IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

CP 1371 & CP 1372/I&BP/NCLT/MAH/2017

Under Section 7 of IBC, 2016

In the matter of

Standard Chartered Bank (CP 1371).... Petitioner

&

DBS Bank Ltd (CP 1372) .... Petitioner

vs.

Ruchi Soya Industries Ltd. .... Respondent

Order delivered on 15.12.2017

Coram: Hon'ble B.S.V. Prakash Kumar, Member (J)
Hon'ble V. Nallasenapathy, Member (T)

For the Petitioners: Mr. Atul Rajyadakshya, Sr. Counsel, Mr. Gaurav Joshi, Sr. Counsel, Mr. Vivek Shetty, Mr. Hridhay Khurana, Advocates, i/b AZB & Partners.

For the Respondent:Mr. Janak Dwarkadas, Sr. Counsel, Mr. Nitin Thakkar, Sr. Counsel, Mr. Ashish Kamat, Mr. Ankita Singhania, Counsel, Mr. Abhay Jadeja, Ms. Shruti Katakey, Mr. Jay Zaveri, Advocates, i/b Crawford Bayley & Co.

Per B. S. V. Prakash Kumar, Member (Judicial)

COMMON ORDER

Order pronounced on 8.12.2017

CP 1371/2017

It's a Company Petition filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 by the Financial Creditor namely, Standard Chartered Bank against the Corporate Debtor namely, Ruchi Soya Industries Ltd. to initiate Corporate Resolution Process on the ground that this Corporate Debtor

defaulted in making repayment of USD 5,358,742.84 as on 31.8.2017 and ₹334,14,19,044 as on 31.8.2017 in respect to the external borrowing of USD 15,895,000 and working capital facilities of ₹335,50,00,000 availed by Ruchi Infrastructure Limited in the year 2012.

2. Since this Corporate Debtor acquired Ruchi Infrastructure Ltd, though this loan facility was initially availed by Ruchi Infrastructure Ltd., the liability being fastened with this Corporate Debtor, this Company petition is filed against this Corporate Debtor.

3. ECB facility was originally granted by this Creditor to Ruchi Infrastructure Ltd vide an Agreement dated 27.1.2012 with repayment schedule as mentioned in Clause 5(1) of the aforesaid Agreement, it has been modified twice in respect to the securities created by creating charge over movable and immovable assets of Ruchi Infrastructure. It has admittedly withdrawn entire loan amount of USD 1,58,95,000 in February, 2012. Since RBI granted its approval for transfer of this ECB loan from Ruchi Infrastructure Ltd to the Corporate Debtor for both being group companies, a Deed of Novation dated 31.3.2015 was executed between the parties transferring ECB loan liability to the Corporate Debtor wherein this Corporate Debtor has admitted that total amount then outstanding was USD 80,35,346. At the same time, an Agreement of Amendment of Securities and Hypothecation was also executed by the Corporate Debtor. Since this Corporate Debtor failed to repay the loan, this Creditor has recorded on 26.8.2016 that this Corporate Debtor defaulted in making repayment. The Corporate Debtor by its letter dated 6.9.2016, recorded the amounts "overdue" to 18 Banks including the Petitioner bank. Again on 9.1.2017, the Bank has sent an email to the Corporate Debtor that USD 51,41,424 was overdue and payable by the Corporate Debtor. For this money was not being paid on 17.1.2017, the Corporate Debtor informed that the Joint Lender's Forum (JLF) was formed to ascertain the viability options to revive the company. The correspondence in between the bank and the Corporate Debtor dated 6.2.2017, 15.2.2017 and the returns (Form ECB 2) filed with RBI admits that the aforesaid amount is overdue and payable by the Corporate Debtor to the Petitioner herein and the same has been showing in the Annual Report of the Corporate Debtor for the Financial Year 2016-17.

4. This Creditor has also granted working capital facilities of ₹355.50 crores by two facilities for ₹90 crores and ₹265.50 crores on the same terms and conditions, including the master credit terms in the restatement of facilities and terms by two letters of the bank dated 27.1.2016, which the Respondent has admitted that the amount outstanding as on 30.11.2015 was over ₹131 crores by executing several security documents like Hypothecation of Stocks, Book Debts and Personal Guarantees etc. The bank account statement of Corporate Debtor proves that it was in continuous default since 12.7.2016. By notice dated 25.1.2017, the Creditor Bank correctly recorded the default calling upon the Debtor to pay ₹186.49 crores which was then due and payable. Again on 30.4.2017, the Creditor Bank recorded the outstanding due as ₹315.73 crores and the same was acknowledged by Corporate Debtor on 25.5.2017. Indeed, by the letter dated 1.6.2017, the Corporate Debtor admitted that it was undergoing financial crunch contending that the JLF has been formed by saying that this Creditor unilaterally levied penal interest over the loans taken by it. The Bank statement of the Corporate Debtor as on 31.8.2017 reflects that the amount due and payable by the Debtor was about ₹334.14 crores.

5. To prove that the debt has been in existence and the default has occurred for not being paid by the Corporate Debtor, the Creditor herein, as to External Commercial Borrowing, annexed Facility Agreement dated 24.1.2012, Utilisation request dated 1.2.2012, Memorandum of Charges dated 16.8.2012, Amendment Agreement dated 24.6.2013, RBI Approval letter dated 16.5.2014 for transfer of ECB from Ruchi Infrastructure Ltd to the Corporate Debtor, Novation Deed dated 31.5.2015 between the Corporate Debtor, Ruchi Infrastructure Ltd and the Financial Creditor situated at London and the Branch of the Financial Creditor at Chennai, Second Amendment Agreement dated 18.6.2015, Memorandum of Hypothecation dated 30.6.2015 and various email correspondences between this Creditor and the Corporate Debtor from 26.8.2016 till 20.7.2017 disclosing demands and acknowledgements passed in between the Petitioner and the Corporate Debtor reflecting that the Corporate Debtor defaulted in making repayment in respect to ECB facility.

6. As to Working Capital facility granted by the Petitioner, it has placed amended and restated facility letter dated 27.1.2016 between the Petitioner

and the Corporate Debtor for an amount of ₹90 crores, facility letter (amended and restated) dated 27.1.2016 for an amount of ₹265,50,00,000, bank statement of the Corporate Debtor with the Creditor bank from 1.4.2016 to 31.8.2017, letter dated 25.1.2017 addressed by the Creditor to the Corporate Debtor, email dated 15.5.2017 addressed by the Corporate Debtor to the Creditor Bank, email dated 22.5.2017 alongwith the attached letter dated 22.5.2017 addressed by the Creditor to the Corporate Debtor, email dated 25.5.2017 from the Corporate Debtor to the Petitioner, letter dated 1.6.2017 from the Corporate Debtor to the petitioner Bank, Agreement of Hypothecation of stocks, Book Debts, Supplementary Hypothecation Agreement of stock/Book Debts dated 7.6.2013, Unattested Memorandum of Hypothecation dated 31.7.2014, Supplemental Memorandum to unattested Memorandum of Hypothecation dated 28.1.2016, Personal Guarantee of Dinesh Sahara dated 4.3.2014, 7.6.2013, 14.5.2014, 27.10.2016.

7. To prove that debt has been withdrawn by this Corporate Debtor from the facility of External Commercial Borrowing of USD15,895,000 and the working facility of ₹355,50,00,000 on various dates as mentioned in the Annexures to the Petition.

8. This Company petition has been filed by one Pallav Sangal as the person authorised to act on behalf of the Financial Creditor relying upon two power of Attorneys dated 27.6.2017 and 11.7.2017 issued by this Creditor Bank. Likewise, this Petitioner has even filed written communication given by the proposed Interim Resolution professional namely, Shailendra Ajmera (Ernst & Young LLP, New Delhi) agreeing to accept for appointment of him as Interim Resolution Professional saying that he has been registered with IBBI with Insolvency professional number IBBI/IPA-001/IP-P00304/2017-18/10568.

9. On filing such a petition by the Financial Creditor, the Corporate Debtor, though not denied the existence of debt and occurrence of default, raised several objections against initiation of insolvency resolution process against the Corporate Debtor on the ground that the Power of Attorney given to Pallav Sangal as defective, that the determination of default by the Financial Creditor is not in compliance with requirements under Bankers' Books of Evidence Act, 1891, that the Certificate of Registration of Charge created against the Corporate Debtor is defective, that the Facility Agreement is not adequately

stamped, that an appeal arising from the dismissal of winding up petition is pending before the Appellate Authority, that since JLF process has been initiated, this Bank is bound by the directions of RBI, this Creditor Bank should not have filed this petition in violation of the directions of RBI and that to file this Company petition as to External Commercial Borrowing Facility, jurisdiction lies with the English law but not before this Bench.

10. On looking at the Petition filed under Section 7 of the Code along with the annexures and the opposition filed by the Corporate Debtor, it is crystal clear that this Corporate Debtor has neither disputed granting of ECB facility and working capital facility or withdrawing the facilities granted, nor even disputed the occurrence of default. The objections raised by this Corporate Debtor are procedural in nature in respect to Power of Attorney, certificate issued by the Bank is not in accordance with Banker's Books of Evidence Act, Facility Agreement not adequately stamped, appeal on winding up order being pending before the Appellate Authority, initiation of JLF proceedings and dispute in respect to exercise of jurisdiction under Insolvency & Bankruptcy Code.

11. For there being no objection about this Corporate Debtor availing loan facilities from the Creditor Bank and thereafter, defaulted in making repayment, we don't think burden is still on the Petitioner to prove the existence of debt and occurrence of default, more specially when all the documentation in between the Petitioner and the Corporate Debtor filed before this Bench reflecting existence of debt and occurrence of default.

12. Now the points for consideration are as follows:

a. Whether the Power of Attorney given to Pallav Sangal is defective or not?

b. Whether Statement of Accounts have been properly certified as envisaged under Bankers' Books of Evidence Act, 1891?

c. Whether the certificate of Registration of Charge over the assets of the Debtor Company is defective or not?

d. Whether Facility Agreement has been adequately stamped or not, if not stamped adequately, whether such defect would deprive this petitioner from filing this Company petition or not?

e. Whether an Appeal over an order dismissing winding up CP 570/2016 filed by IDFC Bank Ltd against this Corporate Debtor will have any bearing on this Adjudicating Authority passing an order under Section 7 of the Code or not?

f. Whether the Reserve Bank of India directives pursuant to the Banking Regulations (Amendment) Act, 2017 will have any bearing on this application or not?

g. Whether Insolvency & Bankruptcy Code is applicable to the Agreement for ECB facility said to have been governed by English Law or not?

a. Whether the Power of Attorney given to Pallav Sangal is defective or not?

The Corporate Debtor Counsel says that since power of attorney dated 11.7.2017 has not been annexed with this Petition alongwith the power of attorney dated 27.6.2017, it can't be said that this petition has been filed with proper authority. The Debtor Counsel says that the Power of Attorney dated 27.6.2017 has been issued by one Zarin Daruwala on behalf of the Creditor Bank concerning its overseas operations. Since Zarin Daruwala herself being Power of Attorney, the Corporate Debtor Counsel says, she cannot further delegate her authority to Pallav Sangal to file this Company Petition. Another objection the Corporate Debtor Counsel raised is since the Power of Attorney given to Zarin Daruwala being dated 1.4.2016, for this being evident that this Power of Attorney was given prior to advent of Insolvency & Bankruptcy Code, Zarin Daruwala has no authority to authorise Pallav Sangal to institute Insolvency proceedings under IBC for she herself has no authority to delegate her authority to Pallav Sangal to initiate proceedings under Insolvency & Bankruptcy Code, 2016 because the Power of Attorney to Zarin Daruwala is antecedent to the arrival of Insolvency & Bankruptcy Code.

To which the answer given by the petitioner counsel is that by oversight the Power of Attorney given on 27.6.2017 has been annexed twice to the petition instead of annexing the Power of Attorney dated 11.7.2017 along with the Power of Attorney dated 27.6.2017. But in the index given to this Company petition, it has been categorically mentioned that Power of Attorney dated 11.7.2017 as Exhibit 'MM' with page nos. 623 and 624 and the Power of Attorney dated 27.6.2017 as Exhibit 'NN' with page nos. 625 and 626. Had the power of attorney dated 11.7.2017 not in existence, the Petitioner could not have reflected it as Exhibit in the list of index. The Counsel submits Zarin Daruwala has been given authority to carry the functions of the Petitioner Bank in India. It is not only for authorising that bank to file proceedings before Court of Law but also for dealing with each and every file of the Petitioner Bank in India. Therefore, the authority given by the Bank in England to Zarin Daruwala is limited to initiate court proceedings therefore, though the authority given to her is antecedent to the advent of Insolvency & Bankruptcy Code for overall power in India is given to her until the same has not been revoked, she has been entitled to authorise the representatives of bank to initiate proceedings before Court of Law. In furtherance of it only, she authorised Pallav Sangal to initiate the proceedings against this Corporate Debtor under Insolvency & Bankruptcy Code on 27.6.2017. The Petitioner Counsel says that the procedure for giving power of attorney in Standard Chartered Bank is different from other banks, because this Standard Chartered Bank is registered under Queen's Royal Charter, there Power of Attorney will be signed by two sealing officers who are authorised by the Committee/Court of Standard Chartered Bank, London, in the case of Zarin Daruwala also, the sealing officers have authorised Zarin Daruwala to continue as Power of Attorney as stated under the Charter aforementioned. Moreover, to obviate this problem, sealing officers have directly given the power of attorney to Pallav Sangal on 11.7.2017 to proceed against the Corporate Debtor to take action under Insolvency & Bankruptcy Code in respect to External Commercial Borrowing Account.

The Corporate Debtor Counsel has raised frivolous argument saying that Board meeting resolution not being passed as envisaged under the Companies Act, 2013, this Power of Attorney cannot be

conceived as proper authority to file this Company petition ignoring the fact that Companies Act, 2013 will not be applicable to the Laws of England. Moreover, this Standard Chartered Bank was incorporated in the year 1854 under the management of Court of Directors under Queen's Royal Charter with an unique arrangement therefore, the authority given by those Court of Directors cannot be said invalid just because a resolution has not been passed as stated under Companies Act, 2013. Moreover, when it is not the case of the Corporate Debtor that debt is not in existence and default is not occurred and for there being no dispute from the bank side saying that authority given to Pallav Sangal is disputed by the insiders of the bank, how could this Corporate Debtor raise this dispute saying that power of attorney is defective. There is a material to say that Zarin Daruwala has been given overall authority to manage this Bank in India and when there is a special authority to Pallav Sangal to institute proceedings including insolvency proceedings under authority given on 11.7.2017, it is inconceivable to say that the authority given to Pallav Sangal is defective therefore, we have not found any merit in the submission made by the Corporate Debtor.

b. Whether Statement of Accounts have been properly certified as envisaged under Bankers' Books of Evidence Act, 1891?

The bank has filed certificate as contemplated under Section 2(A) of the Bankers Books Evidence Act, therefore it can't be said that it can't be taken on record on the ground it has been filed subsequent to filing the Company petition.

c. Whether the certificate of Registration of Charge over the assets of the Debtor Company is defective or not?

On verification of the Registration of Charge, this Bench having not noticed anything as defective, we have not found any material to take this point into consideration for dismissal of this Petition.

d. Whether Facility Agreement has been adequately stamped or not, if not stamped adequately, whether such defect would deprive this petitioner from filing this Company petition or not?

As to this point, the Petitioner Counsel submits the allegation made by the Corporate Debtor Counsel has not stated how much is to be paid and under what Article how much deficit is there, in view of the same, this Petition can't be dismissed on that ground. Moreover, for Article 5(b) of Maharashtra Stamp Act, 1958 mandates for payment of ₹100 on the Agreement, the same being already paid on that Agreement itself, the Corporate Debtor cannot raise this objection vaguely. Moreover, the liability to pay stamp duty being upon the Corporate Debtor as per the terms of Agreement, it is the Corporate Debtor to pay the stamp duty not by the Petitioner. For the Corporate Debtor having failed to prove that under such and such Article so and so amount is payable and for this Agreement is already stamped with ₹100 as contemplated under Article 5(b) of Maharashtra Stamp Act, 1958, we have not found any merit in the objection raised by the Corporate Debtor.

e. Whether an Appeal over an order dismissing winding up CP 570/2016 filed by IDFC Bank Ltd against this Corporate Debtor will have any bearing on this Adjudicating Authority passing an order under Section 7 of the Code or not?

This point being slated to deal with in the Petition moved by DBS, the same may be read as part of the order in this CP also.

f. Whether the Reserve Bank of India directives pursuant to the Banking Regulations (Amendment) Act, 2017 will have any bearing on this application or not?

This point being slated to deal within the Petition moved by DBS, the same may be read as part of the order in this CP also.

g. Whether Insolvency & Bankruptcy Code is applicable to the Agreement for ECB facility said to have been governed by English Law or not?

This Corporate Debtor Counsel has taken an objection saying that since ECB facility is to be governed by English Law, if any proceeding is to be initiated, it has to be initiated before English Court, not before any other court, therefore, this proceeding should not lie before this Bench, as to which, the Petitioner Counsel submits that since this Company is located in India governed by the laws of India, if at all the Petitioner wants to invoke insolvency proceedings, it has to be invoked against this company in India only. That being the situation, it is always open to the Petitioner to avail jurisdiction available to it either in England or in India. In view of this reason, we don't find any merit in the objection raised by the Corporate Debtor in respect to the jurisdiction, hence, this point is decided against the Corporate Debtor.

13. For none of the objections raised by the Corporate Debtor are sustainable, for the Petitioner has already proved that for the Corporate Debtor availed loan facilities by entering into various agreements and thereafter, defaulted in making repayments, therefore, we hereby held that this Petition is fit to be admitted under Section 7 of Insolvency & Bankruptcy Code, 2016, whereas this Bench intends to admit the next petition with consequential directions, the Petitioner herein is hereby directed to make its claim before the Insolvency Resolution Professional proposed to be appointed in the case DBS filed against the Corporate Debtor.

CP 1372/2017

It's a Company Petition filed u/s 7 of Insolvency & Bankruptcy Code, 2016 by the Petitioner/Financial Creditor namely, DBS Bank (hereinafter referred as "DBS or the financial creditor") against the Corporate Debtor namely Ruchi Soya Industries Ltd. (hereinafter referred as "Ruchi Soya or the corporate debtor") on the footing that Ruchi Soya defaulted in repayment of USD 10,332,989.51 towards External Commercial Borrowing –I (ECB-I) and of USD 26,427,702.87 towards External Commercial Borrowing – II (ECB-II) outstanding as on 31.7.2017 as against USD 20 million ECB - I facility availed by it on the Facility Agreement entered into on 19.2.2011 and as against USD

30 million ECB-II facility availed by it on another Facility Agreement entered into on 15.2.2012. For having availed loan facilities as aforesaid and thereafter defaulted in repaying the same, DBS Bank has filed this Petition to initiate Corporate Insolvency Resolution process against Ruchi Soya.

Material facts from the Financial Creditor side:

2. It is a Bank established by Government of Singapore in the year 1968 incorporated in Singapore having its branches and offices in China, Dubai, Hong Kong, India, Indonesia, Japan, South Korea Malaysia, Myanmar, Philippines, Taiwan, Thailand, Vietnam, United Kingdom and United States. Its Branch in India is headquartered in Mumbai with 10 branches across our country. When Ruchi Soya situated in India approached DBS Bank for the loan facilities aforementioned, this Bank, having considered the request of Ruchi Soya, entered into first Facility Agreement with Ruchi Soya on 19.2.2011 through its Branch situated at Mumbai as "Arranger" showing itself as Lender, by agreeing to provide the Loan Facility in an aggregate amount equal to total commitment of USD 20 million enabling Ruchi Soya to utilise this facility on delivery of utilisation request to DBS Bank, Singapore, which shall be repaid as per the relevant repayment schedule – 7 of the Agreement as per the rate of interest provided in the Agreement. This agreement further says that non-payment of due amounts under the Facility Agreement constitutes an Event of Default and an event of cross default occurs when any Financial indebtedness of Ruchi Soya is not paid when due or within originally applicable grace period. In pursuance of these terms and conditions, when Ruchi Soya submitted three utilisation requests, one for USD 10 million on 8.3.2011, two for USD 5 million on 16.3.2011 and three for another USD 5 million on 26.4.2011, DBS accordingly, transferred USD 10 million on 10.3.2011, USD 5 million on 19.3.2011 and remaining USD 5 million on 29.4.2011 to the Corporate Debtor.

3. As to ECB-II, DBS entered into another Facility Agreement with Ruchi on 15.2.2012 in the same line as above by entering into the Agreement showing its Branch at Mumbai as Arranger and Bank at Singapore as Lender for providing Term Loan Facility to Ruchi Soya for an amount of USD 30 million, like in the above case, Ruchi Soya having submitted two utilisation requests to DBS for USD 15 million each on 1.3.2012 and 4.4.2012, DBS Bank

transferred USD 15 million each on 5.3.2012 and 9.4.2012 to the account of Ruchi Soya.

4. The first instalment under ECB-I fell due in the month of September, 2014, until such time, Ruchi regularly made payments of the principal amounts. The outstanding under ECB-I from September, 2014 to March, 2016 was aggregated to USD 10.4 million. As to ECB-II, it fell due in March, 2016; as to this facility, Ruchi Soya paid only the first instalment towards principal under ECB-II for the total amount of USD 5 million. For the remaining instalment payments having fallen due, DBS on 25.8.2016 addressed to Ruchi Soya informing that under ECB-I and ECB-II an amount of USD 4.8 million and USD 6 million was due and payable as on 6.9.2016, but Ruchi Soya defaulted in repayment of USD 6 million due and payable under ECB-II. The petitioner says the occurrence of default is recorded in Annual Report of Ruchi Soya which is annexed as Exhibit – AA with relevant portion in page no.761 of the Company Petition.

5. For no payment came from Ruchi Soya, despite the letter addressed by DBS on 25.8.2016, DBS again addressed a letter on 23.9.2016 to Ruchi informing that it has failed to pay the instalment payable on 6.9.2016 therefore, Ruchi breached the provisions of ECB-II; and failure to honour the payment obligations under ECB-II constitutes an Event of Default under Clause 22.5 of ECB-I Agreement giving right to DBS to accelerate payment obligations under ECB-I Agreement. In view of the same, DBS called upon Ruchi Soya to pay an amount of USD 25,000,000 outstanding under ECB-I and USD 9.6 million outstanding under ECB-II along with applicable interest under the respective Facility Agreements. To the letter dated 23.9.2016 sent by DBS on 8.11.2016, Ruchi Soya replied that it was undergoing financial difficulties for various reasons beyond its control, therefore, JLF has been constituted in July, 2016 with a Corrective Action Plan, and DBS having attended to various JLF meetings, Ruchi requested DBS to *"bear with us till the outcome of such solution"* by denying the breach of its financial obligations towards DBS. When no payment had come from Ruchi, DBS on 4.11.2016 through their Advocates sent a winding up notice calling upon Ruchi to repay the total amounts outstanding under both the Facility Agreements aggregating to USD 34,970,805.41, comprising of the principal outstanding amount and

applicable interest (USD 9,790,965.69 under ECB-I Agreement and USD 25,179,839.72 under ECB-II Agreement), to which Ruchi replied on 29.11.2016 stating that the demand notices dated 4.11.2016 are premature on account of ongoing discussions in JLF, which DBS is fully aware because it also participated in the JLF meetings. In July, 2017, DBS Bank Ltd., Mumbai as the Authorised Dealer of Ruchi Soya filed ECB-II with RBI disclosing that an amount of USD 5 million and USD 9 million are the outstanding principal amounts under the ECB Facility Agreements against the facilities availed by Ruchi Soya. Since part payments have been made and acknowledgements have been given from time to time by Ruchi Soya to DBS Bank, these loans have remained alive as on the date of filing this Company Petition. As the Bank could not realise its outstanding dues from Ruchi Soya, on 11.9.2017, DBS filed this Section 7 Petition against Ruchi Soya before this Bench.

6. Apart from the Facility Agreements entered into, Ruchi executed a Deed of Hypothecation dated 9.8.2012 on the whole of movable and fixed assets of Ruchi Soya Industries Ltd including its movable plant and machinery, machinery spares, tools and accessories, furniture and fixtures and other movables at Village Mithi Rohar, Taluka-Gandhidham, District- Kutch, Kandla, Gujarat. Ruchi also executed Indenture of Mortgage dated 30.8.2012 between Ruchi and DBS, Mumbai Branch mortgaging various assets held by Ruchi as reflected in Schedule II of the Petition. Apart from this, a Security Trustee Agreement was also executed on 12.8.2012 between DBS, Singapore and DBS Bank Ltd, Mumbai Branch. Likewise, DBS filed various documents reflecting Memorandum of Mortgage, utilisation requests, letter addressed on 25.8.2016 by DBS to Ruchi, a notice dated 23.9.2016 sent by DBS to Ruchi in relation to defaults under the ECB facilities provided by the Bank. The Bank has filed Certificate of Charge dated 17.8.2012 and 5.9.2012 reflecting charge registered in favour of DBS Bank. Having DBS furnished all these material papers reflecting existence of debt and default against Ruchi, we have ascertained that DBS Bank has filed all material papers reflecting Ruchi Soya availing ECB –I and ECB-II loan facilities for an amount of USD 50 million and thereafter, defaulted in repaying the said loan amount as agreed in the Facility Agreements.

7. As against this case, the Corporate Debtor Counsel has not raised any issue in respect to availing loan from DBS Bank and default in repayment of loan by Ruchi Soya, but on the contrary, the Counsel of the corporate debtor raised issues saying that (1) Power of Attorney filed along with this petition is defective; (2) this insolvency petition is hit by being an appeal pending over the order dismissing winding-up petition filed against this debtor, (3) for Reserve Bank of India being authorised to resolve specific stressed assets lying with Banks by initiating CIRP under IBC, RBI issued circular on 5th May 2017 and a corrigendum to it on 13th June 2017, basing on which, an Internal Advisory Committee was constituted to focus on large stressed accounts, which has examined 500 accounts, out of which 12 accounts were recommended to be taken up to NCLT under IBC, as to remaining 488 Accounts, RBI directed the Banks to finalise resolution plan within six months, that ends by 13th December 2017, but this Bank, instead of waiting until six months are complete, has proceeded to NCLT in violation of RBI guidelines, therefore it is in violation RBI guidelines, henceforth it has to be dismissed; (4) for the Facility Agreement being inadequately stamped, this facility Agreement should not be looked into for any purpose for it is hit by Section 35 of Maharashtra Stamp Act; (5) for Joint Lenders Forum has already been constituted to have a resolution with the Creditors of this Debtor, this Bank should not have proceeded under IBC; (6) for the default has not been determined in compliance of requirements under the Bankers Books of Evidence Act, such statement of account shall not be taken into consideration to admit this petition.

8. Looking at the objections raised by the Corporate Debtor, the points for determination are as follows:

i. Whether there is any defect in the Power of Attorney as stated by the Debtor or not?

ii. Whether pending of appeal over the order dismissing winding up petition against the Corporate Debtor, will have any bearing over adjudication of this case or not?

iii. Whether this case has to be postponed or not on the ground that on reference (in the matter of Union Bank of India vs. Era Infra Engineering Ltd.) to the larger Bench on the issue of as to that whether proceeding under IBC can be triggered while winding up petition

pending before the respective High Courts against the same Corporate Debtor?

iv. *Whether Reserve Bank of India directives pursuant to the Banking Regulations (Amendment) Act, 2017 have any bearing on adjudication of this case or not?*

v. *Whether Facility Agreements have been inadequately stamped as stated by the Corporate Debtor, if so, whether this petition can be admitted basing on such inadequately stamped Agreement?*

vi. *Whether formation of Joint Lender Forum will have any bearing over filing of this case or not?*

vii. *Whether the Statement of Account filed by DBS is in compliance with Part V Serial No.7 of Form No.1 or not?*

9. Despite the Petitioner already proved to the hilt that Debtor herein availed the loan facility of USD 50 million and thereafter, defaulted in repaying the same, for the Corporate Debtor counsel having raised all these procedural objections, this Bench is obliged to answer all the issues raised by the debtor counsel. It is not the case of the Debtor that the creditor failed to prove existence of debt and default in respect to the borrowings the debtor made from the creditor. But its case is that though debt and occurrence of default are proved, for the defects above mentioned not being cured, this petition shall be dismissed.

10. Since proof of existence of debt and occurrence of default are being two subject matter constituents to admit the case u/s 7 of the Code, both being already held as proved, normally burden shifts upon the opposing party to prove that it is otherwise hit by some other grounds. Now this duty is cast upon Ruchi Soya for it has made assertion that the aforesaid defects are material to dismiss this case, in the absence of such disproval from Ruchi side, the Petitioner having already proved that debt and default are in existence as mentioned in Section 6 and 7 of Insolvency & Bankruptcy Code, 2016, this petition ought to be admitted. Therefore, let us see as to whether the Corporate Debtor has discharged his duty in proving that these defects are in existence and they are material for dismissal of this case.

(i) Whether there is any defect in the Power of Attorney as stated by the Debtor or not?

Since it has already been said that duty is cast upon the Debtor to prove these assertions, we have first taken up the assertion of the Corporate Debtor to find out as to whether the debtor has placed sufficient material before this Bench to believe that power of attorney given in favour of Pankaj Jain is defective.

On this count, the Debtor counsel submitted that in ***Palogix Infrastructure Private*** Limited ***v. ICICI Bank Limited*** (order by NCLAT on 20th September 2017) has held that one – Power of Attorney holder, being distinct from the word "authorised person" repeatedly used in Form-1 representing financial creditor, is not competent to file an application on behalf of a 'financial creditor' or 'operational creditor' or 'corporate applicant'; two – that power of attorney given prior to enactment of I & B Code is not a valid Power of Attorney to file an application under section 7 of the Code.

In support of the above proposition propounded by the debtor counsel, as to point one is concerned, he submits that Pankaj Jain being a power of attorney holder in this case, he cannot be an authorised person as contemplated in signature Box set out at the foot of Form-1 designed for filing application u/s 7 of the Code. As to point two is concerned, since the power of attorney was executed in favour of Pankaj Jain on 26.6.2013 by DBS Bank, which is prior to enactment of I&B Code 2016, the debtor counsel says that it is obvious that this petition shall be dismissed on this ground alone.

To ascertain as to whether any merit in the points raised by the debtor counsel, we must look into the Power of Attorney given by the Bank to the Attorney Holder. On perusal of Power of Attorney dated 26.6.2013, it appears that this Power of Attorney was given on 26.6.2013 by DBS Bank incorporated in Republic of Singapore stating that one Pankaj Jain working with DBS Bank Branch in India is conferred with powers and authorities to do various activities on behalf of the Bank which is as below:

POWER OF ATTORNEY

> ***"POWER OF ATTORNEY given on the 26th day of June, 2013 by DBS BANK LTD.,*** *a company incorporated in the Republic of Singapore and having its registered office at 12 Marine Boulevard, Marina Bay Financial Centre Tower 3, Singapore 018982 (hereinafter called the "Bank").*

WHEREAS:

*(1) The Bank carries on business in the Republic of Singapore and has established branches in India and may establish additional branches in India (each a "**Branch**").*

(2) The following are Branch staff:

Name	*Passport No.*
PANKAJ JAIN	***L1705946***

(Hereinafter called "the Officer")

(3) The Bank is desirous of conferring on the Officer the powers and authorities hereinafter contained.

*NOW THIS DEED WITNESSETH **that the Bank hereby appoints the Officer**, each of them acting singly, to be the true and lawful attorney of the Bank to act for the Bank at any Branch and on behalf of and for and in the name of the Bank or in his own name to do and perform all or any of the following acts and things **in India**, that is to say:-*

1. ***To ask, demand, sue for,** at law or in equity, recover, receive, enter upon, seize and take possession of, all lands, goods, chattels, stocks, funds, moneys, securities, real and personal estate and property of any description, which the Banks holds, is entitled to or interested in, whether as owner, or under or by virtue of any bond, mortgage, charge, lien, pledge or security, or otherwise howsoever.*

2. *To ask, demand, sue for, either at law or in equity or otherwise, and recover, all moneys now due or owing or payable or which shall hereafter be or become due or owing or payable to the Bank on any account whatsoever, and to receive and give good receipts or releases for all of such moneys as aforesaid whether the time for payment thereof shall or shall not have arrived and to satisfy all record judgements in favour of the Bank, and all mortgages and liens whatsoever in or as to which the Bank is, or may hereafter be, the mortgagee or lien holder or pledgee.*

3. *To use, exercise, and enforce, all powers, rights and remedies in respect of any lands, goods, chattels, merchandise, stocks, funds, moneys, shares, securities, real and personal estate or property of any kind whatsoever or any account, matter or thing whatsoever, which the Bank can, or could use, exercise, or enforce.*

4. ***To commence and carry on, or concur any actions suits or other proceedings of every description, at law or in***

equity including bankruptcy or insolvency or liquidation or winding up or otherwise *and to accept service of any writ of summons or other legal process and to enter an appearance in, defend, represent the Bank in or oppose any actions, suits or other proceedings as aforesaid, which may be commenced or prosecuted against the Bank, or wherein the Bank may be in any way concerned or interested, and to execute and deliver any bonds or undertakings necessary or desirable in any such legal or judicial proceedings, or to procure the same to be executed and delivered by any person, persons, firm, corporation or company and to indemnify such person, persons, firm, corporation or company and to indemnify such person, persons, firm, corporation or company for the same.*

5. *To submit to arbitration or reference any dispute or difference, litigation or action or cause of action that exists or has arisen, or may arise relating to loans of which the Bank as a lender is a party thereto or is otherwise concerned in, and to abide by and perform any award that may be made thereon.*

6. ***To take all such proceedings for declaring insolvent or bankrupt any debtor and for procuring the liquidation or winding up of any company that is or may be s indebted to the Bank.***

7. ***To compound, settle, release and discharge all debts, demands, actions, causes of actions, suits, judicial proceedings of every kind whatsoever, liabilities, claims, counterclaims, and set-offs****, which may be or become due to the Branch, or which the Branch may have against any person or persons, firm, corporation or company or which may be claimed from or set up against the Branch, on such terms as the Officer shall deem fit.*

8. ***To prove all debts and claims in bankruptcy, insolvency, liquidation or winding up proceedings, to receive dividends, vote for and represent the Bank at all meetings of creditors and to act as proxy for the Bank and to execute under hand or seal any deeds of assignment or scheme of arrangement or composition.***

9. ***To act as trustee, liquidator or otherwise in relation to the affairs of any debtor or insolvent person or entity and to take all steps in relation to the winding up and arrangement of the affairs of any debtor or insolvent person or entity.***

10. ***To appear before any court or office or other authority and to do and execute any act, deed or thing necessary***

for perfecting this Power of Attorney and any writing or instrument executed pursuant thereto.

11. *To execute sign seal and deliver all deeds contracts, receipts, acknowledgements, settlement agreements, notices, instruments, documents and letters necessary and proper for effectively doing or causing to be done any or all of the acts and things which the Officer is empowered to do.*

Provided always that the Bank hereby grants and delegates to the officer all the powers and authorities of the Bank in and about the matters aforesaid in so far as such powers and authorities are necessary or expedient for carrying out any litigation or arbitration for and on behalf of the Bank in relation to business of the Bank relating to the Branch and also on behalf of the Overseas Branches of the Bank relating to the business of the Bank that was originated from India.

And the Bank hereby agrees to ratify and confirm all and whatsoever the Officer shall lawfully do or cause to be done by virtue of this Power of Attorney.

IN WITNESS WHEREOF, ***the Bank has caused its Common Seal*** *to be hereunto affixed this* ***26th day of June Two Thousand and Thirteen (2013).***

The Common Seal of)

DBS BANK LTD.)

was hereunto affixed)

in the presence of:-)

- *Director*
  Piyush Gupta (Mr)

- *Secretary*
  Goh Peng Fond (Mr)"

On perusal of this Power of Attorney, on face, it appears that it is not a Power of Attorney given by some Director on the authority given by the Company. It is ex-facie apparent on record that this Power of Attorney has been directly given **by the Bank** to the power of attorney holder Mr Pankaj Jain through the Director of the Bank, namely Piyush Gupta and the Secretary of the Bank, namely Goh Peng Fond as mandated under Companies Act of Singapore.

Now as against this Power of Attorney granted in favour of Pankaj Jain, let us see what the Companies Act of Singapore envisaging about the powers of the Directors:

Chapter 50

Companies Act

"***Ultra vires transactions***

25.—(1) ***No act or purported act of a company*** *(including the entering into of an agreement by the company and including any act done on behalf of a company by an officer or agent of the company under any purported authority, whether express or implied, of the company) and no conveyance or transfer of property, whether real or personal, to or by a company* ***shall be invalid by reason only of the fact that the company was without capacity or power to do such act or to execute or take such conveyance or transfer.***

(2) ***Any such lack of capacity or power may be asserted or relied upon only in —***

(a) ***proceedings against*** *the company* ***by any member of the company or****, where the company has issued debentures secured by a floating charge over all or any of the company's property, by the holder of any of those debentures or the trustee for the holders of those debentures to restrain the doing of any act or acts or the conveyance or transfer of any property to or by the company;*

(b) ***any proceedings by the company or by any member of the company against the present or former officers of the company; or***

(c) ***any application by the Minister to wind up the company.***

(3) If the unauthorised act, conveyance or transfer sought to be restrained in any proceedings under subsection (2)(a) is being or is to be performed or made pursuant to any contract to which the company is a party, the Court may, if all the parties to the contract are parties to the proceedings and if the Court considers it to be just and equitable, set aside and restrain the performance of the contract and may allow to the company or to the other parties to the contract, as the case requires, compensation for the loss or damage sustained by either of them which may result from the action of the Court in setting aside and restraining the performance of the contract but anticipated profits to be derived from the performance of the contract shall not be awarded by the Court as a loss or damage sustained.

Power of directors to bind company

25B. *—(1) In favor of a person dealing with a company in good faith,* ***the power of the directors to bind the company, or authorize others to do so, shall be deemed to be free of any limitation under the company's constitution.***

(2) For the purposes of subsection (1), ***a person dealing with a company —***

(a) is not bound to enquire as to any limitation on the powers of the directors to bind the company or authorize others to do so; and

(b)is presumed to have acted in good faith unless the contrary is proved.

(3) The references in subsection (1) or (2) to limitations on the directors' powers under the company's constitution include limitations deriving —

(a) from a resolution of the company or of any class of shareholders; or

(b) from any agreement between the members of the company or of any class of shareholders.

(4) This section shall not affect any right of a member of the company to bring proceedings to restrain the doing of an action that is beyond the powers of the directors; but no such proceedings shall lie in respect of an act to be done in fulfillment of a legal obligation arising from a previous act of the company.

(5) This section shall not affect any liability incurred by the directors, or any other person, by reason of the directors exceeding their powers.

(6) This section shall have effect subject to section 25C.

Ratification by company of contracts made before incorporation

41. *—(1) Any contract or other transaction purporting to be entered into by a company prior to its formation or by any person on behalf of a company prior to its formation may be ratified by the company after its formation and thereupon the company shall become bound by and entitled to the benefit thereof as if it had been in existence at the date of the contract or other transaction and had been a party thereto.*

(2) Prior to ratification by the company the person or persons who purported to act in the name or on behalf of the company shall in the absence of express agreement to the contrary be personally bound by the contract or other transaction and entitled to the benefit thereof.

Form of contract

(3) Contracts on behalf of a corporation may be made as follows:

(a) a contract which if made between private persons would by law be required to be ***in writing under seal*** *may be made on behalf of the corporation in* ***writing under the common seal of the corporation;***

(b) a contract which if made between private persons would by law be required to be in writing signed by the parties to be charged therewith may be ***made on behalf of the corporation in writing signed by any person acting under its authority, express or implied;***

(c) a contract which if made between private persons would by law be valid although made by parol only (and not reduced into writing) may be made by parol on behalf of the corporation by any person acting under its authority, express or implied, and any contract so made shall be effectual in law and shall bind the corporation and its successors and all other parties thereto and may be varied or discharged in the manner in which it is authorized to be made.

Authentication of documents

(4) A document or proceeding requiring authentication by a corporation may be signed by an authorized officer of the corporation and need not be under its common seal.

Execution of deeds

(5) A corporation may by writing under its common seal empower any person, either generally or in respect of any specified matters, as its agent or attorney to execute deeds on its behalf and a deed signed by such an agent or attorney on behalf of the corporation and under his seal, or, subject to subsection (7), under the appropriate official seal of the corporation shall bind the corporation and have the same effect as if it were under its common seal.

(6) The authority of any such agent or attorney shall as between the corporation and any person dealing with him continue during the period, if any, mentioned in the instrument conferring the authority, or if no period is therein mentioned then until notice of the revocation or determination of his authority has been given to the person dealing with him.

Official seal for use abroad

(7) A corporation whose objects require or comprise the transaction of ***business outside Singapore may****, if authorised by its constitution,* ***have for use in any place outside Singapore an official seal, which shall be a facsimile of the common seal of the corporation*** *with the addition on its face of the name of the place where it is to be used and the person affixing any such official seal*

shall, in writing under his hand, certify on the instrument to which it is affixed the date on which and the place at which it is affixed."

Since this Power of Attorney was executed in Singapore, naturally the execution of this Power of Attorney is governed by the statute of that country. In the backdrop of it, if we see Section 25B of Companies Act, Singapore, whenever a person (here Ruchi Soya) in good faith deals with a company (DBS), the Power of directors shall be deemed to be free of any limitation under the Company's constitution. When such a free right has been given to directors of companies of Singapore to deal with outsiders, we don't find any occasion for this Debtor to question the capacity of the director in executing this document. As per this enactment, under Section 41 of the Companies Act, Singapore, two things are prerequisite to show that it is a document executed by Company, one is execution of a Deed by one of the Directors and Secretary of the company or by two directors of the company, two, if at all it is to be used in abroad, official seal is to be affixed on the Deed.

In the light of the statutory provisions, now if we see the Power of Attorney and Companies Act of Singapore side by side, the authors of the document have followed word to word as stated in the Companies Act. It has been said that it has been executed in Singapore, it has been said that it has been executed **by the Bank itself**, which is the company.

11. May be this procedure is slightly different from Indian Companies Act but their law having said that one Director and Secretary can execute Deeds representing the company, whatever document executed with such an authority has to be taken as valid. The persons entering into a Deed with the company are very much protected by the doctrine of good faith inbuilt in the Act itself. The only exception under Companies Act, Singapore is, it should not be a related party transaction as stated under Section 25C and it can be questioned by the members of the same company. When no doubt is in existence that tomorrow somebody come on behalf of the company and say this institution of suit is invalid, how can this Corporate Debtor raise an objection over the Power of Attorney given by the Company authorising this person, i.e. Pankaj Jain to file this case before this Bench. Since this person has been authorised by the company itself, this Pankaj Jain designation as power of attorney is very much in fitting in the designation of "authorised

person" mentioned in the Form. Moreover, when IBC is open to the world at large to proceed against Indian Companies, it has to be conceived that the power of authority given to somebody in accordance with the law of the respective country as valid. Of course, foreign law is not binding on us where there is an express prohibition to do so under Indian law, for the phrase "Authorised Person" being inclusive, person given Power of Attorney will fall within the phrase of "Authorised Person".

12. This Power of Attorney has been affixed with the Company Seal to prove that this Power of Attorney is the authority given by the company. In normal parlance, whenever any company seal is affixed on any document said to have been issued by a company, it has to be presumed that the document has been conferred with the authority of the company. As to Power of Attorneys are concerned, usually a dispute will arise only when management itself or some of the persons in the management or the persons giving authority themselves raise a dispute saying that such and such power of attorney has not been given by the company. Here in this case, it is a large institution spread all over the world and making this institution run by conferring power upon some attorney holders to act on behalf of the Bank. It is not the case of the Debtor that this Power of Attorney holder is not conferred with power to institute legal proceedings, it is also not the case of the Debtor that this Power of Attorney has not been given by the company. The strange thing in this case is, the Debtor relies upon a hyper technical point that special authorisation has not been given to this Power of Attorney under Insolvency & Bankruptcy Code.

13. To justify this argument, the Counsel has heavily relied upon ***Palogix Infrastructure Pvt Ltd Vs. ICICI Bank Ltd (Company Appeal (AT) (Insol) No.30/2017 decided on 20.9.2017) by NCLAT*** to say that the Power of Attorney filed by one Pankaj Jain to represent on behalf of the Financial Creditor cannot be a valid document authorising him to represent on behalf of the Financial Creditor in a petition filed under Insolvency & Bankruptcy Code, 2016.

14. The debtor counsel says that for Hon'ble NCLAT has already decided that Insolvency & Bankruptcy Code is a complete code by itself, the provisions of 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 and that the clause "authorised person" reflected in entry 5 and 6 of Form I is distinct from Power of Attorney holder therefore, as to this case, for there being no authority authorising any person to file this case soon after Insolvency & Bankruptcy Code has come into existence, this Petition shall be dismissed at threshold.

15. Before going into the ratio decided in the case supra, it is imperative to look into the background facts in the case supra so as to find out on what premise such ratio has been decided by the Hon'ble NCLAT.

16. It appears in the case supra, ICICI Bank filed Section 7 petition against Palogix before NCLT, Kolkata Bench by an officer of ICICI Bank saying that he was authorised to file Section 7 petition through Power of Attorney issued to him on the Board Resolutions dated 3.5.2002 and 30.10.2009 entitling this officer to deal with all legal proceedings for or against the Bank. The point relevant for the present discussion is, looking at this Power of Attorney, two Members Bench of Kolkata expressed divergent opinions on operation of Power of Attorney dated 20.10.2014, one saying that since this Power of Attorney was executed before Insolvency & Bankruptcy Code has come into existence, this Power of Attorney will not entitle the holder of POA to initiate proceedings under Insolvency & Bankruptcy Code which has come into existence in the year 2016, i.e. subsequent to the execution of the Power of Attorney, on the contra, other Ld. Member opined that since it has been mentioned in the POA that the Legal Manager is empowered to initiate legal proceedings under the NCLT which automatically includes the proceedings before Adjudicating Authority under IBC. That Bench has further held that if at all Petitions are to be filed on the basis of specific Power of Attorney basing on the Board Resolution, it will defeat the very purpose of Insolvency & Bankruptcy Code which is for the speedy resolution of Insolvency cases.

17. On which, when it went for reference to be decided by a third Member situated at Guwahati, the Ld. Member has decided since a complete new regime in respect of Insolvency/Bankruptcy has been put in place under the Code of 2016, the procedure laid under the Code of 2016 can't be equated with the proceedings for winding up under the Companies Act, 1956, therefore the power given in the POA executed in 2004 cannot be stretched to embrace

the power to initiate Corporate Insolvency Resolution proceedings under Section 7 of the Code, 2016.

18. When this order was impugned before Hon'ble NCLAT by the Corporate Debtor, the Counsel appearing on behalf of the Corporate Debtor relied upon ***State Bank of Travancore vs. Instant Computer India Pvt Ltd. (2011) 11 SCC 524*** to say that the "authorisation" in the case of a company would mean a specific authorisation by the Board of Directors of the Company by passing a resolution, unless such specific resolution has been passed authorising the power of attorney with a specific power to proceed under Insolvency & Bankruptcy code, no application can be entertained.

19. By going through the aforesaid citation, it appears that the authorisation was given by the CFO of the company to one of the Directors of the company stating that he was given power of attorney to give authorisation to proceed in the said matter. When it has been examined as to whether that CFO has been given power to give such authorisation to the Director, the Court has arrived to a conclusion that no proof has been placed showing that CFO was given power of attorney by the company to further delegate such power to the person filed that case, in view of the same, it has been held the authorisation given to the Director is shorn of authority henceforth, that point was decided against authorised person.

20. On Hon'ble Supreme Court having noticed that the person given authorisation himself has no power to authorise somebody else to proceed, it has held that the person claiming authority is not competent to defend the company Kingston. If a converse situation is presumed, then it is evident that, as per this ratio, if the power of attorney has come from a competent source, then that power of attorney confers power upon the holder to sue or to be sued on behalf of the company.

21. The Corporate Debtor in the case supra further relied upon ***T C Mathaiand Anr. vs. District and Session Judge, Thiruvanatapuram, Kerala (1999) 3 SCC 614*** to say that Section 2 of Power of Attorney Act, 1882 cannot override the specific provision of statute which requires that a particular act should be done by a party in person. On looking at the facts of

the case in the above, it is in relation to Criminal Revision Petition pending before a Sessions Court, a person holding power of attorney on behalf of wife and husband living in Kuwait insisted upon the Sessions Court to allow him to appear on behalf of those accused basing on the power of attorney given by them. On which, Hon'ble Supreme Court has categorically held that when it has been said that when act has to be performed is personal in character that particular act should be done by the party as stated in the Criminal Procedure Code, under Criminal Procedure Code, if the personal attendance of the accused is sought to be dispensed with, such dispensation has to be sought under Section 205 of Criminal Procedure Code notwithstanding the person holding any power of attorney from the accused. Here two things are visible, one – it is in relation to a criminal case governed by Criminal Procedure Code wherein it has been categorically mentioned under Section 205 of Criminal Procedure Code that the personal attendance of the accused can be dispensed with only in accordance with Section 205 of the Code. Two - when such specific provision is mentioned in respect to attendance, more especially in a criminal case, nobody can insist upon appearance of the accused through a power of attorney without taking the grant of the respective Criminal Court under Section 205 of the code. In view of the same, it could be understood if a special provision is there in the Code itself to take permission for power of attorney appearance on behalf of the accused, then that specific provision obviously will have overriding effect on Section 2 of the Power of Attorney Act. In criminal cases accused appearance is a requisite; his appearance can be dispensed with only when Court permits it, not otherwise.

22. The proposition in the above case cannot be equated to civil cases because there is no any such pre-requisite in a civil case for the personal attendance of the party unless such party has to adduce something which is in his personal knowledge, therefore, the situation before Criminal court will never become a precedent to apply to civil cases. But it is true that when any specific provision is there in any enactment, no matter it is a civil or criminal case, such specific provision in the enactment relating to power of attorney will no doubt have overriding effect over Section 2 of the Power of Attorney Act. In I&B Code, no such provision is in existence to deviate from general proposition in existence since long, whenever any standard is set by application of various enactments over a period of time, all of sudden, if some new law comes into existence, it does not mean it can read down any and

every standard procedure flanked by law. If at all anybody venture into such interpretation, one - it has to be proved that a specific new provision has come into law invalidating old provision of law, two - old law must be so inconsistent with new law that unless that provision is read down it is difficult to give effect to new law. Moreover, by bringing in this power of attorney issue, though debt and default are in existence, by this new issue of invalidating POA, it indeed bounces back on I&BC itself causing hardship to the creditors in initiating proceedings under I&BC.

23. Now if we come to the facts of the present case, it is evident that the Petitioner is a Bank with various branches spread all over the world, principal business of any bank for that matter is lending money for profit, therefore, to run this business and incidentally to proceed against defaulters and to defend the cases filed against the Bank, it has to invariably delegate its powers to various persons at least one or two persons in a country where it has branches. Likewise, in India that authority has been given to Mr. Pankaj Jain who is incidentally power of attorney holder to file this case before this Bench. Since it is a globally spread bank so whenever any power of attorney is given, it will be given with full powers to deal with any eventuality that keeps coming in the course of its business. If we see the text of Attorney deed already taken out and placed above, this Pankaj Jain has been given full authority to sue and to be sued on behalf of the Bank and also to take action under Bankruptcy, Insolvency, Liquidation and Winding up all-inclusive power so that special authority need not be given to meet eventualities that arise over a period of time. Because legal remedy against default of repayment or inability to pay as the case may be, it will be at some places in the form of bankruptcy, at some places in the form insolvency, and at some places in the form of liquidation, in force all over the world, therefore, to meet this eventuality, exhaustive powers are given to power of attorney. This power of authority is given to him to deal with all situations that happen in India. It is not that in every company, the board has to pass resolution to meet the requirements of the company. If the company size is big, then the board will decide what authority to be exercised by whom. Here the Bank having global presence, it is impossible to pass board resolution every time when suit is filed in one country or other country. In banking business, suing and being sued always keeps happening, when a new legislation has come in any country, if subject matter authorisation to deal with that eventuality is included in the power of

attorney, there need not be a separate new authorisation from the company to the power of attorney holder to meet that eventuality. Subject matter in I&BC being to deal with insolvency in respect to corporate persons, for this subject matter jurisdiction has already given to Pankaj in many words, he is entitled to proceed against the corporate debtor under I&BC. Indeed, the powers in Attorney Deed are sweeping in nature. When power is given to meet any eventuality, it can't be said that since new enactment has come, again authority has to be given to proceed under a particular enactment. If you see any power of attorney, the phraseology will be to deal with variety of subjects, in mentioning those subjects, it will never be found that jurisdiction is given to proceed under so and so enactments only.

24. As to authority is concerned, if you see our own Companies Act, 2013, under Section 21 of Companies Act, deed can be signed by any key managerial personnel authorised by the Board on its behalf. The practise that happens in providing this authority is to execute that document with the seal of the company. Here, in this case, by reading the power of attorney, it appears that this power to authorise agent has directly come from the company with the seal of the company. It is deemed that company is bound by the said document. At the time when loan is given, the debtor has no requirement to see the Board, bank in its usual course to enter into Facility Agreements. Of course, the debtor should not also be put to be wrongly sued, but to say that, the debtor has to disprove the fact that suit has been rightly filed. As I said above, who proves what depends upon the material on record. If material on record persuades the adjudicating authority to believe existence of a fact, then unless such fact is disproved by other side, court cannot deviate from the said belief. In a big organisation, as per work assignment, business happens. Here the company authorised Pankaj Jain to act as power of attorney on behalf of the company. In India as well, since there is a presumption that when any document comes from a company with a seal of it, it has to be premised that the said document was executed on behalf of the company, so the person getting authority through that document is entitled to take actions accordingly. If it is a small company, normally board resolutions will be passed as and when required as per Articles of Association, but the same cannot be the situation if the size of the company is massive and spread across the world. What all we say is non filing of a resolution by the board cannot become a spring board to throw away a case otherwise fit to be admitted.

25. It goes without saying the ultimate object of law is to render justice, here the grievance is this petitioner lent money to the corporate Debtor and the said Corporate Debtor defaulted in paying the said loan. When such default occurs, the aggrieved will seek justice for repayment of its money. When Companies Act, 1956 was in vogue, the creditor shall not invoke winding up jurisdiction unless and until the company is unable to repay loan to the creditor; and that proceeding of winding up shall be a bonafide act. In winding up petition under Companies Act, 1956 in addition to default occurrence, the creditor has to show he has bonafidely proceeded against the company for winding for the company being unable to make payment. The proof of insolvent situation in the company is prerequisite for admission of winding up petition under old Act. Now under the new Act, these doctrines of bonafide and inability to pay have been done away by opening up jurisdiction to file insolvency cases on just showing existence of debt and occurrence of default. For recovery of money also, the same essentials required. Now there is no difference to proceed for simplicitor recovery of money or to initiate insolvency proceedings against the company. Under new regime, insolvency case should not be pursued through the prism of doctrine of bonafide and inability. No doubt it is hard to see to initiate insolvency proceedings simply on existence of debt and default, because until yesterday, we were under the belief that winding up petition was not meant for recovery of money. But howsoever hard it seemingly appears, it is the law we all have to follow. We have no role to tilt either side, perception of the statute shall be the perception of this Tribunal.

26. The ground reality is, debt and default are not in dispute, that means the creditor proved its case; law cannot become an impediment to achieve justice basing on this reality. In the section of law or in the Rules, it has nowhere been mentioned that power of attorney should not file a case on behalf of the company, it only says that financial creditor can file. The terminology of authorised person is generic in nature, whereas, power of attorney is specific in nature. The phrase "authorised person" is a caption in general, encompassing the caption of "power of attorney", because "power of attorney" is also nothing but authorisation with more rigours. Moreover, the word "Authorised Person" is loosely used without defining it, therefore, the usage of this word "Authorised Person" in the form annexed to Rules cannot

invalidate the power of attorney. Power of Attorney defines principal and agent relationship. When an agent is chosen to deal with certain subjects, it need not be seen in which form that subject is, the point to be seen whether subject matter authority is given to him or not. In this particular power of attorney, the attorney holder has been given authority to proceed in the cases of insolvency and bankruptcy as well. It is not something new remedy that has come under Insolvency & Bankruptcy Code, it was there before IBC, may be one remedy before one forum another remedy before another forum, re-organisation or re-structuring of the company was there under SICA, relief of liquidation was there under winding up in companies Act, 1956.

27. Today this Corporate Debtor having admitted the existence of debt and occurrence of default, defeating justice on the premise board resolution is not passed is not only legally untenable but also unfair on the part of the Corporate Debtor. The basic propositions for rendering justice are doctrine of truthfulness and reasonableness. The truth is the Corporate Debtor availed loan and then defaulted repayment. Reasonableness is entitlement to the creditor to realise the debt from the Corporate Debtor through the remedies available to him. May be, it is for recovery of money or for initiating insolvency process. The destiny in both the remedies is realisation only. In second case, company may be wound up. When doors are open for ease of doing business by allowing the creditor to directly proceed against the Corporate Debtor, especially when debt and default are admitted, there can't be an impediment otherwise, unless the debtor proves that admitting the petition is not valid under some law. When other statute permits an agent to act on behalf of the principal, when there is no direct prohibition under the Code stopping agent to appear on behalf of the principal, it is not reasonable to stop the agent from proceeding on behalf of the principal.

28. This terminology of authorised person will not appear anywhere in the Code or in the Rules except in Form I given for filing an application. No definition has been given anywhere power of attorney holder will not become an authorised person. Power of attorney is more stringent document fixing responsibility upon the principal as well as the agent not to disown that they are not bound by the power of attorney. As to authorised-person is concerned, there is no fixation of any responsibility between principal and agent. Banking business is veins and arteries to the corporate business, if banking is made

easy and realisation is made tough, it is nothing but choking the veins and arteries of corporate business. Now India has become one of the business hubs in the world, when that being the situation, wholesome approach shall be given to effectuate the purpose and object of law. We cannot pierce out something from the whole and propound a legal proposition, which goes against the main aim of the enactment. We do not say that petitions need to be admitted ignoring the procedural aspect that is required to be followed. If it is understood in the way it is to be understood, it will be clear that valid power of attorney is nothing but authorisation to proceed against the Debtor.

29. Moreover, if we read PALOGIX order closely, it has not been held anywhere that Power of attorney shall be executed after Code has come into existence, no doubt a question has been framed that as to whether power of attorney shall be executed to file cases under IBC, only after IBC has come into force. There have been back and forth arguments over it from either side, but this point has not been decided by Honourable NCLAT holding that POA executed before advent of IBC is invalid. This question has been framed in para 17 of Palogix supra, the statements in Para 23 of the order appears to be the argument of the corporate debtor in that case, because first line of the para starts with *"learned counsel for the corporate debtor submitted that" and ends with "therefore according to the "Corporate Debtor", the procedural pre-requisites under IBC must be strictly construed."*

30. Another two points decided in Palogix are, one - about seven days' time given for curing defects, where Honourable NCLAT held that holidays shall be excluded in computing seven days, two- IBC is a complete code therefore Power of Attorney cannot override the specific provisions of the statute, therefore power of Attorney holder is not competent to file application on behalf of the creditor or corporate applicant. In the same breadth, Honourable NCLAT held that if Manager is competent to sanction loan, then it can't be said that manger cannot file case. By seeing this conclusion by NCLAT, it appears that filing of Board Resolution in every case is not sine qua non, the observation made is since CIRP process is slightly serious, if it is filed through power of attorney, there is a possibility of fraudulently filing cases, and also a possibility to initiate cases under section 65 of the Code.

31. As to timing of power of Attorney execution, for there being no holding in Palogix over power of attorney executed before Insolvency & Bankruptcy Code has come into force, it is not hit by Palogix order. Here, the company having itself executed power of attorney to Pankaj, who is looking after entire India in respect to legal matters, looking at the size of the company, and looking at the sweeping powers given to him, his authority for filing this case cannot be invalidated. Moreover, having Hononorable NCLAT already held that officers at higher level can proceed against the debtor companies, Pankaj being Vice President – Risk Management Group, India, given charge to carry all litigation work and other business, his authority cannot be weighed down on the ground he is not an authorised person. The ground reality is, all bank cases filing happens through power of Attorney only, moreover it being a bank internationally spread, and the authority to Pankaj having directly come from the company, it cannot be seen as distinct from the specific authority envisaged in Palogix.

32. The petitioner relied upon citation in between Timblo Irmaos Ltd., Margo v. Jorge Anibal Matos Sequeira and Anr. (1977)3 SCC 474, to say that power of attorney has to be read as a whole keeping it in mind the purpose of it.

33. Therefore, considering the size of the company, the order passed by the Hon'ble NCLAT is distinguishable from the facts of this case, for there being no objection from the bank's side and there being no material from the debtor side to disprove that this authorization given in favour of Pankaj Jain is not valid one, we hereby hold that this power of attorney is binding on the creditor bank, therefore, this power of attorney shall be held as valid authorization to proceed against the debtor.

ii. ***Whether pending of appeal over the order dismissing winding up petition against the Corporate Debtor, will have any bearing over adjudication of this case or not?***

As of today or as on the date of filing this case before this Bench, no winding up petition is pending before Hon'ble High Court of Bombay, indeed the winding up petition filed by IDBI against this company has been decided against IDBI, mere pendency of appeal before appellate jurisdiction over the dismissal order cannot be said as winding up petition pending before Hon'ble

High Court of Bombay. Till date there is holding saying that if winding up petition is pending before High Court, NCLT cannot proceed under Insolvency & Bankruptcy Code. Moreover, when proceedings are initiated before two competent forums, unless one of the proceedings is stayed, both of them can parallelly run without any impediment. The only point that comes into question is, if any of these two, adjudicate the matter, then the other competent forum shall not proceed any further for it is hit by the doctrine of res-judicata. Even if we go by old Companies Act, the proceedings before other courts will not be suspended before liquidator or provisional liquidator is appointed, henceforth, we don't find any merit in this argument of the corporate debtor.

The Corporate Debtor relied upon *Karan Singh v. Bhagawan Singh (1996) 7 SCC 559, Rafiquennessa v. Lal Bahadur Chetri (AIR 1964 SC 1511 para 13), and Ram Saran Sharma v. Bank of India (1990) 69 Comp Cases 544 (P&H) para 7, 8 & 9* to say that when appeal is filed against a decree, the court of appeal shall have all the powers and shall perform the same duties as are conferred and imposed on the court of original jurisdiction thereby the appeal is a continuation of the original proceedings.

It is true that appeal will become a continuation of the original proceedings, therefore, an appellate authority has seisin of the whole case, it is limited to understand that appellate authority can pass an appellate decree exercising the powers vested with the original jurisdiction. The analogy applied in the ratio above is not applicable to understand the pendency of appeal to be conceived as original proceedings pending before the court of law. If that is the case, when a decree has been passed, no court can execute a decree unless an appeal is decided but execution proceedings will not automatically gets stayed unless stay over the execution proceedings is ordered by the Appellate authority. If the proposition of law does not stop the decree upon which appeal is filed, it is far fetching to say that IBC proceedings shall not be initiated looking at an appeal pending over some other proceedings filed against this Corporate Debtor. For the sake of clarity, we reiterate that winding up petition was dismissed against this very corporate debtor. Therefore, this argument of the corporate Debtor counsel saying this case shall not proceed because of pendency of an appeal over the dismissal order over the winding up petition does not hold any merit.

iii. Whether this case has to be postponed or not on the ground that on reference (in the matter of Union Bank of India vs. Era Infra Engineering Ltd.) to the larger Bench on the issue of as to that whether proceeding under IBC can be triggered while winding up petition pending before the respective High Courts against the same Corporate Debtor ?

This case will not be covered in any of the categories mentioned in the case referred because no winding up petition is pending against the corporate debtor herein.

The corporate debtor counsel relied upon Dattatray Gokhale v. A.B.W. Infrastructure Ltd. (CP (IB) 74 (PB) 2017) NCLT, Delhi on 28.06.2017, Nauvata Engineering Pvt. Ltd. v. Punj Lloyds Ltd. (CP (IB) 217 (PB) 2017) NCLT, Delhi on 19.07.2017 to say that two proceedings cannot be permitted for liquidation one before Adjudicating Authority under IBC and another before High Court against the same company.

Since no winding up petition is pending before High Court as of now against this corporate debtor, except an appeal on dismissal order, this petition cannot be kept under suspension by looking at a fight this very corporate debtor fighting before Appellate Authority for confirmation of the original order. In view of the same the ratio decided in those cases is not applicable to the present case.

iv. *whether Reserve Bank of India directives pursuant to the Banking Regulations (Amendment) Act, 2017 has any bearing on adjudication of this case or not?*

Any circular that is in recommendatory in nature and suggesting IBC proceedings in 12 accounts will not amount to depriving other accounts to be filed before this Adjudicating Authority under IBC provided they fall within the ambit of IBC. Henceforth, we have not found any merit in this argument canvassed by the corporate debtor.

v. ***Whether Facility Agreements have been inadequately stamped as stated by the Corporate Debtor, if so, whether this petition can be admitted basing on such inadequately stamped Agreement?***

The corporate debtor relied upon Avinash Kumar Chouhan v. Vijay Krishna Mishra (2009) 2 SCC 532, Lakdawala Developers Pvt. Ltd. v. Badal Mittal (Bom HC Arb. Petition No. 221 of 2013, para 5) and SMS Tea Estates Pvt. Ltd. v. Chandmari Tea Company Pvt. Ltd. (2011) 14 SCC 66, Para 17 onwards, to say that facility agreement dated 24.01.2012 is not duly stamped as per the provisions of the Maharashtra Stamp Act 1958, therefore the inadequately stamped documents is inadmissible to use it for using it as evidence.

The petitioner relied upon *Tata Capital financial Services v. Unity Infraprojects (2015) SCC Online Bom 3507*, to say that Hon'ble Bombay High Court after considering *SMS Tea Estates Pvt. Ltd. v. Chandmari Tea Company Pvt. Ltd. (2011) 14 SCC 66, Lakdawala Developers Pvt. Ltd. v. Badal Mittal (Appl (L) 272/2013,* held that the Agreements having been acted upon by both the parties and the obligation to pay the requisite stamp duty being on the Respondent (who objected to the admissibility of the documents), therefore, the objection on account of non-payment of stamp duty is held as devoid of merit.

The corporate debtor counsel has nowhere mentioned how much stamp duty is to be paid, how much is not paid by the Petitioner, his hypothetical argument will not be relevant to decide any case because duty is cast upon the person raising objection. Moreover, facility agreement alone is not the document to prove this case, there is surplus material to prove that debt and default are in existence whereby, this argument is not sufficient enough to deny the claim of Petitioner herein, henceforth, the argument of the corporate debtor is hereby dismissed.

vi. Whether formation of Joint Lender Forum will have any bearing over filing of this case or not?

It has already been held by the Hon'ble NCLAT Innoventive Industries Ltd Vs. ICICI Bank Ltd that JLF proceedings pending against the corporate debtor will not have any bearing on the cases initiated under IBC, therefore, this plea is hereby dismissed without having any further consideration on this point.

The corporate debtor counsel relied upon *IDFC Bank Ltd. v. Ruchi Soya Industries (Bom HC Com. Petition 570/2016, Central Bank of India v. Ravindra*

(2002) 1 SCC 367, Essar Steel India Ltd. v. RBI (SCA 12434 of 2017 dated 31.07.2017) to say that when a scheme is proposed for settlement of the creditors dues, the creditors will have to wait for settlement of their dues, it is not correct proposition of law as against IBC proceedings for two reasons, one - a mechanism recommended by RBI Circular will not have any bearing on IBC proceedings owing to non-obstante clause present in Insolvency and Bankruptcy Code, two - it has been settled by Hon'ble NCLAT as well as Hon'ble Supreme Court in *Innoventive Industries Ltd. v. ICICI Bank Ltd. (SC dated 31.08.2017)* and this Bench in between *Indian Bank v. Varun Resources Ltd. (NCLT Mumbai dated 14.06.2017)* that RBI Circulars will not have any binding nature on the proceedings under IBC.

vii. Whether the Statement of Account filed by DBS is in compliance with Part V Serial No.7 of Form No.1 or not?

The argument of the Corporate Debtor Counsel is that the copies of entries in Bankers' Book are not in accordance with the Bankers Books of Evidence Act therefore, the statement submitted is not admissible, hence the Petition cannot be maintained.

To which, the Petitioner has subsequently filed Bank statements for the year 2011-2012 (Exhibit 'A') in its additional Affidavit. Whereas, the Corporate Debtor Counsel raised objection to take this material on record for it has come subsequent to filing of the Petition.

Since the Corporate Debtor case is, these entries in Bankers Book are not in accordance with the Bankers' Book Evidence Act, it is essential to look into Part V of Form I to find out as to what is the requirement to be placed as particulars of the financial statement in respect to Entry 7 of this Part V. In Entry 7, what it has been asked is to file ***copies of entries in a Bankers Book in accordance with the Bankers' Books Evidence Act, 1891 (attach a copy).*** So two things are requisite, one is, it must be a copy of entry in a Bankers Book, two, that copy shall be attached with Form No. I. If we see the definition of "Bankers' Books", statement of account being a record used in the ordinary business of the Bank, it will fall within the definition of Bankers' Book. The Petitioner filed the document falling within the definition of Bankers' Book under the Bankers' Books Evidence Act. In Entry No.7, what is asked to attach is the copy of the Bankers' Book, it has not been asked to file a certified copy as certified under Bankers Book Evidence Act therefore, it can't be said that unless a certified copy is filed, it should not be looked into.

For the argument of the Corporate Debtor is, no other law is applicable when Insolvency and Bankruptcy Code is applicable, it is obvious that Bankers' Books Evidence Act is also to be construed as not applicable. But we do not go to such an extent to say that all canons of law are null and void as against Insolvency and Bankruptcy Code, 2016. It is being said by Hon'ble Supreme Court umpteen times, that whenever any overriding effect is given in any statute, it has to be consciously applied so as not to dilute the operation of other laws save and except to the extent of inconsistency mentioned in the enactment constituted with non obstante clause. Since the statement of account being a document falling within the definition of "Bankers' Books", and copy having been filed as mentioned in Entry 7, the document has to be taken into consideration as part of the documents filed under Part V of Form No. I.

The corporate debtor relied upon *Punjab National Bank v. M/s. Concord Hospitality Pvt. Ltd. (NCLT Chandigarh dated 4.8.2017* having stated that when banks statements submitted are not in accordance with Bankers Books Evidence Act, 1881, such statements are not admissible. Hence, this petition cannot be maintained. It has not been decided in this case as to what exactly column no.7 requisite. Whereas here it has been clarified with reasons that certified copy has not been asked in column no.7 therefore, it is not mandatory to file certified copies as mentioned under Bankers Books Evidence Act. The only point to be seen is as to whether the statement of account filed before this Bench is falling within the ambit of definition to Bankers Books, this point has already been decided.

Moreover, examination and proof are always dependent upon the stands of the parties. In this case, the Corporate Debtor has nowhere refuted either the existence of debt or occurrence of default. In normal parlance, for an illustrative purpose, if you take a promissory note case, if execution is admitted and payment of consideration is denied, then burden shifts upon the defendant to prove no consideration plea, if he fails to prove that plea, suit will be decreed basing on admission of execution of promissory note. The extent of adducing proof keeps changing depending on the stand of the parties. If consideration plea is not proved, it does not mean the burden shifts upon the plaintiff to prove payment of consideration. Basic propositions of law and logic will not change as and when new enactment comes into operation. If anything new has come that is not present in the past, then such new provision has to be applied to the extent mentioned there but not to dehors

other provisions and other enactments. If at all we understand in that perspective, the doctrine of predictability and certainty will get lost. People will enter into transactions and execute documents with a legitimate expectation that their transactions will not get invalidated in future. For this reason, only, when any new enactment is brought into existence, if at all Parliament is of the view that overriding effect is to be given, it will take two precautions into consideration, one, they will repeal the prior enactment to the extent that is covered in the subsequent enactment or if it feels that prior enactment must also remain in existence then it will do so by differentiating the fields of operation. Whenever any conflict or overlapping comes, then the provision with overriding effect will prevail over. In a situation like that also, many a times, Hon'ble Supreme Court harmonised the situations so as not to dilute the vigour of the enactments to the extent possible. Though IBC is definitely a new enactment, the subject dealt with by this enactment is not new to us, because in the past it was spread in 2-3 enactments. In view of the same, we are of the view that inconsistency is the benchmark to invoke non-obstante clause of this Code upon other enactments. I must also say that when there is a categoric admission falling under Indian Evidence Act, that admission need not be put to proof as envisaged under Section 58 of Indian Evidence Act. Here, when a specific case has been put to the Corporate Debtor saying that the Corporate Debtor borrowed money and failed to repay the same, this Corporate Debtor has nowhere denied about existence of debt and occurrence of default.

34. For the reasons afore stated, we are of the view that the Petitioner herein has furnished all the material to prove the existence of debt and occurrence of default.

35. In view of the same, this Bench hereby admits this Petition prohibiting all of the following of item-I, namely:

I (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, 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 (SARFAESI Act);

(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.

(II) That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(III) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(IV) That the order of moratorium shall have effect from 15.12.2017 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

(V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

(VI) That this Bench hereby appoints Mr. Shailendra Ajmera, Ernst & Yong LLP, 3rd Floor, Worldmark 1, Aerocity Hospitality District, New Delhi – 110 037 , email shailendra.ajmera@in.ey.com, Registration No. IBBI/IPA-001/IP-P00304/2017-18/10568 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

36. Accordingly, this Petition is admitted.

37. The Registry is hereby directed to communicate this order to both the parties within seven days from the date order is made available.

Sd/-

V. NALLASENAPATHY
Member(Technical)

Sd/-

B. S. V. PRAKASH KUMAR
Member (Judicial)