

C.P. No.37/2017

ICICI Bank Ltd. -vs- Palogix Infrastructure Pvt. Ltd.

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA

CORAM

Justice P.K.Saikia  
Hon'ble Member (J)

Shri V. P. Singh  
Hon'ble Member (J)

Shri S. Vijayaraghavan  
Hon'ble Member (T)

Company Petition No.37/2017

In the matter of:

Insolvency and Bankruptcy Code, 2016;

And

In the matter of :

An application under section 7 of the Insolvency and Bankruptcy Code, 2016;

And

In the matter of:

ICICI Bank Ltd., a bank incorporated under the laws of India with its registered office at ICICI Bank Tower, Near Chakli Circle, Old Padra Road, Vadodara -390 007, Gujarat, India and a Regional Office at ICICI Bank House, 3A, Gurusaday Road, Kolkata - 19

... APPLICANT

-Versus-

Palogix Infrastructure Private Ltd., a company incorporated under the laws of India with its registered office at 86 B/2, Topsia Road, Gajraj Chambers, Kolkata – 700 046.

.... RESPONDENT

Counsels on Record:

- |                                      |   |                   |
|--------------------------------------|---|-------------------|
| 1. Mr. Ratnanko Banerji, Sr. Counsel | ] |                   |
| 2. Mr. Vivek Jhunhunwala, Advocate   | ] | For the Applicant |
| 3. Mr. Shanu, Advocate               | ] |                   |

1. Ms. Manju Bhutoria, Advocate ] For the Respondent  
2. Ms. Smita Mukherjee, Advocate ]

DT. of order - 12-4-2017

**O R D E R**

In this case, the Petition was heard before the Bench consisting of myself and Mr. S. Vijayaraghavan, Member (Technical). But because of the divergent orders passed by both the Members, the case was referred to the Hon'ble President, NCLT, under sub Section (5) of Section 419 of the Companies Act, 2013 for constituting a larger Bench for decision on the following questions:-

*"Whether the Constituted Attorney authorized on 20/10/2014 to file suits and/or proceedings against the company for recovery of the amount and also to affirms complaints cum affidavits and other pleadings in any court of India including NCLT can file application for initiation of corporate insolvency process under Section 7 of the Insolvency and Bankruptcy code 2016 without having specifically authorized to lodge Application/Petition under IBC 2016?"*

2. On the basis of my letter dated 14/02/2017 Hon'ble President, NCLT constitutes larger Bench and refers the matter to the 3<sup>rd</sup> Member Hon'ble Mr. Justice P.K. Saikia, Member (Judicial), Gauhati Bench for the above mentioned issue. Hon'ble Mr. Justice P.K. Saikia has decided the above reference and passed the order dated 30/03/2017 that he concurs with the finding arrived at



by myself and differed the view taken by Hon'ble Member (T) Shri S. Vijayaraghavan. He has passed the separate order on the point of reference.

3. In this case, after hearing the Petition I have passed the order that there should be specific authorization to initiate corporate insolvency resolution process. It also appears from the Petition that the Applicant has not filed an affidavit in support of the application, therefore, the applicant has to submit affidavit in support of the application and notice to be issued to the applicant/Petitioner to ratify the defect in the application.

4. Hon'ble Member(T), S. Vijayaraghavan, was of the view that Financial Creditor/Applicant has filed the Power of Attorney which mentions that the Legal Manager is empowered to initiate the proceedings under the NCLT which automatically includes its role as an Adjudicating Authority under IBC. In case, this is insistent upon in every Petition under the IBC involving a Financial Creditor that the Petition be filed on the basis of specific Power of Attorney on a Board's Resolution, it will defeat the very purpose of the IBC Code, which is for speedy resolution of insolvency cases and on the above basis Hon'ble Member (T) S. Vijayaraghavan, passed the order for admitting the Petition and for appointment of IRP. However, on the basis of the order passed by the Hon'ble Mr. Justice, P. K. Saikia, it is clear that Hon'ble Mr. Justice Saikia has concurred with the view taken by myself and therefore, by majority judgement it is clear that for initiation of corporate insolvency proceedings, there should be specific authorization to initiate the process.



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5. In this case the Petition has filed with a copy of authorization letter on the basis of general Power of Attorney, which was given on 20/10/2014, wherein it was specifically mentioned *"to commence, institute, file, carry out, continue, prosecute, defend, answer or oppose all actions, suits, writ petition, winding up proceedings or other legal proceedings or prosecute or discontinue or become non-suit therein or suffer judgment to go against ICICI bank, or issue legal notices including winding up notices, as the said attorney shall be advised or make them proper."*

It is also mentioned in para 4 that:-

*"to appoint pleaders, advocates and solicitors to appear and act on behalf of the ICICI Bank in any Court of justice or Tribunal or Recovery Officer or before any Revenue and/or Income-Tax, Gift Tax, Wealth Tax, Recovery, Refund, Appellate, Assistant Commissioner, Income Tax Appellate Tribunal, Company Law Board or the National Company Law Tribunal and/or before other forums and/or other Officer or Officers and to revoke such appointment and substitute any others in their place and stead."*

6. In my view, general Power of Attorney was not sufficient for initiating the corporate insolvency process and therefore, I had passed the order that to initiate corporate insolvency process, there should be specific authorization for this purpose and this view has been further affirmed by the 3<sup>rd</sup> Member Hon'ble Mr. Justice P.K. Saikia. Therefore, resulting with the majority view, it

is clear that for initiation of corporate insolvency process, there should be specific authorization.

7. In this case, the Petitioner has not filed specific authorization to initiate the corporate insolvency process and therefore, the Petitioner is directed to ratify the defects pointed out by us within 7 (seven) days.

8. Earlier order passed by each Hon'ble Member of this Bench in this matter shall be part of this order.

9. List the date on 19/04/2017 for further orders.

Sd/-

[ Vijai Pratap Singh |  
Member (J)