

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, CHENNAI BENCH
AT CHENNAI

IN THE MATTER OF THE INSOLVENCY & BANKRUPTCY CODE 2016
And
IN THE MATTER OF M/S.UDESHTECH EQUIPMENTS & ENGINEERING
PVT. LTD.

MICELLANEOUS APPLICATION NO. OF 2021
IN
COMPANY PETITION No.1179 OF 2018
AND
IN THE MATTER OF M/S.UDESHTECH EQUIPMENTS & ENGINEERING
PVT. LTD.

M/s.Ostberg India Pvt. Ltd.,
Survey No.109/128, DP 2&3,
Sidco Industrial Estate,
Thirumazhisai, Chennai – 600 124. ..Applicant/Operation Creditor

-Vs-

M/s.Udeshtech Equipments & Engineering Pvt. Ltd.,
No.24, Vinayapuram,
Ambattur, Chennai – 600 053. ..Respondent/Corporate Debtor

**APPLICATION FILED UNDER SECTION 12A OF THE INSOLVENCY AND
BANKRUPTCY CODE 2016**

i. DETAILS OF ORIGINAL APPLICATION

i. 1. PARTICULARS OF THE OPERATION CREDITOR:

The Operational Creditor is a private limited company, registered under the Companies Act. It is a 100% subsidiary of OSTBERG GROUP AB, SWEDEN and among other business of manufacture and sale of very high quality fans and other accessories.

i. 2. PARTICULARS OF THE APPLICANT:

The Applicant is M/s.Ostberg India Pvt. Ltd. whose particular is given in Column i.1 above is the Operational Creditor in the main petition.

i. 3. PARTICULARS OF THE RESPONDENT:

The Respondent is the Corporate Debtor in the main petition.

ii. JURISDICTION OF THE BENCH:

The Applicant declares that this Application is within the jurisdiction of this Hon'ble Bench/Tribunal.

iii. LIMITATION:

The Applicant declares that the application is not barred by limitation.

iv. FACTS OF THE CASE:

The Applicant/Operational Creditor has filed an application under Section 9 of Insolvency and Bankruptcy Code, 2016, sought for initiating Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor.

During pendency of the above company petition, the Respondent/Corporate Debtor paid a sum of Rs.1,20,000/- on 26.04.2019 and came forward to settle the matter amicably and has offered to pay only a sum of Rs.15,50,000/- towards full and final settlement, which offer was duly accepted by the Applicant/Operational Creditor.

In order to give quietus to the matter amicably the Applicant/Operational Creditor and Respondent/Corporate Debtor arrived at a settlement and filed Joint Memo of Compromise before this Hon'ble Tribunal.

This Hon'ble Tribunal recorded this Joint Memo of Compromise and disposed of the above Company Petition on 02.08.2019 with liberty to revive/restore the above Company Petition in the event of dishonouring any or all cheques given by the Corporate Debtor.

After disposal of the above Company Petition, the Respondent/Corporate Debtor has not complied with the terms and conditions of the Joint Memo of Compromise and hence the Applicant/Operational Creditor filed an Application in I.A.No.836/2020, sought for restoration of C.P.No.1179/2018 on the basis of the default committed by the Respondent/Corporate Debtor.

When the above I.A.No.836/2020 came up for hearing, the counsel represented on behalf of the Respondent/Corporate Debtor sought time to settle the balance amount of Rs.7,72,464/- within a period of three months. Accordingly this Hon'ble Tribunal restored the above C.P.No.1179/2018 vide order dated 22.12.2020 and directed the Corporate Debtor to file a memo in view of the representation. The Respondent/Corporate Debtor has also filed Memo to that effect, but failed to settle the amount as per the memo, within 3 months. Hence, this Hon'ble Tribunal heard the matter on merits and

pronounced its order on 04.06.2021 to initiate Corporate Insolvency Resolution Process (CIRP) as against the Respondent/Corporate Debtor appointing one Mr.S.Shivshanker as the "Interim Resolution Professional. Copy of order passed by this Hon'ble Tribunal is attached as Annexure -1 herewith.

Since the Applicant/Operational Creditor have already lost huge amount and they are facing financial crisis, they are not in position to pay a sum of Rs.2,00,000/- to the Insolvency Professional and the claim amount is also Rs.7,50,000/-. Further, the Applicant/Operational Creditor has been given to understand that the Corporate Debtor has no assets to recover the claim amount. Hence, they have decided to withdraw the company petition. Copy of email sent by the Applicant/Operational Creditor to its counsel is attached as Annexure – 2 herewith. The same has also been communicated to the Insolvency Profession which is attached as Annexure – 3 herewith.

v). **Relief(s) sought:**

In view of the facts mentioned above, the Applicant prays for the following relief:

It is therefore prayed that this Hon'ble Tribunal be pleased to permit the Operational Creditor to withdraw the above C.P. and thus render justice.

vi). Particulars of Bank draft evidencing payment of fee for the application made:

Place: Chennai

Date: 14.06.2021

Signature of the Applicant.

BEFORE THE HON'BLE COMPANY LAW TRIBUNAL
CHENNAI BENCH (SINGLE BENCH)

M.A.No. of 2021
 in
C.P.No.1179 of 2018

M/s.Ostberg India Pvt. Ltd.,
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AFFIDAVIT OF VERIFYING PETITION

I, R.Subramanian, son of Mr.K.Ramamurthi, Hindu, aged 32 years, working at Survey No.109/128, DP 2&3, Sidco Industrial Estate, Thirumazhisai, Chennai – 600 124, do hereby solemnly affirm and sincerely state as follows:-

1. I am the Accounts Manager of the Applicant/Operational Creditor Company and as such I am well acquainted with the facts of the case personally.

2. The facts of the case made in paragraphs 1 to 10 in column No.IV of the Application, now shown to me are true to the best of my knowledge and statement made in column No.(i) to (iii) and (v) are based on information, and I believe them to be true.

Solemnly affirmed at Chennai
on this the 15th day of June,
2021 and signed his name
in my presence.

Before me

Notary : Chennai

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, CHENNAI BENCH
AT CHENNAI

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S.No.	Date	Description of documents	Annexure No.	Page No.
1	14.06.2021	Application under Rule 12A of the Insolvency and Bankruptcy Rules 2016	---	1 – 3
2	15.06.2021	Affidavit of Verifying Petition sworn by Applicant/Operational Creditor duly notarised		4 & 5
3	04.06.2021	Copy of order passed by this Hon'ble Tribunal in C.P.No.1179 of 2018	Annexure – 1	6 – 14
4	12.06.2021	Email sent by the Applicant/Operational Creditor to its counsel	Annexure – 2	15
5	12.06.2021	Email sent by the Applicant/Operational Creditor to IRP as well email sent by the counsel for Applicant/Operational Creditor to IRP	Annexure – 3	16 & 17
6	16.06.2021	Email sent by the Applicant/Operational Creditor to IRP along with proof for payment of fees	Annexure – 4	18 & 19
7	15.06.2021	Online payment receipt	Annexure – 5	20

Certified that the documents are true copies of their respective originals.

Place: Chennai

Date : 21.06.2021

Signature of the counsel for Applicant

BEFORE THE NATIONAL COMPANY LAW
TRIBUNAL, CHENNAI BENCH
AT CHENNAI

M.A.NO. OF 2021

IN

COMPANY PETITION No.1179 OF 2018

M/s.Ostberg India Pvt. Ltd.,
..Applicant/Operation Creditor

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M/s.SAMPATHKUMAAR & ASSOCIATES
E.SENTHILKUMAR
N.ELANGO &
N.PRABAKARAN

Counsel for Applicant/Operational Creditor

