

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 239 of 2017

(Arising out of Order dated 28.08.2017 passed by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh in Company Petition (IB) No.-01/Chd/2017)

IN THE MATTER OF:

Shri Ashish Mohan Gupta **... Appellant**

Versus

M/s. Hind Motors Limited **... Respondent**

WITH

Company Appeal (AT) (Insolvency) No. 240 of 2017

Arising out of Order dated 12.09.2017 passed by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh in Company Petition (IB) No.-06/Chd/CHD/2017)

IN THE MATTER OF:

Shri Ashish Mohan Gupta **... Appellant**

Versus

M/s. Hind Motors India Limited **... Respondent**

WITH**Company Appeal (AT) (Insolvency) No. 241 of 2017**

Arising out of Order dated 12.09.2017 passed by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh in Company Petition (IB) No.-03/Chd/2017)

IN THE MATTER OF:**Shri Ashish Mohan Gupta****... Appellant****Versus****M/s. Hind Motors Mohali Private Limited****...****Respondent**

Present: For Appellant : Shri Sandeep Bajan, Ms. Pallavi Singh and Ms. Sonal Chaujar and Mr. Soayib Qureshi, Advocates.

For Respondents : Shri Kamal Satija, Advocate.

J U D G E M E N T**SUDHANSU JYOTI MUKHOPADHAYA, J.**

‘M/s. Hind Motors Limited’, Chandigarh, filed an application under Section 10 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “I&B Code”) in CP (IB) No. 01/Chd/2017, for its ‘Corporate Insolvency Resolution Process’. The application under section 10 of the ‘I&B Code’ was admitted by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh, on

14th February, 2017 declaring the 'Moratorium' and one Mr. Manik Goyal was appointed as 'Interim Resolution Professional'.

2. Another Company namely, 'M/s. Hind Motors India Limited', Chandigarh, filed an application under Section 10 of the "I&B Code" in CP (IB) No. 06(Chd)/2017, for its 'Corporate Insolvency Resolution Process', which was admitted by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh on 9th March, 2017 declaring the 'Moratorium', one Mr. Krishan Vrind Jain was appointed as 'Interim Resolution Professional'.

3. A third Company namely, 'M/s. Hind Motors Mohali Private Limited', Chandigarh, filed an application under Section 10 of the "I&B Code" in CP (IB) No. 03(Chd)/2017, for its 'Corporate Insolvency Resolution Process', which was admitted by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh on 20th February, 2017 declaring the 'Moratorium', one Mr. Manik Goyal was appointed as 'Interim Resolution Professional'.

4. By the impugned orders dated 28th August, 2017 in CP (IB) No. 01/Chd/2017; order dated 12th September, 2017 in CP (IB) No. 06(Chd)/2017 and order dated 12th September, 2017 in CP (IB) No. 03(Chd)/2017, the Adjudicating Authority after expiry of 180 days in all the cases passed order under Section 33(1) of the 'I&B Code' and

started Liquidation Process in respect to the aforesaid three 'Corporate Applicants' giving rise to the present appeals.

5. The Appellant- Mr. Ashish Mohan Gupta is a Promoter of all the aforesaid 'Corporate Debtors' who had also submitted 'Resolution Plan'. In all these cases, the Appellant produced a letter dated 16th August, 2017 from the Corporation Bank along with the 'Resolution Plan' but in the said letter it was mentioned that *"please note that this letter doesn't tantamount to firm commitment for sanction of the said loan."* In one of the cases, the Appellant- Mr. Ashish Mohan Gupta, Promoter proposed to make payment of Rs. 1.25 crores as against the total outstanding claim of Union Bank of India which amounts to Rs. 3.51 crores. In other cases, similar 'Resolution Plan' was filed by the Appellant- Mr. Ashish Mohan Gupta, Promoter. However, in all the three cases, the respective 'Committee of Creditors' by majority decision rejected the plan, which resulted in initiation of liquidation proceeding under Section 33 of the 'I&B Code'.

6. The Appellant- Mr. Ashish Mohan Gupta has taken similar pleas in all the appeals that the 'Corporate Insolvency Resolution Process' was completed without following the prescribed provisions of the 'I&B Code', the 'Resolution Professional' did not seek extension of 90 days' time and therefore, the Adjudicating Authority in haste passed the order for liquidation of the Company.

7. In the case of M/s. Hind Motors Limited- Company Appeal (AT) (Insolvency) No. 239 of 2017 highlighted the following facts:

- i. **No Resolution professional:** The first meeting of the 'Committee of Creditors' convened on 9th March, 2017, thereafter, the 'Insolvency Resolution Professional', Mr. Manik Goyal was removed.
- ii. **No Application under Section 22(3)(b) of the Code:** After order dated 19th May, 2017 passed by the Adjudicating Authority at Chandigarh, issuing notice to Union Bank of India, to file an application for appointment of a new 'Resolution Professional' as per the procedure in the 'I&B Code' that an application was filed. Furthermore, the application under Section 22(3)(b) of the 'I&B Code' came to be filed on 31st May, 2017 and thereafter, the name of the 'Resolution Professional' was confirmed by the Insolvency and Bankruptcy Board of India on 16th June, 2017.
- iii. **No Resolution Process in terms of Section 12 and non-compliance with Sections 25, 27 and 29 of the 'I&B Code':** Section 12 of the 'I&B Code' provides for a period of 180 days further extendable by 90 days for the completion of the 'Corporate Insolvency Resolution Process'. During that period certain acts have to be carried out by the 'Resolution Professional' in view of Section 25 of the 'I&B Code'. It is pertinent to mention herein that as per the

affidavit of the Respondent dated 10th January, 2018, that no invitations were invited from prospective lenders, investors and any other person to put forward 'Resolution Plans' as per Section 25(h) of the 'I&B Code'.

- iv. **No extension application under Section 12(2) of the 'I&B Code':** Even though Section 12(2) of the 'I&B Code' provides for the filing of an application seeking extension of time of 90 days, the 'Resolution professional' did not file any application in pursuance to the same. The 'Resolution Professional' was confirmed on 16th June, 2017 and the first meeting of the 'Committee of Creditors' was held thereafter. As per the additional affidavit dated 18th December, 2017 filed by the Respondent in the minutes of the meeting dated 24th July, 2017, it has been recorded:

"2. Information memorandum not prepared: The information memorandum should contain all information as specified by Regulation 36(2) of the IBBI (Insolvency Resolution process for Corporate Persons) Regulations, 2016, however, various information as required by the above regulation to be prepared and complied as information memorandum has been prepared by the IRP."

Therefore, it is quite clear that even though merely 20 days for conclusion of the 'Resolution Process' were left, the basic procedure as prescribed under Sections 25, 27 & 29 of the 'I&B Code' were not complied with by either the 'Resolution Professional' or the 'Committee of Creditors'.

8. It was submitted that the 'I&B Code' provides for procedure from Section 22 (Appointment of Resolution professional) to Section 29 (Preparation of Information Memorandum), which are mandatory at every stage but all procedures were not properly followed as the post of the 'Resolution Professional' remained vacant for more than three months (90 days). The application for seeking appointment of a new 'Resolution Professional' was filed on 31st May, 2017, the 'Resolution Professional' was appointed much later. Thereafter, the 'Resolution Professional' was never provided the time period of 180 days as envisaged under Section 12 of the 'I&B Code'.

9. Similar plea has been taken by the Appellant- Mr. Ashish Mohan Gupta, the Promoter in the other two appeals.

10. The Respondents have filed affidavit and taken plea that all steps as required under the provisions of the 'I&B Code' were taken.

11. From the record of CP (IB) No. 01/Chd/2017, we find that the case was admitted on 14th February, 2017 appointing Mr. Manik Goyal as 'Interim Resolution Professional'. The 'Financial Creditors' namely

Union Bank of India, State Bank of India, ICICI Bank and 37 depositors held meeting on 10th March, 2017. The lead Bank is the Union Bank of India holding more than 75% of the voting share of the 'Committee of Creditors'. On the request of the 'Committee of Creditors', the 'Interim Resolution Professional' was removed and another 'Resolution Professional' was appointed pursuant to the order of the Adjudicating Authority dated 19th May, 2017.

12. Mr. Krishan Vrind Jain was appointed as 'Resolution Professional' in the aforesaid case on 16th June, 2017. The said 'Resolution Professional' convened the meeting of the 'Committee of Creditors' on 24th July, 2017, 2nd August, 2017 and 11th August, 2017. The last meeting was held on 11th August, 2017 and the minutes of meeting were submitted to the Adjudicating Authority by Mr. Krishan Vrind Jain on 14th August, 2017.

13. The Respondents have enclosed the newspapers publication dated 18th February, 2017 published under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 giving public announcement. It was followed by the progress report submitted by the 'Interim Resolution Professional' dated 27th February, 2017. The minutes of 1st meeting of the 'Committee of Creditors' dated 10th March, 2017 is on the record. The progress report in the matter of M/s. Hindi Motors Limited, Chandigarh, including, valuation report to be prepared by the valuer

were brought to the notice of the Adjudicating Authority and followed by another progress report dated 12th April, 2017. By progress reports dated 15th May, 2017 and 16th May, 2017, the 'Interim Resolution Professional' intimated that pursuant to the notice, claims have been received from different Creditors. The details of information/documents sought for by the 'Committee of Creditors' was also brought to the notice of the Adjudicating Authority by the 'Interim Resolution Professional'.

14. All the aforesaid facts, including the decision of the 'Committee of Creditors' held on different dates were taken into consideration by the Adjudicating Authority before passing the impugned order. The 'Committee of Creditors' having rejected the only 'Resolution Plan' submitted by the Appellant- Mr. Ashish Mohan Gupta, who is the Promoter of the 'Corporate Debtor(s)', the Adjudicating Authority by impugned order had no option but to pass order under Section 33(1) for initiation of liquidation process by appointing a 'Resolution Professional(s)' as Liquidator(s) of respective 'Corporate Debtor(s)'.

15. The plea taken by the Appellant that the 'Resolution Plan' were not called for by advertising in the newspapers in terms of Section 29 cannot be taken into consideration for giving any benefit in favour of the Appellant, as the Appellant though present during the meeting of the 'Committee of Creditors' submitted its 'Resolution Plan' but never raised this question that 'Resolution Plans' should be called from the others.

The 'Resolution Plan' submitted by the Appellant- Mr. Ashish Mohan Gupta, Promoter having been rejected by the 'Committee of Creditors' in all these three cases, it is not open to the Appellant- Mr. Ashish Mohan Gupta, promoter to raise the issue that the applications should have also been called for from the other 'Resolution Applicants'.

16. Once the 'Resolution Process' reaches finality and the 'Committee of Creditors' reject the 'Resolution Plan' in view of Sections 30 & 31 of the 'I&B Code', the Adjudicating Authority had no other option but to order for initiation of Liquidation Process. In such case, there is no occasion to grant further extension of time, as all the procedural has been followed in letter and spirit.

17. We find no merit in these appeals. They are accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

NEW DELHI
26th April, 2018

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