

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 102 of 2018

IN THE MATTER OF:

Rajit Mehra

...Appellant

Versus

Punjab National Bank & Anr.

...Respondents

Present:

For Appellant :

**Mr. Sandeep Bajaj, Ms. Aakanksha Nehra and
Ms. Shourya Mittal, Advocates**

O R D E R

22.03.2018 The appellant, a shareholder of M/s. Rishi Ganga Power Corporate Ltd. (Corporate Debtor), has preferred this appeal against order dated 25th January, 2018 passed by the Adjudicating Authority (National Company Law Tribunal) Chandigarh Bench, Chandigarh whereby and whereunder the application preferred by Punjab National Bank under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'I&B Code') has been admitted, order of moratorium has been passed and the insolvency resolution professional has been appointed with certain directions.

2. Learned counsel appearing on behalf of the appellant submitted that the application under Section 7 was filed by the 'power of attorney holder' and the power of attorney was given in the year 1989. However, such ground cannot

be entertained to reject the application under Section 7 filed by the Punjab National Bank for the following reasons:

- i) in “*Palogix Infrastructure Pvt. Ltd. vs. ICICI Bank – Company Appeal (AT)(Insolvency) No. 30 of 2017*”, this Appellate Tribunal considered the aforesaid question and observed :

“33. *Therefore, we hold that a 'Power of Attorney Holder' is not competent to file an application on behalf of a 'Financial Creditor' or 'Operational Creditor' or 'Corporate Applicant'.*”

The Appellate Tribunal proceeded further and held as follows:

“36. *In so far as, the present case is concerned, the 'Financial Creditor'-Bank has pleaded that by Board's Resolutions dated 30th May, 2002 and 30th October, 2009, the Bank authorised its officers to do needful in the legal proceedings by and against the Bank. If general authorisation is made by any 'Financial Creditor' or 'Operational Creditor' or 'Corporate Applicant' in favour of its officers to do needful in legal proceedings by and against the 'Financial Creditor' / 'Operational 15 Creditor'! 'Corporate Applicant', mere use of word 'Power of. Attorney' while delegating such power will not take away*

the authority of such officer and 'for all purposes it is to be treated as an 'authorization' by the 'Financial Creditor'! 'Operational Creditor'! 'Corporate Applicant' in favour of its officer, which can be delegated even by designation. In such case, officer delegated with power can claim to be the 'Authorized Representative' for the purpose of filing any application under section 7 or Section 9 or Section 10 of 'I&B Code'.

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

38. *This apart, if an officer, such as senior Manager of a Bank has been authorised to grant loan, for recovery of loan or to initiate a proceeding for 'Corporate Insolvency Resolution Process' against the person who have taken loan, in such case the 'Corporate Debtor' cannot plead that the*

officer has power to sanction loan, but such officer has no power to recover the loan amount or to initiate 'Corporate Insolvency Resolution Process', in spite of default of debt.”

3. In the present case the application has been filed by the Assistant General Manager of the Punjab National Bank and, therefore, we are of the view that the said Bank officer is eligible to file an application under Section 7 as the power of attorney is the authorisation letter which was given as back as in the year 1989.

4. It was next contended that valuation of the security of the bank has not been provided but that is not required to be provided in the cases when the relevant data relating to 'debt' and default with supporting evidence has been provided.

5. It is not disputed that there is a 'debt' which is payable by the 'Corporate Debtor' to the 'Punjab National Bank' (Financial Creditor) and they have defaulted to pay the amount. In such case, all the relevant details having mentioned in Form 1, the application has been rightly admitted by the Adjudicating Authority.

6. Learned counsel for the appellant further submitted that the account of the 'Corporate Debtor' was declared Non-Performing Assets (NPA) in the year 2016 but subsequently loan was sanctioned by the Bank in the year 2017. However, on such objection application cannot be rejected as the said fact was

not required to be discharged in Form 1. The facts which are not required to be disclosed in the format cannot be treated to be suppression of facts.

7. We find no merit in this appeal. It is accordingly dismissed.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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