

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CORAM

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

**Shri S. Vijayaraghavan
Hon'ble Member (T)**

C.P. (I.B.) 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. Vivek Jhunjunwala, Advocate] For the Applicant
2. Mr. Pratik Shanu, Advocate]

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

Date of Pronouncing the order :

ORDER

Per Sri Vijai Pratap Singh, Member(J)

The applicant being a Financial Creditor has filed this Company 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 to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.

Brief facts of the case are such that the applicant ICICI Bank Ltd. (hereinafter referred to as the "Applicant") having Identification No.L65190GJ1994PLC021012 and registered office at "ICICI Bank Tower, Near Chakli Circle, Old Padra Road, Vadodara- 390007 in the state of Gujarat and Mr. Srinjoy Bhattacharjee has got authorisation dated 20.10.2014 to file this petition. The applicant in its course of business has sanctioned a term loan of Rs.111 crores to the Corporate Debtor, Palogix Infrastructure Private Limited having identification no. U45201WB2007PTC162847 and out of which Rs.65,60,00,000/- was disbursed. The date of disbursement in parts has been given in the application. The applicant petitioner has stated that the amount in default as on 31st December 2016 is Rs.32,21,97,699.06. The applicant petitioner has stated that the Corporate Debtor has committed first default on 26.06.2016, thereafter on 30.06.2016 regarding the term loan facility given to the Corporate Debtor. In the circumstances, the applicant, Financial Creditor has filed this application to initiate Corporate Insolvency Resolution Process under the Insolvency & Bankruptcy Code, 2016. The applicant petitioner has filed a copy of the Authorisation Letter and copy of notice under Exhibit "I".

The petitioner has also filed the specific Power of Attorney pertaining to initiation of Corporate Insolvency Resolution Process against the Corporate Debtor, which was given to Shri Srinjoy Bhattacharjee and Shri Srinjoy Bhattacharjee has also filed an affidavit that he is the Authorised Representative of the applicant and he has verified that the application for initiating Corporate Resolution Process has been drafted under instructions and

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contents of the accompanying application are true and correct on the basis of information received by him. In this case, the petitioner has proposed the name of **Smt. Mamata Binani, Room No.6, 4th floor, Commerce House, 2A, Ganesh Chandra Avenue, Kolkata – 700 013, E-mail: mamtabinani@gmail.com, Mobile no.9831099551** as Interim Resolution Professional and has annexed the consent letter of Shri Mamata Binani in form no.2.

The Ld. Counsel for the Respondents has relied on the judgment of the Hon'ble NCLAT passed in case of J.K. Jute Mills -vs- Surendra Trading Company and on the basis of law laid down in that case, the respondent has claimed that at the time of filing of petition, the petitioner was not having proper authorisation and time to rectify the mistakes was given to the petitioner but he failed to remove the defect in the given time. Hence, the petition deserves to be rejected on the basis of time limit prescribed under the Insolvency & Bankruptcy Code, 2016.

The respondent's claim has no force because the facts referred to by the Respondents are different from this case. In this case, the delay in rectifying the errors was not on account of delay on the part of the petitioner but was unavoidable, because due to difference of opinion among the different Bench Members under section 420 of the Companies Act, 2013, the matter was referred to the Hon'ble President, NCLT for referring the matter to Larger Bench and after the decision of the Larger Bench, the petitioner preferred an appeal before the NCLAT. Therefore, time taken by the petitioner in rectifying the mistakes was not intentional and the petitioner is not anyhow responsible for that. On the above basis, it is clear that the argument raised by the Respondents is not sustainable.

On the basis of records available before us, we are of the view that the Corporate Debtor has committed default of making payment of Rs.32,21,97,699.06 as on 31st December, 2016. Even when the copy of the



petition was served, no payment was made to the petitioner. Therefore, the petitioner has filed an application for initiating Corporate Resolution Process.

In the circumstances mentioned above, the petition for initiating the Corporate Resolution Process deserves to be admitted and declare a moratorium and public announcement as stated in section 13 of IBC 2016. The proposed IRP has also given her consent in Form-2 under Rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

ORDER

The application for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor is admitted along with the Proposal for appointing Smt. Mamata Binani as IRP, whose particulars are mentioned above. We hereby declare a moratorium as per provisions of sections 13 and 14 of I.B.C., 2016. We also issue direction for issuing Public Announcement in compliance of provisions of Section 15 of the I.B.C., 2016. The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors.

Certified copy of the order may be issued to the petitioner on urgent basis subject to compliance of requisite formalities. A copy of the order should also be sent to the Corporate Debtor.

List the matter on 30th May, 2017.


(S. Vijayaraghavan)
Member(T)


(Vijai Pratap Singh)
Member (J)

Signed on this, the 16th day of May, 2017