

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

**IBA/699/2019**

*Under Section 9 r/w Rule 6 of the IBC, 2016*

**In the matter of M/s. Alectrona Energy Private Limited**

**Mr. K.G Rajasekaran**

**---Operational Creditor**

**V/s**

**M/s. Alectrona Energy Private Limited**

**---Corporate Debtor**

**Order delivered on: 29.07.2019**

**Coram:**

**B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)**

**S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

For the Operational Creditor: *Shri. K.Mukund Rao, Advocate*

For the Corporate Debtor : *Ms. B. Nandita, Advocate*

**ORDER**

**Per: B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)**

**Heard and dictated in the Open Court on 24.07.2019**

It is an Insolvency and Bankruptcy Application filed u/s.9 by Mr. K.G Rajasekaran (Applicant/Employee) under the Insolvency and Bankruptcy Code, 2016 ("the Code") for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor

for having not paid an amount of ₹31,66,807 towards salary of the Applicant as on 04.03.2019.

2. On perusal of this Company Petition, it appears that this Operational Creditor has worked for some time as an employee with the Corporate Debtor i.e., from the year 2016 onwards. Later he has resigned on his own by sending a Resignation letter on 09.01.2019 to the Corporate Debtor.

3. While dictating this sentence, the Operational Creditor Counsel has interdicted the dictation saying that his resignation letter dated 09.01.2019 was based on non-payment of salary, when this Bench has put it to the counsel as to any such averment has been placed in the resignation letter dated 09.01.2019, he has stated that no such averment has been placed in writing in the resignation letter.

4. Soon after he resigned from the Corporate Debtor, his resignation was accepted by the Corporate Debtor on 10.01.2019, thereafter this Operational Creditor, for the first time, straight away sent Section 8 Notice to the Corporate Debtor on 04.03.2019 making

a claim of ₹31,66,807 due and payable towards salary and other emoluments such as Leave Encashment, Variable Pay, Leave Travel Allowance and other reimbursements. When we have verified as to what payment is payable by the Corporate Debtor, we have come across a computation prepared and filed on his own by the petitioner claiming arrears and part payments left unpaid from September 2016 onwards. But this Operational Creditor has not placed any kind of material before this Bench showing that this debt is in existence or an amount of ₹31,66,807 is due and payable by the Corporate Debtor at any time before sending Section 8 notice to the Corporate Debtor on 04.03.2019.

5. As soon as the Corporate Debtor received section 8 notice on 06.03.2019, the Corporate Debtor replied on 16.03.2019 i.e. within 10 days from the date of receipt of Section 8 notice, mentioning for how many days the Operational Creditor has remained absent and other denials to other claims such as variable pay; LTA etc. The Corporate Debtor has already disputed in respect to the variable pay, Leave

Travel Allowance and other emoluments this Operational Creditor included in its claim.

6. It is understandable that debt and default are in existence as on the date Section 8 notice was served upon the Debtor if the Operational Creditor placed documents showing the Debtor owed to pay and thereafter defaulted in making such payment. In this case, the creditor has not placed any material ante to the Section 8 notice issued by the Creditor reflecting the debtor owed to pay so and so money to the Creditor and the debtor defaulted in paying it.

7. The only document filed by the Creditor is Bank Statement, but by seeing that document, we can only visualise how much money has come to the Petitioner's Account, but it will not disclose how much money is due and payable by the Corporate Debtor and how much the debtor owed to pay the petitioner. To prove that this debt is in existence, this Operational Creditor has filed only the Appointment letter, the Resignation letter and the Relieving letter. All these three documents have not disclosed anywhere as to how much this Operational Creditor is entitled to claim arrears of the

years 2016, 2017, 2018 and 2019 and about Leave Encashment, Variable Pay, Leave Travel Allowances and other reimbursements.

8. When such huge money is due and payable to this Operational Creditor allegedly accrued from 2016 onwards, as to why this Operational Creditor has remained silent all along until he was relieved from employment and thereafter all of a sudden making claim of ₹31,66,807 payable on accrual basis from 2016 onwards.

9. It is the bounden duty of the Operational Creditor to prove the existence of debt and default as on the date of giving Section 8 notice. Here in this case, this Operational Creditor has not even placed any material as to how the debt has come into existence and how default occurred subsequent thereto, except a computation sheet prepared by the Operational Creditor.

10. Since this Bench is of the view that this Operational Creditor has failed to prove that debt is in existence and default occurred thereto before issuing Section 8 notice to the Corporate Debtor, we need not get into and see whether dispute is in existence between

the parties or not. The requirement of proof in respect to existence of dispute will arise only when the Creditor discharged his duty of proving existence of debt and default.

11. Here, in this case, the Operational Creditor has failed in proving the existence of debt and default before issuing of Section 8 notice, whereby, this Application IBA/699/2019 is hereby **dismissed in limine.**

**-Sd-**  
**(S. VIJAYARAGHAVAN)**  
**Member (Technical)**

**-Sd-**  
**(B. S.V. PRAKASH KUMAR)**  
**Member (Judicial)**

SR/TJS