IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
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C.P. (IB) No. 29/CB/2023

In the matter of:

Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

-And-

In the matter of:

IndusInd Bank Ltd., having its registered office at: 2401 Gen Thimmayya Road ContonmentPune, Maharashtra-411001, India.

... Financial Creditor

-Versus-

Siddhi Agro Foods Pvt. Ltd., having its registered office at: 9, Annapurna Complex, Agrasen Road, Raipur, Chattisgarh-492001, India.

... Corporate Debtor

Appearances:

For the Financial Creditor	:	Mr. Saswat K. Acharya, Adv for Ms. Preety Chowdhury, Adv. and Mr. Subham Agarwal, Adv, having filed Vakalath.
For the Respondent/Corporate Debtor	:	Mr. Rishav Banerjee, Adv for Mr. P.P. Bishwal, Adv, having filed Vakalath.

Coram:

Shri P. Mohan Raj	:	Member (Judicial)
Shri Kaushalendra Kumar Singh	:	Member (Technical)

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Order Pronounced on: 03.04.2024

ORDER

1. The present petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "**IBC**") by Indusind Bank Ltd which is the Financial Creditor (hereinafter referred as "**FC**"), seeking initiation of CIRP against Siddhi Agro Foods Pvt. Ltd., which is the Corporate Debtor (hereinafter referred as "**CD**") towards loan facility availed by the CD amounting to Rs. 62,66,08,088/- which includes Rs. 31,03,20,563.49/- (Principal Amount) and Interest amounting to Rs. 31,62,87,524.51/- calculated up to 28.02.2023.

Brief facts of the petition:

2. By virtue of an Agreement for cash credit/overdraft facility dated 24th June 2015, the FC sanctioned and disbursed a credit limit of Rs. 28,00,00,000/- (Rupees Twenty-Eight Crore Only) and a Term Loan of Rs.1,63,35,000/- (Rupees One Crore Sixty-Three Lakhs Thirty-Five Thousand Only) was granted to the CD vide sanction letter issued by FC dated 08.06.2015. In this regard, the Master General Terms Agreement and Multi-Facility Loan Agreement dated 24 June 2015 along with the sanction letter dated 08 June 2015 has been placed on record. The CD has also registered the charges towards the loan availed by them with the Registrar of Companies, Chhattisgarh, thus, categorizing the applicant as the secured financial creditor. After the failure on the part of the CD to make a payment towards the credit facility the account of the CD was classified as a 'Non-Performing Asset' on 11.07.2017, which is the date of default and subsequently a demand notice under Section 13 (2) of the SARFAESI Act, 2002 was issued by the FC seeking the payment of unpaid loan amount along with interest component.

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The CD has unequivocally acknowledged the debt in its balance sheet for the financial year 2019-20 which constitutes the acknowledgment of debt and extends the period of limitation. Further, the Hon'ble Supreme Court of India also excluded the period of lockdown from March 15, 2020 to February 28, 2022. Therefore, the petition is well within the period of limitation. The total debt amounts payable as on 28.02.2023 is Rs. 62, 66 crores. Hence this petition.

Brief contents of the reply filed by the Corporate Debtor:

3. The petition is liable to be dismissed for lack of proper authorization to initiate CIRP against the corporate debtor. The specific authorisation is required to be given to initiate CIRP against the CD, but such specific authorisation is absent in this case. The application is liable to be dismissed for this defect. Mr. Rohit Swaroop is not authorised to initiate CIRP, on the basis of power of attorney dated 24.06.2020; since it is not a specific power of attorney authorising Mr. Rohit Swaroop to file this petition. This position of law is upheld by Hon'ble NCLAT in Palogix Infrastructure Private Limited -vs- ICICI Bank Limited (Company Appeal (AT) (Insol) No. 30 of 2017). The power deed does not authorise Mr. Rohit Swaroop to file the petition under Section 7 of IBC 2016. The power of attorney is joint power of attorney which cannot be relied upon. The Balance Sheet of the corporate debtor is filed in order to show that there is an acknowledgement of liabilities of debt; however, the purported acknowledgment relied by the petitioner is much beyond the three years from the date of NPA as such the said acknowledgment will not extend the period of limitation. The present petition is not maintainable for non-compliance of notification No. IBBI/2022-23/GN/REG085 dated 14.06.2022, as per said notification the petition under

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section 7 IBC 2016 must be accompanied by a default of record from an information utility. In the circumstances, the petition is to be dismissed.

Brief contents of the Rejoinder filed by the applicant Financial Creditor:

4. It is submitted that Mr. Rohit Swaroop has been specifically authorised to file proceedings by or against the petitioner/financial creditor, before Tribunal or Authority. The judgment relied by the respondent is no more sustained after the pronouncement of the Apex Court Judgment ***Rajendra Narottamdas Seth and Anr-vs- Chandra Prakash Jain and Anr. (2022) 5 SCC 600***. The Board of the Financial Creditor Bank vide its resolution dated 27.03.2012 has issued power of attorney dated 27.04.2012 in favour of Mr. Sushil Kumar Jain in which he has been granted the authority to appoint further Attorney to commence any proceedings for the petitioner before any Tribunal or Authority. The said Mr. Jain in pursuance of Power Attorney dated 27.04.2012 executed power of attorney dated 24.06.2020 in favour of Mr. Rohit Swaroop. On the basis of power deed dated 24.06.2020, Mr. Swaroop has filed this petition.

5. Without any ambiguity the date of default is in Part IV of Form I as 11.07.2017. The petition is not barred by limitation because the corporate debtor in its balance sheet for the F.Y 2018-19 and 2019-20 has acknowledged the debt payable to the Financial Creditor, which extends the period of limitation. Besides that, the respondent by e-mails dated 13.09.2021, 27.10.2021 and 28.10.2021, had submitted its OTS proposal to the Financial Creditor thereby acknowledging the dues payable by them. Therefore, period of limitation is extended as per Section 18 of the Limitation Act, 1963. The present petition cannot be dismissed for mere non-submission of Information Utility Certificate along with petition. Additional document can be filed at any time during the pendency of the petition, therefore filing of the NesL Certificate subsequently is valid.

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6. Points for consideration are: -

i. Whether the Petition filed by Power Agent Mr. Rohit Swaroop in pursuance of power of attorney dated 24.06.2020 is valid in law?
ii. Whether the Petition is barred by limitation?
iii. Whether the non-filing of record of information utility certificate along with petition is fatal?

7. Point No. 1.

8. In the present case, Mr. Sushil Kumar Jain, who is the Head-Financial Restructuring and Reconstruction Group of the applicant FC, who has been duly authorised *vide* the power of attorney dated 27.04.2012, which was provided through a Board resolution dated 27.03.2012, by executing a Specific Power of Attorney dated 24 June 2020, has appointed Mr. Rohit Swaroop, who is an Assistant Vice President of the applicant Financial Creditor, to do and perform various functions on behalf of the financial creditor including "to commence proceedings by or against the bank before any court/appellate court/Debt Recovery Tribunal or any other Tribunal or Authority".

9. It is the case of the CD that the purported power of attorney cannot be relied upon as such Power of Attorney does not authorize Mr. Rohit Swaroop to file an application under Section 7 of the IBC to initiate CIRP against the CD. They have contended that specific authorization is required to initiate CIRP against a CD. The CD has further argued that there cannot be sub-delegation of authority under the garb of multiple power of attorneys.

10. As pointed out by the Learned Counsel for the FC, the position of law with regard to a specific and valid power of attorney has been clarified by the

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Hon'ble Supreme Court in **Rajendra Narottamdas Seth & Anr. V. Chandra Prakash Jain & Anr.**, (2022) 5 SCC 600, wherein the Hon'ble Supreme Court while affirming the ruling of the Hon'ble National Company Law Appellate Tribunal in the case of **Palogix Infrastructure Private Limited vs. ICICI Bank Limited**, Company Appeal (AT) (Insol) No. 30 of 2017, at Para 11 of the judgment has held that:

> *"The NCLAT was of the opinion that general authorisation given to an officer of the financial creditor by means of a power of attorney, would not disentitle such officer to act as the authorised representative of the financial creditor while filing an application under Section 7 of the Code, merely because the authorisation was granted through a power of attorney. Moreover, the NCLAT in Palogix Infrastructure (supra) has held that if the officer was authorised to sanction loans and had done so, the application filed under Section 7 of the Code cannot be rejected on the ground that no separate specific authorisation letter has been issued by the financial creditor in favour of such officer. In such cases, the corporate debtor cannot take the plea that while the officer has power to sanction the loan, such officer has no power to recover the loan amount or to initiate corporate insolvency resolution process, in spite of default in repayment. We approve the view taken by the NCLAT in Palogix Infrastructure (supra)."*

11. We are of the view that the argument of the CD concerning the sub-delegation of authority vide multiple power of attorneys is concerned is untenable in light of principles enshrined under Section 194 of the Indian Contract Act, 1872 which prescribes that an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

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12. Coming to the facts of the present case, the power of attorney dated 24.06.2020 in favour of Mr. Rohit Swaroop, was executed by Mr. Sushil Kumar Jain who has been duly authorized by the power of attorney dated 27.04.2012, which was provided through a Board resolution dated 27.03.2012. Further, the power of attorney of Mr. Rohit Swaroop empowers him to commence proceedings by or against the Bank before any court/appellate court/Debt Recovery Tribunal or any other Tribunal or Authority, which cannot be said to be non-specific and can be termed as a valid power of attorney.

13. Therefore, in the present case, as Mr. Sushil Kumar Jain is authorized by clause IV of POA dated 27.03.2012 to appoint further attorney, to commence proceedings by or against the Bank before any court/ appellate Court/ Debt Recovery Tribunal/ or any other Tribunal or Authority and in furtherance of that he has authorized Mr. Rohit Swaroop to institute any legal proceedings before any tribunal or court, the same cannot be termed to be untenable. In a similar fact of the case ***the Hon'ble NCLAT- Delhi in Vijaykumar Singhania – vs- Bank of Baroda and Anr dated 13. 12.2023 in para 52 and 53 as follows:-***

> *52. The Power of Attorney was signed by Nidhi Kumar in favour of Shri. Pawan Sharma on 22.12.2021 as it is clear from documents filed at Page Nos. 1502-1507. The Power of Attorney refers to Power of Attorney dated 01.09.2021 which empowers Nidhi Kumar to nominate, constitute and appoint. Following statement in Power of Attorney given by Nidhi Sharma is as follows: -*
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> *"NOW KNOW YE AND THESE PRESENTS WITNESS that by virtue of the said Power to substitute contained in the said Power of Attorney dated 1st*

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September Company Appeal (AT) (Insolvency) No.1058 of 2023 57 2021 for all or any of the Powers contained therein and enabling me, I hereby nominate, constitute and appoint Mr. Pawan Sharma, (EC No. 102555), now in the service of the Bank as Senior Manager at Zonal Stressed Asset Recovery Branch (ZOSARB), New Delhi and who has been identified for posting at Zonal Stressed Asset Recovery Branch (ZOSARB), New Delhi to be the true and lawful attorney of the Bank at New Delhi or any place or places in India (including Head office at Baroda) or at any other place or places abroad for and on behalf of the Bank and in the name of the Bank or in my name to do and perform all or any of the acts, matters, powers and things set out in the Schedule hereto which I am authorised to do and perform by virtue of the said Power of Attorney dated 1st September 2021 in the same manner and as effectively as the Bank or as I might now do them or any of them or the said Mr. Pawan Sharma could have done them or any of them if he had in my stead received authority thereto under the Power of Attorney dated 1st September 2021."

53. Nidhi Kumar was fully empowered to nominate, constitute and appoint any one as lawful attorney of the bank at New Delhi. Pawan Sharma himself was Senior Manager, Zonal Stressed Assets Recovery Branch as noted above. We, thus, do not find any error in filing the application duly signed by Pawan Sharma supported by Affidavit of Pawan Sharma and submission of the Appellant that NCLT has no jurisdiction to entertain application filed by Pawan Sharma is to be rejected.

14. It is therefore answer to this point that the application has been filed by an authorized person on behalf of the Financial Creditor is valid in law, accordingly, the petition is maintainable.

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15. Point No. 2

16. In the instant case, the date of default is 11 July 2017, i.e., the date on which the account of the CD was classified as 'Non-Performing Assets' and the application under Section 7 of the code was filed on 29 March 2023. According to the FC, Section 18 of the Limitation Act, 1963 is applicable because the CD acknowledges its debt by way of Balance sheets for the FY 2018-19, and FY 2019-20. It is pertinent to note that the CD on 13.09.2021, 27.10.2021 and 28.10.2021 through e-mails has proposed the FC for a One-Time Settlement of the debts due and payable by the CD. In the said e-mail the CD has also confirmed that they are financially broken and in deep economic crisis.

17. It is no more *res integra* that Section 18 of the Limitation Act, 1963 is applicable to petitions filed under Section 7 of the Code. In case the petition under Section 7 is filed beyond the period of three years from the date of default and the FC furnishes the required information relating to the acknowledgement of debt, in writing by the CD, before the Adjudicating Authority, with such acknowledgement having taken place within the initial period of three years from the date of default, a fresh period of limitation commences and the application can be entertained, if filed within this extended period.

18. The Corporate debtor has taken the plea of limitation when the financial creditor in the petition relied upon the Balance Sheet of corporate debtor for the financial year 2019-20, as the said document was approved by the Board on 7.12.2020. When the date of default is on 11.07.2017, the supra acknowledgment is dated 7.12.2020 thus, beyond the period of three years. But on the financial creditor side has subsequently filed document i.e.,

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Balance sheets of the Corporate Debtor for the financial years 2018-2019, there the corporate debtor acknowledged the debt; this statement is dated 26.09.2019 i.e., within three years from the date of NPA/default. Thus, the plea of limitation raised by the corporate debtor is no more valid and sustainable.

19. In the circumstances, the date of default is on 11.07.2017; the corporate debtor acknowledged the debt in the 2018-2019 balance sheet dated 26.09.2019 and also acknowledged the debt in 2019-2020. the corporate debtor submitted OTS and acknowledged the debt by e-mails dated 13.09.2021, 27.10.2021 and 28.10.2021 and this petition is filed on 29.03.2023. As a result, it is answered that the petition is not barred by limitation.

20. **Point No. 3:**

21. The corporate debtor has taken a plea that the filing of petition itself is defective, because, the petition is not accompanied with information utility certificate as required by notification No. IBBI/2022-23/GN/REG085 dated 14.06.2022. The said notification dated 14.06.2022 Regulation 20 (1A) was introduced , as per Regulation the creditor shall file the information of default with information utility before filing an application to initiate CIRP under Section 7 or 9 of IBC, 2016. By the said Regulation the petition shall be filed along with record of default. But the Hon'ble NCLAT-Delhi in Vijaya Kumar Singhania -vs- Bank of Baroda and Anr. 13.12.2023 in para 29 held that non-production of record of default from an information utility is not a ground to reject the application. The order runs as follows: -

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29. From the above examination of statutory scheme, Rules and Regulations, it is clear that Regulation 20(1A) cannot be read to mean that after the said amendment brought in regulation w.e.f 14.06.2022 an application filed under Section 7 which is not supported by information of default from an information utility is to be rejected and if the Financial Creditor has filed other evidence to prove default which is contemplated by the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the said application has not to be considered. We, thus, are of the considered view that even after amendment of Regulation 20 by insertion of Regulation 20(1A) w.e.f 14.06.2022, Financial Creditor is entitled to file evidence of record of default as contemplated by Regulation 2A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. We, thus, do not find any substance in the submission of the Appellant that since Financial Creditor has not filed the record of default from an information utility, Section 7 deserves to be rejected.

22. In our case the petitioner/financial creditor not filed the default certificate along with petition, but subsequently filed the default certificate along with rejoinder. As per Section 7 (3) (a) read with Regulation 2A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 the financial creditor is at liberty to submit other records to prove the debt and default. In this case the financial creditor produced documents annexure C to I and proved the default. In the circumstances, it is answered that belated filing of default certificate of information utility is not fatal to the petition.

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23. In view of the answer arrived to the above points, we hereby **admit** the petition and pass the following Orders:

(i) The Corporate Debtor Siddhi Agro Foods Pvt. Ltd is admitted in the Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016.

(ii) The moratorium under section 14 of the Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of section 14(1) of the Code.

(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;

(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.

(iii) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of Corporate Debtor under section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

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(iv) The petitioner/financial creditor has proposed the name of **Mr. Sushanta Kumar Choudhary** Having Registration No. **IBBI/IPA-003/IP-N00292/2020-2021/13238** to appoint as Interim Resolution professional. The proposed IRP has given his written consent and the same is filed with the petition.

(v) As proposed by the Financial Creditor, we appoint **Mr. Sushanta Kumar Choudhary**, having registration No. **IBBI/IPA-003/IP-N00292/2020-2021/13238,** having contact address-Ambika Devi Apartment, 1st Floor, 64, Hemchandra, Naskar Road, Beliaghata, Trikone Park Kolkata. **to** act as an Interim Resolution Professional (IRP) of the corporate debtor to carry out the functions as per the Code, subject to his possessing a valid Authorisation for Assignment (AFA) in terms of 7A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations 2016. He shall conduct the Corporate Insolvency Resolution Process as per the provisions of Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.

(vi) The IRP so appointed shall make a public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.

(vii) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period. The corporate debtor to provide effective assistance to the IRP as and when he takes charge of the assets and management of the corporate debtor.

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(viii) The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under section 19 of the Code extending every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

(ix) The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by section 20 of the Insolvency & Bankruptcy Code, 2016.

(x) The Financial Creditor is directed to pay an advance of Rs.2,00,000/- (Rupees Two Lakh Only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for Interim funds, which shall be provided as per Rules.

(xi) The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and to the concerned Registrar of Companies, of IBBI after completion of necessary formalities, within three working days and upload the same on website immediately after pronouncement of the order.

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(xii) The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST, State Trade Tax, and Provident Fund etc. who are likely to have their claim against Corporate Debtor as well as to the trade unions/employee's associations so that they are informed of the initiating of CIRP against the Corporate Debtor timely.

(xiii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

24. Interim Resolution Professional shall file 1st Progress Report within six weeks from the date of this order.

25. Thus, the corporate debtor ***Siddhi Agro Foods Pvt. Ltd CP (IB) No.29/CB/2023 is admitted** into CIRP.

26. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

27. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

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Kaushalendra Kumar Singh
Member (Technical)

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P. Mohan Raj
Member (Judicial)

Signed on this, the 03th day of April, 2024

Kaushik LRA / Supriya P.S.

* Amended as per the order dated 01.05.2024 passed in IA (IB) No. 130/CB/2024.