

**BEFORE THE DEBTS RECOVERY TRIBUNAL –II AT CHENNAI**

Dated this 8<sup>th</sup> day of August, 2022

**PRESENT: SHRI T. RAJESH**  
PRESIDING OFFICER

**IBC No.1 of 2022**

KEB Hana Bank, Chennai Branch  
No.29, Bannari Amman Towers  
4<sup>th</sup> Floor, Dr. Radhakrishnan Road  
Mylapore, Chennai – 600 004

...Applicant

Versus

Mr. Rohit Nath @ Mr. Rohit Rabindra Nath  
No.4/235, MGR Road  
Palavakkam  
Chennai – 600 041

Also at  
No.26, 1<sup>st</sup> Floor, Poes Garden  
Gopalapuram  
Chennai – 600 086

...Defendant

Counsel for the Applicant Bank	: Mr. Srinivasan MD
Counsel for Defendant	: M/s Subharanjani Ananth

**ORDER**

1. This Application is filed by the creditor under Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 to initiate Insolvency Resolution Process against the personal guarantor to the Corporate Debtor "Alectrona Energy Private Ltd" in regard to the unsecured part of debt as envisaged u/s 115(2) of the Insolvency and Bankruptcy Code, 2016.
2. Part-I of the Application sets out the details of the Financial Creditor, from which it is evident that the Financial Creditor is a Bank at No.29,

BannariAmman Towers, 4<sup>th</sup> Floor, Dr. Radhakrishnan Salai, Mylapore, Chennai – 600 004. Further, Part-I evidences that the Authorised Signatory of the Financial Creditor to be one Mr. DAE KI HONG and duly authorised by the bank.

3. Part-II of the Application sets out the details of the Guarantor from which it is evident that Mr. Rohit Nath is the personal guarantor and Managing Director of Alectrona Energy Private Limited, the Corporate Debtor in the case on hand and presently residing at No.26, 1<sup>st</sup> Floor, Poes Garden, Gopalapuram, Chennai – 600 086 with his permanent address as No.4/235, MGR Road, Palavakkam, Chennai – 600 041 and having business at No.3B (Western Side, Old No.4 / New No.7, LVR Centre, Seshadri Road, Alwarpet, Chennai – 600 004. Further, Part-II clearly sets out the details of the assets of the guarantor and the companies in which he holds the capacity of Director. Further at Srl No.14, details regarding guarantee given by the guarantor is also set out.
4. Part-III of the Application sets out the particulars of debt, from which it is clear that the total debt (including any interest or penalties) is Rs.60,61,13,173.26p as on 16.2.2022 and in support of the said claim the applicant had enclosed the certificate on outstanding dues along with detailed calculation. It is also seen that out of the total debt, the secured debt is Rs.39,37,90,400/- as on 16.2.2022 and the unsecured portion of the debt is Rs.21,23,22,773.26p. At S. No.13, the provision of law, contract or other documents under which the debt has become due is mentioned, which are as follows: -

(a) Section 123 of Insolvency and Bankruptcy Code, 2015 read with Indian Contract Act, 1872.

(b) Guarantee demand notice dated 18.2.2020.

(c) Working Capital Agreement dated 28.6.2016

(d) Working Capital Agreement dated 27.7.2016

(e) Sanction Letters of the applicant dated 28.6.2016, 26.7.2016, 25.10.2016, 21.2.2017, 5.6.2017 and 27.6.2017.

(f) Orders of this Tribunal dated 24.11.2021 in SR. No.2643 of 2020

5. At Srl. No.15 of Part-II the applicant had set out the list of documents attached to the application in order to prove the existence of debt and the amount of default, which are as follows: -

(a) Letter of Personal Guarantee dated 27.7.2016, 26.10.2016, 21.2.2017 and 5.6.2017.

(b) Demand Promissory Notes along with Letter of Continuity dated 28.6.2016, 27.7.2016 and 27.6.2017.

(c) Deed of indemnity dated 27.7.2016.

(d) General Indemnity deeds for letter of credit dated 25.10.2016, 21.2.2017 and 5.6.2017.

(e) Communications and letters exchanged between the Corporate Debtor and the applicant herein in relation to the debt.

- (f) Application filed in SR No.2643 of 2020.
- (g) Counter / Objection filed in SR No.2643 of 2020
- (h) Final Repayment Plan dated 4.9.2021
- (i) Report of the Interim Resolution Professional (IRP)
- (j) Order dated 24.11.2021 passed by this Tribunal in SR. No.2543 of 2020.
- (k) Other orders passed by this Tribunal in SR No.2643 of 2020
- (l) Other documents relating to SR No.2643 of 2020.
- (m) Notarized asset declaration affidavit dated 5.6.2017 given by the Personal Guarantor.
- (n) Net worth certificate dated 21.7.2016 issued by Personal Guarantor's auditor.
- (o) KYC documents of the Personal Guarantor.
- (p) Master data of the Corporate Debtor
- (q) Mortgage deeds executed by the personal guarantor to secure the dues.
- (r) Board Resolutions passed by the Corporate Debtor in relation to the loan transaction.

6. Part-III sets out at S. Nos. 16 and 17, the statement by the secured creditor under Section 123(2) of the Code and Statement by creditor in respect of excluded debts.
7. Part –IV which pertains to the Particulars and Declaration by Insolvency Professional (if proposed to act as Bankruptcy Trustee) is blank as no specific proposal is made by the applicant.
8. The application is accompanied by Affidavit Verifying Application and Affidavit on Insolvency Resolution / Liquidation Process against the Corporate Debtor, wherein it is stated that the application has been filed for bankruptcy process of the defendant, who is the personal guarantor to the principal borrower / corporate debtor viz., Alectrona Energy Private Limited and further that as on date no Corporate Insolvency Resolution Process or Liquidation proceedings pending before NCLT, Chennai under Insolvency and Bankruptcy Code, 2016 against the said corporate debtor, to the best of information, knowledge and belief.
9. Heard the submissions made by the Learned Counsel for both the parties and perused the records including the pleadings placed on record.
10. The applicant had earlier initiated Insolvency Resolution Process against the guarantor to the Corporate Debtor vide application SR No.2643 of 2020, before this Tribunal, wherein a Resolution Professional was appointed and pursuant to his Report this Tribunal by its order dated 22.10.2020 admitted the application under Section 95 of the Act. The IRP had filed a report dated 11.11.2021, and this Tribunal by its order dated 24.11.2021 rejected the Resolution Plan as submitted by the Resolution Professional u/s 114(1) of the

Insolvency and Bankruptcy Code, 2016 and sequel to the above facts, the present proceedings are initiated.

11. On filing of the instant application by the secured creditor, as a memo was filed on behalf of the Respondent ('the personal guarantor') in the present case to the effect that an application for Bankruptcy Process against the Personal Guarantor to the Corporate Debtor would not be maintainable before this Tribunal. However, this Tribunal after hearing the parties passed a detailed order on 08.07.2022 and rejected the objection as raised by the respondent and found that the proceeding for bankruptcy in respect of personal guarantor is maintainable before this Tribunal.

12. The relevant provision of the Insolvency and Bankruptcy Code, 2016 for filing an Application for bankruptcy is 121 of the Code, which is as follows: -

***“Section 121. Application for bankruptcy. –***

*(1) An application for bankruptcy of a debtor may be made, by a creditor individually or jointly with other creditors or by a debtor, to the Adjudicating Authority in the following circumstances, namely; –*

*(a) where an order has been passed by an Adjudicating Authority under sub-section 4 of section 100; or*

*(b) where an order has been passed by an Adjudicating Authority under sub-section 2 of section 115; or*

*(c) where an order has been passed by an Adjudicating Authority under sub-section 3 of section 118.*

*(2) An application for bankruptcy shall be filed within a period of three months of the date of the order passed by the Adjudicating Authority under the sections referred to in sub-section (1).*

*(3) Where the debtor is a firm, the application under sub-section (1) may be filed by any of its partners.”*

13. From the above provision it is clear that an application for bankruptcy of a debtor may be made by a creditor individually or jointly with other creditors or

by a debtor, to the Adjudicating Authority under certain circumstances. In the case on hand the secured creditor has filed the application for bankruptcy under Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 to initiate Insolvency Resolution Process as against the Persona guarantor to the Corporate debtors. Further, it is not in dispute that the earlier proceedings initiated by the secured creditor had ended up with this Tribunal rejecting the Resolution Plan submitted by the Resolution Professional under Section 114(1) of the Insolvency and Bankruptcy Code, 2016. Therefore, as this Tribunal being the Adjudicating Authority had rejected the repayment plan under Section 114, the debtor and the creditors are entitled to file an application for bankruptcy under Chapter IV and therefore the present application of the applicant is maintainable and the secured creditor is entitled to file the application for bankruptcy under Section 123 of the Code.

14. Further, as there was no proposal that is made by the parties with regard to the appointment of Bankruptcy Trustee, this Tribunal in accordance with Section 125(3) of the Code, 2016 gave a direction was given to the registry to communicate to the Insolvency and Bankruptcy Board of India to nominate a Bankruptcy Trustee for initiating bankruptcy process. Accordingly, on a communication sent by this Tribunal dated 29.7.2022 to the Board, the Insolvency and Bankruptcy Board of India, by letter dated 3.8.2022 had informed this Tribunal to the following effect that:-

*“It is, however, confirmed that, as per records there is nothing adverse against the proposed Insolvency Professional, namely, Ms. S. Yoshoda (IP Registration No.IBBI-001/1P-P01036/2017-2018/111709). The authorisation for assignment (AFA) issued to said IP is valid up to December 31, 2022 “*

15. Thus, taking into consideration the facts and circumstances of the case as well as the position of Law, this Tribunal is of the considered view that this Application, as filed by the Financial Creditor is required to be admitted under Section 126 (1) of the Insolvency and Bankruptcy Code, 2016
16. In view of the above communication from the Insolvency and Bankruptcy Board of India, Ms. S. Yashoda (IP Registration No.IBBI-001/1P-P01036/2017-2018/111709) is hereby appointed as the bankruptcy trustee in the present case. The Bankruptcy Trustee shall convey her written consent as per Regulation 3(3) of the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 and shall be governed by the said Regulations. It is made clear that the Fees of Bankruptcy Trustee shall be in accordance Regulation 4 of the said Regulations.
17. As a consequence of the Application being admitted in terms of Section 126(1) of the Insolvency and Bankruptcy Code, 2016, this Tribunal finds it fit to pass the bankruptcy order against the respondent, where by the provisions of Section 128 of the Insolvency and Bankruptcy Code, 2016 extracted hereunder shall come into effect: -

**“Section 128. Effect of bankruptcy order. –**

*(1) On the passing of the bankruptcy order under section 126, –*



*(a) the estate of the bankrupt shall vest in the bankruptcy trustee as provided in section 154;*

*(b) the estate of the bankrupt shall be divided among his creditors;*

*(c) subject to provisions of sub-section (2), a creditor of the bankrupt indebted in respect of any debt claimed as a bankruptcy debt shall not—*

*(i) initiate any action against the property of the bankrupt in respect of such debt; or*

*(ii) commence any suit or other legal proceedings except with the leave of the Adjudicating Authority and on such terms as the Adjudicating Authority may impose.*

*(2) Subject to the provisions of section 123, the bankruptcy order shall not affect the right of any secured creditor to realize or otherwise deal with his security interest in the same manner as he would have been entitled if the bankruptcy order had not been passed:*

*Provided that no secured creditor shall be entitled to any interest in respect of his debt after the bankruptcy commencement date if he does not take any action to realise his security within thirty days from the said date.*

*(3) Where a bankruptcy order under section 126 has been passed against a firm, the order shall operate as if it were a bankruptcy order made against each of the individuals who, on the date of the order, is a partner in the firm.*

*(4) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.”*

18. The Bankruptcy Trustee is directed to take forward the process of Bankruptcy and shall take in this regard such other and further steps as are required under the Statute, more particularly, in terms of Section 129, 130, 136, and 137 of the Insolvency and Bankruptcy Code.

19. Registry is directed to furnish a copy of the application for bankruptcy filed by the creditor and a copy of this order to the Bankruptcy Trustee. The bankrupt is directed to submit his statement of financial position to the Bankruptcy Trustee in such form and manner as prescribed within seven days from the bankruptcy commencement date. The bankruptcy trustee may require the

bankrupt or any other person to submit in writing further information explaining or modifying any matter contained in the statement of financial position.

20. The Bankruptcy Trustee shall proceed further in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 and shall perform the following functions in accordance with the provisions of Chapter V – Administration and Distribution of the Estate of the Bankrupt i.e., investigate the affairs of the bankrupt, realise the estate of the bankrupt and distribute the estate of the bankrupt.
21. The bankruptcy Trustee shall submit a preliminary report within ninety days of the bankruptcy commencement date and further reports as stipulated in Regulations 7 and 8 of the IBBI (Bankruptcy Process) Regulations, 2019.
22. Post this matter on 07.11.2022 for the preliminary report of the Bankruptcy Trustee.
23. A copy of the order shall be communicated to the applicant as well as the defendant. In addition a copy of the order shall also be forwarded to the IBBI for its records. Further, the Bankruptcy Trustee above named be also furnished with a copy of this order forthwith by the Registry.

(Dictated to PS, transcribed by him, corrected, signed and pronounced by me in Open Court on this the 8<sup>th</sup> day of August, 2022)

**Sd/-**  
**(T. RAJESH)**  
PRESIDING OFFICER  
DRT-II, CHENNAI