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**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – I, CHENNAI**

**CP/IB/5/CHE/2023**

*(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w  
Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating  
Authority) Rules, 2016)*

*In the matter of **M/s. Ozone Projects Private Limited***

**Shapoorji Pallonji and Company Private Limited**

70, Nagindas Master Road, Fort,  
Mumbai- 400 023

*... Operational Creditor*

-Vs-

**Ozone Projects Private Limited**

New No.63, G N Chetty Road,  
T. Nagar, Chennai- 600 017.

*...Corporate Debtor*

*Order Pronounced on **01 May, 2023***

CORAM :

**Justice RAMALINGAM SUDHAKAR, PRESIDENT  
SAMEER KAKAR, MEMBER (TECHNICAL)**

*For Operational Creditor : S. Satish, Advocate*

*For Corporate Debtor : R. Venkatraman, Advocate*

**ORDER**

***Per: SAMEER KAKAR, MEMBER (TECHNICAL)***

Under Adjudication is CP/IB/5/CHE/2023 filed by **Shapoorji Pallonji and Company Private Limited** (hereinafter referred to as '**Operational Creditor**') under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'I & B Code, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **Ozone Projects Private Limited**



(hereinafter referred to as '**Corporate Debtor**'). The Application is filed to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor.

2. Part-I of the Application sets out about the Operational Creditor from which, it is evident that the Operational Creditor is a Private Company Limited by shares which was incorporated under the Companies Act, 1956 on 23.01.1943 with CIN No: U45200MH1943PTC003812. The Registered office of the Operational Creditor is situated at No.70, Nagindas Master Road, Fort, Mumbai 400 023. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Private Limited Company with CIN:U70101TN2005PTC056894 and was incorporated on 13.07.2005 under the Companies Act, 1956. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at New No.63, G.N.Chetty Road, T. Nagar, Chennai-600017. From Part III of the application, it is seen that the Operational Creditor has not proposed the name of the "Interim Resolution Professional" and left it to the discretion of this Tribunal.

3. The Affidavit verifying the Application is placed at Page Nos 198 to 201 of the Application typeset and Mr. A.Balasundaram, the Deputy General Manager from Chennai Region of the Operational

Creditor/Applicant has sworn the Affidavit as the authorized representative of the Operational Creditor vide Board Resolution dated 30.07.2021.

4. From Part-IV of the Application, it is seen that Operational Creditor has claimed a total sum of Rs.4,50,00,000/-. No interest has been claimed. The date of default is 27.05.2022.

5. Part – V of the Application discloses about the details of the documents filed by the Operational Creditor in order to prove the 'Operational debt', which are as follows;

1. Cost Plus Agreement dated 18<sup>th</sup> March 2013 between M/s. Ozone Projects Private Limited & M/s. Shapoorji Pallonji And Company Private Limited.
2. Supplemental Agreement dated 02.05.2016 to the Cost Plus Agreement between M/s. Ozone Projects Private Limited & M/s. Shapoorji Pallonji And Company Private Limited.
3. Form 3 dated 05.08.2021.
4. Form 5 dated 28.08.2021 C.P.(IB)/201(CHE)/2021 filed by M/s. Shapoorji Pallonji And Company Private Limited against M/s. Ozone Projects Private Limited.
5. Memo dated 16.04.2022 & Consent Terms dated 01.04.2022 in C.P.(IB)/201(CHE)/2021 entered into between M/s. Shapoorji Pallonji And Company Private Limited & M/s. Ozone Projects Private Limited & Copy of Cheques issued by M/s. Ozone Projects Private Limited.
6. Order dated 19.04.2022 passed by Hon'ble NCLT, Chennai in C.P.(IB)/201(CHE)/2021.

7. Cheque Return Memo dated 27.05.2022 in respect of Cheque No. 000692 for Rs. 50,00,000/- (Rupees Fifty Lakhs Only).

8. Email dated 01.06.2022 from M/s. Shapoorji Pallonji And Company Private Limited to M/s. Ozone Projects Private Limited.

9. Cheque Return Memo dated 28.06.2022 in respect of Cheque No. 000693 for Rs. 50,00,000/- (Rupees Fifty Lakhs Only).

10. Cheque Return Memo dated 26.07.2022 in respect of Cheque No. 000694 for Rs. 1,00,00,000/- (Rupees One Crore Only).

6. It is submitted by the Ld. Counsel for the Operational Creditor that the Corporate Debtor is a real estate development company with projects in Bangalore, Chennai and Goa approached the Operational Creditor for constructing certain portion for its project "The Metrozone, Chennai" located at Anna Nagar, Chennai and for which the Agreement dated 18.03.2013 was entered into. Subsequently, Supplemental Agreement dated 02.05.2016 was entered into.

7. Since the Corporate Debtor had defaulted in payment of the amount due in respect of work executed, the Operational Creditor had earlier filed CP/IB/201/CHE/2021 against the Corporate Debtor before this Tribunal and based on the joint consent terms entered into between the Operational Creditor and the Corporate Debtor.

The said Petition was dismissed as withdrawn vide order dated 19.04.2022.

8. Out of the amount of Rs.5 Crores agreed to be paid under the consent terms except honouring the first payment of Rs.50 Lakhs, the Corporate Debtor had defaulted in making the balance payment as per the consent terms.

9. A memo has been filed under SR.No.633 dated 09.02.2023 by the Counsel for the Applicant wherein it is stated that post filing the present Application, the Settlement Agreement dated 16.12.2022 has been entered into between the Petitioner and the Corporate Debtor.

10. The Corporate Debtor has agreed to pay a sum of Rs.5,00,74,247/- (Rupees Five Crore Seventy Four Thousand Two Hundred and Forty Seven only) to the Petitioner under the Agreement dated 16.12.2022 and has paid a sum of Rs.1,00,00,000/- (Rupees One Crore only) by the Demand Draft and had given the post dated cheques for the balance amount.

The details of which are provided below:-



<b>INSTALMENT NO.</b>	<b>MONTHLY INSTALMENTS (INR)</b>	<b>DUE DATE ON OR BEFORE</b>	<b>CHEQUE NUMBER</b>
1	1,00,00,000/-	31.12.2022	013355
2	1,00,00,000/-	31.01.2023	013356
3	1,00,00,000/-	28.02.2023	013357
4	1,00,74,247/-	31.03.2023	013358

11. It was further stated in the Memo that two of the cheques that is Cheque dated 31.12.2022 and 31.01.2023 have already been dishonoured. A Copy of the Settlement Agreement has been filed along with the Memo along with the copies of the cheques issued by the Corporate Debtor.

12. Ld. Counsel for the Operational Creditor submitted that Form-3 demand notice has been issued to the Corporate Debtor on 03.09.2022.

13. The consent terms as agreed between the Operational Creditor and the Corporate Debtor in CP/IB/201/2021 are attached from page No.83 to 88 of the present application.

14. The Corporate Debtor has filed reply under SR.No.932 dated 27.02.2023. The main objections of the Corporate Debtor are summarised as below: -

- i). The first Petition of the Corporate Debtor is CP/IB/201/2021 has been sought to be revived to the present petition.

ii). It is further stated that even though that Clause – 9 of the consent terms dated 01.04.2022, the Corporate Debtor admits that a sum of Rs.4,50,00,000/- is due and payable to the Operational Creditor herein.

iii). The Corporate Debtor has given certain citations in support of the revival of the Application and stated brief of the terms of the agreement including the Settlement Agreement, the Application cannot be revived.

15. Heard the Counsel for the Applicant and the Corporate Debtor in the present matter.

16. Both the parties have first entered into a Settlement Agreement dated 01.04.2022. Based upon which CP/IB/201/2021 was dismissed as withdrawn vide order dated 19.04.2022. Subsequent to the above, a fresh Application being CP/IB/5/2023 was filed before this Tribunal. Post filing of this Application, both the parties have entered into another Settlement Agreement which is dated 16.12.2022 wherein the Corporate Debtor had agreed to pay a sum of Rs.5,00,74,247/- to the Operational Creditor and since paid certain amounts to the Operational Creditor.



17. Ld. Counsel for the Operational Creditor has given copies of cheques issued by the Corporate Debtor to the Operational Creditor are listed in para No. 10 above.

18. It is further stated that cheque dated 31.12.2022 and 31.01.2023 have since been dishonoured.

19. Counter filed by the Corporate Debtor is nothing but a moon shine defence. The present Application is no way is revival of CP/IB/201/2021, but is a fresh Application.

20. It is also noted that again a settlement was arrived at between the two parties and again the Corporate Debtor has breached the Agreement. It appears to us that the Corporate Debtor is in the habit of entering into settlement and breaching the same.

21. In view of the foregoing and when there is a Settlement Agreement placed before us, it is proved beyond doubt that the total debt is more than a sum of Rs.1 crore, we are constrained to order for Corporate Insolvency Resolution Process of the Corporate Debtor.

22. It is seen from Part-III of the Application that the Operational Creditor has not named the Interim Resolution Professional.



23. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the 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;



24. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) 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.

25. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (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.

26. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India applicable for the period between January 2023 – June 2023 appoints **Mr.Rajendran Shanmugam, Reg.No.IBBI/IPA-002/IP-N00098/2017-18/10241; (Email ID: cs.srajendran.associates@gmail.com)** as the “Interim Resolution Professional” subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order.

27. The IRP is directed to take charge of the Corporate Debtor’s management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received in a newspaper having wide circulation and call for submissions of

claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

28. 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 IBC, 2016 and file his report within 30 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.

29. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

30. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.



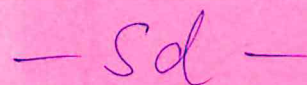
31. The Operational Creditor is directed to pay a sum of **Rs.8,00,000/- (Rupees Eight Lakhs Only)** to the Interim Resolution Professional within a period of 5 working days from the date of this order, to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

32. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational 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 who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

33. Accordingly, **CP/IB/5/CHE/2023** stands **allowed**.



**SAMEER KAKAR**  
MEMBER (TECHNICAL)



**JUSTICE RAMALINGAM SUDHAKAR**  
PRESIDENT