S.No. 2

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH -1

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON **21.09.2022** AT **10:30 AM** THROUGH VIDEO CONFERENCE

IA (IBC) 569/2022 in CP (IB) No. 353/7/HDB/2020
U/s. 7 of IBC, 2016

IN THE MATTER OF:

UCO Bank **… Financial Creditor**

Vs

GVS Infra & Industries Pvt Ltd **… Corporate Debtor**

CORAM:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER TECHNICAL

ORDER

IA (IBC) 569/2022:-

Orders pronounced and recorded vide separate sheets. In the result, this application is allowed and Liquidation process is ordered against the Corporate Debtor to be carried on in accordance with the provisions of the IB Code.

Sd/- Sd/-

MEMBER (T) **MEMBER (J)**

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1, HYDERABAD

I.A. No. 569/2022 in
C.P. (IB) No.353/07/HDB/2020 r/w
under section 33(2) of the IB Code, 2016

In the matter of
M/S GVS Infra & Industries Private Limited

Between:

S. Kasturi Rangan,
Resolution Professional of GVS Infra & Industries Private Limited,
IBBI/IPA-001/IP-P000064/2017-18/10150,
909A Raghava Ratna Towers
Chirag Ali Lane, Hyderabad – 500 001.

…Applicant/Liquidator

A N D

M/s UCO Bank

…Respondents/Financial Creditor

Date of Order: 21.09.2022

Coram:

Hon'ble Dr. Venkata Ramakrishna Badarinath Nandula, Member, Judicial
Hon'ble Sri Veera Brahma Rao Arekapudi, Member, Technical

Counsel present:

For the Applicant: Mr. S. Kasturi Rangan, Resolution Professional.

PER BENCH

O R D E R

1. Under consideration is an Interlocutory Application filed by Sri. S. Kasturi Rangan, Applicant herein) of **M/S Sri GVS Infra & Industries Private Limited** (hereinafter referred to as the "Corporate Debtor"), under Section 33(2) of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as "the Code, 2016"), seeking order of liquidation in respect of Corporate Debtor (GVS INFRA AND INDUSTRIES PRIVATE LIMITED).

2. Brief facts of the matter, as averred by the Applicant are as under:

2.1 This Tribunal vide order dated 01.10.2021 admitted the C.P. (IB) No. 353/07/HDB/2020 filed by the Corporate Debtor, i.e., the Corporate Applicant, M/S GVS Infra & Industries Private Limited, under Section 07 of the Code, 2016 and Shri S.Kasthuri Rangan was appointed as Interim Resolution Professional and the Applicant i.e. S.Kasthuri Rangan was directed to take necessary actions in accordance with the relevant provisions of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for corporate Persons) Regulations, 2016.

2.2 The Applicant, in Compliance with Section 13, Section 15 and other applicable sections of the Insolvency and Bankruptcy Code, 2016 read with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016, (here in after called 'Regulations'), a public announcement was made on 8th October 2021 by the Interim Resolution Professional in Business Standard & Nava Telangana where the registered office of the corporate debtor is situated intimating the commencement of Corporate Insolvency Resolution

Process against M/s. GVS INFRA AND INDUSTREIS PRIVATE LIMITED and inviting claims from the creditors by 20th October, 2021.

2.3 Upon admission of the claim of M/s. SREI Equipment Finance Limited, one of the financial creditors of the corporate Debtor, the COC was reconstituted as under:

S.No	**Name of the Creditor**	**Name of Claim Submitted in Rs.**	**Amount of Claim Admitted in Rs**	**Percentage (%) of holding**
1	State Bank of India	306,15,25,976	306,15,25976	82.14
2	UCO Bank	51,39,13,530	51,39,13,530	13.78
3	SREI Equipment Finance Limited	15,17,29,598	15,17,29,598	4.08
	Total	372,71,69,104	372,71,69,104	100.00

2.4 The Applicant submits that he has not received any other claims from other operational creditors, work man/ employee/ authorized representative of workmen and employees.

2.5 In the First meeting of Committee of Creditors held on 05th November 2021, the Applicant was confirmed as Resolution Professional by the committee of Creditors.

2.6 It is further submitted by the Applicant that there are no realizable assets with the Corporate Debtor and as such in the 3rd CoC meeting, the CoC initially resolved to liquidate the Corporate Debtor but subsequently in the 4th CoC meeting, it was decided to go for publication of EOI. However, the Applicant failed to receive any EOI till the last date i.e. 18.03.2022. The CoC in its 5th CoC meeting held on 28.03.2022, resolved to liquidate the Corporate Debtor. The following are the resolution passed in the CoC meeting with 100% voting share.

Liquidation under Section 33(2) of IBC, 2016: "Resolved that as there is no possibility of resolution, Corporate Debtor be liquidated and advised Resolution Professional to file an application with Hon'ble NCLT under section 33(2) of IBBI to get the order of Liquidation from Hon'ble NCLT.

Appointment Of Liquidator: Applicant stated that, COC has also resolved that the existing Resolution Professional (S.KASTHURI RANGAN) shall be appointed as Liquidator subject to approval of this Adjudicating Authority who shall be paid a fees/remuneration of Rs. 40000/- (Rupees Forty Thousand only) per month plus applicable taxes as decided by Committee of Creditors under regulation 39(D) of IBBI (Insolvency Resolution Process Of Corporate Persons) Regulations 2016.

3. Therefore, the Point that emerges for consideration by this Tribunal is:

- **Whether liquidation of the Corporate Debtor can be ordered in this case?**

4. Heard Mr. S. Kasturi Rangan, Resolution Professional for the applicant. Perused the records.

5. According to the Resolution Professional, though the CoC had initially resolved to liquidate the Corporate Debtor in its Third Meeting, the CoC in its Fourth CoC Meeting decided to issue fresh Expression of Interest (EoI) for submission of Resolution Plan and accordingly the Resolution Professional was advised to call for EoI for submission of Resolution Plan under Regulation 36A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. It is further submitted that both the above resolutions discussed hereinabove were passed with 100% vote share through E- voting (Right to Vote App) which was kept opened initially up to 19th April 2022 and subsequently extended up to 13/05/2022 at the request of COC members. However, the Applicant failed to receive any EOI till the last date i.e. 18.03.2022. Hence the CoC in its 5th CoC meeting held on 28.03.2022, with 100% voting resolved to liquidate the Corporate Debtor.

6. Here we refer to **Section 33 of IB Code.**

(1) Where the Adjudicating Authority, –

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast-track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall –

- (i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

- (ii) issue a public announcement stating that the corporate debtor is in liquidation; and
- (iii) require such order to be sent to the authority with which the corporate debtor is registered.

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors [1][approved by not less than sixty-six per cent. of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

[*Explanation.* – For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]

3) Where the resolution plan approved by the Adjudicating Authority [3][under section 31 or under sub-section (1) of section 54L,] is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii), (iii) of clause (b) sub-section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority,

(6) the provisions of sub-section (5) shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(7) The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator.

7. Admittedly, this Adjudicating authority has not received any resolution plan on or before the expiry of the maximum time permitted for CIRP. the CoC in its 5th CoC meeting held on 28.03.2022, with 100% voting resolved to liquidate the Corporate Debtor.

8. Therefore, in exercise of the powers conferred under sub-Clauses (i), (ii) and (iii) of Clause (b) of Sub-Section (1) of Section 33 of the I&B Code, 2016, the Tribunal proceeds to pass the following order :

ORDER

9. The Application is accordingly allowed with the following directions:-

(a) The Corporate Debtor i.e GVS Infra & Industries Private Limited shall be liquidated in the manner laid down in Chapter-III of the Code.

(b) This Adjudicating Authority hereby appoints **Shri S. Kasthuri Rangan as Liquidator**. He is having registration bearing No.IBBI/IPA-001/IP-00064/2017-18/10150, AFA valid up to 27th day of October 2022. He has given his consent letter dated 20th day of September 2022 (Through an E-mail to Registry NCLT Hyderabad) to act as Liquidator in the present case. He shall issue a public announcement stating therein that the Corporate Debtor is in Liquidation;

(c) He shall issue public announcement stating that the Corporate Debtor is in liquidation.

(e) Subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor. This shall however not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(f) All powers of the Board of Directors, Key Managerial Personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator.

(g) The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of the Code, read with Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(h) Personnel connected with the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as would be required for managing its affairs.

(i) The Liquidator shall be entitled to such fees as may be specified by the Board in terms of Section 34 (8) of the Code.

(j) This order shall be deemed to be a notice of discharge to the Officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.

(k) Copy of the order shall be furnished to IBBI, to the Regional Director, Ministry of Corporate Affairs, Registrar of Companies & Official Liquidator, Hyderabad, the Registered Office of the Corporate Debtor and the Liquidator.

Sd/-	Sd/-
(VEERA BRAHMA RAO AREKAPUDI) **MEMBER (TECHNICAL)**	**(DR N.V. RAMAKRISHNA BADARINATH)** **MEMBER (JUDICIAL)**

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