

## **NCLAT HOLDS POWER OF ATTORNEY HOLDERS “NOT AUTHORISED” TO PRESENT INSOLVENCY APPLICATION**

In *Palogix Infrastructure Pvt. Ltd. v. ICICI Bank Ltd* the National Company Law Appellate Tribunal (“NCLAT”) held that a power of attorney holder is not authorised to present an insolvency application under sections 7, 9 and 10 of the Insolvency and Bankruptcy Code, 2016. Thus mere presence of power of attorney held by a person for proceedings in certain tribunals is not sufficient to present an insolvency application. There must be a specific authorization in favour of the person presenting the application.

Section 7 of the Code states as follows:

*“A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.*

*Explanation.-- For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.”*

Section 9 of the Code states as follows:

*“After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.”*

Section 10 of the Code states as follows:

*“Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority.”*

ICICI Bank Ltd. filed an application under section 7 of the IBC for initiation of the corporate insolvency resolution process (“IRP”) against corporate debtor Palogix Infrastructure Pvt. Ltd.

The case was first heard by a two-member bench of the National Company Law Tribunal (NCLT). Having noticed that the financial creditor preferred the application through a power of attorney holder, the NCLT passed two separate orders: one held that the application through power of attorney is not maintainable (Judicial Member),

and the other that the application was maintainable (Technical Member). The Technical Member found that the power of attorney was given in favour of the Legal Manager to initiate proceedings before the NCLT.

The case was then referred to the President, NCLT, exercising power under section 419(5) of the Companies Act, 2013 (the "Companies Act") for constituting a larger bench for decision, wherein by majority judgment, the NCLT held that there should be specific authorization to the power of attorney holder to initiate the IRP. Since the financial creditor had not filed such specific authorization, it was directed to rectify the defects.

The Financial Creditor challenged the said order on appeal before the NCLAT on the ground that no specific authorization is required for initiation of the CIRP.

The key issue before the NCLAT was whether the constituted attorney authorised to file suits or proceedings against the company for recovery of the amount and also to affirm plaints and affidavits and other pleadings in any court of India, including NCLT, can file an application for initiation of corporate insolvency process under section 7 of the IBC.

The National Company Law Appellate Tribunal held as follows:

*"As per Section 7 of the 'I&B Code' an application for initiation of 'Corporate Insolvency Resolution Process' requires to be filed by 'Financial Creditor' itself. The form and manner in which an application under section 7 of the 'I&B Code' is to be filed by a 'Financial Creditor' is provided in 'Form-1' of the Adjudicating Authority Rules. Upon perusal of the Adjudicating Authority Rules and Form-1, it may be duly noted that the 'I&B Code' and the Adjudicating Authority Rules recognize that a 'Financial Creditor' being a juristic person can only act through an "Authorised Representative". Entry 5 & 6 (Part I) of Form No.1 mandates the 'Financial Creditor' to submit "name and address of the person authorised to submit application on its behalf. The authorization letter is to be enclosed. The signature block of the aforementioned Form 1 also provides for the authorised person's detail is to be inserted and also includes inter alia the position of the authorised person in relation to the 'Financial Creditor'. Thus, it is clear that only an "authorised person" as distinct from "Power of Attorney Holder" can make an application under section 7 and required to state his position in relation to "Financial Creditor"."*