

HIGH COURT OF CHHATTISGARH, BILASPUR**Company Petition No.10 of 2016**

IDBI Capital Markets & Securities Ltd. (a wholly owned Subsidiary Of IDBI Bank Ltd.) A Company Formed Under The Provision Of The Companies Act, 1956, Having Its Registered Office At Mafatlal Center, 3rd Floor, Nariman Point, Mumbai 400 021, Maharashtra Through Its Authorized Signatory Mr. Suresh B. Lokhande, S/o Bhiku R. Lokhande, Aged About 26 Years, Working As Senior Executive Compliance.

----Petitioner

Versus

Vandana Vidhyut Limited (VVL) A Public Company Incorporated On November 10, 1995 Under The Companies Act, 1956 And Having Its Registered Office At Vandanaa Bhawan, M.G. Road, Raipur, (Chhattisgarh) 492001.

---- Respondent

For Petitioner	:	Mr.Uttam Pandey, Advocate
For Respondent	:	Mr.Ankit Shinghal, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board**8/9/2017

1. Preliminary objection has been raised on behalf of the respondent praying for dismissal of the company petition instituted by the petitioner for winding up of the respondent-Company under Section 433 of the Companies Act, 1956.
2. Mr.Ankit Shinghal, learned counsel appearing for the respondent, would submit that company petition has been signed and filed by Mr.Suresh B. Lokhande as Senior Executive Compliance, who is not duly authorized person on behalf of the petitioner company to file the company petition as in the Board of Directors resolution dated 23rd October, 2011 only Mr.Nagraj Garla, Managing Director & CEO of the Company is authorized to do the acts on behalf of the Company. No power has been conferred to the Managing Director of the Company to

file the company petition, therefore, delegation of power by Mr.Nagaraj Garla to Mr.Suresh B. Lokhande, Senior Executive Compliance will not confer him any power to institute this winding up petition. Therefore, it is liable to be dismissed.

3. Mr.Uttam Pandey, learned counsel appearing for the petitioner, would submit that the Board of Directors have resolved and conferred the powers to sign contract notes, underwriting agreements, sub-brokers agreements and other agreements with the company's client or principals has been conferred to Managing Director and CEO of the Company, therefore, such power would include power to file the company petition and as such, the preliminary objection deserves to be rejected.
4. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.
5. The company petition has been filed along with an affidavit of Mr.Suresh B. Lokhande, Senior Executive Compliance at IDBI Capital Markets & Securities Ltd. When pre-admission notice was served to the respondent-Company, the respondent-Company has filed its reply stating inter-alia that the person who has filed the present winding up petition is not duly authorized person by the petitioner company to file the present petition. It has been further stated that no averment has been made that on what date and by which resolution of Board of Directors of the petitioner-Company, Mr.Suresh B. Lokhande has been authorized to file the present winding up petition on behalf of the

Company and the petitioner has not filed any document or copy of Board of Resolution to demonstrate that Mr.Suresh B. Lokhande is duly authorized by the Board of Directors of the petitioner Company to file the present company petition for winding up of the respondent Company. It has also been stated that in absence of valid authorization of the person to file the petition, the present petition in its present form is not maintainable.

6. In the rejoinder filed by the petitioner company, it has been stated that Managing Director and CEO of the Company Mr.Nagraj Garla has been authorized by the Board of Directors in its 99th meeting held on 23rd October, 2015 and the said Managing Director and CEO has authorized Mr.Suresh B. Lokhande to file the present winding up petition and Mr.Nagraj Garla has authorized Mr.Suresh B. Lokhande on 12th August, 2016 to file the present petition.

7. Copy of the resolution dated 23.10.2015 has been filed as Annexure P/7. Relevant clause is clause 16 which states about the filing of the suits which read as under:-

“16. To institute for and on behalf of Company one or more suits against any party and to defend any suits instituted against the Company and for that purpose appoint lawyers, solicitors, advocates, chartered accountants, assessors, valuers, arbitrators or any other person or persons and fix their remuneration.”

8. Now the question is whether clause 16 of the resolution authorizes Mr.Nagraj Garla, MD & CEO of the company to authorize Mr.Suresh B. Lokhande to file winding up petition.

9. A focused glance of the aforesaid clause 16 would show that the company has authorized Mr.Nagraj Garla, MD & CEO of the Company

to institute for and on behalf of Company one or more suits against any party and to defend any suits instituted against the Company and for that purpose appoint lawyers, solicitors, advocates, chartered accountants, assessors, arbitrators or any other person or persons and fix their remuneration, but there is no such clause where Mr.Nagraj Garla has been authorized by the Board of Directors to file company petitions or to delegate the powers to file company petition to another person.

- 10.** The settled principle is that powers of attorney must be strictly construed. The rationale behind that principle being that the powers given are not abuse by agents or the actions are restricted within and only to the extent the power is indicated or given (See Jivibai w/o Karsondes Bhatia Vs. Ramkuwar Shrinmas Murarka Agarwala¹, P.M. Desappa Nayanam Varu Vs. Ramabhakttda Ramiah², H. Ezekiel Vs. Carew & Co. Ltd.³, D.H.M. Framji Vs. The Eastern Union Bank Ltd.,Chittagong⁴, Mr.Inderwati Vs. Hari Ram⁵, Vimal C. Sodhani Vs. Parag Fans and Colling System Ltd. and others⁶ and Shantilal Khushaldas and Brothers Pvt. Ltd. Vs. Smt. Chandanbala Sughir Shah and another⁷.)

- 11.** The Supreme Court in the matter of Church of Christ Charitable Trust & Educational Charitable Society Vs. Ponniyamman Educational Trust⁸ held as under:-

1 A.I.R. 1947 Nagpur 17

2 A.I.R. 1952 Madras 559

3 A.I.R. 1938 Calcutta 423

4 A.I.R. 1951 Punjab 371

5 A.I.R. 1937 Lahore 318

6 2004 SCC OnLine MP 463

7 1992 SCC OnLine Bom 83

8 (2012) 8 SCC 706

“19. Next, we have to consider the power of attorney. It is settled that a power of attorney has to be strictly construed. In order to agree to sell or effect a sale by a power of attorney, the power should also expressly authorize the power to agent to execute the sale agreement/sale deed i.e., (a) to present the document before the Registrar; and (b) to admit execution of the document before the Registrar. A perusal of the power of attorney, in the present case, only authorizes certain specified acts but not any act authorizing entering into an agreement of sale or to execute sale deed or admit execution before the Registrar.

20. In a recent decision of this Court in *Suraj Lamp and Industries Pvt. Ltd. vs. State of Haryana*⁹, the scope of power of attorney has been explained in the following words: (SCC pp. 666-67, paras 20-21)

“20. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorises the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1-A and Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee.

21. In *State of Rajasthan v. Basant Nahata*¹⁰ this Court held: (SCC pp. 90 & 101, paras 13 & 52)

“13. A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favour of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.

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9 (2012) 1 SCC 656

10 (2005) 12 SCC 77

52. Execution of a power of attorney in terms of the provisions of the Contract Act as also the Powers of Attorney Act is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the donee to act on his behalf. Except in cases where power of attorney is coupled with interest, it is revocable. The donee in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee." An attorney-holder may however execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf of the grantor."

- 12.** In the light of aforesaid principle of law, it is quite vivid that the Board of Directors has not authorized Mr.Nagraj Garla, MD & CEO of the company to file winding up petition and thus, clause 16 only authorizes Mr.Nagraj Garla to institute for and on behalf of Company one or more suits against any party and to defend any suits instituted against the Company and to appoint lawyers, solicitors, advocates, chartered accountants, assessors, arbitrators or any other person or persons and fix their remuneration and thus, the Board of Directors has not authorized Mr.Nagraj Garla to file winding up petition. Thus, question of authorization or delegating the power to Mr.Suresh B. Lokhande to file winding up petition does not arise and that will not give any power to Mr.Suresh B. Lokhande, Senior Executive, Legal and Compliance to file the instant winding up petition.
- 13.** Accordingly, it is held that the petition as filed on the strength of authorization allegedly given by Mr. Nagraj Garla, MD & CEO of the Company is not a valid presentation and hence, cannot be entertained for being tried on the merits. Thus, the present company petition as

framed and filed is not maintainable and is hereby rejected. However, this will not bar the petitioner Company to proceed in accordance with law.

Sd/-

(Sanjay K. Agrawal)

Judge

B/-