

**IN THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"**

CA No. 138/2017
IN
CP (IB) NO. 06/Chd/CHD/2017
(Decided matter)

**Under Section 12 (2) of the Insolvency
and Bankruptcy Code, 2016**

In the matter of :

M/s. Hind Motors India Limited,
Plot No. 9, Industrial Area, Phase-1,
Chandigarh.

.....Petitioner-Corporate Debtor.

Date of Order: 12.09.2017

Coram: Hon'ble Mr. Justice R.P. Nagrath, Member (Judicial)

For the petitioner : Mr. Rakesh Bhatia, Advocate.

For the applicant : Mr. Shobit Phutela, Advocate.

Mr. Krishan Vrind Jain, CA, Resolution Professional.

ORDER (Oral)

CP (IB) NO. 06/Chd/2017 filed under Section 10 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the 'Code') was admitted on 09.03.2017 declaring moratorium in terms of Section 14 of the Code and appointing Mr. Krishan Vrind Jain as the Interim Resolution Professional with necessary directions. The first meeting of Committee of Creditors was held on 07.04.2017 and Mr. Krishan Vrind Jain was confirmed as the Resolution Professional. Mr. Krishan Vrind Jain has been holding the meetings of the Committee of Creditors on regular intervals and sending the progress reports to this Tribunal. The



first meeting was held after constitution of the Committee of Creditors comprising of Union Bank of India, ICICI Bank, SIDBI and Fixed Deposit holders. The claims were submitted to the Resolution Professional by the creditors on the basis of public announcement made on 12.03.2017. The Resolution Professional held the meeting of Committee of Creditors on 07.04.2017, 24.04.2017, 24.07.2017, 02.08.2017, 11.08.2017, 17.08.2017, 29.08.2017 and 04.09.2017 for which the reports were sent from time to time. The last meeting of Committee of Creditors was held on 04.09.2017 wherein the following resolution was passed:

*"1. **Resolved that the resolution plan** proposed by Representative of Sh. Ashish Mohan Gupta in this meeting without any modifications as to terms of resolution from the previous plan is rejected. All the financial creditors and FD Holders except the 3 stated FD Holders refused to accept the same Resolution Plan, it being repetitive, without stating appropriate sources of funds and not in line with the guidelines of the Act.*

*2. **Further resolved that** the Committee of Creditors comprising of 78.49% voting share recommend the Company should be wound up/liquidated and Honorable NCLT Chandigarh Bench be informed accordingly.*

*3. **Further resolved that,** COC, decided that the company should be recommended for the Liquidation to the Honorable NCLT Bench. The Liquidator so appointed be paid fees in accordance with the Regulation 4 (3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.*



4. Further resolved that, the agreements entered by the promoters of the company with the various FD holders being not part of Resolution Process through Committee of Creditors should be declared void and Resolution Professional should refer this for further orders of Honorable NCLT Bench, Chandigarh."

2. The resolutions were passed with 78.49% in favour of the resolution for liquidation of the company by rejecting resolution plan presented by Mr. Naresh Aggarwal, representative of Mr. Ashish Mohan Gupta who was director of the company. Before that, the meeting was scheduled for 29.08.2017. Mr. Ashish Mohan Gupta was brought for attending meeting of committee of creditors on production warrants issued by this Tribunal as he was in custody since 08.04.2017 in an FIR. That order was passed by this Tribunal on 24.08.2017 as Adjudicating Authority and the meeting was attended by Mr. Ashish Mohan Gupta. The resolution plan which was presented by Mr. Ashish Mohan Gupta on 29.08.2017 was again pressed by his representative in the meeting of COC on 04.09.2017. He also requested the COC for granting 90 days more to come up with some workable plan in accordance with regulations framed under the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 but failed to amend the resolution plan which was presented on 29.08.2017. The copy of the resolution plan was attached with the minutes of the meeting of Committee of Creditor dated 04.09.2017 also.



The plan was rejected by the Committee of Creditor and it recommended that the company should be wound up/liquidated. The Resolution Professional filed intimation to this Tribunal along with copy of minutes of meeting of Committee of Creditors with the request for passing necessary orders.

3. Learned counsel for the applicant representing Mr. Ashish Mohan Gupta has filed CA No. 138/2017 explaining the circumstances for providing another opportunity to persuade the Committee of Creditors on the resolution plan and to extend the period of completion of insolvency resolution process in accordance with Rule 12 (2) of the Code.

4. It is submitted that the last meeting held on 04.09.2017 was attended by all the secured creditors except ICICI bank. There are 301 depositors of the company and out of them 42 deposit holders attended the meeting. They also voted in favour of the resolution for an order of liquidation except two of them having 0.72% voting share only. 4.02% of the voting share of the depositors voted against the extension of time to consider the resolution plan.

4. Under Regulation 39(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, a resolution plan is to be prepared in accordance with the Code and the same is to be submitted to the Resolution



Professional 30 days before expiry of the maximum period permitted under Section 12 of the Code for completion of the corporate insolvency process. The period of 180 days as provided under sub-section (1) of Section 12 of the Code from the date of admission of the application expired in this case on 05.09.2017 and admittedly no resolution plan was submitted before 30 days of the expiry of the said period. The learned counsel for the applicant, however, submitted that the applicant remained in custody throughout the period in one FIR registered against him and is still in custody but that cannot be a ground to consider for grant of extension of time as the order of admission and appointment of Interim Resolution Professional as proposed by the Corporate Debtor was passed in the presence of Corporate Debtor.

5. The scope of extension of time can be only on an application made by the Interim Resolution Professional on the basis of the resolution of the Committee of Creditors as provided in sub-sections (2) and (3) of Section 12 of the Code. After expiry of 180 days or 270 days, in case extension of 90 days is granted, the only recourse is to initiate the liquidation process as provided in Chapter III of the Code.

Section 33 (1) of the Code reads as under:-

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."*

6. Therefore, CA No. 138/2017 cannot be accepted and accordingly the same is dismissed. The order is passed in accordance with Section 33 of the Code for liquidation of the Corporate Debtor by issuing public announcement stating that the Corporate Debtor is in liquidation and to intimate the Registrar of Companies, Punjab and Chandigarh about this order.

7. Mr. Krishan Vrind Jain, Resolution Professional would act as 'Liquidator' for the purposes of liquidation as he is not disqualified under any of the clauses of sub-section (4) of Section 34 of the Code. The 'Liquidator' shall publish public announcement in accordance with Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016 and in Form B of Schedule II of these Regulations within five days from today

calling upon the stakeholders to submit their claims as on liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date.

8. It is further directed that the announcement shall be published in accordance with Regulation 12(3) as under :-

*" (a) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, or the corporate debtor and any other location where in the opinion of the liquidator, the corporate debtor conducts material business operations;
(b) on the website, if any, of the corporate debtor; and
(c) on the website, if any, designated by the Board for this purpose."*

9. It is further directed that as per Section 33(5) of the Insolvency and Bankruptcy Code, 2016,

- (i) Subject to Section 52 of the Code, when a liquidation order has been passed, no suit or other legal proceedings shall be instituted against the Corporate Debtor:

Provided that a suit or other legal proceedings may be instituted by the liquidator on behalf of the Corporate Debtor, with the prior approval of the Adjudicating Authority;

- (ii) However, in terms sub-section (6) of Section 33 of the IB Code, 2016 the provisions of sub-section (5) of Section 33 of the Code shall not apply to legal



proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator;

- (iii) The order for liquidation under Section 33 of the Code shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the liquidator;
- (iv) All the powers of the Board of Directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested in the liquidator; and
- (v) The personnel of the Corporate Debtor shall extend all assistance and cooperation to the liquidator as may be required by him in managing the affairs of the Corporate Debtor and provisions of Section 19 of the Code shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the Interim Resolution Professional.

10. The Resolution Professional has submitted that as a 'Liquidator' he is to charge fee for conducting the liquidation process as may be specified by Insolvency and Bankruptcy Board of India.

11. The liquidator shall exercise the powers and perform the duties as prescribed under various provisions and the Code, Regulations and the applicable Rules. It is submitted that the 'Corporate Debtor' has no liquid assets so it is clarified that the expenses of the



public announcements and for service of process etc. incurred by the 'Liquidator' shall be reimbursed by Union Bank of India presently and the same shall be part of liquidation costs. The 'Liquidator' shall be paid fee in accordance with the Regulation 4(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

12. In accordance with Regulation 13 of the Liquidation Process Regulations, 2016, the 'Liquidator' shall file his preliminary report within 75 days and to file regular progress reports every fortnight thereafter.

13. It is clarified that the Financial Creditors are not debarred from having recourse to enforce of the personal guarantees and to take proper steps in this regard.

14. The Resolution Professional has lastly submitted that his fee has not been paid so far right from the date of his appointment. There is a provision in clause (a) of Section 53 (1) of the Code giving priority at the time of distribution of liquidated assets relating to the IRP cost and liquidation cost to be paid in full as first preference.

Copy of this order be supplied to the 'Liquidator' forthwith. and also to the learned counsel for the Financial Creditor.

- Sd -

(Justice R.P.Nagrath)
Member (Judicial)

September 12, 2017

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