

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 204 of 2017**

**IN THE MATTER OF:**

**M/s Paharpur Cooling Towers Limited .. Appellant**

**Versus**

**M/s Ankit Metal & Power Limited .. Respondent**

**Present:**

**For Appellant: Shri Sanjoy Ghosh, Senior Advocate assisted by Shri R. N. Ghosh and Shri Santanu Ghosh Advocates**

**For Respondent: Shri Susanta Dutta, Shri Bidyut Dutt and Shri Anirudhya Dutta Advocates**

**ORDER**

**09.11.2017** This appeal has been preferred by M/s Paharpur Colling Towers Limited (Operational Creditor) against the order dated 21<sup>st</sup> August, 2017 passed by the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench) whereby and whereunder the Adjudicating Authority dismissed the application under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as '**I & B Code**') on the ground that there is 'an existence of dispute' and Application was not filed directly by the 'Operational Creditor' but by its Company Secretary.

2. Learned Counsel for the Appellant submits that the Appellant ought to have been granted more time to remove the defect. It is also submitted that the Company Secretary who filed Application under Section 9 of I & B Code

was authorised by the Appellant. However, such submission cannot be accepted in view of the decision of this Appellate Tribunal in “**Palogix Infrastructure Private Limited Vs. ICICI bank Limited**” – Company Appeal (AT)(Insol) No. 30 of 2017 wherein this Appellate Tribunal by judgment dated 20<sup>th</sup> September, 2017 held as follows:

“32. *The ‘I&B Code’ is a complete code by itself. The provision of the 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.*

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 Application’.”*

4. Learned Counsel for the Appellant requested to allow the Appellant to file another Application under Section of 9 ‘I&B Code’. However, permission cannot be granted as the application filed by the Appellant has been dismissed also on the ground of existence of a dispute, even prior to the issuance of the demand notice sub-Section (1) of Section 8 of the ‘I & B Code’.

5. From the impugned order we find that the Respondents brought to the notice of the Adjudicating Authority certain disputes which were also supported by e-mail dated 13<sup>th</sup> May, 2015 which were marked as Annexure R-4. Other documents were also brought to the notice to the Adjudicating Authority. In reply, learned Counsel for the Appellant referred to a letter dated 2<sup>nd</sup> April, 2016 issued by an Advocate on behalf of the Appellant but such stand has been disputed by the Respondent.

6. However, even after dispute of the amount if certain amount is admitted by the Respondents but has not paid such amount the Appellant may prefer application under Section 9 after notice to the Respondent under Sub-Section (1) of Section 8 of the I & B Code giving a reference to such undisputed debt, if defaulted.

7. For the reasons aforesaid, while we are not inclined to interfere with the impugned order dated 21<sup>st</sup> August, 2017, we allow the Appellant to move before the appropriate forum in respect of the admitted dues if any. The Appeal stands disposed of with aforesaid observation. No costs.

[Justice S.J. Mukhopadhaya]  
Chairperson

[Justice A.I.S. Cheema]  
Member (Judicial)

[Balvinder Singh]  
Member (Technical)

*/akc/uv*