1

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

IA/(IBC)/1260/CHE/2022 in CP(IB)/82/CHE/2021

(Filed under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11of the NCLT Rules, 2016)

In the matter of ***Kaveri Gas Power Private Limited***

Mr. Krishna Komaravolu
Resolution Professional of
Kaveri Gas Power Private Limited
7-1-214, Flat No. 409, Vamsikrishna Apartments,
Dharam Karan Road, Ameerpet,
Hyderabad – 500 016

... Applicant /Resolution Professional

Order Pronounced on ***09th December, 2022***

CORAM:

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

For Applicant : *Krishna Gandhi, Advocate*

ORDER

***Per:* SAMEER KAKAR, MEMBER (TECHNICAL)**

This is an application filed under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016) seeking relief as follows:

(i) To allow the instant application filed U/s 33(1) of IBC, 2016 for liquidation of the Corporate Debtor i.e., Kaveri Gas Power Private Limited, including as a going concern under Regulation 32 (e) of IBBI (Liquidation Process) Regulations 2016 or sale of the business of the Corporate Debtor as a going concern under Regulation 32(f) thereof;

(ii) To appoint Mr.Krishna Komaravolu, the Resolution Professional of the Corporate Debtor during CIRP, as Liquidator in accordance to the provisions of Section 34(1) of IBC,2016 and Rules made thereunder; and

(iii) To any other order as the Tribunal may deem fit in the interest of Justice.

<u>FACTS OF THE CASE:</u>

2. Shorn of unnecessary details, the aspects relevant for the present case are as follows:

a) From the averments made by the Applicant, it is evident that the CIRP of the Corporate Debtor was initiated under section 7 of the IBC, 2016 and one Mr.L.Bhadri was appointed as IRP on 04.02.2022. IRP caused public announcement calling for the claimants from the Creditors of the Corporate Debtor by virtue of publication dated 07.02.2022. Upon receiving the claims, same were verified and IRP constituted the Committee of Creditors and filed a Memo of Constitution of CoC on 25.02.2022and the details are as under:

S.No	Name of Financial Creditor	Claim Submitted	Claim Admitted Rs.	Voting %
1	ASREC (India) Limited	173,81,87,399	173,81,87,399	98.96%
2	Tarini Enterprises Limited	1,55,47,986	1,55,47,986	0.88%
3	West Overseas Tradelink Pvt .Ltd	27,66,000	27,66,000	0.16%
TOTAL		**175,65,01,385**	**175,65,01,385**	**100.00%**

b) Thereafter in the 1st CoC meeting held on 07.03.2022 the Applicant herein Mr.Krishna Komaravolu replaced the IRP namely Mr.L.Bhadri and the same was ordered by the Tribunal vide order dated 25.04.2022.

c) It is seen that Form-G was published on 12.05.2022 and the last date for submission of EoI by PRAs was fixed on 27.05.2022.

d) During the 5th CoC meeting held on 08.06.2022, the Resolution Professional informed the CoC that the Prospective Resolution Applicants (PRAs) namely Sakthi Steel Industries Limited, Sherisha Technologies Private Limited and Mr.S.Elangovan have submitted their EOI documents on or before the due date i.e., 27.05.2022 along with the Refundable deposit of Rs.15 lakhs. Further, in the same CoC meeting, the last date for submission of Resolution plan was fixed on 11.07.2022.

e) Thereafter with the consent of CoC, the RP extended the last date for submission of Resolution plan twice based on the request made by the Prospective Resolution Applicants namely Sakthi Steel Industries Limited, Sherisha Technologies Private Limited and Mr.S.Elangovan. Accordingly, the last date for submission of Resolution Plan was fixed on 28.07.2022 and from the minutes of the 7th COC meeting dated 1.08.2022, the Applicant RP placed two resolution plans received from Sakthi Steel Industries Limited and Mr.S.Elangovan before the COC for consideration.

f)It is further seen from the application that the last date for CIRP was 02.08.2022 and the RP has filed an application seeking extension of CIRP period by 90 days beyond 180 days and the same was allowed by this Tribunal vide order dated 26.08.2022.

g) That the RP had received valuation reports and upon receipt of the Confidentiality Undertaking from the Financial Creditors the valuation reports were circulated to them through mail on 30.08.2022. The average Fair Value and average Liquidation Value of assets of the Corporate Debtor is Rs. 1383.11 lacs and Rs. 834.06 lacs respectively and the summary of valuation reports is attached as Annexure - A12 of the Application typeset.

h) Since the Resolution plans received were not found satisfactory, the CoC decided in its 8th meeting held on 30.08.2022 to reissue Form-G. Further the RP had reissued Form –G on 03.09.2022 and fixed the last date for submission of Resolution plans on 10.09.2022.

i) One more Resolution Applicant namely Manikaran Power Limited submitted Resolution plan and the same was opened during the 9th CoC Meeting held on 10.10.2022. Thereafter, RP and CoC interacted, discussed and negotiated with the Resolution Applicants during the 10th, 11th and 12th meetings of CoC.

j) The RP had placed the Resolution plans for voting during the 12th meeting held on 20.10.2022 and the CoC rejected the Resolution plans submitted by the Resolution Applicants and the copies of Voting sheets are attached as Annexure 20, 21 and 22 respectively.

3. It is averred in para 23 of the Application that in the 12th COC meeting held on 21.10.2022, the CoC after discussions and

deliberations resolved to liquidate the Corporate Debtor. The minutes of the 12th COC meeting are annexed as page 185 to 203 of the Application typeset and the extract of Resolution is reproduced hereunder:

Resolution 4:

ITEM NO.10 OF THE AGENDA

To vote on the Resolution for Liquidation of Corporate Debtor
CoC is requested to vote on the following resolution pertaining to liquidation of the Corporate Debtor with or without modification, through E-voting via E- mail mode:

RESOLUTION FOR LIQUIDATION OF THE CORPORATE DEBTOR:
"RESOLVED THAT pursuant to Section 33(1) of the Insolvency and Bankruptcy Code, 2016 and in accordance with the applicable rules and regulations made thereunder, the consent of the Committee of Creditors be and is hereby accorded for the Liquidation of the Corporate Debtor under Section 33(1) of the Insolvency and Bankruptcy Code, 2016."

"FURTHER RESOLVED THAT Mr. Krishna Komaravolu, the Resolution Professional be and is hereby authorized to submit the necessary application with NCLT seeking an order to be passed under Section 33(1) of the Insolvency and Bankruptcy Code, 2016."

"RESOLVED FURTHER THAT Mr. Krishna Komaravolu, Resolution Professional, be and is hereby authorised to appear before the NCLT and to do all such acts, deeds,

matters and things as may be necessary to give effect to the resolution."

NAME OF THE FINANCIAL CREDITOR	% OF VOTING
ASREC (India) Limited	98.96%
Tarini Enterprises Limited	0.88%
West Overseas Tradelink Private Limited, Kolkata	0.16%

4. It was further averred in para 25 of the application that:

   i. The corporate Debtor belongs to MSME category

   ii. Valuation Reports and Transaction Audit report were received

   iii. All efforts were made by the Resolution Professional to ensure that the Corporate Debtor is a **'Going Concern'** and the operations of the factory were continued and the intrinsic value of the Corporate Debtor is maximized.

   iv. Three Resolution Plans were received were not found satisfactory by the Financial Creditors since they are far lesser than the 'Liquidation Value of the assets of the Corporate Debtor.

5. The proposed Liquidator, Mr.Krishna Komaravolu has also filed his written consent to act as the Liquidator of the Corporate Debtor and also on verification from the IBBI Website, it is seen that the

Authorization for Assignment (AFA) for the RP is valid up to 27.12.2022.

6. Heard the submissions of the Applicant.

7. Apropos, it can be seen that it satisfies the mandate of 66% voting share under Section 33 (2) of the IBC, 2016. The Section 33 (2) of the IBC, 2016 is extracted hereunder:-

> **Section 33 (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 approved by not less than sixty-six percent 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)."

8. Thus, as a consequence thereof, the Corporate Debtor is required to be ordered for liquidation as per Section 33(1)(a) of IBC, 2016. We hereby appoint **Mr.Krishna Komaravolu,** with (***Reg. No:IBBI/IPA-002/IP-N00562/2017-2018/11699 and e-mail Id: kkvolu@gmail.com)*** as the Liquidator of the Corporate Debtor, to carry out the liquidation process subject to the following terms of the directions.

a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and Regulations including Insolvency and Bankruptcy

(Liquidation Process) Regulations, 2017 as amended upto date enjoined upon her.

b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.

c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file suitable application before this Adjudicating Authority.

d) The Registry is directed to communicate this order to the Registrar of Companies, Chennai and to the Insolvency and Bankruptcy Board of India;

e) In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.

f) The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.

g) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.

h) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section – 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.

i) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further report as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.

j) Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Debtor.

9. Accordingly, IA/1260/CHE/2022 filed for Liquidation of the Corporate Debtor stands **allowed**.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

JUSTICE RAMALINGAM SUDHAKAR
PRESIDENT

Sriram Ananth .V