

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



ITEM No. 303  
C.P.(IB)/259(AHM)2023

**Order under Section 7 IBC**

**IN THE MATTER OF:**

Zep Infratech Limited  
V/s  
Kalol Investments Private Limited

.....Applicant

.....Respondent

**Order delivered on: 23/11/2023**

**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 order. The order is pronounced in 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)/259/7/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. Kolon Investments Private Limited***

**M/s. Zep Infratech Ltd. (Under CIRP)**

**CIN: U74899GJ1994PLC050189**

Through its Resolution Professional:

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

... Financial Creditor

-Vs-

**M/s. Kolon Investments Pvt. Ltd.**

**CIN: U70200GJ1993PTC113099**

Having its registered address at:

506, Abhijit-1, Nr. Mithakhali Six Roads,  
Ellisbridge, Ahmedabad – 380006,  
Gujarat.

... Corporate Debtor

**Order pronounced on 23.11.2023**

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



### **Appearance**

For the Applicant : Mr. Jaimin Dave, Advocate  
a.w. Hirva Dave, Advocate  
For the Respondent : Mr. Rajiv Chawla, Advocate for  
Mr. Arjun Sheth, Advocate.

### **ORDER**

**Per: BENCH**

1. This is an Application filed on 19.10.2023 by M/s. Zep Infratech Limited by its Resolution Professional (herein after referred to as Financial Creditor) against M/s. Kolon Investments Pvt. Ltd. (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 M/s. Kolon Investments Pvt. Ltd. having CIN No. U70200GJ1993PTC113099. The Corporate Debtor was incorporated on 22.10.1993 and having its registered office at 506, Abhijit-1, Nr. Mithakhali Six Roads, Ellisbridge, Ahmedabad – 380006, Gujarat.



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, , having address: A-604, Royal Edifice, B/h Iscon Heights, Kunal Cross Road, Gotri- Laxmipura Road, Gotri, Vadodara, Gujarat-390023. (**e-mail:** sachin.bhattbhatt@gmail.com) 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 on 19.04.2014. 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. The proof of disbursement was also filed being A/c statement of ICICI Bank being Annexure-L.
  
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.6,50,00,000/- 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 23.08.2023, the IRP addressed a letter to the Corporate Debtor for the repayment of the said loan of Rs.6,50,00,000/- with the premium of 20% aggregating to Rs.7,80,00,000/-. 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.7,50,00,000/- within 10 days of receipt of the said legal notice. A copy of the said legal notice is annexed as Annexure-I. However, the same was served on email, which was replied by the Corporate Debtor on 27.09.2023. The copy of email dated 27.09.2023 is annexed as Annexure-J.
  
10. It is stated that in its reply that the Corporate Debtor had addressed an E-mail to the advocate of the Financial Creditor duly admitted the dues and stated that:

***“We are in receipt of legal notice dated 11.09.2023 for recovery of loan amount of Rs.6,50,00,000/- along with premium at the rate of 20% aggregating to Rs.7,80,00,000/- due and***



**payable to Zep Infratech Limited on 30 June 2022.**

***In this regard we would like to acknowledge outstanding dues and would like to inform you that currently we are facing financial difficulties and we are not in position to repay the debts of Zep Infratech Limited.***

A copy of email reply is attached as Annexure-J. 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-K. Further, the Financial Creditor has also filed Form-D through Purshis issued by National E-Governance Services Limited (“**NeSL**”) being record debt and default with status “Authenticated”.
13. Reply was filed by the Corporate Debtor through an affidavit dated 20.10.2023 affirmed by one Mr. Amit K. Parikh 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.6,50,00,000/- was given as loan from the Financial Creditor to the Corporate Debtor on 19.04. 2014. The disbursement is proved through A/c statement of ICICI Bank which is paced as Annexure-L. 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.7,80,00,000/-** 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. Hence, 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.

20. Accordingly, in light of the above facts and circumstances, it is, **hereby ordered** as under:-

(i) The Respondent/Corporate Debtor **M/s. Kolon Investments Pvt. Ltd.** is **admitted** in Corporate Insolvency Resolution Process (**CIRP**) under section 7 of the Code.

(ii) As a consequence thereof, moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of 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, 2022;*
  - 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.*
  - e. *The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.*
- (iii) The order of 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) However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the corporate debtor as may be specified, 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.
- (v) As proposed by the Financial Creditor, we appoint **Mr. Sachin Dinkar Bhattbhatt**, having Registration No. IBBI/IPA-003/IP-N000138/2017-2018/11514, having address: A-604, Royal Edifice, B/h Iscon Heights, Kunal Cross Road, Gotri- Laxmipura Road, Gotri, Vadodara, Gujarat-390023. (**e-mail:** Sachin.Bhattbhatt@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.



- (vi) 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.
  
- (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 is expected to take full charge of the corporate debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to



render all assistance as may be required by the IRP in this regard.

- (ix) 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.
- (x) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (xi) We direct the financial creditor to pay IRP a sum of **Rs.2,00,000/- (Rupees Two Lakh Only)** in advance within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims etc. till the CoC decides about his fees/expenses.
- (xii) The Registry is directed to communicate this order to the financial creditor, corporate debtor, and to the Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board of India after



completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

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

21. Accordingly, this Application **CP(IB)/259/AHM/2023** is allowed and disposed of. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-Sd-

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

-Sd-

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

AT