the above, this Tribunal is of the opinion that no specific authorization is required to file the instant IB case. IBA/25/KOB/2020 is an application to take action against the Respondent/Corporate Debtor for non-payment of the debt. Therefore, Smt. Maya C. Vice President/Br. Head of the Financial Creditor/Applicant of the IBA/25/KOB/2020 who is the Power of Attorney Holder is the right person for filing the said IBA. Accordingly, IA/105/KOB/2020 is dismissed being devoid of merit.

Dated the 24<sup>th</sup> day of September, 2020

Sd/-

**(Ashok Kumar Borah)**  
**Member (Judicial)**