

**NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH**

CP (IB) / 04 / GB / 2018  
Diary No.03(093)/2018

*Under Section 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating) Authority Rules 2016.*

In the matter of:

Bank of India ... Financial Creditor

-Versus-

M/s Maxim Infrastructure & Real Estate Ltd. ... Corporate Debtor

**Coram:**

Hon'ble Mr Justice P K Sarkia, Member(J)

For the Applicant/Financial Creditor : Mr S. Dutta, Advocate

For the Respondent/Corporate Debtor : Mr K. Paul, Mr P. Shome &  
Mr G. Singh, Advocates

**ORDER**

**Date of Order: 31.08.2018**

This application under Section 7 of the Insolvency & Bankruptcy Code, 2016 (in short, the Code of 2016) read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules 2016 (in short, Rules of 2016) has been filed by the Bank of India, a body corporate, constituted under the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970 having its Registered Head Office at Plot No.C-5, G Block, Bandra Kurta Complex, Bandra East, Mumbai, Maharashtra and carrying on its Banking business through diverse branches including a branch office at Guwahati at Dr J.C. Das Road, Panbazar, Guwahati.

2. The application has been filed against M/s Maxim Infrastructure & Real Estate Pvt. Ltd. having its Registered Office at Vikash Enterprise, Lower Ground Floor, Salonsar Mansion, Police Bazar, Shillong, Meghalaya. The applicant namely, Bank of India and the respondent M/s Maxim Infrastructure & Real Estate Pvt. Ltd. would be referred to hereinafter as Financial Creditor (in short, FC) and Corporate Debtor (in short, CD) respectively.

3. It has been stated that the CD had approached the individual banks for financial assistance under a consortium and accordingly, a consortium of 7 nos. of banks, namely, State Bank

of India, Dena Bank, United Bank of India, Federal Bank, Indian Overseas Bank, NEDFi and Bank of India (FC) agreed in principle to grant/ sanction a total consortium loan amounting to Rs.159.24 crores (Rupees One hundred fifty nine crores and twenty four lakhs only) with State Bank of India being the lead bank. The Bank of India contributed Rs.19 crores to the aforesaid consortium loan.

4. Individual Sanction letters were issued by the aforesaid consortium banks and the FC vide Sanction letter dated 27.07.2010 had initially sanctioned a term loan of Rs.25 crores and same was subsequently modified to a term loan of Rs.19 crores vide Sanction letter dated 01.03.2012.

5. Thereafter the CD through its Director and the Consortium Banks had signed and executed a Common Loan Agreement dated 24.11.2010, Security Agent Agreement dated 24.11.2010 with respect to the entire consortium loan amounting to Rs.159.24 crores as security for repayment of the loan and also agreed to the terms and conditions, contained in the said consortium agreements.

6. The CD through its Director had signed and executed a deed of Hypothecation dated 24.11.2010 thereby hypothecating plant and machineries, fixtures and fittings, current and fixed assets etc. in favour of the consortium banks who have first charge over the said hypothecated properties on pari-passu basis.

7. The consortium member banks had also signed and executed an Inter Creditor Agreement cum Lenders Agent Appointment Agreement dated 24.11.2010 whereby and where under modalities of consortium were worked out like appointment of the State Bank of India as the lead bank etc. in respect of various matters including initiation of suits against the CD individually and collectively.

8. The Corporate Guarantors (in short, CG), namely, M/s H.M. Cements and M/s H.M. Holdings Pvt. Ltd. had signed and executed two separate Consortium Guarantee Agreements on 24.11.2010 in favour of the Consortium Banks including the FC covering the loan facilities granted by the consortium banks.

9. Shri Narayan Prasad Jhunjhunwala, Shri Pankaj Jhunjhunwala, Shri Prithu Jhunjhunwala, Shri Vikash Agarwal, Smti Jyoti Agarwal stood as the Personal Guarantors (in short, PG) by signing and executing a Deed of Personal Guarantee dated 24.11.2010 in favour of the Consortium Banks including the FC, covering the loan facilities granted by the consortium banks.

10. Further, the CD had also created Equitable Mortgage over three separate plots of land measuring 11.20 Ares, 11.20 Acres and 2 Kathas standing in its name by depositing Title Deeds and also confirmed the same by signing and executing Letters of Confirmation of creation of Mortgage dated 27.12.2011 as a security for repayment of the loan.

11. Similarly, the Corporate Guarantor, M/s H.M. Cements, had also created equitable mortgage over a Leasehold right (20 years) over a land measuring 71649.58 sq.ft, situated at Jail Road, East Khasi Hills, Shillong, Meghalaya by depositing Lease Agreement and also confirmed the same by signing and executing a Letter of Confirmation of creation of Mortgage dated 27.12.2011 also as a security for repayment of the loan.

12. Again, Shri Pankaj Jhunjhunwala and Shri Prithu Jhunjhunwala had created Equitable Mortgage over 4 plots of land measuring 1 Bigha 1 Katha 5 Lechas, 3 Kathas 10 Lechas, 3 Kathas (8640 sq.ft. approx.) and 4 Kathas 3.23 Lechas, jointly standing in their name by depositing 4 separate Sale Deeds and also confirmed the same by signing and executing Letters of Confirmation of creation of Mortgage dated 27.12.2011, 15.07.2014, 15.07.2014 and 27.12.2011 as securities for repayment of the consortium loan.

13. The CD had also registered the charge over the secured properties (hypothecated and mortgaged **properties**) with the Registrar of Companies and relevant documents have **also been filed along with the application**. The CD, CG and PG had also signed and executed Revival Letters dated 30.10.2013 and 04.03.2016 in favour of the lead bank and the member banks of the consortium undertaking to repay the loan in accordance with the schedule of repayment of loan, agreed to by the parties.

14. The CD, however, **failed to make repayment against** the loan account **viz the term loan (A/c No.500065310000003) as it did not pay the instalments as per terms and conditions, incorporated in the loan agreement and as a result thereof default in repayment of aforesaid loan** started accruing on and from 30.08.2015, 30.09.2015, 30.10.2015 and 30.11.2015 and as such, on 31.12.2015, aforesaid term loan was classified as Non-Performing Assets (in short NPA).

15. Thereafter, having left with no other alternative, the FC had issued Loan Recall Notices, all dated 02.01.2016 to the CD, CG and PG. However, in spite of recalling of total outstanding term loan, maintained in the name of CD, no payment had been received by the FC towards liquidation of outstanding dues which stood at Rs.25,99,81,050.09 (Rupees twenty-five crores ninety-nine lacs eighty-one thousand fifty and paise nine only) as on 14.06.2018.

16. The **relevant** statements of Account, Memorandum of Interest, Capitalised Penal Interest calculation sheet, Loan Instalment Report and Certificate under Banker's Books of Evidence Act, 1891 ----which are also annexed with the application -----support the claim of the FC against the CD.

17. *On receipt of the application, the Registry of this Bench scrutinized the application and having found the same to have been filed in accordance with requirement of law and rules framed there under, same is placed before this authority for doing further needful. In due course, the CD was asked to show cause as to why the application should not be admitted. On being so required, the CD has filed its reply urging this Bench not to admit the application and such opposition was made mainly on technical grounds. For ready reference, relevant part of the affidavit-in-opposition is reproduced below:*

*That at the outset, the Respondent states that the instant petition is not maintainable both in facts and law, and is marred with incurable defects besides being devoid of merits and as such the same is liable to be dismissed in limine and the instant application is filed only for the purposes of challenging the maintainability of instant petitioner under section 7 of the Insolvency and bankruptcy Code. The Respondent herein reserves its right to file a detailed reply on facts and law at an appropriate stage if so required.*

*"That the Respondent states that purported power of attorney dated 28.04.2017 as well as the letter of authorization dated 26.06.2018, authorizing one Shri Angom Ramchandra Singh, Chief Manager Recovery Department of Guwahati Zone is invalid and non-est in the eyes of law, and as such the very institution of the instant petition by the so called authorized person is marred with inherent infirmities, which is not curable in nature.*

*"That the Respondent states that it is a settled position of law that a delegate cannot further sub-delegate his powers. In the present case, the action of the Petitioner Bank is in clear violation of the aforesaid proposition of law, in as much as, the Power of attorney dated 28.04.2017 could not have been executed by the General Managers in favour of Shri Angom Ramchandra Singh, especially when the Board of Directors of the Petitioner Bank had already delegated its power to the General Managers which further could not have been sub-delegated the said powers for the purpose of filing the petition.*

*"Further, assuming but not conceding that the General Managers had the authority to issue power of attorney to the officers of the bank, however, the same cannot in any manner said to have vested any valid authority on the General Managers to further issue letter of authorization in favour of the officers of the Bank so as to initiate insolvency process.*

*"That the Respondent stated that the purported Board of Directors resolution dated 14.06.2016 and on 02.03.2017 granting comprehensive power of attorney to the General Managers concerned, by which they were authorized by the Board to issue Power of Attorney to the Officers of the Bank is not annexed to the petition filed by the Petitioner and does not form a part of the record and as such the very authenticity or existence of such purported board resolutions dated 14.06.2016 and 02.03.2017 is uncertain and cannot be relied upon. In view of the same, the instant petition is liable to be dismissed outright as being completely unauthorized."*

18. In support of its contention that unless it is shown that the **power of attorney** in question was actually executed by the Board of Directors of the applicant bank (**in short BOD**) in favour of Shri Mrityunjay Kumar Gupta, GM and Shri Ravi Prakash Gupta, GM to do various acts and deeds for and on behalf of the bank, such power of attorney cannot be used for any purpose whatsoever, learned Advocate for the CD drew my attention to the decision of Hon'ble Supreme Court in the case of State Bank of Travancore Vs. Kingston Computers India Private Limited, reported in (2011) 11 SCC 524 as well as the decision of Hon'ble NCLAT, New Delhi, in Company Appeal (AT) (Insol.) No.30 of 2017 in the case of Palogix Infrastructure Private Limited Vs. ICICI Bank Limited.

19. The objection in the affidavit-in-opposition was disputed by the FC stating that such objection had no legal basis whatsoever since neither the Power of Attorney nor the Authorization Letter suffers from any defect whatsoever. The relevant part of the rejoinder is reproduced below:

*"That the statements made in paragraphs 4, 5, 6, 7 and 8 of the Application/Written Objection are legally and factually incorrect and the Financial Creditor denies the same and states that the averments made in the said paragraphs of the Objection are completely irrelevant on the fact of the records. It is further stated herein that the Financial Creditor had filed the Power*

of Attorney dated 28.04.2017 signed by the two General Managers, Sri Mrityunjay Kumar Gupta and Sri Ravi Prakash Gupta who were in turn authorized by the Board of Directors of the Bank vide Board Resolutions which was approved on 14.06.2016 and 02.03.2017 by the Board for issuing such Power of Attorney to the Officers of the Bank. But the Financial Creditor has also in total compliance of and in consonance with the Rule 23 (1) of the NCLT Rules, 2016 and also Entry 5 and 6 (Part 1) of Form No.1 had enclosed Letter of Authorization dated 26.06.2018 (Annexure-I-3, Pages No.40 to 41 of the Application) in favour of the Authorised Signatory Sri Angom Ramchandra Singh ( who had signed the application) and duly backed and supported by Board Resolution dated 06.12.2017 (Annexure-I-2, Pages No.38 to 39 of the Application) and as such it is evident that the Corporate Debtor had completely and miserably failed to take notice of the approved Board Resolution dated 06.12.2017 by which the said General Managers have been authorized by the Financial Creditor to sign and issue specific Letter of Authorization to Officers as and when required for initiating Insolvency Resolution process and to file application before the NCLT under I&B Code, 2016.

20. Above being the claim and counter claim of the parties, let us now see whose claim stands to reason. A perusal of the counter affidavit clearly demonstrates that the CD challenged the application mainly on the ground that the power of attorney dated 28-04-2017, purportedly executed by Shri Mrityunjay Kumar Gupta, GM and Shri Ravi Prakash Gupta, GM appointing one Shri Angom Ramchandra as attorney for the applicant bank as well as the authorization letter dated 26-06-2018, purportedly executed by those two very senior bank officers under which Shri Ramchandra was authorized to sign and present section 7 application are all non-est in law since they suffer from various legal infirmities of enormous proportion .

21 Since the power of attorney dated 28-04-2017 as well as authorization letter dated 26-06-2018 are non-est in law, such a power of attorney or for that matter, the authorisation letter aforesaid cannot validly confer any authority on Shri Ramchandra Singh either to act as attorney of the applicant bank for any purpose whatsoever or to sign and present the application U/s 7 of the Code of 2016 before the Adjudicating authority. Since those two very vital documents are found to be documents which have no legal existence, on this count alone, the proceeding under consideration is required to be rejected ----- argues Mr K.Paul, the counsel for CD.

22. But before proceeding further, I find it necessary to go through the decision of the Hon'ble NCLAT in Palogix Infrastructure (supra) as stated in the paragraphs 15 & 16 of the judgment. For ready reference, same is reproduced below:

*"15. Section 179 of Companies Act, 2013 empowers the Board of Directors to do all such acts that a company is authorised to do. A company being a juristic person is capable of initiating and defending legal proceedings and, therefore, the Board of Directors is empowered to exercise such rights on behalf of the Company or may duly empower 'Authorised Representative' to do so on its behalf.*

*"16. Thereby the person authorised by the Board of Directors is duly empowered to*

*initiate or defend any legal proceedings by or against the 'Financial Creditor'/Corporate Debtor' in any Court of law including the matters relating to Insolvency and Bankruptcy proceedings. Thereby, the Board of Directors of a Bank are empowered to delegate powers to any of its officer."*

23. Supporting his contention that power of attorney dated 28-04-2017 is a document non-existent in law, Mr Paul had submitted that there is nothing record to show that the Board of Directors of the applicant Bank had ever appointed Shri Mrityunjay Kumar Gupta and Shri Ravi Prakash Gupta to act as the attorneys of applicant bank. Since the applicant bank had never appointed Shri Mrityunjay Kumar Gupta and Shri Ravi Prakash Gupta to act as its attorneys, they could have no authority whatsoever either to appoint Shri Ramchandra Singh to act as attorney of the applicant bank or to authorize him to sign and present the application under consideration before this authority.

24. Such contentions were refuted by the applicant Bank and in doing so, it has been stated that the BOD of the applicant bank duly appointed Shri Mrityunjay Kumar Gupta, GM along with five others to act as attorneys of the Bank for various purposes including appointment of officers under them to act as attorney of the applicant bank as well as authorising them to file suit etc. before any judicial/quasi-judicial authority/tribunal so as to protect the interest of the applicant bank and in that connection, my attention has been drawn to the Memorandum dated 27.05.2016 (at Annexure I-AX at page 7-9 of the rejoinder to the counter affidavit of the CD).

25. Similarly, the applicant bank, under the Memorandum dated 20.02.2018 (vide Annexure I-AY at Page 10-12 of the rejoinder to the counter affidavit of the CD) also appointed Shri Ravi Prakash Gupta GM along with five others as attorneys for the applicant bank for the purposes aforementioned. Being so, there is no infirmity whatsoever either in the power of attorney dated 28-04-2017 under which Sri Ramchandra Singh was appointed as attorney of the applicant bank or in the authorisation letter dated 26-06-2018 under which same officer was authorized to sign and present before this authority the application under Section 7.

26. But then, such contentions were again spiked by the CD stating that the Board Memorandum dated 27-05-2017 as well as the Board Memorandum dated 20-02-2018 were nothing more than mere proposals which is evident from the last line of the aforesaid memoranda which runs as: "Submitted for approval of the Board, please". For ready reference, the Memorandum dated 27-05-2017 is also reproduced below:

***"Delegation of Powers to General Managers for Granting of Power of Attorney to other Officers***

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*"In terms of Board Resolution passed from time to time, the General Managers posted at Head Office were granted Comprehensive General Manager's Power of Attorney by which they were authorized by the Board to issue Power of Attorney to Officers of the Bank JOINTLY by any TWO General Managers. Normally, 6 General Managers posted at Head Office are granted such Power of Attorney, so that during the absence of General Managers, who are on leave/tour, any TWO of the General Managers can JOINTLY grant and execute the Power of Attorney WITHOUT common seal of the Bank.*

2. *At present due to retirement of Shri R.N. Kar, General Manager (H.R.) on superannuation in the month of May 2016, the Comprehensive General Manager's Power of Attorney of Shri Rameshchandra Baliarsingh is available in Head Office (Star House Building). Shri Baliarsingh is due for retirement on superannuation in the month of July, 2016.*

3. It is, therefore, now proposed to granted similar "General Manager's Power of Attorney" in favour of the following General Managers: -

I)

Name	Shri Nikhilesh Bhargava
Designation	General Manager, Compliance
Empl. I.D.	115342
Date of Birth	05.12.1956
Date of Joining	21.04.1977
Date of Promotion to VII	.12.2014
Qualification	MA LL.B. CAIIB

II)

Name	Shri Bhalchandra Vasuden Upadhya
Designation	General Manager, Risk Management
Empl. I.D.	126506
Date of Birth	31.12.1956
Date of Joining	12.09.1977
Date of Promotion to VII	01.08.2013
Qualification	B.COM LL.B. CAIIB

III)

Name	Shri Prakash Kashinath Vartak
Designation	General Manager, International
Empl. I.D.	126393
Date of Birth	10.01.1957
Date of Joining	05.05.1977
Date of Promotion to VII	01.07.2015
Qualification	B.COM CAIIB

IV)

Name	Shri Ram Krishna Sinha
Designation	General Manager, Business Process Re-Engineering
Empl. I.D.	149125
Date of Birth	01.02.1957
Date of Joining	04.01.1982
Date of Promotion to VII	01.10.2015
Qualification	MBA. MSC. CAIIB

V)

Name	Shri Mrityunjay Kumar Gupta
Designation	General Manager, H.R.
Empl. I.D.	155697
Date of Birth	24.12.1958
Date of Joining	01.05.1985
Date of Promotion to VII	01.10.2015
Qualification	MA CAIIB

4. Our Industrial Law Division, head Office and Vigilance Department, Head Office, have confirmed that no disciplinary action is contemplated/initiated/ pending against any of the above General Managers.

5. We, therefore, recommend granting Comprehensive General Manager's Power of Attorney to the above General Managers.

**Submitted for approval of the Board please.**

Sd/-  
(R. N. Kar)  
General Manager (H.R.)"

27. Since the proposals in the memoranda aforementioned were only a proposal recommending Shri Mrityunjay Kumar Gupta and Shri Ravi Prakash Gupta to act as Attorneys for the applicant Bank and nothing more than that, those two bank officers, despite their holding very high positions in the applicant bank cannot legally act as attorneys for the FC so as to appoint officer under them to act as attorney of the FC or to authorise any officer under them to sign or present Section 7 application aforesaid before this authority so as to initiate corporate insolvency resolution process.

28. Such contention was once again disputed by Mr S. Dutta, learned Advocate for the FC stating that it is not correct to say that the proposals in Memorandum dated 27.05.2016 and Memorandum dated 20.02.2017 had remained at the stage of proposals only. Quite contrary to it, those proposals were duly approved by the Board of Directors of the applicant Bank and in that connection, my attention was drawn to the title part of the memoranda to contend that CEO, ED-2 and ED-3 acting as Board of Directors and CEO and ED-1 acting as Board of Directors had duly approved the proposals in Memorandum dated 27.05.2016 and Memorandum dated 20.02.2017 respectively.

29. Situation being such, it is now well apparent that Shri Mrityunjay Kumar Gupta and Shri Ravi Prakash Gupta, being duly appointed as attorneys of the applicant bank, had properly appointed Shri Angom Ramchandra Singh to act as attorney of the company and also authorised him to sign and present the application under consideration before this Authority. In support of such contentions my attention has been drawn to the power of attorney dated 28-04-2017 (Annexure 1-1 at page 18) and authorisation letter dated 26-06-2017 (Annexure I-3 at page 40).

30. Therefore, there was no infirmity whatsoever either in the appointment of Shri Mrityunjay Kumar Gupta and Shri Ravi Prakash Gupta as being Attorneys of the applicant Bank or in their appointing Shri Angom Ramchandra Singh to act as attorney of the bank or in their issuance of Authorization Letter in favour of said Shri Angom Ramchandra Singh empowering him to sign and present the application under consideration before this Authority.

31. I have considered such submission having regard to the evidence on record and found that the title parts of Memorandum dated 27.05.2016 and Memorandum dated 20.02.2017 clearly demonstrate that the BOD of the applicant bank had duly appointed Shri Mrityunjay Kumar Gupta and Shri Ravi Prakash Gupta as Attorneys to do and perform various acts mentioned therein. I have also found that on being so appointed as Attorneys of the Bank, they had also appointed Shri Angom Ramchandra Singh to act as attorney of the applicant bank and also duly authorised him to sign and present application under consideration before this authority.

32. The CD has also contended that by appointing Shri Mrityunjay Kumar Gupta and Shri Ravi Prakash Gupta, the applicant bank has delegated its authority to those very senior bank officers to do various acts and deeds for and on behalf of the bank. Since those two bank officers themselves enjoy only the delegated power to act for and on behalf of the bank, they could not have further delegated such delegated power to Shri Angom Ramchandra Singh since it is a settled proposition of law that a delegated power cannot be further delegated. On this count also, the present proceeding is required to be rejected -----contends Mr. Paul.

33. However, I have found such submission too could cut no ice in demolishing the case of the applicant. A very careful perusal of the memorandum dated 27-05-2017 and 20-02-2017 clearly reveal that under the memoranda aforesaid, the BOD had granted Shri Mrityunjay Kumar Gupta and Shri Ravi Prakash Gupta comprehensive General Manager's power by which they were authorized by the Board to issue even power of attorneys in favour of banks officers working under them to do various acts and deeds for and on behalf of applicant bank.

34. Such revelation once again shows the inherent infirmity in the last contention, advanced from the side of the CD, which is why I find no difficulty in rejecting the last contention of the CD. The discussion, made herein before, also shows that the decision relied on by the Counsel appearing for the CD has no application whatsoever since facts and circumstances in the reported cases are very different from the facts and circumstances in the case under consideration.

35. In view of above, I find no infirmity whatsoever either in the memoranda aforementioned appointing Shri Mrityunjay Kumar Gupta and Shri Ravi Prakash Gupta as Attorneys of the Bank to do various acts mentioned in those memoranda or in their appointing Shri Ramchandra Singh as attorney of the applicant bank or in their authorising him to sign and present the application under consideration before this Authority and, therefore, all the objections stand overruled.

36. It is found apparent from the record that as on 14.06.2018, an amount to the tune of Rs.25,99,81,630.52 stood as debt due from the CD to the FC and there was default in repayment of the same.

37. Further, the FC has named one Shri Kamalesh Kumar Singhania of A V Insolvency Pvt. Ltd., Bajarang Kunj, Room No.412-413, 2B, Grant Lane, 4<sup>th</sup> Floor, Kolkata-700012 as being the Insolvency Resolution Professional (in short, IRP) against whom no proceeding is said to have been pending.


38. On consideration of the application in the light of the provisions contained in the Code of 2016 and the Rules framed thereunder, it is also found that the application is complete in all aspects

39. In view of the above, this application is admitted.

40. Consequently this authority declares moratorium prohibiting all of the followings, namely----

- 1) (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 corporate debtor any of its assets or any legal right or beneficial right 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;

- (d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
- 2) The supply of essential goods or services to the corporate debtor shall not be terminated or suspended or interrupted during the moratorium period.
- 3) The order of moratorium shall have effect from today till the completion of corporate insolvency process.
41. Necessary order regarding the appointment of IRP would be passed shortly.
42. The registry is directed to put up a note regarding appointment of IRP before this authority on the next working day, same being day after tomorrow, tomorrow being a holiday.

  
Adjudicating Authority  
National Company Law Tribunal,  
Guwahati Bench, Guwahati.

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