

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

CP/1179/IB/2018

*(filed under Section 9 of Insolvency and Bankruptcy Code, 2016 read with Rule 6
of the Insolvency and Bankruptcy (Application to Adjudicating Authority)
Rules, 2016)*

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

Tirumazhisai,

Chennai – 600 124

... Operational Creditor

-Vs-

M/s. Udeshtech Equipments & Engineering Private Limited,

No.24, A-201, 2nd Floor,

OHM Tower, Vinayagapuram,

Ambattur,

Chennai – 600 053

... Corporate Debtor

Order Pronounced on 4th June 2021

CORAM :

R. VARADHARAJAN, MEMBER (JUDICIAL)

ANIL KUMAR B, MEMBER (TECHNICAL)

For Operational Creditor : E. Senthilkumar, Advocate

For Corporate Debtor : None appeared

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

1. CP/748/IB/2018 is an Application filed by the Operational Creditor viz. M/s. Ostberg India Pvt. Ltd., under Section 9 of Insolvency and Bankruptcy Code, 2016 (*hereinafter referred to as*

"IBC, 2016") seeking thereof to initiate Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor viz. M/s. Udeshtech Equipments & Engineering Private Limited

2. It is seen from the records that based upon a memo of compromise filed by the parties, this Tribunal vide its order dated 02.08.2019 disposed off the Petition by passing the following order;

"Both the sides are present; filed a memo of compromise signed by both the parties. The amount paid by the Corporate Debtor is Rs.14,30,000/- by way of 6 post dated cheques (Rs.1,50,000/- dated 28.08.2019; Rs.1,50,000/- dated 28.09.2019; Rs.1,50,000/- dated 28.10.2019; Rs.3,26,666/- dated 28.11.2019; Rs.3,26,667 dated 28.12.2019 and Rs.3,26,667 dated 20.01.2020) which are handed over to the Counsel for the Operational Creditor, which is full and final settlement. The memo of compromise shall form part of this order.

In the light of the terms and conditions of the memo of compromise filed, the Petition stands **disposed of**.

However, the Operational Creditor is at liberty to revive / restore the petition in the event of dishonouring any or all cheques given by the Corporate Debtor."

3. Subsequent thereof, the Operational Creditor has filed IA/836/IB/2020 before this Tribunal stating that after the disposal of the said CP/1179/IB/2018, the Corporate Debtor has not complied with the terms and conditions of the joint memo of compromise and hence the Operational Creditor sought for

restoration of CP/1179/IB/2018 on the basis of the default committed by the Corporate Debtor. The Corporate Debtor was represented by a Counsel and sought time to settle the balance amount within a period of three months and accordingly this Tribunal restored the CP/1179/IB/2018 back on file vide its order dated 22.12.2020 and directed the Corporate Debtor to file a memo in view of the representation being made by them. Thereafter, it is seen that the Corporate Debtor has filed a memo vide Diary No. 333 dated 19.01.2021, to which the Operational Creditor has filed a Reply Memo vide Diary No. 1143 dated 01.03.2021, wherein they have stated that if the Corporate Debtor has failed to give a Demand Draft for a sum of Rs.7,72,464/- on or before 03.04.2021, this Tribunal may pass order on merits in CP/1179/IB/2018 and thereby recorded their objection to the memo filed by the Corporate Debtor on 19.01.2021.

4. Thereafter, it is seen that when the matter was posted for hearing on 30.03.2021, none appeared on behalf of the Corporate Debtor and the matter was adjourned to a date subsequent to 03.04.2021 for compliance on the part of the Corporate Debtor. However, when the matter was taken up for hearing on 13.04.2021, there was no representation on behalf of the Corporate Debtor and the matter was heard on merits based upon

the submissions made by the Learned Counsel for the Operational Creditor.

5. Thus the failure on the part of the Corporate Debtor in non-adherence of the time schedule as stipulated under the Joint Memo of compromise as entered into between the parties, based on which this Tribunal was induced to dispose of the petition filed earlier, proves that the Corporate Debtor has committed default in payment of the amount due to the Operational Creditor and as such this Tribunal is left with no other option rather than to initiate Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor.

6. Thus, taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Petition as filed by the Operational Creditor is required to be admitted under Section 9(5) of the IBC, 2016. The Operational Creditor has proposed the name of one Mr. S. Rajagopal, as Interim Resolution Professional (IRP) and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has also been filed by the proposed IRP. However, the matter was posted for clarification on 05.05.2021 for the production of "Authorization for Assignment" by the proposed IRP

and in pursuance of the same, the Operational Creditor has filed a memo by way of an e-mail to the Registry of this Tribunal on 31.05.2021 by stating that the said Mr. S. Rajagopal has declined to act as an IRP and has withdrew his consent given in Form – 2 and he is not willing to apply for “Authorization for Assignment” and under the said circumstances, the Operational Creditor requested to appoint any other Insolvency Resolution Professional, from the list furnished by the IBBI.

7. Accordingly, this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India applicable for the period between January – June 2021 appoints **Mr. S. Shivshanker**, *Registration No. IBBI/IPA-001/IP-P02141/2020-2021/13294 (email id: - shivshanker92@gmail.com)* as the “Interim Resolution Professional” subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the 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 respondent including 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 respondent 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 respondent 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 respondent.

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;

8. 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 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 arrangement 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.

9. 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.

10. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-** (*Rupees Two Lakhs Only*) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

11. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor 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 Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with 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-

ANIL KUMAR B
MEMBER (TECHNICAL)

-Sd-

R. VARADHARAJAN
MEMBER (JUDICIAL)

Raymond