

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



Item No. 205

CP (IB) No. 69/NCLT/AHM/2023

Order under Sections 7 of Insolvency and Bankruptcy Code, 2016

IN THE MATTER OF:

RAJ RADHE FINANCE LIMITED

....Financial Creditor

Versus

ZEP INFRA TECH LIMITED

....Corporate Debtor

Order delivered on: 31/07/2023

Coram:

Shammi Khan, Hon'ble Member(J)

Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :

ORDER

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

-SD-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)



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

CP (IB) 69/AHM/2023

(An application 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)

In the Matter of:

Raj Radhe Finance Ltd.
(CIN: U67120GJ1985PLC007576)
Registered office at 47,
Shyamal Row House 3/B,
Near Shyamal Cross Roads,
Satellite, Ahmedabad 380015.

...Applicant / Financial Creditor

Versus

Zep Infratech Limited
(CIN: U74899GJ1994PLC050189)
Registered office is located at
Abhijit, 7th Floor, Mithakali Six Roads,
Ellisbridge, Ahmedabad, Gujarat 380006.

...Respondent/ Corporate Debtor/Corporate Guarantor

Order Pronounced On: 31/07/2023

Coram: Shammi Khan (Member Judicial)
Kaushalendra Kumar Singh (Member Technical)

Appearance:

Advocate Mr. Monal Davawala for the Financial Creditor and
Advocate Mr. Arjun Sheth for the Corporate Debtor



ORDER

1. The Present Application is filed on 10.03.2023 by Raj Radhe Finance Limited through its Authorised Officer Mr. Meet F. Shah **(Applicant)**, authorised vide board resolution dated 04.04.2022, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IB Code) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 as a **Financial Creditor** for initiation of Corporate Insolvency Resolution Process (**CIRP**) against Zep Infratech Limited (**Corporate Debtor/Corporate Guarantor**) for having defaulted payment of its outstanding dues Rs 1,27,38,907/-. The date of default is 06.12.2022.

2. The Applicant is a company incorporated as on 17.01.1985 under the Companies Act, 1956 and registered as a non-banking finance company (NBFC) with Reserve Bank of India in accordance with the provisions contained under Section 45-IA of the Reserve Bank of India Act, 1934 and having identification No. U67120GJ1985PLC007576 and having registered office at 47, Shyamal Row House 3/B, Near Shyamal Cross Roads, Satellite, Ahmedabad 380015.

3. The Corporate Debtor is a company limited by shares, incorporated under the provisions of the Companies Act, 1956 on 18.02.1994, duly registered with Registrar of Companies, Ahmedabad with CIN: U74899GJ1994PLC050189 and its registered office is located at Abhijit, 7th Floor, Mithakali Six Roads, Ellisbridge, Ahmedabad, Gujarat 380006. The authorized share capital of the Corporate Debtor is Rs. 954200000/- and the Paid-up share capital of the Corporate Debtor is Rs 700000/-.



4. The averments made by the financial creditor in its application and presented/argued by the learned counsel for the financial creditor are summarized hereunder:

(i) In April 2022, the borrower (Shree Ram Cottex Industries Private Limited) applied for a term loan before the Financial Creditor of Rs. 1,50,00,000/- (Rupees One Crore and Fifty Lacs Only) and passed an appropriate Board Resolution in the meeting of Board of Directors held on 11.04.2022. After considering the request, the loan amount of Rs. 1,50,00,000/- was sanctioned on 11.04.2022, which was secured by way of hypothecation of book debts and stocks situated at factory premises of the Borrower i.e., Survey No. 39, Opp. Biliyala Bus Stop, National Highway 8-B, AT. Biliyala, Gondal, Rajkot – 360311, Gujarat, India bearing Loan Account No. RRFLRJK1013, to borrower (Shree Ram cottex Industries Private Limited) for which the Corporate Guarantee was given by Zep Infratech Private Limited (the respondent herein) as per personal guarantee deed dated 08.04.2022

(ii) The borrower and Guarantors executed Demand Promissory Note dated 06.04.2022, Loan-cum- Hypothecation Agreement dated 06.04.2022, Personal Guarantee Deed of (i) Shri Ramnik Chakubhai Bhalala and (ii) Shri Dineshkumar Chakubhai Bhalala both dated 08.04.2022, Corporate Guarantee Deed with M/s. Zep Infratech Limited, etc. for securing the debt.

(iii) On the default committed by the Borrower, the Financial Creditor invoked the Corporate Guarantee vide its Recall Notice dated 02.12.2022, upon the Corporate Guarantor to repay the Outstanding amount of Rs. 1,27,38,907/-. Despite the receipt of



recall notice the Corporate Guarantor failed / neglected payment of the outstanding amount to the Financial Creditor.

(iv) The entire business secured term loan of Rs. 1,50,00,000/- (Rupees One Crore and Fifty Lacs Only) was to be repaid in 24 (twenty-four) monthly instalments of Rs. 13,75,199.89/- (Rupees Thirteen Lacs Fifty-Seven Thousand One Hundred Ninety- Nine and Eighty-Nine Paise Only) each by the Borrower. Such repayment of the loan amount was to commence from August 2022, ending in July 2024 with an interest rate of 18% per annum which was payable at the end of every month on the outstanding principal amount.

(v) The loan was disbursed to the Borrower on 21.07.2022 vide a cheque bearing no. 327688 along with a covering letter for an amount of Rs. 1,46,05,200/- (Rupees One Crore Forty-Six Lacs Five Thousand and Two Hundred Only) after deduction of the processing fees of Rs. 3,94,800/- (Rupees Three Lacs Ninety-Four Thousand and Eight Hundred Only). However, the cheque was encashed in the month of August 2022. After the disbursement of the said loan amount, the Borrower had also paid 2 (two) monthly instalments to the Financial Creditor to the tune of Rs. 13,75,200/- (Rupees Thirteen Lacs Seventy- Five Thousand and Two Hundred Only) each pertaining to the months of August 2022 and September 2022, on 20.09.2022.

(vi) The sanction letter dated 11.04.2022 duly acknowledged by the borrower (Shri Ram Cottex Industries Pvt. Ltd) is annexed with the application mentioning the loan amount and the guarantee given by the corporate guarantor. Draft guarantee deed was placed before the Board of Directors for review and approval. The Board of Directors after detailed discussion and deliberations passed the resolution. The certified true copy of the



board of directors of the corporate guarantor granting approval to issue corporate guarantee in favour of the financial creditor for borrowing availed by the borrower (Shri Ram Cottex Industries Pvt. Ltd) is annexed with the application. A guarantee deed has been issued by the corporate guarantor to the financial creditor dated 08.04.2022, undertaking to pay 1,50,00,000/- Rs. With all the interest, delayed payment, charges costs, expenses payable by the borrower as mentioned in schedule one of the guarantee deed.

(vii) The Financial Creditor had not received any amount since the month of October 2022, from the borrower/corporate guarantor towards principal amount or the interest amount. As on 28.02.2023 an amount of Rs. 1,33,12,701/- (Rupees One Crore Thirty-Three Lacs Twelve Thousand Seven Hundred and One Only) admittedly remained outstanding and payable by the Corporate Debtor.

(viii) The Financial Creditor did several personal follow-ups with the borrower but it failed to repay the dues. The financial creditor also issued a loan recall notice invoking the Corporate Guarantee vide its recall notice dated 02.12.2022 to the Corporate Guarantor in pursuance to Clause 7 of the Loan-cum-Hypothecation Agreement dated 06.04.2022. However, no response was received by the Corporate Guarantor. A copy of the recall notice dated 02.12.2012 is annexed with the application.

5. It is relevant to mention here that CP(IB) 91 of 2023, filed under section 7 of IB Code by the financial creditor against the borrower is admitted by this Adjudicating Authority by order dated 17.07.2023. wherein the borrower had admitted the grant of financial assistance from the Financial Creditor on April 11, 2022 amounting to Rs. 1,50,00,000/- (Indian Rupees One Crore Fifty Lacs Only). It has also



categorically accepted that as on February, 2023 an outstanding amount of INR. 1,33,12,701/- (Rupees One Crore Thirty- Three Lacs Twelve Thousand Seven Hundred and One Only) remained payable to the financial creditor.

6. In response to the Present application the Corporate Guarantor filed a reply admitting to have been defaulted in repaying the financial debt and stated to have been facing financial crunch and therefore it is not possible for the Corporate Guarantor to repay the debts. The copy of the audited financial statements of the Corporate Guarantor of the year 2021-2022 has also been annexed with the application.

7. We have heard the learned counsel and perused the material available on record. On perusal of the records, it is found that the corporate guarantor (Zed Infratech Ltd.) has given corporate guarantee to the borrower (Shree Ram Cottex Industries Private Limited) in taking financial assistance of Rs 1.50 Cr. from the Financial Creditor in the year 2022 and the borrower/corporate guarantor defaulted its repayment; and as on February 2023, an outstanding amount of Rs 1,33,12,701/- remained payable to the applicant/Financial Creditor.

8. The present application is complete in terms of Section 7 (5) of the Code. As the liability of the borrower and corporate guarantor is co-extensive in nature the corporate guarantor is liable to pay the financial creditor the remaining amount owned by the borrower. The Financial Creditor is entitled to claim its dues, establishing the default in payment of the financial debt beyond doubt. The outstanding financial debt is of more than rupees one crore which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Accordingly, the Application filed under section 7(2) of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Respondent/Corporate Debtor deserves to be admitted.



9. Accordingly, we allow this petition and order as under:

(i) The corporate Debtor Zep Infratech Limited is admitted in Corporate Insolvency Resolution Process under section 7 of the Code.

(ii) The moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all 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 moratorium under section 14 of the Code shall come to 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 the corporate debtor under Section 33 of the IBC 2016, as the case may be.

(iv) As proposed by the Financial Creditor, we appoint **Mr. Nimai Gautam Shah** having Registration No. IBBI/IPA-001/IP-P00154/2017-18/10323, having address at Address: 605-607, Silver Oaks, Near Mahalaxmi Char Rasta, Paldi , Ahmedabad-380007, Gujarat, India (e-mail: cnjabd@gmail.com) under section 13 (1)(c) of the Code to act as Interim Resolution Professional (**IRP**). He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.

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

(vi) 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.

(vii) The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the corporate debtor, its promoters, or any other person associated with the management of the corporate debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the corporate debtor, its promoters, or any other person required to assist or



co-operate with IRP, do not assist, or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

(viii) The IRP shall be under a duty to protect and preserve the value of the property of the 'corporate debtor company' and manage the operations of the corporate debtor company as a going concern as a part of obligation imposed by section 20 of the Code.

(ix) We direct the financial creditor to pay IRP a sum of Rs 1,00,000/- as fees and expenses till the COC decides about his fees/expenses.

(x) The Registry is directed to communicate this order to the financial creditor, corporate debtor, and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order.

(xi) The IRP shall also serve a copy of this order to the various govt departments such as Income Tax, GST, State Trade Tax, Provident Fund etc. who are likely to have their claim against Corporate Debtor. The IRP is also directed to serve a copy of this order to the trade unions/employees associations so that they are informed of the initiation of CIRP against the Corporate Debtor timely.

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



9. Accordingly, this petition CP(IB)/91/AHM/2023 is allowed and disposed of.

-SD-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

-SD-

**SHAMMI KHAN
MEMBER (JUDICIAL)**

Divya Sharma