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BEFORE THE ADJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
AHMEDABAD BENCH  
AHMEDABAD

C.P. (I.B) No. 137/7/NCLT/AHM/2018

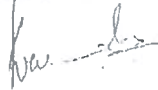
Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL  
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH  
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 24.08.2018

Name of the Company: Bank of India  
V/s.  
Diamond Power Infrastructure Ltd.

Section of the Companies Act: Section 7 of the Insolvency and Bankruptcy Code

S.NO. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE

1. Kunal P Vaishnav Advocate Corporate Debtor 

2.

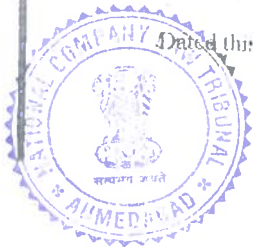
ORDER

Advocate Mr. Kunal Vaishnav is present for the Corporate Debtor.

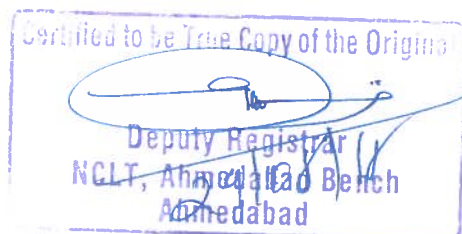
The Order is pronounced in the open court, vide separate sheet. The petition is allowed. ~~and~~ admitted 

  
MANORAMA KUMARI  
MEMBER JUDICIAL

  
HARIHAR PRAKASH CHATURVEDI  
MEMBER JUDICIAL



Dated this the 24<sup>th</sup> day of August, 2018



BEFORE THE ADJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
AHMEDABAD BENCH  
AHMEDABAD

C.P. (IB) No. 137/7/NCLT/AHM/2018

**In the matter of:**

M/s. Bank of India Limited,  
Bank of India Building, Second Floor,  
Opp. Usha Kiran Building, Raopura,  
Vadodara – 390 001.  
Gujarat.

..... Petitioner

Vs.

M/s. Diamond Power Infrastructure Limited,  
Having its registered address at:  
Phase-II, Village- Vadavala,  
Ta. Savli,  
Vadodara, Gujarat.

..... Respondent

Order delivered on 24<sup>th</sup> August, 2018.

Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (Judicial)  
Hon'ble Ms. Manorama Kumari, Member (Judicial)

**Appearance:**

Ms. Natasha Shah, Advocate for the Petitioner. Mr. Kunal Vaishnav, Advocate  
for the Respondent.

**ORDER**

(Per Se: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (Judicial))

1. The present IB Petition is filed in this court by the Bank of India, being a financial creditor against the



*Chaturvedi*

*[Signature]*

Respondent Corporate Debtor Company, i.e. M/s. Diamond Power Infrastructure Limited having its registered address at Phase-II, village- Vadavala, Ta. Savli, Vadodara, Gujarat.

2. The present petition is filed under section 7 of the I.B. Code, 2016 stating that the Corporate Debtor Company has defaulted of payment of debt to the tune of **Rs.4,85,42,95,507=21 paisa (Rupees Four-Hundred Eighty-Five Crores Forty-Two Lakhs Ninety-Five Thousand Five-Hundred-Seven and Twenty-One Paisa Only)**.
3. The default of debts is reported on 09.01.2015.
4. It is the case of the Petitioner Bank of India that it disbursed a loan amounting of **Rs. 661.88 Crores (Rupees Six-Hundred Sixty-One Crores and Eighty-Eight Lakhs Only)** to the Corporate Debtor Company in several intervals between the period from 2008 to 30<sup>th</sup> March,2015 and a copy of the sanction of loan for above stated loans are annexed along with the present petition.



*Chitwan*

5. The bank has also given description of necessary particulars as prescribed in Form No. 1(Sub Rule-1 of Rule-4 of the I. B. Code) which is a prescribed form of the application to be made by a Financial Creditor to initiate Corporate Insolvency Resolution Process (CIRP in short) under the Code.
6. In support of its claim towards unpaid debts, the bank has furnished necessary particulars about its financial debts and loan documents, description of securities/ guarantees to secure the loan and report of default as prescribed in Part-III and Part-IV of the application. The financial Creditor Bank has further stated in the application that its Assistant General Manager, Shri Mohan Haripant Zingade is duly authorized for filing the present application as per the power of attorney dated 16.08.2007 executed in his favour by the Bank of India.
7. A copy of such Power of Attorney dated 16.08.2007 is enclosed with the present petition which appears to be a general Power of Attorney duly executed in favour of the authorized officer of the bank, Mr. Mohan Haripant Zingade to be authorized signatory to file legal



*Attorney*

proceeding on behalf of the bank which includes legal proceeding by or against the bank and to sign on behalf of bank with its seal and further to execute the affidavits, declarations, claims as well as to enter into a compromise on behalf of the Bank etc. in any Court of Law.

8. In addition to the above, the bank has also obtained a written communication from its proposed IRP Mr. Ramchandra Dallaram Choudhary, in case the Corporate Interim Resolution Process is initiated in respect of the Corporate Debtor Company.
9. In the present matter, the amount of defaulted debt is more than **Rs. 485 Crores (Rupees Four Hundred Eighty-Five Crores Only)**, and the debt is reported to be defaulted on 9<sup>th</sup> January, 2015, and the Corporate Debtor Company has duly created securities to secure such loan as per the Memorandum entered on 21.10.2015. The company has further executed other loan documents e.g. joint deed of hypothecation dated 18.06.2015, the deed of Guarantee dated 18.06.2015 entered between the Corporate Debtor and Financial Creditor. Further, Mr. Amit Saurabh Bhatnagar, Saurabh



*Amit Saurabh*

Bhatnagar and Sumit Suresh Bhatnagar; being Directors of the company have executed their personal guarantees in the year 2015, while the present petition is filed on 26.03.2018. Hence it is filed well within the limitation.

10. The proposed Resolution Professional has also expressed his willingness to accept the assignment as IRP of the proposed corporate insolvency resolution process in respect of M/s. Diamond Power Infrastructure Limited if an order of admission of the present IB petition is passed. The proposed IRP has further made a declaration to this effect that there is no disciplinary action pending against him with the IBBI Board or the ICAI. Hence, he expressed his acceptance for proposed assignment.
11. Thus, on the basis of aforesaid reason, the applicant financial creditor has prayed for the initiation of CIRP in respect of the Corporate Debtor Company, as the company has committed default in making payment of its outstanding debt which is more than of Rupees One Lakh, comes to around Rs. 485 Crores and above.



*Answer*

12. The applicant bank, by filing the present petition has drawn our attention to an internal circular of date 02.12.2015 of the Reserve Bank of India; whereby, a it has directed concerned bank(s) being a Financial Creditor to declare such account as a Non-Performing Assets (NPA). It is evident that the Corporate Debtor Company has committed a default and its name finds place in the list of identified NPAs by the Reserve Bank of India in its internal circular dated 02.12.2015 (Which is addressed to the Managing Director of the Financial Creditor Banks).
13. Thus, thereby, the Reserve Bank of India has instructed to the Board of Directors of the Petitioner Bank for taking action to classify such account as a Non-Performing Asset and for further needful action.
14. After filing of the present IB petition, a formal notice was issued to the Corporate Debtor Company through the applicant as well as by the Registry of this Bench. In response thereof, the Respondent Corporate Debtor Company made its appearance through Learned Counsel and filed a statement before this Bench which is duly notarised. In the said statement, the directors of



*Ahmedabad*

*2*

the company have expressed their no-objection for admission of the present petition and the appointment of an Interim Resolution Professional would be in the interest of Creditors of the Corporate Debtor Company. Such statement is made on 1<sup>st</sup> August, 2018 and is duly filed before this Bench on 2<sup>nd</sup> August, 2018, hence it is taken on record.

15. Considering such statements made on behalf of the Corporate Debtor Company, we feel that there remains no embargo for admission of the present IB petition for triggering the CIRP in respect of the Corporate Debtor Company, if, otherwise, the present application is in order and found complete.

16. Therefore, we perused the present application, which shows that the authorized signatory of the bank Mr. Mohan Haripant Zingade; being the Assistant General manager has filed the present application on the strength of a Power of Attorney dated 16.08.2007, which, in nature is a general Power of Attorney, while there is requisite under the I.B. Code a specific Power of Attorney from the Petitioner Bank supported by an authorisation from its Board of Directors or its



*Admission*



Competent Authority, by authorising its officer to file this present petition. We further place reliance on a decision passed by the Hon'ble National Company Law Appellate Tribunal in the matter of **Palogix Infrastructure Private Limited Vs. ICICI Bank Limited**; wherein, their Lordships have pleased to held such although the Power of Attorney holder is not competent to file an application on behalf of the Financial Creditors or Corporate Applicant and as per the Section 7 or Section 10, initiation of CIRP which is required to be filed by the Financial Creditors itself. The Hon'ble NCLAT went further to observe equally that the IB Code and Adjudicating Authority Rules recognize that Financial Creditor being a juristic person can act through an authorized representative and it is mandatory for the Financial Creditor to submit name and address of its authorised person appointed on its behalf.

17. As we find that, the present application is signed by the Assistant General Manager of the applicant bank with official seal of the Bank of India, therefore, it can be safely presumed that he possesses proper authority for filing the present application.



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The Hon'ble NCLAT was pleased to examine such issue and clarified the same by observing in Para-31 to 41 of the above referred judgement. Thus, settled the legal position in this respect, which, in our view is squarely applicable to the facts of the present case. The relevant portions of the above referred judgement for the sake of convenience are being reproduced here in below.

31. *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*



*Abhinav*

*nd*

required to state his position in relation to "Financial Creditor".

32. 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.

33. 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'.

34. 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.

35. 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'.



*Han*

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'.

37. As per Entry 5 & 6 (Part I) of Form No.1, 'Authorised Representative' is required to write his name and address and position in relation to the 'Financial Creditor'/Bank. If there is any defect, in such case, an application under section 7 cannot be rejected and the applicant is to be granted seven days' time to produce the Board Resolution and remove the defect.

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



*Abhishek*

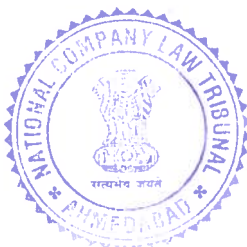
*have taken loan, in such case the 'Corporate Debtor' cannot plead that the officer has power to sanction loan, but such officer has no power to recover the loan amount or to initiate 'Corporate Insolvency Resolution Process', in spite of default of debt.*

*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. "*

18. By following the above stated proposition as laid down by the Hon'ble NCLAT in the above stated judgement, in our view the filing of the present application is found to be in order as it has been signed by the proper authorised signatory and is found complete for the purpose of triggering of CIRP in respect of the Corporate Debtor



*Author*

*J*

Company. Because it has already expressed its no objection for initiating such process and stated that the appointment of a Resolution Professional would be in the interest of the Creditors. Hence, there remains no impediment for initiation of CIRP.

19. For the afore-stated reasons, the present Company IB Petition No. 137/7/NCLT/AHM/2018 is hereby admitted.

20. consequently, a moratorium is declared under Section- 13 and 14 of the IB Code with following directions.

14. (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- (d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(2) The supply of essential goods or services to the Corporate debtor as may be specified shall not be



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terminated or suspended or interrupted during the moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.

21. Further, **Shri Ramchandra Dallaram Chaudhary** (Residing at 9-B, Vardan Tower, Nr. Vimal House, Lakhudi Circle, Navrangpura, Ahmedabad – 380 014, Email ID rdc\_rca@yahoo.com, **Registration No. IBB/ IPA-001/IPP00257/2017-18/10326**) is hereby appointed as Interim Resolution Professional for the purpose of IRP under Section-16 of the I.B. Code.

He is further directed to cause public announcement of Corporate Insolvency Resolution process in respect of the Corporate Debtor Company under Sections 13 and 15 of the Code and to take further follow-up action under Sections 16 to 21 of the IB Code and shall report the progress to this Adjudicating Authority.

22. The applicant Bank is further directed to communicate a copy of this order to the Interim Resolution Professional as appointed by this Adjudicating



*Adarsh*

*(Signature)*

Authority. Further, a copy of this order be communicated to the Respondent Corporate Debtor Company through the member of the suspended management.

23. A copy of this order further be communicated by the applicant/ petitioner as well as by the Registry of this Tribunal to the Registrar of Companies, Gujarat, Ahmedabad for information.
24. Accordingly, this present IB Petition is admitted.

  
(Ms. Manorama Kumari),  
Member Judicial

  
(Mr. Harihar Prakash Chaturvedi)  
Member Judicial

