

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH, KERALA

I.A. No. 205/KOB/2020

In

TIBA No.35/KOB/2019

(Under Section 33(2) of the Insolvency and Bankruptcy Code 2016)

Order delivered on: 11.01.2021.

Coram:

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

Sathiq Buhari,
Interim Resolution Professional,
Sagreen Law Chamber,
Mathrubhoomi Road,
Vanchiyoor, Trivandrum-35.

..... **Applicant**

Vs.

1. Goodwin Packpet Private Limited, Thrissur.
2. Kovath Achuthan Anirudhan
3. Muraly Narayanan
4. Cheerambath Manikutty Rajeevan
5. Puthupally Pavithran Sathees
6. Prasanth Kumar Santhosh Bhavan Krishnan Nair
7. Suresh Babu Kattapilly

In the matter of

Goodwin Packpet Private Limited

Appearance (through video conferencing)

For Applicant : Mr. Sathiq Buhari, Interim Resolution Professional (In person)



ORDER

1. This IA has been filed by Shri Sathiq Buhari, Interim Resolution Professional in the matter of Goodwin Packpet Private Limited, under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 for liquidation of the Corporate Debtor.

2. The brief facts of the case are that by order dated 22.4.2020, this Tribunal admitted the application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, filed by Mr. Amarjeet Singh, Proprietor of Vineet Enterprises, Ernakulam, Kerala, the operational creditor against M/s Goodwin Packpet Private Limited, corporate debtor and appointed the applicant herein as the Interim Resolution Professional directing him to take necessary steps as contemplated under the relevant provisions of the Act and Regulations of IBBI after the relaxation of nationwide Lockdown declared by the Government. The IRP published the public notice on 24.10.2020 in two dailies under section 13&15 of IBC 2016. Thereafter, on the request made by the IRP, this Tribunal extended the period for completion of CIRP upto 30.11.2020. Thereafter, the IRP proceeded with the CIRP. Even though the IRP visited the premises of the corporate debtor, it was found that the company was locked and the suspended directors of the corporate debtor did not cooperate with the IRP. Hence IRP filed IA 184/2020 under Section 19(2) of IBC seeking police protection, which was allowed. On taking steps by the IRP the gates were opened and the 2nd respondent – suspended director, was present, but he did not allow to take possession of the property. Even though the IRP sought police protection again, the police authorities told that the suspended directors filed a Writ Petition before the Hon'ble High Court of Kerala and since that case is pending before the High Court, they could not assist the IRP. The CoC held the 1st meeting of CoC on 18.11.2020. Since the time fixed



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for completion of CIRP was 30.11.2020 and there was delay in the matter, IRP placed the issue before the 1st CoC. However, the 1st CoC did not approve the proposal for extension of time. The CoC decided to call for records from the suspended directors within three days. However again the suspended directors did not cooperate in providing the documents. 2nd CoC meeting was held on 23.11.2020 and the CoC discussed the issue in detail and decided that without the cooperation of the CD it is impossible to complete the CIRP without cooperation from the side of the suspended directors. The CoC consists of financial creditors having 100% voting power to take a decision for liquidation. Hence the CoC decided to go for liquidation and authorized the IRP to file a liquidation intimation petition before this Tribunal on or before 30.11.2020 under Section 33(2) of IBC 2016. Since the suspended directors of CD are not cooperating and the company is not a going concern, it is impossible to complete the CIRP. Hence the CoC decided to approach this Tribunal for ordering liquidation order. Hence the applicant filed the present I.A seeking an order for liquidation of 1st respondent company (corporate debtor) as contemplated under Section 33(2) of IBC 2016.

3. This Tribunal thoroughly perused the pleadings in the I.A and heard the learned IRP who is present in person through video conferencing as also the minutes of the meeting of 1st and 2nd CoC held on 18.11.2020 and 23.11.2020 respectively. This Tribunal vide order dated 4th December, 2020 directed the IRP to file an affidavit explaining why he has not complied with the Regulation 36A of the IBBI (Insolvency Regulation Process for Corporate Persons) Regulations, 2016 in the CIRP proceedings and also directed to explain the delay in filing this IA and also the status of the Writ Petition filed by the Corporate Debtor before the Hon'ble High Court of Kerala. The IRP filed an affidavit on 14.12.2020 submitting that the order passed on



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21.10.2020 in IA 160/2020 specifically directed the IRP to complete CIR Process on or before 30.11.2020. He has stated that the 2nd CoC held on 23.11.2020 was with 100% voting right took a decision for liquidation and directed the IRP to file liquidation application under Section 33(2) of IBC, 2016 on or before 30.11.2020. Even though the liquidation application was prepared on 26.11.2020 it could not be filed before 1.12.2020 for the reason that 28th, 29th and 30th Nov. 2020 were declared holidays for this Tribunal. He has also stated that the WP(C) No.24637/2020 filed before the Hon'ble High Court of Kerala challenging the CIR proceedings was dismissed on 4.12.2020 as it has become infructuous in view of filing of liquidation application before this Tribunal. The IRP has produced a copy of the order passed by Hon'ble High Court of Kerala on 4th December, 2020 in WP (C) No.24637 of 2020 in which it is stated that the date mentioned for taking over the management and possession of the assets of the company of which the petitioners are directors is already over and moreover the order impugned (Ex.P2) (Order in IA 184/20) is an appealable one. Hence the Writ Petition was dismissed.

4. During arguments Shri Satiq Buhari, Interim Resolution Professional stated that he is not interested to continue as Liquidator in this matter. This submission is recorded. Hence this Tribunal decided to appoint a resolution professional from the panel of IPs issued by the Insolvency and Bankruptcy Board of India for Kochi Zone from January to June, 2021.

5. Section 33 (1) & (2) of the Insolvency and Bankruptcy Code 2016, which is as follows:

"33. (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 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).

Explanation- For the purposes 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.

6. After considering all the above aspects, and considering the fact that the 2nd CoC with 100% voting right resolved to approach the Adjudicating Authority for liquidation under Section 33(2) of IBC, this Tribunal can pass an order for liquidation as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1) mentioned above. Hence this Tribunal pass the following order: -



- (i) The Corporate Debtor M/s Goodwin Packpet Private Limited is hereby put under liquidation with immediate effect under Section 33(2) of IBC, 2016.
- (ii) Since the Interim Resolution Professional stated that he is not willing to continue as the Liquidator, this Tribunal appoints Mr. Balakrishnan Baburajan with Registration No. IBBI/IPA-002/IP-N00544/2017-2018/11691 having office at BK Baburajan and Associates, Practicing Company Secretaries, 2nd floor, Uzhinjelil Tower, Subhash Chandra Bose Road, Ponnuruni, Vytilla PO, Kochi, Ernakulam, Kerala -682019 (baburajanfcs@gmail.com) as Liquidator of the Corporate Debtor under Section 34 of IBC, 2016 subject to submission of his written consent in the specified form and AFA issued by IPA before this Tribunal within 7 days of issue of this Order.
- (iii) Till the Liquidator take charge of the matter, the present Interim Resolution Professional shall continue. Thereafter, he shall hand over all the papers to the Liquidator, on request made by the Liquidator, without fail.
- (iv) The Liquidator is directed to adhere to Section 33(1)(ii) & (iii) and discharge his powers and duties as specified under Section 35 to 41 of IBC, 2016 and meticulously adhere to the Rules and Regulations issued by IBBI in this regard from time to time.

8. With the above directions, this IA/205/KOB/2020 is disposed of.

Dated the 11th day of January, 2021

Certified to be True Copy-

[Signature]
22/01/2021

Deputy Registrar

National Company Law Tribunal
Kochi Bench

sdl-

(Astok Kumar Das)
Member (Judicial)

Copy to:

Mr. Balakrishnan Baburajan, PCS
BK Baburajan & Associates, 2nd Floor, Uzhinjelil Tower,
Subhash Chandra Bose Road, Ponnuruni, Vytilla P.O, Kochi,
Ernakulam, Kerala - 682019.

