

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

IA/(IBC)/81/KOB/2021

In

IBA/35/KOB/2019

(Under Rule 11 of NCLT Rules)

Order delivered on 28th June 2021

Coram:

**Hon'ble Shri Ashok Kumar Borah, Member (Judicial)
Hon'ble Shri Satya Ranjan Prasad, Member (Technical)**

Applicants/Corporate Debtor:

Goodwin Packpet Private Limited
Door No.1/94, Vadakkunalath House
Mulang, Thottippal PO, Thrissur
Kerala represented by its Directors

1. Mr. Anirudhan
2. Mr. Rajeevan CM

Vs.

Respondent

Mr. Balakrishnan Baburajan,
Insolvency Professional, (Liquidator)
2nd floor, Uzhinjelil Tower,
Subhash Chandra Bose Road, Ponnurunni
Vytilla PO, Kochi-682019.

Parties/Counsel present (through video conference)

For the applicants
For Respondent

: Mr. Amal Stanley, Advocate
: Mr. Balakrishnan Baburajan (Liquidator in
person)

ORDER

This IA(IBC)/81/KOB/2021 has been filed by the suspended directors of the Corporate Debtor Company M/s Goodwin Packpet Private Limited praying the following reliefs: -

- i. To grant 45 days' time to the Directors of the applicant company Anirudhan and Rajeevan C. M. to clear off the debt due to the Respondent in the IBA and the other Creditor CSB Bank so as to get re-structured the applicant company.*
- ii. To keep the further proceedings in the case in abeyance including the further steps of the CIRP in the matter.*

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 an 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 Sections 13&15 of IBC 2016. Thereafter, on the request made by the IRP, this Tribunal extended the period for completion of CIRP up to 30.11.2020. On 01.12.2020 the IRP filed an Application before this Tribunal and the said application IA/205/KOB/2020 was allowed on 11.01.2021 putting the Corporate Debtor M/s Goodwin Packpet Private Limited under liquidation.

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Thereafter this Tribunal appointed Mr. Balakrishnan Baburajan as Liquidator of the Corporate Debtor.

3. The Applicants herein stated that the authorities of the Bank have been taking a lenient view towards the Applicant Company and Applicants for getting settled the loan account. The Applicants are taking urgent necessary steps to see that the liabilities towards the Bank and also towards the Respondent in the IBA settled at the earliest so as to revive and re-start the functioning of the Applicant Company. As such, the Respondent in the IBA cannot be permitted to move against the Applicant Company any further through the Liquidator and that too by claiming exorbitant amount as principal and interest. The Applicant Company and the Applicants are disputing the claim of the Respondent in the IBA and they are having a strong case against the Respondent in the IBA in the matter.

4. It is also stated that the respondent issued notice dated 27.01.2021 to the Applicant Company intimating about the initiation of liquidation proceedings. On 26.2.2021, the Applicants requested for granting 3 months' time so that they could re-structure the company by clearing off the debt due to the Respondent in the IBA and the other creditor CSB Bank. But the respondent granted only time up to 11.4.2021 as per his letter dated 29.3.2021. Therefore, the Applicants filed this Application to grant 45 days' time to the Applicants to clear off the debt due to the Respondent in the IBA and other Creditor CSB Bank.

5. The Liquidator filed counter affidavit stating that on 7th February, 2021, Mr. Kovath Achuthan Anirudhan, Mr. Cheerambath Manikutty

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Rajeevan and Mr. Puthuppully Pavithran Satheesh, members of the suspended board of directors of the Company had visited his office and orally informed that the promoters of Goodwin Packpet Private Limited proposes to submit a plan to re-structure the Company under Section 230 of the Companies Act, 2013 vide their letter dated 26th February, 2021. As per Regulation 2B of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, compromise or arrangement proposed under Section 230 of the Companies Act, 2013 should be completed within 90 days from the date of commencement of liquidation. Hence, compromise or arrangement proposed under Section 230 of the Companies Act, 2013 should have been completed on or before 11th April, 2021. He has also stated that vide letter dated 29th March, 2021 he had communicated the matter to the Promoters/Directors of Goodwin Packpet Private Limited and allowed them 90 days from the date of commencement of liquidation to restructure the Company. However, the applicants could not come up with any proposal to restructure the Company within the said period of 90 days as specified in IBC 2016. Therefore, the respondent stated that this Tribunal may consider the prayer of the applicants to grant extension of time to submit the plan for restructuring the Company Goodwin Packpet Private Limited based on its merits.

6. We have heard the learned counsel for the Applicants and learned Liquidator and had gone through the documents produced. The only question to be decided in this matter is whether some time more time can be granted

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to the Applicants to clear off the dues to the Respondent and other Creditor CSB Bank so as to get re-structured the Applicant Company.

7. To arrive at a conclusion whether further time can be granted to the applicants to settle the matter by restructuring the company, we have gone through the **2005 Report of the Expert Committee on Company Law (JJ Irani Committee Report)** in which it is stated that *to* provide an opportunity for genuine effort to explore restructuring/ rehabilitation of potentially viable businesses with consensus of stakeholders reasonably arrived at. Where revival / rehabilitation is demonstrated as not being feasible, winding up should be resorted to. Where circumstances justify, the process should allow for easy conversion of proceedings from one procedure to another. This will provide opportunity to businesses in liquidation to turnaround wherever possible. Similarly, conversion to liquidation might be appropriate even after a rehabilitation plan has been approved if such a plan was procured by fraud or the plan can no longer be implemented.

8. We have also gone through the decision of the Hon'ble NCLAT in the matter **S.C. Sekaran vs. Amit Gupta and Ors., (Company Appeal (AT) (Insolvency) No.495 and 496 of 2018)**. In this case, the Hon'ble Tribunal directed the liquidator appointed under the IBC, to "*take steps in terms of Section 230*" for the revival of the corporate debtor before undertaking the sale of its assets.

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9. In the view of the above even though the time sought by the Applicants have already expired, taking into account the fact that the applicants have filed this application on 09.04.2021, exercising the discretionary power of this Tribunal under Rule 11 of the NCLT Rules, 2016, this Tribunal dispose of the IA(IBC)/81/KOB/2021 with the following order: -

10. The Applicants are granted 30 days' time from today to clear off the debt due to the Respondent in the IBA and another Creditor CSB Bank, so as to get re-structured the Applicant Company. It is made clear that no further time will be granted for this purpose and if this order is not complied with by the applicants, the Liquidator is free to proceed further under the relevant rules.

Dated the 28th day of June, 2021

Sd/-
(Satya Ranjan Prasad)
Member (Technical)

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