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

IA/IBC/1004/CHE/2022 in IBA/582/2020

(Filed under Section 33(1)(a), 33(2) & 34(1) of the Insolvency and Bankruptcy Code, 2016)

In the matter of ***GPR Resources Private Limited***

J. Karthiga,
RP for M/s GPR Resources Private Limited,
"Sri Nivas", 1052, 41st Street,
Korattur, Chennai – 600 080.

... Applicant

*Order Pronounced on **23rd November 2022***

CORAM:

JUSTICE (RETD.) RAMALINGAM SUDHAKAR, PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant : Mr. A.G.Sathiyanarayana, Advocate

ORDER

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

This Application has been filed by the Applicant herein seeking the following relief:

> *"a. That this Hon'ble Tribunal may be pleased to pass an order for Liquidation of the Corporate Debtor namely M/s. GPR Resources Private Limited;*
>
> *b. That this Hon'ble Tribunal may be pleased to appoint one of the Insolvency Professional as Liquidator from the IBBI Panel list as maintained by this Hon'ble Tribunal for administering the Liquidation Process of the Corporate Debtor; and*
>
> *c. To pass such orders or further orders which this Hon'ble Tribunal may deem to be fit and proper in the interest of justice."*

2. The Corporate Insolvency Resolution Process (CIRP) in the matter commenced on 01.11.2021 vide Order of this Bench in IBA/582/2020 and Ms. Seetha Thelagar was appointed as the IRP.

3. Pursuant to the public announcement, claims were received by the IRP consisting of the Financial Creditors: -

S.No.	Name	Voting share
1	State Bank of India	93.87%
2	Hinduja Leyland Finance Limited	5.15%
3	Deutsche Bank AG	0.98%

4. The first CoC meeting was held on 01.12.2021. However, no decision was taken to confirm / appoint the RP.

5. The second CoC meeting was held on 21.12.2021.

6. The third CoC meeting was held on 24.02.2022 the CoC authorised the RP to file an Application under Section 19(2) of the Code before this Tribunal.

7. During the 3rd CoC meeting the RP apprised the CoC that due to non-cooperation of the persons of Corporate Debtor/suspended director and statutory auditor and non availability of records of the Corporate Debtor, the RP is not in a position to prepare Information Memorandum (IM) and take the CIRP to its logical conclusion.

8. Subsequently, 4th CoC meeting was conducted on 13.04.2022 whereat it was decided to replace the RP by another Resolution Professional Smt. J.Karthiga/Applicant and the Financial Creditor SBI took the responsibility to move an application with the Hon'ble NCLT, Chennai.

9. Vide Order dated 29.06.2022 in IA(IBC)/526/CHE/2022, this Tribunal appointed the Applicant herein as RP of the Corporate Debtor and also excluded the period of 119 days from the total CIRP period of the Corporate Debtor.

10. The 5th CoC meeting was held on 01.08.2022 wherein the RP informed the CoC that she could not ascertain possession of any asset of any kind with the Corporate Debtor and the CIRP of the Corporate Debtor has not progressed as per the scheme of the Code. The following steps under the CIRP could not be concluded:-

    a. Information Memorandum.
    b. Valuation.
    c. Form-G

11. Taking into consideration the above facts, the CoC in the 6th meeting held on 23.08.2022 resolved with a voting majority of 93.87% as under:

> *"**RESOLVED THAT** the Corporate Debtor is to be liquidated and the Resolution Professional shall*

intimate the Adjudicating Authority of the decision of the Committee of Creditors to liquidate the Corporate Debtor and shall file an application before the Adjudicating Authority praying for liquidation of the Corporate Debtor."

12. It is also seen that the CoC has not proposed the name of the Liquidator and there is a consequential prayer by the RP to appoint Liquidator in the matter from the IBBI panel list.

13. Heard the Ld. Counsel for the Applicant and perused the documents.

14. The minutes of the 6th CoC meeting are appended along with the Application from page Nos. 63 to 67. It is seen that the CoC with 93.87% voting majority has resolved for liquidation of the Corporate Debtor.

15. Form-H is attached at page Nos. 73 to 80 of the Application. A perusal of Form-H reveals that the extended period of the CIRP has expired on 29.08.2022.

16. From the first and second meeting of the CoC, it is seen that one Mr. David, General Manager of the Corporate Debtor was attending the meeting. Third and fourth meeting were not attended by suspended board of directors. In the fifth and sixth CoC meeting, one Mr. Ponraghu represented the suspended board

of directors. It has been concluded that the suspended board of directors were aware of the matter and the meeting wherein the liquidation of the Corporate Debtor was considered as their representative/suspended director were present.

17. It is seen that the extended period of CIRP ended on 29th August, 2022 and that the CoC has already resolved to liquidate the Corporate Debtor as per the 6th CoC meeting and resolution (supra) has already been passed. Consequent to which the Applicant has filed this Application under Section 33 of the Code.

18. 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)."

19. Considering the averments in the Application and submissions made across the bar and as no resolution plan has been received in the matter and as the mandated period of CIRP of 270 days has

already expired, this Adjudicating Authority is forced to order for liquidation of the Corporate Debtor and as such we hereby order for the liquidation of the Corporate Debtor.

20. In view of the discussions above, the Corporate Debtor is hereby ordered liquidation.

21. In the circumstances, **Mrs. Usha Gayathri Kavi** with Reg. No: ***IBBI/IPA-001/IP-P-02639/2022-2023/14100 (E-mail id: ca.ushagayathrik@gmail.com),*** whose AFA is valid till 16.06.2023 is appointed 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.

22. With the above directions, **IA/IBC/1004/CHE/2022** stands **allowed**.

-Sd-	-Sd-
SAMEER KAKAR	**JUSTICE RAMALINGAM SUDHAKAR**
MEMBER (TECHNICAL)	PRESIDENT