NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH

Dy No.528 of 2017

Central Bank of India ... Financial Creditor

-Versus-

Assam Company India Ltd. ... Corporate Debtor

**Order delivered on 24-10-2017**

Present: Hon'ble Mr Justice P K Saikia, Member (J)

For the Financial Creditor: Mr. S. Chamaria, Advocate
Mr. M. Ali, Advocate

For the Corporate Debtor: Mr. J. Saha, Sr. Advocate
Mr. A. Gaggar, Advocate
Mr. D. Choudhury, Advocate

ORDER

Facts necessary for disposal of the present proceeding, in short, are that the Central Bank of India, Corporate Finance Branch, Kolkata Zone, Kolkata (herein after referred to as FC) had sanctioned two term loans vide term loan No. CFBK.CMD. 2010 -11-08-584, dated 14.8.2010. One of the said term loan was for an amount to the tune of Rs.18.50 crores, whereas, other loan was for Rs.41.50 crores totalling to Rs.60.00 crores. Such term loans were sanctioned in favour of M/s. Assam Company Ltd, hereinafter referred to as Corporate Debtor (in short, "CD").

2. However, subsequently, at different points of time, said loan was re-structured. First restructure was done on 13.6.2012, which was also approved by higher authority of Central Bank of India, Kolkata. Such restructure was duly accepted by CD. On 07.01.2015, CD confirmed the liability amounting to Rs.49,67,26,531.00 as on 30.09.2014. Thereafter, *on the basis of another letter dated* 29.12.2015, received from the CD, further modification of term loan amounting to Rs.51.20 Crores was made and the same was done in order to accommodate the CD to make repayment of loans.

3. However, despite giving enough opportunities to repay the debts, the CD failed to repay the outstanding amount payable to the bank. Therefore, vide notice dated 02.03.2017, the FC demanded an amount to the tune of Rs.49,83,72,077.00 (Rupees forty-nine crores eighty-three lakhs seventy-two thousand and seventy-seven) only which was calculated up to 31.03.2015. Responding thereto, the CD vide letter dated 08.03.2017 duly accepted the said liability and also intended to repay the same through instalments.

4. However, since no payment was made, the FC through the duly authorised officer has preferred this application U/s 7 of the Code of 2016 seeking initiation of corporate insolvency

resolution process against the CD. In regard to authorisation of the officer to submit the present application before the Adjudicating Authority, it has been stated that one Mr. A. Bhavani Prasad, Deputy General Manager, Central Bank of India, Kolkata has been authorised by one Sri Umesh Kr. Singh, Field General Manager, CBI, Kolkata Zone, Kolkata to submit the application seeking initiation of corporate insolvency resolution process against the CD and such authorisation was done by Sri Umesh Kr. Singh on the basis of the power of attorney executed by FC in favour of Sri Singh on 30.10.2013.

5. It has also been stated that said A. Bhavani Prasad has also been authorised by the FC to do various deeds and acts for and on behalf of the FC, including institution of suits and other proceedings in the name of FC or to defend any suit/proceeding against the Bank pending in any Court/Tribunal or other forums. In that connection, a power of attorney, same being the power of attorney dated 30.10.2013, had also been executed by Bank in favour of said Bhavani Prasad. Therefore, according to the counsel appearing for the FC, Sri A. Bhavani Prasad too possesses the required authority to submit application in hand on his own.

6. It has also been submitted that the application under consideration was complete in all respects, which shows that as on 01.08.2017, the CD owed an amount of Rs.54,16,40,576.00 to the FC, but the CD committed default in repayment of the principal amount as well as the interest accrued thereon, on and from 31.10.2016. The FC further says that one Mr. Kuldeep Verma has been named as Interim Resolution Professional to take charge of the situation in accordance with the prescription of Law and Rules framed there under in the event of admission of the application under consideration.

7. On scrutinising the same, it is found that the application suffers from some defects and in due course, such defects were noticed to the FC and such defects were brought to the notice of the Financial Creditor requiring it to rectify the defects accordingly. In due course, the Financial Creditor has rectified the defects and thereafter, this Bench vide Order dated 31-08-2017 has directed the Corporate Debtor to show cause within three days as to why the application filed by the Financial Creditor under Section 7 of the Code of 2016 seeking initiation of corporate insolvency resolution process against it would not be accepted.

8. The Corporate-debtor has, however, assailed the proceeding under Section 7 of the Code of 2016 on several counts. First, it was alleged that the person who is authorised to submit the application U/s Section 7 of the Code of 2016 on behalf of the FC did not have requisite authority to submit the application under the aforesaid provision of law. In this connection, it has been pointed out that in column 5 of the Part I of the application, one Sri Sandeep Chamaria, Advocate, with his detailed address, was shown as person authorised to present application on behalf of the FC.

9. Similarly, in column No.6 of Part I of the application, said Sri Sandeep Chamaria, Advocate was shown as a person, resident of India, to receive service of notice on behalf of the FC. However, according to the counsel appearing for CD, there is absolutely nothing on record to show that said Sri Sandeep Chamaria, Advocate had ever been authorised to present the application in hand before the Adjudicating Authority.

10. Rather, the power of attorney, at annexure - 46, relied on by the FC, shows that one Sri A. Bhavani Prasad, an officer of Central Bank of India, was constituted as attorney of the Central Bank of India to do various acts, *as mentioned therein*, for and on behalf of the FC, which included the power to institute suit/proceeding etc. for and on behalf of the Bank or to defend any suit/proceeding against said Bank initiated before any court/ tribunal/ any other authority.

11. It is not in dispute that said power of attorney was executed long before the Code of 2016 was brought into existence in 2016, to be precise on 30.10.2013. In Palogix Infrastructure Pvt. Ltd. [Company Appeal (AT) (Insol.) 30 of 2017 Judgement dated 20-09-2017] it was held by the NCLAT, New Delhi that a power of attorney, executed by the donor before the bringing into existence of the Code of 2016, cannot validly empower the donee of such power of attorney to submit an *application* undersection 7/9/10 of the Code of 2016.

12. This is because of the fact that the Code of 2016 has brought into existence a regime which differs very drastically from all legislations holding the field till then which was earmarked for the Code of 2016. Such being the situations, the power of attorney executed on 30.10.2013 cannot validly empower the donee there-under, he being Sri A. Bhavani Prasad, an officer of Central Bank of India, to submit the application under section 7 of the Code of 2016, before the Adjudicating Authority seeking initiation of corporate insolvency resolution process against the CD herein.

13. In Palogix (supra), it has also been held that in terms of section 179 of the Companies Act, a company, being a juristic person, can discharge its function through its Board of Directors only. Therefore, an officer, however high he may be in the hierarchy of the Bank, cannot on his own or authorise any other officer of the bank to present an application under section 7/9/10 of the Code of 2016 before the authority concerned unless the company in some way or other, has authorised him to do such act/acts or unless the conditions enumerated in such a judgment are met.

14. In the case in hand, there is nothing on record to show that said Sri A. Bhavani Prasad, Deputy General Manager, Central Bank of India had ever been authorised by the FC in accordance with the prescription of law to act as attorney of the FC to initiate a proceeding under section 7 of the Code of 2016. Nor was there any proof of Shri Umesh Kumar Singh, Field General Manager, Central Bank of India ever being authorized by the FC either to initiate any proceeding under Section 7 of the Code of 2016 or to authorise someone to file any application under the aforesaid provision of law before the Adjudicating Authority in the name of the bank aforesaid.

15. All these speak loud AND CLEAR that said Sri A. Bhavani Prasad, Deputy General Manager, Central Bank of India had no authority whatsoever to initiate a proceeding under section 7 of the Code of 2016. Such revelations are also testimonies to the fact that Sri Umesh Kumar Singh, Field General Manager, Central Bank of India too had no authority to authorise someone to submit any application under section 7/9/10 of the Code of 2016 seeking initiation of Corporate Insolvency Resolution Process.

16. In second place, it has been contended that the FC must establish in unequivocal terms that the CD had owed it a definite amount as being the debt due to the FC. The FC must also establish that there was clear default in repayment of such debt.

17. In that connection, my attention has been drawn to the definition of the terms of "claim", "debt" and "default" as has been given in the Sub-section 3(6), 3(11) and 3(12) of the Code of 2016 respectively to contend that mere claim or existence of debt is not enough but the FC has to establish with equal clarity the date of default and defaulted amount.

18. This is because of the fact that the proceeding under the IBC is summary in nature and therefore, IRP /RP are not entitled to enter into a detail enquiry to ascertain the quantum of claim, debt and amount defaulted. Their duty is to collate the claims of various creditors etc. leading to formulation of a Resolution plan. However, in the present case, FC has miserably failed not only to establish of the exact amount debt ---- but --------also failed to establish the quantum of defaulted amount.

19. In that connection, my attention has been drawn to the figures in column No.4 of the chart, annexed as document No. 47 to the application (at page 228) which shows that as on 01.08.2017, an amount to the tune of Rs.54,16 40,576.00 had fallen due as debt whereas in the statement, which was certified according to the Bankers' Books Evidence Act,1891 (and which was submitted along with the reply to the written objection), such amount was shown as Rs.34,62,80,000.00 as on 01.08.2017.

20. It has also been submitted that the amount, which was shown as debt as on 01.08.2017 in the statement which was certified in accordance of the Bankers' Books Evidence Act, 1891 (and which was submitted along with the reply to the written objection), did not match with the amount which was shown as debt as on 01.08.2017 in column No.4 of the chart at page 228 of the application.

21. The statements, which were certified in accordance of the Bankers' Books Evidence Act,1891 show that the CD committed default in repayment against all the three term loan accounts. According to such statements, the debt in respect of account No.A/c No.3081712321 as on 01.08.2017 was Rs.17,18,00,000.00 whereas the debt in respect of account No A/c No.3081685895 as on 01.08.2017 was Rs.7,95,20,000.00 as well as the debt in respect of the A/c No.3187540746 as on 01.08.2017 was Rs.9,76,00,000.00 totalling to Rs.34,89,20,000.00. Quite surprisingly, in the column 4 of the chart aforesaid, as on 01.08.2017, such an amount was shown as Rs.34,62,80,000.00.

22. Since the various figures, given in the application regarding debt as on 01.08.2017, completely mismatch with the figures on debt on the same date in the supporting documents, there cannot be any escape from the conclusion that the FC itself did not know what was the actual amount that had become due to it from the side of CD as on 01.08.2017. Therefore, on this count also, the Adjudicating Authority is duty bound to reject the proceeding in view of the law laid down by Hon'ble NCLAT, New Delhi in Starlog Enterprises Ltd. Vs. ICICI Bank Ltd. reported in (2017) 142

SCL 1, as well as by the NCLT, Principal Bench, New Delhi in the case of Indian Bank Ltd. & Ors. Vs. M/s. Athena Demwe Power Ltd. [Company Petition No.55/2017] decided on 12-05-2017

23. The CD has attacked the proceeding in hand on yet another ground as well. It has been stated that before being a financial creditor, it needs to be established that the CD owed a financial debt to the former. In that connection, my attention has been drawn to the definition of Financial Creditor as well as Financial Debt, so given in Section 5 (7) & 5 (8) of the Code of 2016 respectively. For ready reference Sections 5 (7) & 5 (8) are reproduced below:

> *"Sections 5 (7) "financial creditor" means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;*
>
> *"Sections 5 (8) "financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes–*
>
> *a) money borrowed against the payment of interest;*
>
> *b) any amount raised by acceptance under any acceptance credit facility or the de-materialized equivalent;*
>
> *c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*
>
> *d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed.*
>
> *e) receivables sold or discounted other than any receivables sold on non-recourse basis;*
>
> *f) any amount raised under any transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*
>
> *g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;*
>
> *(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*
>
> *(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses(a) to (h) of this clause".*

24. The definition of "financial creditor" as rendered in Section 5 (7), therefore, clearly demonstrates that unless there is a financial debt due from debtor to creditor, the later cannot acquire in law the status of a Financial Creditor. On the other hand, the definition of Financial Debt shows that only certain kinds of debt which have been itemised in the aforesaid Sub-section can be treated as Financial Debt.

25. Therefore, according to learned Sr. Advocate appearing for the CD, a debt along with interest can be treated as Financial Debt although the amounts, specified in Clause (a) to (i) to qualify to be the Financial Debt. However, the amount which is said to be Financial Debt in the present proceeding, same being Rs.54,16,40,576.00, under no circumstances can qualify to be the Financial Debt so contemplated in Section 5 (8) of the Code of 2016.

26. In that connection, it has been pointed out that though an amount to the tune of Rs.34,62,80000.00 is being claimed as outstanding balance towards the principal amount, Rs.18,25,78,861.00 is being claimed as interest accrued on the principal amount ---yet -----an amount to the tune of Rs.1,27,83,715.00 was also claimed as being arrear penalty. What is, however, important to note that such amount was also included in debt which was said to be Rs.54,16,40,576.00 as on 01.08.2017.

27. Since the term "arrear penalty" is conspicuously lacking in the definition of Financial Debt, therefore, no amount stretch of the term "Financial Debt" as contemplated in section 5(8) can include "arrear penalty" within the meaning of the term 'Financial Debt'. Since the "arrear penalty" cannot pass the test to be graded as Financial Debt, the entire computation of debt adding such "arrear penalty" to the amount of debt makes the calculation of debt totally untenable in law and therefore, on this score too, the present proceeding is liable to be rejected ----- argues the learned Advocate for the CD.

28. All those contentions were hotly disputed by Mr. Chamaria, learned Advocate for the FC. In regard to the third contention aforesaid, it has been stated that the definition of Financial Debt is inclusive one – and--- not exhaustive as claimed by the learned Advocate for the CD. In that connection, it has been stated that any amount which broadly satisfy the conditions enumerated in Section 5 (8) may qualify to be Financial Debt although such a debt may not find its name in the list of debts specified in such a provisions of law.

29. Further, referring to the Reserve Bank of India Master Circular on Interest Rates on Advances, issued on 01.07.2014, it has been submitted that in bank parlance, interest means and include simple rate of interest, compound rate of interest, floating rate of interest or penal rate of interest etc. Therefore, the term "interest "as stated in Section 5 (8), covers wide range of items and not limited to the items specified in the section aforesaid.

30. In that view of the matter, there cannot be any difficulty in concluding that the arrear penalty is nothing but amount calculated on the basis of penal rate of interest. Quite importantly, such arrear penalty was calculated on the basis of agreement arrived at by the parties at the time of entering into the loan agreement on 25.08.2010, vide clause 3 of Schedule III under caption repayment schedule. Therefore, one cannot find fault with the inclusion of penal rate of interest in the amount calculated as Financial Debt.

31. In regard to second allegation that the figures as to the debt, rendered by the FC in its application U/s 7 of the Code of 2016 is contradicted various figures, rendered in different supporting documents, annexed with the application, it has been submitted that such allegation is far from truth. It may be stated that in their written argument, the CD did not give an accurate picture as to the outstanding due towards the principal amount as on 01.08.2017. In that connection, it has been pointed out that the figures, so given in the written argument in respect of outstanding principal amount, are as under:

a) *The amount allegedly outstanding in the A/c No.308171232I as on 01.08.2017 is Rs.17, 18, 00,000/-*

b) *The amount allegedly outstanding in the A/c No.3081685895 as on 01.08.2017 is Rs.7, 9520, 000/- and*

c) *The amount allegedly outstanding in the A/c No.3187540746 as on 01.08.2017 is Rs.9,76,00,000/- totalling to Rs.34,89,20,000/-.*

32. However, the figures, so shown in their written argument from the side of CD were not correct. As per statements, submitted from the side of FC which were prepared in accordance with prescription of the Bankers' Books Evidence Act, 1891, the outstanding amounts towards the principal amount as on 01.08.2017 are as under: -

a) *The amount allegedly outstanding in the A/c No.3081712321 as on 01.08.2017 is Rs.17, 18, 00,000/-*

b) *The amount allegedly outstanding in the A/c No.3081685895 as on 01.08.2017 is Rs.7,68,20,000/- and not Rs.7,9520,000/- as stated in in the written argument, submitted from the side of CD and*

c) *the amount allegedly outstanding in the A/c No.3187540746 as on 01.08.2017 is Rs.9,76,00,000/- totalling to Rs.34,89,20,000/- totalling to Rs.34,68,80,000/-.*

33. Therefore, the claim of CD that the figures regarding outstanding amount towards the principal amount so rendered in the application do not match with the figures regarding principal amount so given in supporting documents, in statements, submitted from the side of FC which were prepared in accordance with prescription of the Bankers' Books Evidence Act, 1891 in particular, is found to be horribly without any substance. Unfortunately, such a state of affairs only serves to show that the CD was held bent in trying to hide the truth from the Tribunal.

34. In regard to the contention that although in the statements, submitted under the Bankers Books of Evidence Act, 1891 the FC has claimed an amount to the tune of Rs.34,68,80,000/- to be the outstanding debt due from the side of CD as on 01.08.2017, in its application, the FC has magnified such amount so much so that in its application, it claims that as on 01.08.2017, the CD owed to the FC an amount to the tune of Rs.54,16,40,576.00 as being the debt, it has been contended such a claim is structured more on surmise than on facts on record.

35. In support of such contention, it has been submitted that in the computer generated statements, which was certified in accordance with the provisions of Bankers' Books Evidence Act,1891 the FC has given the statements only in respect of amount outstanding towards the principal amount as on 01.08.2017 and nothing else and same is given as per practice followed by Banks throughout the country. Such figures match completely with the figures as given in column 4 of the chart in document No.46 produced from the side of FC.

36. However, the chart in document No.46 also speaks about interest accrued on principal till 01.08.2017 as well as arrear penalty. When all those amounts are put together, the total amount comes to Rs.54,16,40,576.00 and same being the total dues (read as debt) payable to the FC as on 01.08.2017. Such a figure, therefore, matches completely with the figure so given in Part IV of the application. These are more and more testimonies to the fact that the allegation that figures regarding the debt, so rendered in the application did not match with figures regarding the debt, rendered in different supporting documents, is nothing but a pack of lies.

37. In regard to the first allegation, it has been submitted that such allegation too is a farfetched one. In support of such contention, it has been stated that the FC had executed a Power of Attorney on 30.10.2013 in favour of one A. Bhavani Prasad, constituting him to be the attorney of the Bank to do various duties and functions specified therein which includes the power to institute for and on behalf of Bank any suit/proceeding etc. or to defend any suit or other proceeding initiated against the Bank in any Court, Tribunal etc. Therefore, the said A. Bhavani Prasad who has signed the application in question has all the authority to submit the present application in the name of the Bank.

38. He further submits that even if one assumes for the sake of argument for a moment that under the aforesaid Power of Attorney, said A. Bhavani Prasad was incompetent to present the application in hand on behalf of the FC — yet — one Shri Umesh Kumar Singh, Field General Manager, Central Bank of India being the Zonal Head, Kolkata, on being armed with power conferred on him under the Power of Attorney dated 30.03.2013, had authorized Sri Prasad to submit the present application under Section 7 of the Code of 2016 before the Adjudicating Authority vide authority letter dated 03.08.2017 (Document No.47).

39. Since the Bank concerned on the basis of Power of Attorney dated 30.10.2013 had empowered Shri Umesh Kumar Singh, Field General Manager, Central Bank of India to do various acts for and on behalf of bank and since on the basis of such Power of Attorney, he had authorized Shri A. Bhavani Prasad to submit the application in hand before the authority concerned, it is no longer possible on the part of the CD to complain that the application submitted by Mr. A. Bhavani Prasad suffers from authorisation insufficiency and, therefore, the allegation raised on this count is liable to be rejected ——— argues Mr Chamaria.

40. Referring to the decision of Hon'ble Apex Court in the case Punjab State Co-operative Bank Ltd. Vs Milkha Singh (Deceased) By Legal Heirs & Another, reported in AIR 1998 SC 271, it has also been submitted that even if one assumes for the sake of argument that the FC did not specifically authorise Sri A. Bhavani Prasad to submit the application in question before the authority concerned —yet then— it may not be always necessary for the bank to issue specific authorisation letter to discharge some act or acts for and on behalf of the bank.

41. This is because of the fact that it may not be always possible or practicable for the Board of Directors of the bank to take various executive decisions, some of which require urgent decisions and implementations. In such eventualities, the bank must allow its officer or officers, off course, of superior position/positions to take some urgent decision(s) on their own without waiting for permission to come from the Board of Directors of the bank. In that connection, my attention has been drawn to the relevant part of the judgment in Punjab State Co-operative Bank Ltd. (supra) and same is reproduced below:

> *"It is not practical feasibility that the general body may frequently to take various executive decision. As a matter of fact, the general body of the co-operative society usually take broad policy decisions on one or two occasions. As it is not practicable to take various executive decisions, some of which require urgent decisions and implementations, the bye law has given wide powers to the Managing Director."*

42. Said decision further fortifies the stand of the FC that the present proceeding cannot be rejected only on the ground that Sri A. Bhavani Prasad or for that matter counsel who presented the application in hand were not authorised to submit the application in accordance of prescription of law ---argues Mr Chamaria, learned counsel appearing for the FC.

43. Mr. Chamaria further submits that Hon'ble NCLAT, New Delhi in the case of Palogix Infrastructure Pvt. Ltd. Vs ICICI Bank in Company Appeal (AT) (Insol.) No.30 of 2017 in its Judgement dated 20th September, 2017, also held as follows: -

> *"38. This apart, if an officer, such as Senior Manager of the Bank has been authorized to grant loan, for recovery of loan or to initiate proceeding for Corporate Insolvency Resolution Process" against the person who have taken loan, in such case, the Corporate Debtor cannot plead that 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 authorized officer that he was authorized 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 Financial Creditor in favour of such officer designate."*
>
> *37. As per Entry 5 & 6 (Part I) of Form No. I, '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.*

44. According to Mr. Chamaria, learned counsel for the FC, the Power of Attorney dated 30.10.2013, executed in favour of Shri A. Bhavani Singh, Deputy General Manager Central Bank of India, in no uncertain term, demonstrates that the Financial Creditor has not only empowered Mr. Prasad to grant loan but it has also given him the power to recover such loan as well. In view of above, and in terms of law, laid down in Palogix Infrastructure Pvt. Ltd. (supra), it needs to be held that Mr. Prasad has required authority to present the application before this Bench. For ready reference, the relevant part of the Power of Attorney is reproduced below: -

> *"To make advances and grant any loans or accommodation, on demand or otherwise, on cash credit, overdraft or other accounts to any government or body politic or any person, firm, society, syndicate, company, corporation, body corporate or association of persons with or without security of any kind and in particular and without prejudice to the foregoing to lend or advance moneys on movable and/or immovable and/mixed securities on policies of insurance, bonds, debentures, guarantees, bills of exchange, promissiory notes, hundies and negotiable instruments of any kind, on the deposit of title-deeds, goods, wares and merchandise, bullion, stocks, securities, shares, bills of lading, delivery orders, dock warrants, railway receipts or other documents of title to or possession of any kind of goods or property or on letters of credit or other obligations of any kind".*
>
> *"To ask, demand, sue for, recover, receive, enforce payment, require delivery or transfer possession and to obtain possession from all and every person, firm, society, company, corporation, body corporate, association, syndicate, government or local or public or statutory body or authority wheresoever and whatsoever, of all claims, sums of moneys, debts, demands, dues, securities of any kind, whatsoever and any goods, wares, merchandise, chattls and effects and things and any property moveable and immovable or any actionable claim which now are or which may or shall become due or owing or payable to or recoverable by the Bank whether as owner, mortgagee, pledgee, hypothecates, charge, trustee, executor or guarantor or as subrogate or otherwise howsoever and whether under or by virtue of any mortgage, pledge, hypothecation, charge, lien, bond, agreement or any other security or upon or by virtue of any bills of exchange, promissory notes, cheques, bills of lading or any other*

*negotiable or mercantile instruments whatsoever or otherwise howsoever and in any manner whatsoever"..*

45. Mr. Saha learned Sr. Counsel appearing for the CD again submits that the decision in Punjab State Co-operative Bank Ltd. (supra) cannot have application to this proceeding since such a decision was rendered in a different setting and situations which have no relevance to the dispute in the case in hand. This is because of the fact that the decision, so relied on, was rendered in the context of running of the affairs of the Co-operative Banks which are governed by different laws and rules framed thereunder, which permits some officer/officers of the Co-operative Banks to take some executive decisions in certain special situations as are noticed in the judgment itself.

46. I have considered the rival submissions having regard to the materials on record as well as the decisions, relied on by the parties, to advance their respective case. In so far as second allegation is concerned, it is found that such allegation is not based on facts on records. On perusal of the certified Bank Statements, which were submitted by the FC, along with the reply to the written objections, I have found that the amounts, so given in the certified Bank Statements, relate to the outstanding amounts towards the principal amounts.

47. On further perusal of the certified Bank Statements, it is also found that the total outstanding amount in respect of principal amounts comes to Rs.34, 62, 80,000.00 only, *and not,* ***Rs.34,89,20,000.00*** *as claimed by CD*. It is also found that there was a mistake on the part of CD in calculating outstanding amounts, projected through the bank statements, since the debt in respect of loan, covered by Account No.3081685895, was wrongly read as ***Rs.7,95,20,000.00,*** although the said loan account reveals that outstanding amounts in respect of principal amount was ***Rs.7,68,80,000.00 only***.

48. In regard to the allegation that though in the certified Bank Statements, the debt in question as on 01.08.2017 was stated to be Rs.34,62,80,000.00 only (not Rs.34,89,20,000.00 as claimed by CD) ------yet-------in the document No.46 at page 228 as well as in the application under consideration, Rs.54,16,40,576.00 was stated to be the debt payable to the FC on the aforesaid date (viz,01.08.2017), I have found that such claim, too, is far from the truth.

49. On examination of the application in the light of various documents, submitted by the FC in support of its case, I have found that the certified Bank Statements reveal that as on 01.08.2017, an amount to the tune of Rs.34, 62, 80,000.00 only was outstanding ---but then -----such outstanding amount was in respect of principal amounts only. However, the certified Bank Statements did not speak about the amount which remained outstanding towards the interest accrued on the principal amounts nor did it speak about the penal interest, charged by FC.

50. Record further reveals that while interest, calculated against the principal amounts in the aforesaid three term loan accounts, comes to Rs.18,25,76,861.00 as on 01.08.2017, an amount to the tune of Rs.1,27,83,715.00 was also charged as being the penal interest against all those three term loan accounts. Therefore, the total outstanding amount, on all those counts as on 01.08.2017, comes to *Rs.54,16,40,576.00*. Being so, in my considered opinion, there is no discrepancy whatsoever in describing the debt in question as on 01.08.2017 in various documents, submitted from the side of FC, as claimed by the CD.

51. *Coming to the third allegation*, it is found that such allegation too is devoid of any truth. A perusal of definition of the Financial Debt in between the lines reveals that such a definition is an inclusive one ---and not an exhaustive definition ------as claimed by the CD. Therefore, any amount which satisfies the key requirements of Financial Debt as defined in Section 5 (8) of the Code of 2016 would certainly qualify to be a Financial Debt. In that view of the matter, in my opinion, arrear penalty is nothing but a form of interest as contemplated in Section 5 (8) of the Code of 2016.

52. Further, the Master Circular on Interest Rates on Advances, issued by RBI on 01.07.2014 reveals that interest, charged by the Banks and other Financial Institutions, may have different colours and contours, such as, simple rate of interest, compound rate of interest, Floating Interest, Penal Interest etc. Therefore, the Master Circular on Interest Rates on Advances, further fortifies my conclusion that the amount, charged as arrear penalty, same being Rs.1,27,83,715.00, is one form of interest as specified in Section 5 (8) of the Code of 2016.

53. In this connection, one may look into the decision of Hon'ble Apex Court in the case of Central Bank of India Vs. Ravindra & Ors., reported in AIR 2001 SC 3095. In the aforesaid decision, Hon'ble Apex Court held as under: -

> "*Interest and its classes:*
>
> *Black's Law Dictionary (7th Edition) defines 'interest' inter alia as the compensation fixed by agreement or allowed by law for the used or detention of money, or for the loss of money by one who is entitled to its use; especially, the amount owed to a lender in return for the use of the borrowed money. According to Stroud's Judicial Dictionary of Words and Phrases (5th edition) interest means, inter alia, compensation paid by the borrower to the lender for deprivation of the use of his money. In Secretary, Irrigation Department, Government of Orissa & Ors. v. G.C. Roy, [1992] 1 SCC 508, the Constitution Bench opined that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages.....this is the principles of Section 34, Civil Procedure Code. In Dr. Shamlal Narula v. C.I.T., Punjab, [1964] 7 SCR 668, this Court held that interest is paid for the deprivation of the use of the money. The essence of interest in the opinion of Lord Wright, in Riches v. Westminister Bank Ltd., [1947] 1 All ER 469, 472, is that it is a payment which becomes due because the creditor has not had his money at the due date. It may be regarded either as representing the profit he might have made if he had had the use of the money, or, conversely, the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation; the money due to creditor was not paid, or, in other words, was withheld from him by the debtor after the time when payment should have been made, in breach of his legal rights, and interest was a compensation whether the compensation was liquidated under an agreement or statute. A Division Bench of the High Court of Punjab speaking through Tek Chand, J. in C.I.T., Punjab v. Dr. Shamlal Narula, AIR (1963) Punjab 411 thus articulated the concept of interest - "the words "interest" and "compensation" are sometimes used interchangeably and on other occasions they have distinct connotation. "Interest" in general terms is the return or compensation for the use or retention by one person of a sum of money belonging to or owned to another. In its narrow sense, "interest" is understood to mean the amount which one has contracted to pay for use of borrowed money..... In whenever category "interest" in a particular case may be put, it is a consideration paid either for the use of money or for forbearance in demanding it, after it has fallen due, and thus, it is a charge for the use or forbearance of money. In this sense, it is a compensation allowed by law or fixed by parties, or permitted by custom or usage, for use of money, belonging to another, or for the delay in paying money after it has become payable." It is the appeal against this decision of Punjab High Court which was dismissed by Supreme Court in Dr. Shamlal Manila's case (supra).*
>
> *However, 'penal interest' has to be distinguished from 'interest'. Penal interest is an extraordinary liability incurred by a debtor on account of his being a wrong-doer by having committed the wrong of not making the payment when it should have been made, in favour of the person wronged and it is neither related with nor limited to the damages suffered. Thus, while liability to pay interest is founded on the doctrine of compensation, penal interest is a penalty founded on the doctrine of penal action."*

54. The decision of Hon'ble Apex Court in the Central Bank of India (supra) leaves no manner of doubt that the arrear penalty is an interest as contemplated in Section 5 (8) of the Code and therefore, inclusion of the same in the amount claiming to be the debt due from the CD as on 01.08.2017, in no way, takes such an amount out of the purview of Financial Debt as contemplated and defined in the aforesaid provisions of law.

55. This brings us to the allegation wherein I am to decide if Shri A. Bhavani Prasad, Deputy General Manager, has necessary authority to present the application in hand before the Adjudicating Authority seeking initiation of Corporate Insolvency Resolution Process against the CD. I have found that the FC claims that Shri A. Bhavani Prasad has necessary competence to file the proceeding in hand since the FC had already executed a Power of Attorney in his favour on 30.10.2013 to do various acts and deeds mentioned therein, which includes preferring any suit/proceeding for and on behalf of the FC or defending any suit/proceeding instituted against the bank before any Court, Tribunal etc.

56. However, the question whether any Power of Attorney *which was executed before the enactment of Code of 2016* could empower an Attorney constituted there-under to submit an application under section 7/9/10 of the Code of 2016, is no longer res Integra. In Palogix Infrastructure Pvt. Ltd. (supra), it has been held that a person who was constituted as an Attorney to represent any Bank, Company etc. before enactment of the Code of 2016, cannot validly submit an application under Section 7/9 / 10 of the Code of 2016.

57. Therefore, there cannot be any doubt that the Power of Attorney at document No 47 at pages 231- 244 cannot validly authorize said Shri A. Bhavani Prasad to submit the proceeding in hand under Section 7 of the Code of 2016. That being the position, I have no hesitation in rejecting the claim advanced from the side of FC that Shri A. Bhavani Prasad had full competence to submit the application under consideration on the basis of Power of Attorney executed by the FC in his favour on 30.10.2013.

58. In regard to the authorisation, done by Sri Umesh Kumar Singh, Field General Manager, CBI, Kolkata Zone, Kolkata, empowering Sri A. Bhavani Prasad to present the present application in hand before the authority concerned (which he had done on the basis of Power of Attorney, executed in his favour on 30.10.2013), I have found that such authorisation has no legal validity at all since the Power of Attorney in favour of Shri Umesh Kumar Singh suffered from similar infirmities which affected the Power of Attorney, executed by the FC in favour of Shri A. Bhavani Prasad on 30.10.2013. Being so, none of the Power of Attorneys, aforesaid, could empower Shri Prasad to submit the application in hand before the authority concerned.

59. But then, Mr. Chamaria has once again taken me through the various documents, submitted from the side of the FC, more particularly, the Power of Attorney, executed by the bank in favour of Mr A. Bhavani Prasad on 30.10.2013 to contend that Shri A. Bhavani Prasad, Deputy General Manager has been empowered by the FC, not only to grant loan but to recover the loan as well, if necessary by instituting proceeding before the Court or other Tribunal.

60. Similar reliance was also placed on the Power of Attorney dated 30.10.2013, executed by the bank in favour of Mr Umesh Kumar Singh as well as the letter dated 03. 08. 2017, executed by Mr Umesh Kumar Singh, authoring Mr Prasad to submit application in hand before the Adjudicating Authority to contend once again that FC through the aforesaid Mr Umesh Kumar Singh, Field General Manager, CBI, Kolkata Zone had empowered Shri A. Bhavani Prasad, Deputy General Manager to grant loan as well as to recover the loan including the debt in question.

61. I have already found that Hon'ble NCLAT in Palogix Infrastructure Pvt. Ltd. (supra) held that where it is shown that the person, designated as authorized representative, has the power to grant loan or recover loan or initiate proceeding seeking Corporate Insolvency Resolution Process, such a person needs to be held to have requisite authority to submit an application under Section 7, 9 & 10 of the Code of 2016 and in that event, no separate authorization from the FC could be insisted.

62. In the present case, the bank officer, who was designated as authorized representative of the Financial Creditor, is clearly shown to have power to grant loan. Equally importantly, he was also shown to have power to recover loan. In such a scenario, in view of the law laid down in Palogix infrastructure Pvt. Ltd, it needs to be concluded that Shri A. Bhavani Prasad has the requisite authority to submit present application under Section 7 of the Code of 2016. Our foregoing discussion has made it more than clear and therefore, same needs no further restatement.

63. But then, it is found that the column No. 5 of Part I of the application, one Mr. Sandeep Chamaria, Advocate, with his address, was shown as a person authorized to submit application under Section 7 of the Code of 2016. But then, no document from the side of FC has been filed to show that Mr. Chamaria had ever been authorized to submit the present application before this Adjudicating Authority. This only shows that Mr. Chamaria has no authority, whatsoever, to submit the application under consideration before the Adjudicating Authority.

64. However, very interestingly, in the block towards bottom of the application which were meant for signature of the person authorized to act on behalf of the FC, name in Block letters, position with/or in relation to the Financial Creditor and Address of the person signing necessary information were given and same were in relation to Shri A. Bhavani Prasad, Deputy General Manager. For ready reference, the aforesaid Block together with the information therein has been reproduced below:

*"Central Bank of India, Branch Office: corporate Finance Branch, 33, NS Road, Ist Floor, Kolkata 700001 has paid the requisite fee for this application through Demand Draft Date 02.08.2017.*

| | |
|---|---|
| *Signature of the person authorised to act on behalf of the financial creditor* | *Deputy General Manager CFB, Kolkata* |
| *Name in block letters* | *A. Bhavani Prasad* |
| *Position with or in relation to the financial creditor* | *Deputy General Manager* |
| *Address of the person signing* | *CFB Branch,33,NS Road, Kolkata 700001.* |

65. In my considered opinion, while filling up the form, the name of the Advocates engaged to conduct the proceeding for and on behalf of the FC, the name of the engaged Advocate had been wrongly inserted in the place meant for inserting the name of the authorized representative of the FC. The fact that no separate authorization has been issued from the side of FC in favour of Mr. Chamaria as well as the fact that Shri A. Bhavani Prasad had appointed Mr. Chamaria as the Advocate for the FC make such a conclusion inevitable.

66. One may notice here that we have already found that Shri A. Bhavani Prasad had the required authority to present the present application before the Adjudicating Authority. As a corollary thereto, it needs to be concluded that he had the authority to engage a counsel to conduct the case on behalf of the FC. Being so, the engagement of Mr. Chamaria as the counsel for the FC, so done by Shri A. Bhavani Prasad, is found to be perfect and legal.

67. Now, the question is whether this proceeding is required to be rejected for the aforesaid lapse. In my opinion, the defect aforementioned appears to be an inadvertent one and therefore, rejection of the application in hand on such a ground in the fact and circumstances of the present case, in my view, would be hyper technical approach to the problem which would cause certainly enormous injustice to the applicant approaching this Authority seeking justice on the invocation of Corporate Insolvency Resolution Process against the CD.

68. Moreover, it needs to be stated here that after receipt of the application from the side the FC, the Registry had examined the same and found some defects therein, which were asked to be rectified. However, the defect, which is pointed out by the CD, now, in presentation of the application before the Adjudicating Authority was not notified to the FC before. Being so, in my considered opinion, for such reason as well, the FC needs to be given one more chance to rectify the aforesaid defect.

69. However, the final answer to the above query can very well be found in the judgment rendered by Hon'ble NCLAT in Paloglx Infrastructure Pvt. Ltd. (supra) where it was held that if an officer, such as Senior Manager of the Bank has been authorized to grant loan, for recovery of loan or to initiate proceeding for Corporate Insolvency Resolution Process" against the person who have taken loan, in such case, the Corporate Debtor cannot plead that such officer who has power to sanction loan but has no power to recover the loan amount or to initiate "Corporate Insolvency Resolution Process" in spite of default of debt.

70. It was further held therein that if a plea is taken by the authorized officer that he was authorized 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 Financial Creditor in favour of such officer designate. 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.

71. One may note here that various documents on the record reveal that the CD did not dispute availing of term loans from the FC on certain terms & conditions regarding repayment of the term loans and interest etc. Vide letter dated 08.03.2017, issued from the side of CD, it is also found that

CD did not deny having committed default in repayment of such term loans in accordance with repayment schedule. But then, CD basically challenged the proceeding under consideration on some technical grounds, which I have already held to be without any substance.

72. On the conspectus of aforesaid discussion, it needs to be concluded that the FC has prima facie shown that as on 01-08-2017, the CD owed an amount to the tune of Rs.54,16,40,576.00/- as being debt due to the FC. Such revelation also shows that CD started committed default in repayment of debt on and from 31-10-2016. I have also noticed that the FC has already named a person to act as IRP to take the charge of situation once this application is admitted, against whom, no disciplinary proceeding is said to have been pending.

73. **However, since the application suffers some defects in presentation of the same, as discussed above, same is required to be rectified immediately.**

74. Being so, the applicant is directed to rectify the aforesaid defects within a period of seven days from today falling which, this proceeding would result in rejection.

75. Before I part with the record, it needs to be stated that during the final hearing of this proceeding, the counsel appearing for the CD contend that the Code has prescribed different time limits for completion of each and every stage of the proceeding initiated under section 7/9/10 of the Code. Thus, the time limit for the Adjudicating Authority to admit or reject the application under section 7 (4) of the Code is 14 days from the receipt of the application by the Registry.

76. Such time limit is mandatory meaning thereby that in the event of the Adjudicating Authority failure to meet such time limit, the later would have no other alternative but to drop the proceeding. In that connection, the decision of Hon'ble Apex Court in **Mobilox Innovations Private Limited vs Kirusa Software Private Limited,** reported in Civil Appeal No. 9405 of 2017 dated 21.09.2017 has been relied on. However, it need to be stated here that after the receipt of the application U/s 7 of the Code, the Registry had scrutinised the application and detected some defects in the application.

77. On being required, the applicant had rectified the defects, so pointed out, within the time specified in the Statute. Thereafter, the CD was summoned to show cause as to why the application should not be accepted as prayed for. On receipt of the copy of the application, the Corporate Debtor, through their counsel entered appearance and prayed for time to file written objections against the application preferred by the Financial Creditor seeking initiation of corporate insolvency process

78. In support thereof, it relied on the decision of the Hon'ble Kolkata High Court in the case of Shree Metalics & Ors. Vs Union of India & Ors. Reported in (2017) 203 Compcas 442 Kol., wherein it was held that NCLT is under obligation to afford reasonable opportunity to the debtor to defend by filing written objections. It was contended that such a decision was approved by the National Company Law Appellate Tribunal, New Delhi in the case of M/s. Starlog Enterprises Ltd. Vs ICICI Bank Ltd. (vide company appeal (AT) (Insolvency) No.5 of 2017 vide Order dated 24-05-2017. For ready reference, the relevant part of the decision is reproduced below: -

*"4. Ld. Counsel for the Appellant submitted that the Appellant could have brought the aforesaid facts to the notice of the 'adjudicating authority' had it been given notice prior to admission. Detailed argument has been made by Ld. Senior Counsel for the Appellant on the question of issuance of notice prior to admission, in adherence to principle of rules of natural justice.*

*5. The aforesaid issue now stands decided by decision of the Appellate Tribunal in "M/s. Innoventive Industries Limited vs ICICI Bank & Anr. in CA (AT) (Insolvency) No. 1 & 2 of 2017" wherein the Appellate Tribunal observed and held: -*

> *"43. There is no specific provision under the I&B Code, 2016 to provide hearing to Corporate debtor in a petition under Section 7 or 9 of the I&B Code, 2016."*
>
> *"53. In view of the discussion above, we are of the view and hold that the Adjudicating Authority is bound to issue a limited notice to the corporate debtor before admitting a case for ascertainment of existence of default based on material submitted by the corporate debtor and to find out whether 2 the application is complete and or there is any other defect required to be removed. Adherence to Principles of natural justice would not mean that in every situation the adjudicating authority is required to afford reasonable opportunity of hearing to the Corporate debtor before passing its order." In this connection we may state that the vires of Section 7 of I&B Code was considered by Hon'ble Calcutta High Court in "Sree Metaliks Limited & Ann" in writ petition 7144 (W) of 2017, wherein Hon'ble High Court by its judgment dated 7th April, 2017 held as follows: -*
>
> *"..... However, it is to apply the principles of natural justice in the proceedings before it. It can regulate it own procedure, however, subject to the other provisions of the Act of 2013 or the Insolvency and Bankruptcy Code of 2016 and any Rules made thereunder. The Code of 2016 read with the Rules 2016 is silent on the procedure to be adopted at the hearing of an application under section 7 presented before the NCLT, that is to say, it is silent whether a party respondent has a right of hearing before the adjudicating authority or not.*
>
> *Section 424 of the Companies Act, 2013 requires the NCLT and NCLAT to adhere to the principles of the natural justice above anything else. It also allows the NCLT and NCLAT the power to regulate their own procedure. Fetters of the Code of Civil Procedure, 1908 does not bind it. However, it is required to apply its principles. Principles of natural justice require an authority to hear the other party. In an application under Section 7 of the Code of 2016, the financial creditor is the applicant while the corporate debtor is the respondent. A proceeding for declaration of insolvency of a company has drastic consequences for a company. Such proceeding may end up in its liquidation. A person cannot be condemned unheard. Where a statute is silent on the right of hearing and it does not in express terms, oust the principles of natural justice, the same can and should be read into in. When the NCLT receives an application under Section 7 of the Code of 2016, therefore, it must afford a reasonable opportunity of hearing to the corporate debtor as Section 424 of the Companies Act, 2013 mandates it to ascertain the existence of default as claimed by the financial creditor in the application. The NCLT is, therefore, obliged to afford a reasonable opportunity to the financial debtor to contest such claim of default by filing a written objection or any other written document as the NCLT may direct and provide a reasonable opportunity of hearing to the corporate debtor prior to admitting the petition filed under Section 7 of the Code of 2016. Section 3 7(4) of the Code of 2016 requires the NCLT to ascertain the default of the corporate debtor. Such ascertainment of default must necessarily involve the consideration of the documentary claim of the financial creditor. This statutory requirement of ascertainment of default brings within its wake the extension of a reasonable opportunity to the corporate debtor to substantiate by document or otherwise, that there does not exist a default as claimed against it. The proceedings before the NCLT are adversarial in nature. Both*

*the sides are, therefore, entitled to a reasonable opportunity of hearing. The requirement of NCLT and NCLAT to adhere to the principles of natural justice and the fact that, the principles of natural justice are not ousted by the Code of 2016 can be found from Section 7(4) of the Code of 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Rule 4 deals with an application made by a financial creditor under Section 7 of the Code of 2016. Sub- rule (3) of Rule 4 requires such financial creditor to despatch a copy of the application filed with the adjudicating authority, by registered post or speed post to the registered office of the corporate debtor. Rule 10 of the Rules of 2016 states that, till such time the Rules of procedure for conduct of proceedings under the Code of 2016 are notified, an application made under Sub-section (1) of Section 7 of the Code of 2017 is required to be filed before the adjudicating authority in accordance with Rules 20, 21, 22, 23, 24 and 26 or Part-HI of the National Company Law Tribunal Rules, 2016.*

*Adherence to the principles of natural justice by NCLT or NCLAT would not mean that in every situation, NCLT or NCLAT is required to afford a reasonable opportunity of hearing to the respondent before passing its order.*

*In a given case, a situation may arise which may require NCLT to pass an ex-parte ad interim order against a respondent. Therefore, in such situation NCLT, it may proceed to pass an ex-parte ad interim order, however, after recording the reasons for grant of such an order and why it has chosen not to adhere to the principles of natural justice at that stage. It must, thereafter proceed to afford the party respondent an opportunity of hearing before confirming such ex-parte ad interim order.*

*In the facts of the present case, the learned senior advocate for the petitioner submits that, orders have been passed by the NCLT without adherence to the principles of natural justice. The respondent was not heard by the NCLT before passing the order. 4 It would be open to the parties to agitate their respective grievances with regard to any order of NCLT or NCLAT as the case may be in accordance with law. It is also open to the parties to point out that the NCLT and the NCLAT are bound to follow the principles of natural justice while disposing of proceedings before them.*

*In such circumstances, the challenge to the vires to Section 7 of the Code of 201 6 fails."*

*6. Therefore, it is clear that before admitting an application under Section 9 of the MB Code it is mandatory duty of the 'adjudicating authority' to issue notice."*

79. This Bench on hearing both the parties were pleased to grant time to the CD to file written reply and 13-10-2017 was fixed for filing of written reply although CD wanted some more time to do the same. However, on 13-10-2017, the learned counsel appearing for the Corporate Debtor once again submitted that due to ongoing vacation of the Hon'ble Kolkata High Court and also for the learned leading counsel, appearing in this proceeding on behalf of the CD, being out of the country, they were not in a position to advance arguments from the side of the CD.

80. Therefore, CD through its counsel prayed that the case may be fixed on any date after 25-10-2017. However, such prayer was vehemently objected to by the counsel appearing for the FC contending that this Tribunal has obligation to admit or reject application at the earliest possible time. On considering the submissions and having regard to the time limit fixed, such a request was partly allowed reluctantly asking the parties to offer their arguments on the admission or otherwise of the proceeding in hand by the next date without fail.

81. Accordingly, 17-10-2017 was fixed for such hearing with further direction that under no circumstance, the case would not be adjourned on 17-10-2017. The above narration only shows that if the proceeding in hand could not be concluded within the time, specified in section 7(4) of the Code, it was basically for the adjournments sought for by the CD. In the face of such revelation, it does not lie in the month of the CD to say that this proceeding is required to be dropped for this Tribunal not being able to dispose of the application within the time limit fixed section 7(4) of the Code.

82. List this matter on 8th day from today for further necessary orders.

Member (Judicial)
National Company Law Tribunal
Guwahati Bench: Guwahati.

Dated, Guwahati, the 24th October,2017

*Samir/deka/*