

Annexure-5

Name of the corporate debtor: Goodwin Packpet Private Limited
 Date of commencement of liquidation: 11th January 2020
 List of stakeholders as on: 8th June 2022

List of operational creditors (Government Dues)

(Amount in ₹)

Sl. No.	Details of Claimant			Details of claim received		Details of claim admitted					Amount of contingent claim	Amount of any mutual dues, that may be set off	Amount of claim rejected	Amount of claim under verification	Remarks, if any
	Department	Government	Identification No.	Date of receipt	Amount claimed	Amount of claim admitted	Nature of claim	Amount covered by lien or attachment pending disposal	Whether lien / attachment removed? (Yes/No)	% share in total amount of claims admitted					
01	Commissioner of Central Tax and Central Excise, Kochi	Central Government		11/05/2022	2777822	2617076	Central Excise Duty				100		160746		See Note 01 & 02 below.

Note: 01 – Date of receipt of claim.

Central Excise Department had submitted its claim to the liquidator on 7th February 2022. Since there was a delay of 361 days after the last date to submit claim to the Liquidator, the liquidator did not admit the claim. Thereafter, the department submitted appeal against the decision of the Liquidator to the Hon'ble National Company Law Tribunal, Kochi Bench. The Hon'ble Tribunal vide its order dated 5th May allowed its appeal and directed the liquidator to accept the claim of the department. Based on the order of the Hon'ble Tribunal, the department approached the liquidator to consider its claim vide its letter dated 11th May 2022. Hence, the date of receipt of claim is shown as 11/05/2022.

Note : 02 – Reason for rejection of claim of Interest.

The Central Excise Department had included interest accrued after the date of commencement of liquidation in their claim. Hence, Liquidator rejected the portion of interest relating to the period after commencement of liquidation.



Babulalan

Company Appeal/07(KOB)/2022
IN
IBA/35/KOB/2019

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH, KERALA**

Company Appeal/07(KOB)/2022

IN

TIBA/35/KOB/2019

(Under Section 42 of IBC, 2016)

Order delivered on: 5th May 2022

Coram:

Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)
Hon'ble Mr. Anil Kumar. B, Member (Technical)

Appellant: -

Central Tax and Central Excise,
Chalaky Division, Chalaky,
Thrissur, Kerala- 680 307.

Versus

Respondents: -

1. Mr. Balakrishnan Baburajan,
Liquidator in Goodwin Packpet Pvt. Ltd.,
2nd Floor, Uzhinjilil Tower,
Subash Cahndra Bose Road,
Ponnurunni, Vytilla P.O.,
Ernakulam, Kerala- 682 019.
2. Goodwin Packpet Pvt. Ltd.,
Door No. 18/848, Mulang,
Thottipal, Thrissur,
Kerala- 680 310.

Parties/Counsel present (through video conference)

Company Appeal/07(KOB)/2022
IN
IBA/35/KOB/2019

For Applicant ... Shri. P.G. Jayashankar, Advocate.
For Respondent/Liquidator ... Shri Balakrishnan Baburajan (in person)

ORDER

Per: Ashok Kumar Borah, Member (J)

This Company Appeal/07/KOB/2022 has been filed on 07.03.2022 under Section 42 of the IBC, 2016 by the Assistant Commissioner of Central Taxes in the matter of M/s. Goodwin Packpet Pvt. Ltd., seeking the following relief: -

➤ To direct the 1st Respondent to forthwith include the claims submitted by the Petitioner in Form C under Regulation 17 of the Insolvency and Bankruptcy Board of India (Liquidation Process), 2016, in the list of stakeholders for adjudication.

2. The brief facts of the case are as under: -

3. Aggrieved by the order passed by the 1st Respondent /Liquidator dated 17.02.2022 rejecting the claims submitted by the Appellant which is the nodal national agency responsible for administering Customs, GST, Central Excise, Service Tax & Narcotics in India. The 2nd Respondent was an assessee of the Appellant who manufactured and cleared excisable goods without payment of appropriate Central Excise duty during the period from October 2016 to March 2017. A show-cause notice was issued by the Appellant to the 2nd Respondent on 13.01.2020 demanding Central Excise duty of Rs.10,05,525/- along with interest under Section 11AA of Central Excise Act, 1944 and to impose a penalty under Section 11AC read with Rule 25 of the Central Excise Rules,

2002, as also under Rule 27 of the said rules. The Appellant confirmed the demand *vide* Order-in-Original dated 14.01.2020.

4. It is stated that the 2nd Respondent has not yet paid the Central Excise duty along with the interest and penalty to the credit of the Central Government despite repeated requests. The Appellant had sent numerous letters to the 2nd Respondent but none of the letters were responded to. Later it was informed to the Appellant by the Bank Manager of Catholic Syrian Bank, Parappukkara Branch that the 2nd respondent had availed credit facilities to the tune of Rs. 485 lakh and since the repayments have defaulted, the account of the 2nd Respondent was classified as NPA. Subsequently, Mr. Amarjeet Singh, filed IBA before the Chennai Bench of NCLT which was renumbered by this Tribunal as TIBA/35/KOB/2019 and in the absence of a Resolution Plan within the stipulated period, this Tribunal ordered for liquidation of the 2nd Respondent *vide* order dated 11.01.2021 and the 1st Respondent is appointed as the Liquidator. The public announcement in this regard was made on 25.01.2021 inviting claims from stakeholders to be filed before the 1st Respondent. However, the Appellant could not file its claims before the 1st Respondent within the stipulated period. It is submitted that the delay has occurred because the 2nd Respondent had opted for the amnesty scheme- Sabka Vishwas Legacy Dispute Resolution Scheme (SVLDRS) on 15.01.2020 but the payment due was not made till the due date 30.06.2020 making them ineligible for the benefits under the scheme. It is further stated that the Appellant was unaware that a CIRP had been initiated against the 2nd Respondent by this Tribunal.

5. It is also stated that the Appellant submitted its claims in Form C under Regulation 17 of the Insolvency and Bankruptcy Board of India (Liquidation Process), 2016 before the 1st Respondent. It is further stated that a claim for Rs. 27,77,822/- as government dues, was made to the 1st Respondent for inclusion in the list of stakeholders. The said claim submitted by the Appellant was rejected by the 1st Respondent for the reason that there was a delay of 361 days in submitting the claim and under Section 31 of the Code, the Liquidator can only modify the list of stakeholders only as per the manner prescribed by this Tribunal.
6. It is further stated that even the functioning of the Appellant was limited and the delay occurred to submit the claims to the 1st Respondent is not due to any wilful laches on the part of the Appellant. In the claim, it was specifically pointed out that the application submitted to the 1st Respondent may be treated as one being filed within the time in view of the order of the Hon'ble Supreme Court of India in Suo Motu Writ Petition No. 3 of 2020 wherein the Hon'ble Supreme Court directed to extend the period of limitation in all proceedings before Court/Tribunals till 28.02.2022. The 1st Respondent has not considered this decision and has proceeded to reject the Appellant's entitled claims.
7. It is stated that the repayment of government dues is based on the principle of priority, and founded on the rule of necessity and public policy. The liquidation proceedings are yet to be finalized in the present case and no prejudice will be caused if the claim of the Appellant is adjudicated. None of the assets of the 2nd Respondent are liquidated and sold till date.

Submission by the Respondents

8. The 1st Respondent/Liquidator filed a reply statement on behalf of the 2nd Respondent also and stated that this Tribunal had ordered the liquidation of M/s Goodwin Packpet Pvt. Ltd. vide its order dated 11.01.2021. The Appellant has submitted their claim to the 1st Respondent/Liquidator on 07.02.2022 and the same was rejected on 17.02.2022 as per Section 38(1) of IBC, 2016 and Regulation 31 of IBBI (Liquidation Process) Regulations, 2016.
9. It is further stated that there is no authority vested with the Liquidator to condone the delay based on the order of the Hon'ble Supreme Court of India in Suo Motu in Writ Petition No. 3 of 2020. The authority to condone delay is vested with the Adjudicating Authority. Hence, the rejection of the claim of the Appellant by the 1st Respondent/ Liquidator is not arbitrary.
10. It is stated that no assets of the Company were sold at the time of filing of this Appeal. But, on 24th March 2022, plant and machinery as a whole of the Company was sold by way of e-auction for Rs. 3,25,00,000/-. Even though the land and building of the Company were also put for sale, no bid was received and hence it remains as unsold. The liquidation value of the land and building of the Company is Rs. 1,69,98,000/-. The total claim admitted by the liquidator is Rs. 7,71,12,092/-. It is further stated that there is no possibility of getting more than Rs. 7,71,12,092/- from the sale of all the assets of the Corporate Debtor. The Secured Financial Creditor and the Operational Creditor had submitted their claims within the time prescribed under the code. As per Section 53 of the Code, any amount due to the Central or State Government has priority over the amount due to the Operational Creditors. Hence, if this

appeal is admitted by this Tribunal, it will change the priority of the Operational Creditor adversely, who has submitted his claim within the time prescribed.

11. We have heard Shri. P.G. Jayashankar, the learned counsel for Appellant and the 1st Respondent/Liquidator of the 2nd Respondent Company, and perused the entire case records/documents. To decide this matter, we have gone through the decision of the Hon'ble Supreme Court in **Miscellaneous Application No. 21/2022 in Miscellaneous Application No. 665/2021 in Suo Motu Writ Petition (C) No. 3 of 2020** wherein it was held as under: -

5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021, and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings

12. From a reading of the above order of the Hon'ble Supreme Court we can decipher that even though there is a delay of 361 days in submitting the claim by the Appellant before the Liquidator, in view of the dictum laid down by the Hon'ble Supreme Court of India in **Miscellaneous Application No. 21/2022 in Miscellaneous Application No. 665/2021 in Suo Motu Writ Petition(C) No. 3 of 2020** this delay may be condoned in respect of the claim made by the

Appellant before the Liquidator. The Liquidator during arguments stated that in case the Adjudicating Authority condones the delay and direct the Liquidator to accept the claim, he is ready to accept the claim of the Appellant herein. The contention of the Liquidator that in case the claim of Appellant is admitted, they have priority over the Operational Creditor cannot be accepted, because the governmental claim cannot be neglected for the benefit of other stakeholders.

13. Considering the Appellant being a governmental authority and in view of the judgment of the Hon'ble Supreme Court, in the matter **Miscellaneous Application No. 21/2022 in Miscellaneous Application No. 665/2021 in Suo Motu Writ Petition(C) No. 3 of 2020** we allow this Appeal and direct the Liquidator to accept the claim made by the Appellant before him on 17.02.2022 and take appropriate decision on the claim of the Appellant, in accordance with the extant Rules and Regulations.

14. With the above direction Company Appeal/07/KOB/2022 stands disposed of.

Dated this the 5th day of May 2022.

Sd/-
(Anil Kumar. B)
Member (Technical)

Sd/-
(Ashok Kumar Borah)
Member (Judicial)

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