

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

**MA/398/2019 in CP/1214/IB/2018**

*(Filed under Sec.19(2) of the Insolvency and Bankruptcy Code, 2016)*

In the matter of **M/s. GKK Exports Private Limited**

Subramaniam Aneetha  
RP of M/s. GKK Exports Pvt. Ltd.  
A2, Sarada Apartments,  
17/6, Sringeri Mutt Road,  
R.A. Puram, Mandaveli,  
Chennai – 600 028

.. .. Applicant / RP

-Vs-

Bhuvan Kumar

.. Respondent / Suspended Director

Along with

**MA/1400/2019 in CP/1214/IB/2018**

*(Filed under Sec.12(2) of the Insolvency and Bankruptcy Code, 2016)*

In the matter of **M/s. GKK Exports Private Limited**

Subramaniam Aneetha  
RP of M/s. GKK Exports Pvt. Ltd.  
A2, Sarada Apartments,  
17/6, Sringeri Mutt Road,  
R.A. Puram, Mandaveli,  
Chennai – 600 028

.. .. Applicant / RP

Along with

**IA/221/2020 in CP/1214/IB/2018**

*(Filed under Sec.12(1) and (2) of the Insolvency and Bankruptcy Code, 2016)*

In the matter of **M/s. GKK Exports Private Limited**

MA/398/2019, MA/1400/2019, IA/221/2020 & IA/222/2020 in CP/1214/IB/2018  
Subramaniam Aneetha, RP of M/s. GKK Exports Private Limited



Subramaniam Aneetha  
RP of M/s. GKK Exports Pvt. Ltd.  
A2, Sarada Apartments,  
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.. .. Applicant / RP

Along with

**IA/222/2020 in CP/1214/IB/2018**

(Filed under Sec.33(2) and 60(5) of the Insolvency and Bankruptcy  
Code, 2016)

In the matter of **M/s. GKK Exports Private Limited**

Subramaniam Aneetha  
RP of M/s. GKK Exports Pvt. Ltd.  
A2, Sarada Apartments,  
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R.A. Puram, Mandaveli,  
Chennai – 600 028

.. .. Applicant / RP

Present:

For RP : M/s. Shubharanjani Ananth

CORAM :

**R. VARADHARAJAN, MEMBER (JUDICIAL)**  
**ANIL KUMAR B, MEMBER (TECHNICAL)**

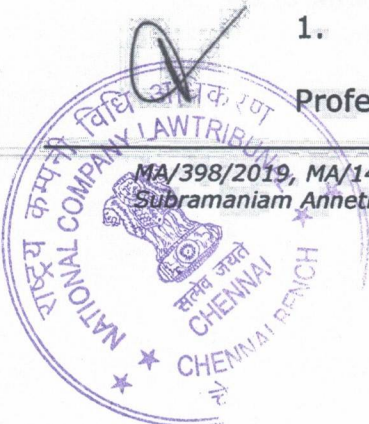
Order Pronounced on 23<sup>rd</sup> December 2020

**COMMON ORDER**

**Per: R. VARADHARAJAN, MEMBER (JUDICIAL)**

1. MA/398/2019 is an Application filed by the Resolution  
Professional of the Corporate Debtor viz. M/s. GKK Exports Private

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Limited under Section 19(2) of Insolvency and Bankruptcy Code (IBC), 2016 seeking thereof to issue directions to the Respondent to extend their assistance and co-operation by furnishing the necessary documents / records / information to the Applicant in order to manage the affairs of the Corporate Debtor, so as to carry out her duties as the Resolution Professional as mandated under the IBC;

2. MA/1400/2019, is an Application filed by the Resolution Professional under Section 12(2) of IBC, 2016 seeking thereof to pass an order excluding 238 days from the Corporate Insolvency Resolution Process (CIRP) which has been lost in the litigation and also to extend the period of CIRP for a further period of 90 days as per the Resolution passed by the CoC in 08.11.2019.

3. IA/221/2020, is an Application filed again by the Resolution Professional under Section 12(1) and 12(2) of IBC, 2016 seeking thereof to pass an order condoning the delay of 88 days in filing the Liquidation Application, which ought to have been filed on the expiry of 270<sup>th</sup> day of the CIRP.

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4. IA/222/2020 is an Application filed by the Resolution Professional under Section 33(2) read with Section 60(5) of IBC, 2016 seeking thereof to liquidate the Corporate Debtor and to appoint the Application as the Liquidator.

5. All the above noted applications are disposed of by virtue of a common order.

6. Brief facts of the case, shorn of unnecessary details are as follows;

(i) In an petition filed under Section 9 of IBC, 2016, this Tribunal vide order dated 01.03.2019 in CP/1214/IB/2018 initiated Corporate Insolvency Resolution Process against the Corporate Debtor viz. M/s. GKK Exports Private Limited. The Applicant viz. Subramaniam Aneetha was appointed as IRP and subsequently in the 1<sup>st</sup> CoC meeting held on 05.04.2019, the Applicant has been confirmed to act as Resolution Professional of the Corporate Debtor.

(ii) Pursuant thereto, based upon the public notice given by the RP on 08.03.2019, the Financial Creditors comprising of Union Bank of India and Phoenix ARC and the Operational Creditor who



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triggered the CIRP, submitted their claim before the RP.

- (iii) In the meantime, since no particulars were forthcoming from the Directors whose powers stood suspended, the RP filed MA/398/2019 against the said Directors for failure to provide co-operation. As a result of which the RP could not prepare Information Memorandum, not appointed any Registered Valuer, nor caused any publication for Expression of Interest.
- (iv) Consequent thereto, the Resolution Professional filed MA/1400/2019 for exclusion of 238 days which was lost in the litigation and also to extend the CIRP for a further period of 90 days. In the said Application this Tribunal by its Order dated 17.12.2019 directed the CoC member to respond to the said Application.
- (iv) In compliance of the said order dated 17.12.2019, the RP placed the MA/1400/2019 before the CoC in its 3<sup>rd</sup> meeting held on 03.01.2020, wherein the CoC has unanimously decided to liquidate the Corporate Debtor since no Resolution plan had been received and no progress is found in the resolution process of the Corporate Debtor. Further, it has also been



recommended that the RP to act as the Liquidator as she is eligible to be appointed as such.

- (v) As a result of which, the RP filed IA/221/2020 before this Tribunal on 21.02.2020 seeking to condone the delay of 88 days in filing the Liquidation Application, which ought to have been filed before the expiry of 270<sup>th</sup> day of CIRP, however the same has been filed with a delay of 88 days. IA/222/2020 is an Application seeking for liquidation of the Corporate Debtor.

7. Heard the submissions made by the Learned Counsel for the Resolution Professional. Eventhough the CIRP in relation to the Corporate Debtor was initiated as early as on 01.03.2019, as on date it is seen that the CoC has convened only three meetings due to the non cooperation from the part of the Directors whose power stood suspended. In MA/398/2019, which is a Section 19(2) of IBC, 2016 Application, the Respondent has filed an Affidavit stating thereon that the operations of the Company has been shut down as of 2009 - 2010 and as such the records maintained in respect of the Company were available only until the said period. Further, it has been stated that the Secured Creditor viz. Union Bank of India, has taken possession of the Registered Office of the Company under Section 14 of the SARFAESI Act and as such all the records

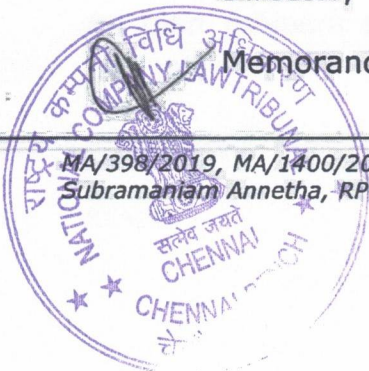
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that had been maintained by the Corporate Debtor until such time, were not handed over to the Corporate Debtor.

8. In reply to the said contentions, the Union Bank of India has filed its reply and has stated that no such record was found in the premises at the time of taking possession by the Financial Creditor and also produced a copy of the inventory which contains the details of the movable items found in the premises of the Corporate Debtor. Under the said circumstances, this Tribunal vide order dated 05.02.2020 directed the suspended Director Mr. MSG Bhuvan Kumar to be present on the next date of hearing. However on 24.02.2020, the suspended Director of the Corporate Debtor was present and undertook to co-operate with the IRP. Thereafter, the matter could not be heard due to the Covid – 19 pandemic coupled with attendant lockdown imposed by the Central / State Governments.

9. In the meantime, the MA/1400/2019 was filed by the Resolution Professional before this Tribunal on 02.12.2019 by stating thereof that due to the non cooperation of the suspended Director, the RP has no data to prepare the Information Memorandum as required under Section 29 of IBC, 2016 r/w

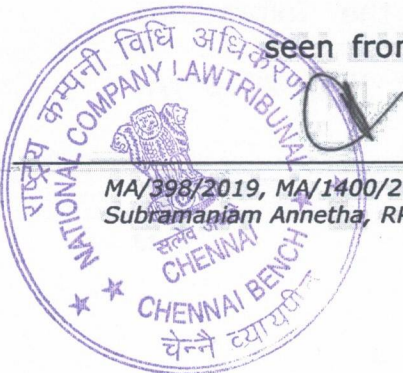


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Regulation 36 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and has stated that a total of 270 days has been lost due to non-availability of the records and due to the pendency of MA/398/2019. Thus, the RP has sought for exclusion of 238 days and also to extend the CIRP for a further period of 90 days. However, when the said Application came up for hearing, this Tribunal vide order dated 17.12.2019 directed the RP to issue notice of this Application to the CoC members and also directed the CoC member to respond to the said Application.

10. Thereafter, the RP filed IA/221/2020 before this Tribunal on 21.02.2020 seeking to condone the delay of 88 days in filing the Liquidation Application, which ought to have been filed before the expiry of 270<sup>th</sup> day of CIRP, however the same has been filed with a delay of 88 days. However, for the reasons stated in the said Application, IA/221/2020 seeking to condone the delay of 88 days in filing the Liquidation Application stands **allowed**.

11. IA/222/2020 is an Application filed by the Resolution Professional seeking for liquidation of the Corporate Debtor. It is seen from the records that the CoC in its third meeting held on



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03.01.2020 as unanimously passed a resolution to liquidate the Corporate Debtor, which is as follows;

“RESOLVED THAT the Resolution Professional be and is hereby directed to file the Application for Liquidation of the Corporate Debtor and recommended appointment of the Resolution Professional as Liquidator subject to the approval of the Adjudicating Authority”.

12. Further, in relation to the fees to be paid to the Liquidator, the CoC has resolved to pay a sum of Rs.1,00,000/- per month to the Liquidator as required under Section 33C of the IBBI (Liquidation Process) Regulations, 2016 and also the estimated Liquidation cost as stipulated under Regulation 39B of the BBI (Liquidation Process) Regulations, 2016 is arrived at Rs. 7.20 Lakhs.

13. As to the present case, it is also to be seen that the CoC in its third meeting itself has decided to liquidate the Corporate Debtor, even before preparation of the Information Memorandum, since the Corporate Debtor has shut down its operations since 2009 and also due to the non availability of sufficient documents to the RP for the purpose of preparation of Information Memorandum. At this juncture, it is pertinent to point out here that, by virtue of the



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Insolvency and Bankruptcy (Amendment) Act, 2019 (Act No.26 of 2019) an Explanation to sub - section (2) of Section 33 of IBC, 2016, was inserted, which came into force on 16.08.2019, in and by which, it has been stated in the said Explanation 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.

14. Further, it is seen from the record that the Resolution Professional has filed Form AA dated 03.01.2020, wherein she has given her written consent to act as the Liquidator of the Corporate Debtor and the same is placed at Page 17 as Annexure -C to the typed set filed along with IA/222/2020. In the circumstances, Ms. Subramaniam Aneetha is appointed as the Liquidator in relation to the Liquidation proceedings of the Corporate Debtor, which is presently under CIRP.

15. In view of the facts and circumstances recorded by the Resolution Professional in IA/222/2020 and since, no Resolution Plan has been received by this Authority under Sub-section (6) of



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Section 30 of the I&B Code, 2016, before the expiry of the maximum period of CIRP, in exercise of powers conferred under Sub-Clauses (i) (ii) and (iii) of Clause (a) of Sub-Section (1) of Section 33 of the I&B Code, 2016, this Authority proceeds to pass the Liquidation Order as follows:-

- a) **Ms. Subramaniam Aneetha** [IBBI/IPA-001/IP-P00376/2017-2018/10633] is appointed as the Liquidator of the Corporate Debtor. She 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 enjoined upon him.
- 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.
- d) The Registry is directed to communicate this order to the Registrar of Companies, Chennai and to the Insolvency and Bankruptcy Board of India;

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- 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 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 Authority within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.
- j) Copy of this Order be sent to the Financial Creditors, Corporate Debtor and the Liquidator for taking necessary steps.



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16. Accordingly **IA/222/2020** stands **disposed of** with the above said terms. Since, the Corporate Debtor is ordered for Liquidation the **MA/398/2019** and **MA/1400/2019** stands **closed**. In relation to IA/221/2020, as already stated in para *supra*, the same stands **allowed**.

-SD-

**(ANIL KUMAR B)**  
MEMBER (TECHNICAL)

-SD-

**(R.VARADHARAJAN)**  
MEMBER (JUDICIAL)

Raymond



Certified to be True Copy

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