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

**CP/IB/41/CHE/2021**

*(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. Alectrona Energy Pvt. Ltd.***

**Dhananjay Balwant Joshi**

No.2/224, Shuhashri 2<sup>nd</sup> Bay Side Street,  
Karpagambal Nagar, Kottivakkam ECR,  
Chennai-600041

*... Operational Creditor*

-Vs-

**M/s. Alectrona Energy Pvt. Ltd.**

(CIN: U40109TN2010PTC075703)  
3<sup>rd</sup> Floor, Block A, Bannari Amman Towers,  
No.29, Dr.Radhakrishnan Road, Mylapore,  
Chennai - 600004

*... Corporate Debtor*

*Order pronounced on 28<sup>th</sup> September 2021*

CORAM :

**R.SUCHARITHA, MEMBER (JUDICIAL)  
ANIL KUMAR B, MEMBER (TECHNICAL)**

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

*For Corporate Debtor : Adith Narayan, Advocate*

**ORDER**

**Per: R.SUCHARITHA, MEMBER (JUDICIAL)**

The Present Application is filed by an Operational Creditor  
viz., Mr. Dhananjay Balwant Joshi. under Section '9' of the  
Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as

'IBC, 2016) before this Tribunal on 23.02.2021 seeking initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor viz., M/s. Alectrona Energy Private Limited.

2. The brief facts of the case are as follows;

(i) The Operational Creditor vide appointment letter dated 24.10.2016 was appointed as an employee in the designation of President-Operations in Corporate Debtor Company and the monthly salary was fixed at Rs.4,30,000/-.

(ii) It was alleged that the Corporate Debtor was irregular in crediting salary in to the account of Operational Creditor and hence the Operational Creditor has communicated his resignation through email & letter dated 26.02.2018 & 17.05.2018 to the Corporate Debtor. The said resignation was accepted and the Corporate Debtor accepted to relieve the Operational Creditor on 30.04.2018 after completion of the notice period. The Corporate Debtor promised to pay the pending salary in to the Operational Creditor's account but failed to credit the pending salary to the Operational Creditors Account.

(iii) It was submitted that the total pending salary which is due and payable to the Operational Creditor as on 30.04.2018 is

Rs.21,50,000 and the total interest payable is Rs.5,16,000/-. Therefore the total debt payable by the Corporate Debtor is Rs.26,66,000/-.

(iv) It is also seen that the Operational Creditor has originally filed an application before this Tribunal vide IBA/137/2019 for the above said due of Rs.26,16,000/- based upon a Joint memo filed by the parties stating that the Corporate Debtor has agreed to pay Rs.26,16,000 on or before 31.01.2020, this Hon'ble Tribunal vide its order dated 17.12.2019 has stated as follows;

"Learned Counsels for the parties are present. Learned Counsel for the Petitioner represents that a joint memo has been filed by the parties wherein it has been found that the Corporate Debtor has agreed to pay Rs.26,16,000/- on or before 31.01.2020. In terms of the joint memo, Learned counsel for the Petitioner seeks to withdraw this petition and in case there is any breach on the part of the Corporate Debtor, Learned Counsel for the Petitioner seeks liberty to approach this Tribunal. Taking in to consideration the representation of Learned Counsel for the Petitioner and the joint memo filed, this petition stands **dismissed as withdrawn** with the liberty to the petitioner to file a fresh petition as sought for the balance claim unpaid".

3. The Learned Counsel for the Operational Creditor submitted that as per the joint memo which was recorded in the order dated 17.12.2019 passed in IBA/137/2019 the Corporate Debtor is required to make the payment on or before 31.01.2020 to the Operational Creditor, however has failed to do so. Thereafter it was

submitted that the Operational Creditor waited till the second week of February 2020 and since no money was forthcoming, the Operational Creditor has issued a Demand Notice as stipulated under Section 8 of IBC, 2016 on 20.02.2020 which was received by the Corporate Debtor on 24.02.2020. It is also seen from the records that the Operational Creditor has filed an Affidavit as mandated under Section 9(3)(b) of IBC, 2016 to the effect that no notice has been given by the Corporate Debtor relating to Dispute of the unpaid operational Debt.

4. The Learned Counsel for the Operational Creditor submitted that they have served a copy of an Application to reopen the Application IBA/137/2019 to the Corporate Debtor and immediately upon the receipt of the said Application the Corporate Debtor has issued a Demand Draft on 13.03.2020 for a sum of Rs.5,00,000/- and also promised to honour the payments of the Operational Creditor within a week, however, it was submitted that the Corporate Debtor had failed to do so.

5. The Respondent has filed counter and the Learned Counsel for the Respondent submitted that the present application is not maintainable and it is averred that as per notification S.O.1205(E) dated 24.03.2020 issued by the Ministry of Corporate Affairs, the minimum threshold limited has been increased from Rs.1 Lakh to

to Rs.1 Crore and hence the Petition filed by the Operational Creditor before this Tribunal on 23.02.2021 for an alleged claim to the tune of Rs.24,96,880/- is clearly hit by section 4 of the IBC, 2016 and hence the present application is to be dismissed *in limine*.

6. Learned Counsel for the Respondent further submits that the Operational Creditor has concealed the fact that the Corporate Debtor has sent a reply to the Demand Notice on 05.03.2020, wherein it has been stated that the Corporate Debtor has agreed to pay the sum of Rs.26,66,000/- as stated in the order dated 17.12.2019 of this Tribunal provided the Operational Creditor agrees to give an undertaking that he would not make any further claims against the Corporate Debtor, to which, it was submitted that the Operational Creditor has not given any undertaking.

7. Further, it was submitted that the Operational Creditor has willfully suppressed the fact that the Respondent had issued a notice of dispute vide its letter dated 05.03.2020 and the Operational Creditor while submitting the Affidavit under Section 9(3)(b) of IBC, 2016 before this Tribunal has stated that no notice has been given by the Corporate Debtor relating to the dispute of the unpaid operational debt and hence on the said count itself, it



was submitted that the present Application is liable to be dismissed.

8. Heard the submissions made by the Learned Counsel for both the parties and perused the file including the pleadings placed on record. From the arguments advanced by both the parties, the sole issue which arises for consideration before this Tribunal is;

*"Whether the liberty granted by this Tribunal in IBA/137/2019 to the Operational Creditor to file a fresh petition when a default occurs, will operate in derogation of the Notification No. S.O.1205(E) dated 24.03.2020 issued by the Ministry of Corporate Affairs wherein the minimum threshold limited has been increased from Rs.1 Lakh to to Rs.1 Crore to file any Application under Part – II of the IBC, 2016".*

9. In proceedings before the Tribunal, when a liberty is being granted to a person, it goes without saying that the said liberty can be availed only if it is in consonance within the procedure established under the law for the time being in force. It is to be noted that as on the date when the liberty was granted to the Operational Creditor, the minimum threshold limit for filing an Application under Section 7, 9 and 10 of IBC, 2016 was Rs.1 Lakh. However, the Central Government through the Ministry of Corporate Affairs vide Notification No. S.O.1205(E) dated 24.03.2020 has increased the minimum threshold limited from Rs.1 Lakh to to Rs.1 Crore. Hence, on and from 24.03.2020 all the

Applications filed under Section 7, 9 and 10 of IBC, 2016 before this Tribunal are required to satisfy the said condition and the debt amount due as claimed in Part – IV of the Application is required to cross the threshold limit of Rs.1 Crore. A liberty granted by this Tribunal, cannot act in derogation or in violation of the law which is prevailing time being in force. Also we are of the view that a liberty being granted to the Operational Creditor to file a fresh Application in case a default occurs cannot be stretched to such an extent that would circumvent the law which is prevailing as on date.

10. Further, the Hon'ble NCLAT in the matter of **Madhusudan Tantia –Vs- Amit Choraria & Anr.** in *Company Appeal (AT) (Insolvency) No. 557 of 2020 dated 12.10.2020*, while dealing with the Notification S.O.1205 (E) dated 24.03.2020 issued by the Central Government in increasing the pecuniary jurisdiction of the Tribunal, has held in para 56 as follows;

"56. As far as the present case is concerned, this Tribunal, after carefully and with great circumspection, ongoing through the contents of the notification dated 24.03.2020 issued by the Ministry of Corporate Affairs, Government of India, whereby and whereunder the minimum amount of default limit was specified as Rs. one crore (obviously raising the minimum amount from Rs. one lakh to one crore) unerringly comes to a definite conclusion that the said notification is only 'Prospective in nature' and not a 'retrospective' one because of the simple reason the said notification does not in express term speaks about the applicability of 'retrospective' or 'retroactive' operation. Suffice it for this Tribunal to point out that from the



tenor, spirit and the plain words employed in the notification dated 24.03.2020 of the Ministry of Corporate Affairs, Government of India, one cannot infer an intention to take or make it retrospective as in this regard, the relevant words are conspicuously absent and besides there being no implicit inference to be drawn for such a construction in the context in issue. That apart, if the notification dated 24.03.2020 of the Ministry of Corporate Affairs, Government of India, is made applicable to the pending applications of IBC (filed earlier to the notification in issue) it will create absurd results of wider implications / complications.

11. Thus, it is now trite, that the Notification issued by the Central Government vide S.O.1205 (E) dated 24.03.2020 by increasing the pecuniary jurisdiction of this Tribunal from Rs.1 Lakh to Rs.1 Crore would operate *prospectively*, that is to say the said notification would be applicable to the matters which are filed before this Tribunal on and from 24.03.2020.

12. Hence, on the said count the Application filed by the Operational Creditor before this Tribunal falls well short of the pecuniary limit of Rs.1 Crore and as a consequence thereof, the Application is liable to be dismissed and accordingly stands **dismissed**. No costs.

-sd-  
(ANIL KUMAR B)  
MEMBER (TECHNICAL)

-sd-  
(R. SUCHARITHA)  
MEMBER (JUDICIAL)

Raymond