

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

CP(IB)/196(CHE)/2021

*(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 ***Alectrona Energy Private Limited***

KEB Hana Bank,
Chennai Branch Office,
4th Floor, Bannari Amman Towers,
No.29, Dr. Radhakrishnan Salai,
Mylapore, Chennai – 600 004.

... Financial Creditor

-Vs-

Alectrona Energy Private Limited,
CIN No. U40109TN2010PTC75703,
No.29, 3rd Floor, 'A' Block,
Bannari Amman Towers,
No.29, Dr. Radhakrishnan Salai,
Mylapore, Chennai – 600 004.

... Corporate Debtor

Order Pronounced on 01st March 2022

CORAM:

Justice (Retd) S.RAMATHILAGAM, MEMBER (JUDICIAL)

ANIL KUMAR B, MEMBER (TECHNICAL)

*For Financial Creditor: Mr.P.V.Balasubramaniam, Advocate
Mr.D.Ferdinand, Advocate
Mr.K.M.Aasim Shehzad, Advocate
Mr.Akhil Bansali, Advocate
Mr.Siddarth P, Advocate
Mr.Arul Gnana Prakash
Mr.Rigved Prasad K, Advocate*

*For Corporate Debtor: Mr.Vinod Kumar, Advocate
Mr.Srinivasan M.D, Advocate*



ORDER

Per: Justice (Retd) S.RAMATHILAGAM, MEMBER (JUDICIAL)

Under Adjudication is an Application that has been filed by **KEB Hana Bank** (hereinafter referred to as '*Financial Creditor*') under Section 7 of the Insolvency & Bankruptcy Code 2016 (in short, 'IBC, 2016') r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **Alectrona Energy Private Limited** (hereinafter referred to as '*Corporate Debtor*'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare a moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out about the Financial Creditor from which, it is evident that the Financial Creditor is a Bank Registered in South Korea having its branch office at Chennai. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Limited Company with CIN:U40109TN2010PTC75703 which was incorporated on 13.05.2010 and the Registered Office of the Corporate Debtor as per the Application is stated to be situated at No.29, 3rd Floor, 'A' Block, Bannari Amman Towers, No.29, Dr.Radhakrishnan Salai, Mylapore, Chennai – 600004. As per Part III of the application, the Financial Creditor has proposed the name



of one Mr.Radhakrishnan Dharmarajan, as the Interim Resolution Professional, who has also filed his consent in Form – 2.

3. From Part-IV of the Application, it is seen that a sum of

a) Rs.50,14,78,938.37/- (Working capital demand loan) comprising Principal amount of Rs.35,00,00,000/- and interest of Rs.12,52,43,321.95/- and default interest of Rs.2,62,35,616.42/-.

b) Rs.7,38,96,591.09/- (Foreign Letter of Credit) Comprising of Principal amount Rs.5,40,97,392.45/- and interest of Rs.1,97,99,198.64/-.

are being claimed by the Financial Creditor as the Financial debt and the date of default of various letters of credits are 30.05.2018, 04.06.2018, 08.06.2018 and 25.06.2018. Part – V of the Application discloses the details of the documents which have been filed by the Financial Creditor in order to prove the 'Financial debt'.

4. It is averred in the application that the total amount granted by the Financial Creditor is as follows

- i) Rs.35,00,00,000/- as working capital demand loan with interest at the rate of 11.25% p.a. and default interest at the rate of 3% p.a.
- ii) Rs.3,83,61,870/- as inland letters of credit with interest at 11.25% p.a.

- iii) USD 1,708,090/- as import letters of credit at several instances at with interest at 11.25% p.a.

The said facilities were disbursed between 30.06.2016 and 25.06.2018.

5. It was further averred that the working capital demand loan and foreign letter of credit specified in Part IV of the Application, have not been repaid by the Corporate Debtor and sought initiation of CRIP ageist Financial Creditor.

6. *Per contra* the Learned Counsel for the Corporate Debtor averred in the Counter that the Managing Director of the Corporate Debtor has held shares in the Zynergy Solar Projects & Services Pvt. Ltd., which is the holding company of the Corporate Debtor. In order to expand the business of Zynergy the Managing Director Corporate Debtor called for an additional investment from the investors. Subsequently, one Mr.Kohli has become an investor through Kholi Ventures and Archer Power Systems Private Limited held 51% shares in Zynergy. Further, it was contended that the Financial Creditor without informing the Managing Director performed KYC verifications with the said new investors.

7. It was further contended that the Financial Creditor had already initiated individual insolvency proceedings against the

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Personal Guarantor / Director representing Corporate Debtor in the Debts Recoveries Tribunal – II, Chennai (DRT) wherein the insolvency proceedings were initiated against the Corporate Debtor and Resolution Professional was appointed.

8. It was further contended that the Financial Creditor continued to compute interest, after declaring the loan received by the Corporate Debtor as Non-Performing Asset and during the moratorium declared by Reserve Bank of India (RBI) on imposition of interest on account of Covid-19 and bar on levying penal interest by lenders, which is against directives passed by the RBI and prohibited by law, and it had crippled the proposed repayment of the Corporate Debtor.

9. It was further contended that the debt received by the Corporate Debtor is entirely secured by a property worth Rs.62 crore which is solely owned by the Respondent. However, the Financial Creditor, after taking possession of the said property has not taken any steps to enforce the security. Further, it was submitted that except for the dispute regarding interest calculation the Corporate Debtor has no difficulties in discharging the debt.


10. As against the entire claim of Rs.53,73,28,602/- of the Financial Creditor, acceptable due was only Rs.46.12 crore as per the finalized repayment plan. Further, it was submitted in the

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Counter that after the proposal of the said repayment plan Financial Creditor had raised an objection and demanded upfront payment of cash, to facilitate the demand, the Corporate Debtor made an arrangement to source money from one DCB Bank.

11. It was further submitted that the repayment plan also contemplated a Joint Venture Agreement (JVA), for the construction and development of the mortgaged property. Further, it was submitted that only because of the Financial Creditor demand of upfront cash payment the Corporate Debtor arranged the credit facility from the DCB bank. In spite of sourcing upfront cash and providing a feasible plan, the Financial Creditor refused to approve the same.


12. It was further submitted that the Applicant has not attempted to enforce the security interest over the mortgaged property for more than 3 years and continuously charged interest on Corporate Debtor even after the loan was declared as NPA and for the above-said reasons sought dismissal of this application.

13. In response to the contention of the Corporate Debtor, the Learned Counsel for the Financial Creditor in the Rejoinder submitted that the KYC documents were strictly in compliance with the law and DRT proceedings are a matter of fact and above-said have no bearing in this application. 

14. Further, denied the contention regarding interest calculation and submitted that the Financial Creditor is not covered under the moratorium imposed by RBI during Covid-19. The circular issued by RBI does not prohibit claim or recovery of interest upon declaration of a loan portfolio as NPA. Further, argued that for initiation of CIRP, dispute on the quantum of debt is irrelevant when the debt and default it admitted.

15. It was further submitted that the Financial Creditor has taken steps to enforce security interest by filing applications before DRT and Magistrate Court, Egmore. In addition to that, submitted that several insolvency applications are filed against the Corporate Debtor by various creditors.

16. Further, the repayment plan agreed by the Financial Creditor is subject to certain conditions which are not fulfilled by the Corporate Debtor and the same was rejected. More to the above submissions argued that there is no requirement under the Insolvency and Bankruptcy Code, 2016 to enforce security interest before approaching this Tribunal.

17. Having heard learned counsel for both the parties, it is important to mention Section 7 of the Insolvency and Bankruptcy Code, 2016 

Section 7: Initiation of corporate insolvency resolution process by financial creditor

... (4) *The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).*

1[Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same.]

(5) *Where the Adjudicating Authority is satisfied that—*

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application;

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application;

...

From this provision, it is clear that when a Corporate Debtor who commits a default of a financial debt, the Adjudicating Authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that there is an existing debt and a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due", which was also held by the Hon'ble Apex Court in ***M/s.Innoventive industries ltd vs ICICI bank & Anr.*** With reference to the said precedent, the disputes regarding interest calculation and

enforcement of security interest are not required to be considered by this tribunal at this stage.

18. Further, it is seen from the Counter Affidavit filed by the Corporate Debtor that Corporate Debtor has admitted the debt, which is above the threshold limit provided in Section 4 of IBC, 2016 and the Corporate Debtor has defaulted in its payments.

19. Coming to the next argument regarding pending proceedings before Debt Recovery Tribunal, it would be relevant to refer to a decision of Hon'ble Appellate Tribunal in "**Unigreen Global Private Limited Vs. Punjab National Bank and others**" which is extracted hereunder

"20. The Adjudicating Authority on hearing the parties and on perusal of record, if satisfied that there is a debt and default has occurred and the Corporate Applicant is not ineligible under Section 11, the Adjudicating Authority has no option but to admit the application, unless it is incomplete, in which case the Corporate Applicant is to be granted time to rectify the defects.

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25. Similarly, if any action has been taken by a 'Financial Creditor' under Section 13(4) of the SARFAESI Act, 2002 against the Corporate Debtor or a suit is pending against Corporate Debtor under Section 19 of DRT Act, 1993 before a



Debt Recovery Tribunal or appeal pending before the Debt Recovery Appellate Tribunal cannot be a Company Appeal (AT) (Insolvency) No. 100 of 2017 7 ground to reject an application under Section 10, if the application is complete.

26. Any proceeding under Section 13(4) of the SARFAESI Act, 2002 or suit under Section 19 of the DRT Act, 1993 pending before Debt Recovery Tribunal or appeal pending before Debt Recovery Appellate Tribunal cannot proceed in view of the order of moratorium as may be passed.

27. It is also desirable to refer to Section 238 of the I & B Code, as quoted below:

"238. Provisions of this Code to override other laws - The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

In view of the aforesaid provision also, I & B Code shall have the effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force including DRT Act, 1993; SARFAESI Act, 2002; money suit etc."

20. With the aforesaid observations and considering the facts and circumstances of the case as well as the position of Law, we are of the view that this Application as filed by the Financial Creditor is required to be admitted under Section 7 (5) of the IBC, 2016.

21. The Financial Creditor has proposed the name of one **Mr.Radhakrishnan Dharmarajan**, having Registration Number **[IBBI/IPA-001/IP-P00508/2017-2018/10909]**, (e-mail ID: **dharma67@gmail.com**) as Interim Resolution Professional (IRP) and written communication in the format prescribed under Form-2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to 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 CIR Process in relation to the Corporate Debtor in terms of the provisions of I&B Code, 2016.

22. 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 Corporate Debtor including the 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 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 Corporate Debtor.

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;




23. 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 the 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 arrangements 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.

24. 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.

25. 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 Petitioner 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 IRP above named be also furnished with a 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.

-Sd-

B. ANIL KUMAR
MEMBER (TECHNICAL)

-Sd-

Justice (Retd.) S. RAMATHILAGAM
MEMBER (JUDICIAL)

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