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

IA/IBC/807/CHE/2022 IN IBA/1179/2018

(Filed under Section 12A of the *Insolvency And Bankruptcy Code, 2016* r/w
Rule 11 of the NCLT Rules, 2016)

*In the matter of M/s. Udestech Equipments & Engineering Private
Limited*

Shri. S. Shivshanker,
(IRP of M/s Udestech Equipments & Engineering Private Limited)
No. 24, Vinayagapuram, Ambattur,
Chennai- 600 053.

..... Applicant / Corporate Debtor

Order Pronounced on 19th September 2022

CORAM:

**JUSTICE RAMALINGAM SUDHAKAR, Hon'ble PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)**

For Applicant : AG Sathyanarayana, Advocate

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

Under Adjudication is the Application filed by the Resolution
Professional of the Corporate Debtor Viz., Udestech Equipments &

Engineering Private Limited under Section 12A, of the Insolvency and Bankruptcy Code , 2016 seeking the following reliefs:-

- i) To dismiss the Company Petition admitted in IBA/1179/IB/2018 which was undergoing CIR process; and
- ii) To pass such other orders or further orders which may deem fit and proper in the interest of justice."

2. It is submitted that the Corporate Debtor was admitted into the Corporate Insolvency Resolution Process by the order of this Tribunal dated 04.06.2021 in IBA/1179/2018 and appointed the Applicant as the IRP. However at this juncture it is pertinent to note that the Applicant IRP has not caused any public Announcement in Form-A in accordance to Regulation 6 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

3. It can be seen from para 3 of the Application that the Operational Creditor vide e-mail dated 12.06.2021 requested the IRP to withdraw the Application and also agreed to pay the CIRP Cost.

4. Further in para 4 of the Application it is averred that the Operational Creditor had communicated to the IRP through e-mail that the Operational Creditor could not bear any further CIRP expenses. The said para is extracted hereunder:-

"In response to the same, the OC representative has sent mail dt.12.06.2021 requesting the Applicant/IRP to

withdraw the CIRP initiated against the CD and further stated in their mail that they can't spend further for the CIRP expenses for their recovery. Copy of the mail dt.12.06.2021 is enclosed herewith as "Annexure-2", but due to wrong e-mail id it did not reach the IRP, but only on 15.06.2021 the same was communicated to the IRP."

5. However from para 6 of the Application it can be seen that Rs.30,000/- has been transferred to the RP towards CIRP cost and the said receipt is placed as Annexure- 4 of the Application typeset.

6. Further it is submitted by the Ld. Applicant counsel that the Operational Creditor approached the Applicant RP on 19.12.2021 with FORM-FA without board resolution and payment of balance CIRP cost. The said copy is placed as "Annexure-4" of the Application typeset. The Ld. Counsel submitted that the Operational Creditor had initially filed an Application under S.12A of the Insolvency and Bankruptcy Code, 2016 and the same was ordered on 04.07.2022 The said operative portion of the order is reproduced as follows, "*It is noticed that this Application under Section 12A is filed by the Operational Creditor and not by the IRP/RP which is not as per IBC,2016. Ld. Counsel seeks permission to file fresh application under Section 12A of IBC,2016 through IRP/RP. Permission is granted to file the same before the next date of hearing.*" Thus this Application has been preferred by the Applicant IRP under Section 12A of IBC, 2016.



7. We have perused the Form – FA filed along with the Application dated 09.12.2021. It is seen that the fees of the IRP has been paid and the Operational Creditor who triggered the CIRP has given his consent for withdrawal of the main Petition by providing FORM-FA. Taking into consideration the said submissions made by the Learned Counsel for the Applicant/IRP as well as the averments contained in the Application and also it can be seen that the CoC is yet to be constituted in relation to the CIRP of the Corporate Debtor, this instant Application IA/807/CHE/2022 stands **allowed** and in the circumstances, IBA/1179/2018 stands **withdrawn**. Consequently, the CIRP initiated against the Corporate Debtor also stands withdrawn. IRP is discharged.

8. The IRP is directed to hand over the management to the Board of Directors whose powers stood suspended by virtue of the initiation of the CIRP by this Tribunal while admitting the Petition in IBA/1179/2018 vide Order dated 04.06.2021 and whose powers stand restored consequent to the withdrawal of CIRP in relation to the Corporate Debtor viz., *Udestech Equipments & Engineering Private Limited*.

9. Before parting, it is required to be noted that the registry of this Tribunal has sent a copy of order dated 04.06.2021 regarding commencement of CIRP vide email to the IRP on 14.06.2021 the Applicant / RP in the said matter has not caused public announcement in FORM- A in accordance to the statutory provisions and the attendant regulations i.e. within a period of 3 days from the date of initiation of CIRP. In fact no further steps were undertaken by the IRP and A search of the IBBI website (www.ibbi.gov.in) reveals that the FORM A pertaining to the initiation of CIRP of the Corporate Debtor was never upload on the site and no status report was ever filed before this Tribunal by the IRP. Hence, we are of the view that there is a dereliction of duty on the part of the IRP .

Registry of this Tribunal is directed to mark a copy of this order to Insolvency and Bankruptcy Board of India (IBBI) and Indian Institute of Insolvency Professionals of ICAI(IIPI) of which the Applicant IRP is a member for further inquiry and necessary action and fix the lapses if any in this regard.



10. Accordingly, IA/807/CHE/2022 stands **allowed** IBA/1179/2018 stands **dismissed as withdrawn**. File sent to records.

- Sd -

SAMEER KAKAR
MEMBER (TECHNICAL)

- Sd -

JUSTICE RAMALINGAM SUDHAKAR
PRESIDENT