

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**DIVISION BENCH**  
**COURT - 1**



ITEM No.301  
C.P.(IB)/257(AHM)2023

**Order under Section 7 IBC**

**IN THE MATTER OF:**

Zep Infratech Ltd

.....Applicant

V/s

Opel Securities Pvt Ltd

.....Respondent

**Order delivered on: 27/10/2023**

**Coram:**

Mr. Shammi Khan, Hon'ble Member(J)

Mr. Sameer Kakar, Hon'ble Member(T)

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-Sd-

**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

-Sd-

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**



**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT NO. I**

**CP(IB)/257/AHM/2023**

*(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

*In the matter of **M/s. Opel Securities Private Limited***

**Zep Infratech Ltd.**

Through Resolution Professional  
Mr. Nimai Gautam Shah,  
605-606-607, Silver Oaks,  
Nr. Mahalaxmi Char Rasta,  
Paladi, Ahmedabad-380007

*... Financial Creditor*

-Vs-

**Opel Securities Private Limited**

Shop No. 102, Riddhi Siddhi Avenue,  
Village Chhatral, Taluka Kalol,  
**Gandhinagar-382729**

*... Corporate Debtor*

**Order pronounced on 27.10.2023**

**CORAM: SHAMMI KHAN, HON'BLE MEMBER (J)  
SAMEER KAKAR, HON'BLE MEMBER (T)**

**Appearance**

For the Applicant

: Mr. Jaimin Dave, Advocate

For the Respondent

: Mr. Rajiv Chawla a.w.

Mr. Arjun Sheth, Advocate.



## **ORDER**

**Per: BENCH**

1. This is an Application filed by M/s. Zep Infratech Limited by its Resolution Professional (herein after referred to as Financial Creditor) against M/s. Opal Securites Private Limited (herein after referred to as the Corporate Debtor) under Section 7 of the Insolvency and Bankruptcy Code, 2016, seeking to initiate the Corporate Insolvency Resolution Process (“CIRP”) against the Corporate Debtor, to appoint IRP and to initiate moratorium.
  
2. From Part-I of the application, it is seen that the Financial Creditor was incorporated on 18.02.1994. From Part-II of the application it is seen that the Corporate Debtor is one Opal Securities Private Limited having CIN No.U46909GJ1995PTC028055). The Corporate Debtor was incorporated on 08.11.1995 and having its registered office at Shop No.102, Riddhi Siddhi Avenue, Village: Chhatral, Taluka: Kalol, Gandhinagar – 382729.
  
3. From Part-III of the application, it is seen that the applicant has nominated Mr. Sachin Dinkar Bhattbhatt (Registration No: IBBI/IPA-003/IP-N000138/2017-2018/11514 as the Interim Resolution Professional.



4. Part-IV of the application reveals that the Financial Creditor has granted a sum of Rs.6,50,00,000/- to the Corporate Debtor sometime in April-2014. The loan was disbursed on 18.05.2014. The loan was sanctioned and disbursed by Sintex Power Limited whose name was changed to Sixvents Power and Engineering Limited with effect from 31.03.2015. The said Sixvents Power and Engineering Limited was amalgamated with the Financial Creditor vide order of this Tribunal dated 05.06.2018. Accordingly, all the assets and liabilities of Sixvents Power and Engineering Limited including the loan receivable from the Corporate Debtor stood transferred in the name of the Financial Creditor.
  
5. It is stated that after the said amalgamation of Sixvents Power and Engineering Limited with the Financial Creditor on 01.07.2018, the Financial Creditor and the Corporate Debtor had entered into Memorandum of Understanding cum Loan Agreement; wherein, the Corporate Debtor had agreed to pay the loan amount of Rs.6.50 Crores along with premium of 20% on or before 30.06.2022. A copy of MOU is annexed as Annexure-F. It is said that the Corporate Debtor has failed to repay the aforementioned admitted dues on or before 30.06.2022.



6. The Financial Creditor was admitted into CIRP by this Adjudicating Authority vide order dated 31.07.2023 and Mr. Nimai Gautam Shah was appointed as an IRP of the Financial Creditor.
7. Upon verification of the books of accounts as well as records of the Financial Creditor, the IRP acquired knowledge about the transaction of the amount of the Corporate Debtor and the Financial Creditor. Accordingly, on 26.08.2023, the IRP addressed a letter to the Corporate Debtor for the repayment of the said loan of Rs.6.50 Crore with the premium of 20% aggregating to Rs.7.80 Crores. A copy of such letter is annexed as Annexure-H. The Corporate Debtor, despite the receipt of the letter has failed to repay the loan.
8. The first meeting of the Committee of Creditor of Zep Infratech Limited (the Financial Creditor) was held on 31.08.2023 wherein, the CoC unanimously resolved to initiate the proceedings under Section 7 of the I.B.C., 2016 against the Corporate Debtor in the present application.
9. The Financial Creditor, on 11.09.2023 issued a legal notice through its advocate in course with Clause No. 6(a) of the MOU dated 01.07.2018 calling upon the Corporate Debtor to repay the outstanding amount of



Rs.7.80 Crore. A copy of the said legal notice is annexed as Annexure-I. The said notice was returned. However, the same was served on email on 02.10.2023 which was replied by the Corporate Debtor on 04.10.2023.

10. It is stated that in its reply that the Corporate Debtor admitted the dues and stated that:

***“We would like to inform you that currently we are having financial difficulties and we are not in position to pay the debt of Zep Infratech Limited.”***

A copy of email reply is attached as Annexure-K. Under the circumstances the present application is filed.

11. The date of default is stated to be 30.06.2022.
12. The record of default with NESL is attached and marked as Annexure-L.
13. Reply was filed by the Corporate Debtor through an affidavit dated 25.10.2023 affirmed by one Mr. Amit Ashokbhai Sompura said to be the director of the Corporate Debtor. Under para-2 of the said affidavit, the Corporate Debtor has stated as under:
- “that the respondent admits to having defaulted in repaying the financial debt in question.”***



14. The said affidavit was filed in response to the receipt of the advance copy of this application by the Corporate Debtor.
  
15. We have heard the counsels appearing on behalf of the parties and perused the documents. It is an admitted position from both the sides that an aggregate sum of Rs.6.50 Crore was given as loan from the Financial Creditor to the Corporate Debtor sometime in 2014. The existence Memorandum of Understanding cum Loan Agreement dated 01.07.2018 is not denied by the Respondent/ Corporate Debtor. According to the Memorandum of Understanding, the loan was repayable on 30.06.2022 and as such the present application is within the limitation period and is also not hit by the provisions of Section 10(A) of the Insolvency and Bankruptcy Code, 2016. Moreover, the Corporate Debtor, through its reply has admitted the debt and the default.
  
16. The amount claimed in default is more than rupees one crore. The NESL record of default reveals that the default is for a sum or **Rs.6,50,00,000/-** and it is duly authenticated.



17. Similarly, in the matter of **Innoventive Industries Ltd. Vs. ICICI Bank and Another**, Civil Appeal Nos.8337-38 of 2017, decided on August 31, 2017 Hon'ble Supreme Court has held as under:-

*“28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub section (1) In such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form is a detailed form in 5 parts, which requires particulars of the applicant In Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional In Part III, particulars or the financial debt in Part IV and documents, records and evidence of default In Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is*



to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. **The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete**, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.”

18. In view of the facts as stated *supra* and also in view of the ‘financial debt’ is proved by the Financial Creditor and the ‘default’ being committed on the part of the Corporate Debtor of an amount of more than Rs. 1 Crore, this Tribunal is left with no other option than to proceed with the present case and



initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

19. The Financial Creditor has proposed the name Mr. Sachin Dinkar Bhattbhatt, Reg. No. IBBI/IPA-003/IP-N000138/2017-18/11514 as the Interim Resolution Professional (IRP) who has also filed his consent in Form – 2 and AFA, it is seen that the Authorization for Assignment is granted to the said IRP till 10.11.2023. The proposed IRP who is appointed shall take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.
  
20. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;



- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent in respect of its property including any action under the Securitization 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 respondent.

*Explanation.*-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or



any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

21. During the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.



(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

22. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

(4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the 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, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.



23. The Financial Creditor is further directed to pay the IRP a sum of **Rs.2.00 Lakh** within a period of 7 days from the date of this order to meet the cost of CIRP.
24. Based on the above terms, the Petition stands **admitted** in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named shall also be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-Sd-

**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

-Sd-

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

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