



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

IA(IBC)/117/KOB/2022

IN

TIBA/35/KOB/2019

(Under Section 19(2) and 34(3) of IBC, 2016)

*In the matter of:
Goodwin Packpet Private Limited*

MEMO OF PARTIES:

BALAKRISHNAN BABURAJAN, Liquidator of Goodwin Packpet Private Limited, B.K Baburajan & Associates, Practicing Company Secretaries, 2nd Floor, Uzhinjelil Tower, Subhash Chandrabose Road, Ponnurunni, Vyttila P.O, Kochi, Ernakulam, Kerala 682 019;

... Applicant

-Versus-

1. **MURALI NARAYANAN**, Mannamparambil House, Kolathur, Nellore P.O, Thrissur, Kerala – 680 305;
2. **KOVATH ACHUTHAN ANIRUDHAN**, 130 A, KOVATH 9, Nenmanikkara Grama Panchayat, Thrissur, Kerala – 680 566;
3. **CHEERAMBATH MANIKUTTY RAJEEVAN**, Cheerambath House, Mulangu, Near Bhagavathi Temple, Thottippal P.O, Thrissur, Kerala – 680 310;
4. **PUTHUPULLY PAVITHRAN SATHEESH**, Puthuppully House, Mulungue Road, Near 103, Anganvadi, Thottippal, Mukundapuram, Thrissur, Kerala – 680 310;
5. **SANTHOSHKUMAR PRASANTH BHAVAN KRISHNAN NAIR (NRI)**, Prasanth Bhavan Kuzhur, Kakulissery P.O., Thrissur, Kerala – 680 734;
6. **SURESH BABU KATTAPPILLY (NRI)**, Kattappilly House, Thuruthur, Puthenveli P.O, Ernakulam, Kerala – 683 594.

... Respondents



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Coram:

Shri P. Mohan Raj : Member (Judicial)
Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing)

For the Applicant : Mr. Sankar P Panicker,
Advocate for Liquidator

Mr. Balakrishnan Baburajan
Liquidator

For the Respondent : Mr. Abraham Mathan
Advocate for R1

Mr. Abhishek R
Advocate for R2 to R6

Order reserved on: 02.02.2023
Order pronounced on:23.03.2023

ORDER

1. This IA(IBC)/117(KOB)/2022 has been filed under Sections 19(2) and 34 (3) of the Insolvency and Bankruptcy Code, 2016 seeking the following reliefs:
 - i. *Pass an order directing Respondents 1 to 6 , the suspended Directors of Goodwin Packpet Private Limited (In Liquidation) to deposit cash balance of Rs. 2,07,826/— (Rupees Two Lakhs Seven Thousand Eight Hundred and Twenty-six only) of the Company with them to the Liquidation Account of the Company maintained by the Liquidator with CSB Bank Limited, Palarivattom Branch. Kochi as mentioned in the notice.*
 - ii. *Pass an order directing the R1 to R6 to handover complete details of debtors like complete address of communication, amount due to the Goodwin Packpet Private Limited (in Liquidation) to the Liquidator for initiating recovery proceedings.*



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- iii. *Direct the R1 to R6 to hand over the records of the Company including books of accounts to the Liquidator from the date of incorporation of the Company to the date of commencement of corporate insolvency resolution process.*
- iv. *Pass an order directing the R1 Mr Murali Narayanan, the sole proprietor of Goodwin traders which owes Rs 12,61,608/— to Goodwin Packpet Private Limited (In Liquidation) to deposit the said amount to Liquidation Account of the Company maintained by the Liquidator with CSB Bank Limited, Palarivattom Branch. Kochi as mentioned in the notice.*
2. The applicant stated that this Tribunal *vide* order dated 11.01.2021 in IA No. 205/KOB/2020 in TIBA/35/KOB/2019 appointed the applicant as the Liquidator of Goodwin Packpet Private Limited from the panel of Insolvency Professional.
3. It is further stated that the plant and machinery of the Company was sold for a price of Rs. 3,25,00,000/ on 24th March 2022 by way of e-auction. The Sale consideration in full was received on 31st March 2022. Out of said realization, an amount of Rs. 2,80,00,000/- has been distributed to the secured financial creditor Viz., CSB Bank Limited on 21st April 2022 towards partial settlement of their claim. Further, interim finance of Rs.12,35,000/- availed from CSB Bank Limited has also been re-paid on 21st April. 2022. Thereafter, it is submitted that the Land and Building belonging to the Company has not been sold as on the date of the application. This IA is filed afresh based on the finding by this Tribunal in IA/(IBC)/169(KOB)/2021 in IBA/35/KOB/2019 that all the directors were not made parties in the said IA. The Applicant unconditionally apologize before this Tribunal for the inadvertent error that have crept in the first IA.
4. The learned counsel for the applicant submitted that it was informed to the Liquidator that the data were destroyed due to flood in August 2018, and the financial statements with the available data would be handed over by them. on 12th March 2021, the Respondents 2, 3 and 4 had handed over the Provisional



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financial statements for the financial year 2019-20 apart from the provisional financial statement for the period ended 11th January 2021. Further, the Liquidator had collected audited financial statements for the financial year 2018-19 from the Statutory Auditor.

5. It is further submitted that during the course of verification, it was observed that an amount of Rs 25,39,164/- is appearing as Sundry debtors from 2018-19 till 11/1/2021. Of the said outstanding receivables from Sundry Debtors, an amount of Rs 12,61,608/- is shown as due from Goodwin Traders, a sole proprietorship firm of R1. Further, stated that Liquidator has sent notice for handing over the cash, details of debtors and records of the Company to all the Respondents and also a separate notice to R1. Till the date of this application no revert on the notices has been received from any of the Respondents.
6. Based on the above submissions the applicant pleaded before this Tribunal to give the following directions for the smooth conduct and completion of the Liquidation process at the earliest:
 - i. *Direct the R1 to R6 to give complete details of debtors like complete address of communication, amount due to the company to initiate recovery proceedings.*
 - ii. *Direct the R1 to R6 To handover the cash of Rs 2,07,836/- to the Liquidator.*
 - iii. *Direct the R1 to R6 to hand over the records of the Company including books of accounts to the Liquidator from the date of incorporation of the Company to the date of commencement of corporate insolvency resolution process.*
 - iv. *Direct Mr. Muraly Narayanan, R1 to deposit Rs 12,61,608/- being the debt due by Goodwin traders a sole proprietorship business entity of R1 to the company as on the date of commencement of Liquidation.*
7. Respondent No. 1 filed counter and stated that this Application is to be dismissed as against the 1st respondent at threshold as this application is hit by the bar of Constructive *Res judicate*. It is submitted that the applicant had earlier filed I.A/(IBC)/169 (KOB)/2021 as against the 1st respondent, seeking the very same reliefs. This respondent entered appearance in the above case and a detailed reply was filed. After adjudicating the issues and hearing both the sides,



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a detailed order was passed by this Tribunal. It is apposite to note that this Tribunal had dealt with all the relevant issues while disposing the above LA. The act of the applicant in concealing Annexure R1(c) and only merely mentioning about the same in the present I.A, needs to be viewed in suspicion, especially after the remarks this Tribunal had made against him.

8. The learned counsel for the Respondent No. 1 submitted that this respondent is the sole proprietorship of Goodwin Traders. However, the averment that an amount of Rs. 12,61,608/- is due from Goodwin Traders is absolutely incorrect. Goodwin Traders used to purchase items from the company. The entire amounts have been repaid by Godwin Traders. There are no dues pending from the side of Goodwin Traders. The bills have been paid by cash to the account of the company on different dates. The cash has been paid by persons authorised by this respondent.
9. The learned counsel further submitted that the bank account statements are called for from this Honourable Tribunal, the cash transactions made by Persons authorised by this respondent will be visible as the Branch Manager refused to give the accounts of the company stating that the applicant/ liquidator has instructed him to not give the account statements of the company to this respondent.
10. Respondent No. 2 to 4 filed a reply and stated that even though these respondents are directors of the company, the 1st respondent who was the managing director was the person who exerted actual control of the company including its financial and commercial transactions. It is most respectfully submitted that the records relating to the commercial and financial transactions of the company were kept and is available only with the 1st respondent. The head office of the company at Mulungu, in Thrissur district was badly hit by the 2018 floods and the entire records and other valuables maintained at the head office has been completely destroyed due to the floods. The records available with these respondents were also destroyed in the floods.



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11. As **regarding relief no.1**, the learned counsel for the Respondent stated that these respondents have not handled the cash amount as mentioned. The records of all the transactions made by these respondents were maintained at the company head office and the said premises was totally damaged and all records were destroyed during the 2018 floods and the same are irrecoverable. As already stated, these respondents have not received any money from the company and on the other hand, the entire investment made by these respondents have been washed off. The cash balance of Rs. 2,07, 826/- is not available with these respondents. **As regarding relief no.2**, the learned counsel for the Respondent further stated that all the records of the company were maintained at the company head office and the said premises was totally destroyed during the 2018 floods and the same are irrecoverable. The facts regarding the same have been appraised to the official liquidator multiple times. These respondents are not in a position to provide details are sought in this relief. **Regarding relief No.3**, it is stated that all the records relating to the company's affairs available at the hands of these respondents have been destroyed due to floods. Hence, these respondents are unable to provide the relevant documents as sought for by the official liquidator. **Relief No.4** are not allowable due to the reason that the 1st respondent who was the managing director has been dealing with all the transactions of the company and he may be in a better position to appraise the official liquidator on the issue involved.
12. The learned counsel for the Respondent No. 5 & 6 stated that they have invested their hard-earned money and life savings and till date, they have not received anything in return from the company. The Managing Director Murali Narayan alone was handling the affairs of the company initially and R2, R3 & R4 were maintaining the company and its assets.
13. As regards **Relief No.1**, the learned counsel stated that these respondents have never participated in any of the affairs of the company and has never handled cash. The cash balance of Rs. 2,07,826/- was with the directors as mentioned above who were managing the affairs of the company. Regarding **Relief No.2**,



it is further stated that these respondents have no details of debtors as they have never participated in the management of the company. They have only invested in the company and trusted the other directors to manage the company well. As regards to **Relief No.3**, it is submitted that these respondents have never been in custody of any of the records of the company including books of accounts. He has joined as a director only with effect from 01.10.2014, whereas the company was incorporated on 23.07.2013.

14. The Liquidator also filed rejoinder reiterating more or less the same facts and circumstances that they canvassed in the Petition. The respondents have also filed the sur-rejoinder denying all the allegations levelled by the petitioners in their rejoinder praying to dismiss the Petition on the grounds referred to in their counter. The learned Counsel on either side vehemently argued the matter at length.
15. We have heard the matter in detail and perused the application and counter filed. We may first consider whether this Application is hit by the principle of *res judicata* in view of order dated 08.04.2022 passed in I.A(IBC)/169/KOB/2021.
16. The Doctrine of *Constructive Res Judicata* does not apply to the issues /points or any 'lis' between parties that has not been decided previously, and despite being pleaded, has not been considered by a court/tribunal and expressly dealt with in the order so passed. In law, the principle has been recognized in Section 11 of the Code of Civil Procedure 1908.
17. In *Satyadhyan Ghosal v. Deorajin Debi (1960) 3 SCR 590*, a three judge Bench of Hon'ble Supreme Court, speaking through Justice KC Das Gupta, explained the doctrine of *res judicata* in the following terms:

“7. The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter- whether on a question of fact or a question of law-



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has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of res judicata is embodied in relation to suits in Section 11 of the Code of Civil Procedure; but even where Section 11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct.”

18. From the above extract, it is clear that while *res judicata* may have been codified in Section 11, that does not bar its application to other judicial proceedings, such as the one in the present case. To constitute *res judicata* the following ingredients are necessary

- i. There must be two suits one former (previously decided) suit and the other subsequent suit.
- ii. Parties of the former and subsequent suit or the parties under whom they or any of them claim should be the same.
- iii. The subject matter of the subsequent suit should be identical or related to the Former suit either actually or constructively.
- iv. The case must be finally decided between the parties.
- v. The former suit should be decided by the court of competent jurisdictions.
- vi. Parties in the former as well as in Subsequent suit must have litigated under the same title

19. Before proceeding further, it is important to compare the reliefs sought by the applicant in both the Applications. They have been tabulated below, for an easy comparison:

Case Number	IA(IBC) 169/ KOB/ 2021	IA(IBC) 117/ KOB/ 2021
Case Name	Balakrishnan Baburajan V	Balakrishnan Baburajan V



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	Muraly narayan	Muraly Narayan & 5 others
Filed on	05.11.2021	03.06.2022
Reliefs Sought	<p>1.Pass an order directing Mr.Muraly Narayanan, Managing Director of Goodwin Packpet Private Limited to pay cash balance of Rs.2,07,826/- of the Company with him to the Liquidation Account of the Company maintained by the Liquidator with CSB Bank Limited, Palarivattom Branch, Kochi.</p> <p>2.Pass an order directing Mr. Muraly Narayanan, Managing Director of Goodwin Packpet Private Limited to handover address and other contact details of debtors of Goodwin Packpet Private Limited to the Liquidator.</p> <p>3. Pass an order directing Mr. Muraly Narayanan, Managing Director of Goodwin Packpet Private Limited to handover the records of the company including books of accounts to the Liquidator from the</p>	<p>1.Pass an order directing Respondents 1 to 6, the suspended Directors of Goodwin Packpet Private Limited (In Liquidation) to deposit cash balance of Rs.2,07,826/- of the Company with them to the Liquidation Account of the Company maintained by the Liquidator with CSB Bank Limited, Palarivattom Branch, Kochi, as mentioned in the notice.</p> <p>2.Pass an order directing R1 to R6, to handover complete details of debtors like complete address of communication, amount due to the Goodwin Packpet Private Limited to the Liquidator for initiating recovery proceedings.</p> <p>3. Direct R1 to R6 to handover the records of the company including books of accounts to the Liquidator from the date of</p>



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	date of incorporation of the Company to the date of commencement of Corporate Insolvency Resolution Process.	incorporation of the Company to the date of commencement of Corporate Insolvency Resolution Process. 4. Pass an order directing Mr.Muraly Narayanan, the sole proprietor of Goodwin traders which owes Rs. 12,61,608/- to Goodwin Packpet Private Limited(In Liquidation)to deposit the said amount to the Liquidation Account of the Company maintained by the Liquidator with CSB Bank Limited, Palarivattom Branch, Kochi, as mentioned in the notice.
Result	Heard and passed order on 08.04.2022	Present application, under consideration.

20. From the above table, it is clear that the prayers in the first application and second Application are identical. From the available materials, it is obvious that all the (vi) conditions mentioned above are involved in this application.

21. Thus, in view of the principle of *Res Judicata* discussed above, this Interlocutory Application cannot be adjudicated and hence, it has to be dismissed. Accordingly, application is DISMISSED.



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22. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
23. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2023.03.23 17:32:42 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN
MOHAN RAJ

Digitally signed by PANDIAN
MOHAN RAJ
Date: 2023.03.23 14:37:39
+05'30'

P. Mohan Raj
Member (Judicial)

Signed on this, 23rd day of March, 2023.

CV