

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

**CP (IB) No.01 (Chd)/2017.
Date of Order: 14.02.2017.**

Coram: HON'BLE MR. JUSTICE R.P.NAGRATH, MEMBER (JUDICIAL).
HON'BLE MS. DEEPA KRISHAN, MEMBER (TECHNICAL).

In the matter of:

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

....Corporate Applicant.

Application to initiate corporate insolvency resolution process
in respect of M/s Hind Motors Ltd. under the Insolvency and
Bankruptcy Code, 2016.

Present: Mr.Ajay K.Jain and Mr.Atana Mukherjee Advocates for
applicant.
Mr.Manik Goyal, Chartered Accountant Insolvency
Professional.

ORDER.

This is an application filed by M/s Hind Motors Ltd., a
"Corporate Debtor" itself in form 6 as prescribed by sub rule (1) of rule 7 of
the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules,
2016 for initiating corporate insolvency resolution process. Apparently such
an application lies under Section 10 of Insolvency and Bankruptcy Code,
2016 (for brevity to be referred here-in-after as 'IBC') at the instance of the
'corporate applicant'. The 'corporate debtor' also falls within the term
"corporate applicant" as defined in sub-section (5) of Section 5 of 'IBC'.

2. It is represented that the applicant company was incorporated on 11.06.1990 with the Registrar of Companies, Punjab, Himachal Pradesh and Chandigarh, as per the Certificate of Incorporation Annexure B, having been allotted CIN No.UN34102CH1990PLC010459. The authorised share capital of the company is ₹3.50 crores i.e. 3,50,000 equity shares of ₹100/- each and issued, subscribed paid up capital is ₹2.50 crores i.e. 2,50,000 equity shares of ₹100/- each. The applicant claims that presently the company has on its Board three Directors, namely; Ashish Mohan Gupta Director, Rajesh Sharma Director and Dev Sharma having separate DIN numbers as per Annexure 'A'. There are in all seven shareholders of the company with three of them namely; Ashish Mohan Gupta, Shuchi Gupta and Hind Inns & Hotels Ltd., as per the list Annexure 'C' having major shareholdings.

3. Annexure 'D' is a copy of the Board of Directors resolution dated 17.01.2017 authorising Mr. Ashish Mohan Gupta, Director to initiate the corporate insolvency process before the Tribunal under the aforesaid Rules. The application also discloses the address of Mr. Ashish Mohan Gupta. The resolution, however, did not contain the authorisation to Mr. Ashish Mohan Gupta to accept the service of the process on behalf of the applicant. When the matter was listed on 03.02.2017 before the Tribunal, time was granted to remove this defect and this defect has since been removed by attaching another resolution of the company dated 04.02.2017, certified to be true copy by Mr. Ashish Mohan Gupta, Director.

4. It is represented by learned counsel for the applicant that the applicant has presently the following financial creditors namely;

<u>Sr. No</u>	<u>Name of the Bank/ Unsecured creditors</u>	<u>Address.</u>	<u>Total debt</u>	<u>Amount in default.</u>
1.	Union Bank of India.	SCO 64/65, Bank Square, Sector 17-B, Chandigarh-160017.	CC limit of ₹4,00,00,000.00 Term loan of ₹1,00,00,000/-	₹4,74,51,175/- ₹ 9,82,888/-
2.	ICICI Bank Limited.	Sector 9, Chandigarh.	Demo Car Loan	₹ 5,47,275/-
3.	State Bank of India,	Sector 17, Chandigarh-160017.	Inventory Funding.	₹ 76,30,333/-
4.	Unsecured creditors.	As per list Annexure 'F'	Public Deposits	₹ 62,38,960/-

It is also represented that there are no operational creditors of the company.

5. The applicant has also proposed the name of Interim Resolution Professional as Mr. Manik Goyal, CA, SCF 174, Grain Market, Sector 26, Chandigarh having registration No.IBBI/IPA-01/2016-17/549. Mr. Manik Goyal proposed Insolvency Resolution Professional has also filed written communication in Form No.2 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rule 2016, to act as Insolvency Resolution Professional, if an order admitting the application, is passed. He has also declared that he is eligible to be appointed as a resolution professional in respect of 'Corporate Debtor' in accordance with the provisions of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. He has also declared that no disciplinary proceedings are pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI. It is also declared that Mr. Manik Goyal is not presently serving as interim resolution professional/resolution professional/liquidator in any proceedings.

6. When the matter was listed on 03.02.2017 before the Tribunal, it was observed that clause (vi) of Form 2 did not contain any disclosures especially with regard to Regulation 3 of the aforesaid Regulations. This defect pointed out in the order dated 03.02.2017, has since been removed. It is stated by the proposed

Interim Profession (IP) that he is competent to function as Interim Insolvency Professional as required by IBBI (Insolvency Professional) Regulation 2016 at page 54-A and 54-B of the paper book. This declaration is duly signed and certified by Mr. Manik Goyal.

7. During arguments, learned counsel for the applicant represented that due to the defaults committed in payment of loan, The Union Bank of India, has served a notice dated 16.06.2016 under Section 13 (2) SARFAESI Act, 2002 along with notice under Section 13 (4) of SARFAESI Act published in 'The Tribune' newspaper, dated 24.09.2016 and the document to support the above contention is Annexure I (COLLY). The notice published in "The Tribune" proclaims that the Authorised Officer has taken possession of the properties mentioned therein. With regard to the Auto Loan Account obtained from ICICI Bank, the applicant has filed Annexure 'J' the settlement with the Bank agreeing to repay the amount in 12 instalments from 31.12.2016 to 23.11.2017.

8. In addition to the above, learned counsel for the applicant submitted that though out of the amount of ₹62,38,960/- relating to the public deposits there is default of only 20% of the depositors, but the company has represented to repay and refund 100% to the depositors as per the schedule which may be approved by the Tribunal. It is further represented by learned counsel for the applicant that the copies of the corporate debtors financial statements for the last two financial year ending i.e. as on 31.03.2015 and 31.03.2016 have been made Annexures to the application. Further the provisional financial statement for the current year made up to 15.01.2017 duly signed by Ashish Mohan Gupta, Director of the company, has also been filed for consideration of the Tribunal.

9. It is also represented that as a security equitable mortgage of land and building on plot No.B-16, Industrial Area, Phase-II, Mohali measuring 10 kanals owned by M/s Hind Motors India Ltd. was created on 09.10.2013. The estimated

value of the security as per creditor Bank is ₹12.10 crores. Copy of the estimated value is attached as Annexure 'G'. This property is mortgaged with Union Bank of India in respect of loan/debts for M/s Hind Motors Ltd., M/s Hind Motors India Ltd. and M/s Hind Motors, Mohali Pvt. Ltd. Annexure 'H' is the document of creation of charge about this property with the Registrar of Companies with date of creation as 12.10.2013. It was also stated that House No.161, Sector 27-A, Chandigarh was kept as a comfort collateral security in the loan account. It is represented that this property belongs to Kusum Gupta, but no equitable charge in respect thereof was created.

10. We have heard learned counsel for the applicant. The instant application filed in form 6 is apparently under Section 10 of the IBC Code by the Corporate Debtor. Section 10 of the IBC is extracted hereinunder:

- (1) *Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority.*
- (2) *The application under sub-section (1) shall be filed in such form, containing such particulars and in such manner and accompanied with such fee as may be prescribed.*
- (3) *The corporate applicant shall, along with the application furnish the information relating to—*
 - (a) *its books of account and such other documents relating to such period as may be specified; and*
 - (b) *the resolution professional proposed to be appointed as an interim resolution professional.*
- (4) *The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application, by an order—*
 - (a) *admit the application, if it is complete; or*
 - (b) *reject the application, if it is incomplete.*

Provided that Adjudicating Authority shall, before rejecting an application, give a notice to the applicant to rectify the defects in his application within seven days from the date of receipt of such notice from the Adjudicating Authority.

- (5) *The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (4) of this section.*

The above provision of IBC Code discloses that the following procedures are required to be completed by a Corporate Debtor in initiating the process of insolvency:

- (i) Existence of a Corporate Debtor.
- (ii) Such a Corporate Debtor must have committed a default.
- (iii) On the satisfaction of (i) and (ii) above a Corporate Applicant may file an application for initiating Corporate Insolvency Resolution Process.
- (iv) Such an application as contemplated in (iii) above shall be filed in such forms, containing such particulars and in such manner and accompanied with such fee as may be prescribed.
- (v) Along with the application as in (iv) above, information relating to books of accounts and other documents relating to such period as may be specified.
- (vi) The Applicant to name the Resolution Professional proposed to be appointed as an Interim Resolution Professional.

Section 10 of the IBC confers a discretion on this Tribunal to either admit or reject the application and in case of rejection to give an opportunity to the applicant before such rejection to rectify the defects within seven days from the date of receipt of such notice from the Adjudicating Authority.

The term “**Corporate Debtor**” has been defined under Section 3 (8) of Part-I of the Code to mean a Corporate Person, who owes a debt to any person and ‘**default**’ is defined under Section 3 (12) of Part-I of the Code to mean “non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be”.

11. The learned counsel for the applicant has represented that the applicant earlier filed application under Section 74 (2) of the Companies Act, 2013 (for brevity ‘2013 Act’) seeking extension of time in making payment to its depositors, but it is contended that the instant application has been filed in view of

coming into force of 'IBC' with effect from 01.12.2016. Learned counsel further represents that the instant application could not have been earlier filed and therefore, the recourse was taken to a petition under Section 74 (2) of the 2013 Act for seeking extension of time in paying the amount of depositors. It is submitted that the recourse to the remedy under IBC is independent of any other law for the time being in force.

12. Section 238 of the 'IBC' says that the provisions of this Code shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. The learned counsel for the applicant has also made a statement on instructions that no liquidation order has been passed against the applicant and therefore, the applicant cannot be considered as a person not entitled to make an application as per provisions of Section 11 of the IBC Code.

13. The forms and particulars to be contained in application as well as the manner of filing and the fee required to accompany the application seems to have been prescribed in the rules termed under Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. As provided in Rule 7 (1) of the said Rules, the Corporate Applicant has to make an application under Section 10 of 'IBC' in Form 6 accompanied with documents and records required therein and as specified IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Since we have already dealt in detail in the opening paragraphs *supra* of this order relating to information furnished, we are not repeating the same for sake of brevity, as the essential particulars as contemplated have been provided by the Applicant in the application with further particulars as pointed out by the Tribunal on 03.02.2017.

14. In relation to information relating to books of accounts, audited financial statements have been filed for preceding two years for the year ending 31.03.2015 and year ended 31.03.2016 and unaudited financial statement for the period made upto 15.01.2017. The Schedule of Creditors, both secured and unsecured has been made upto 15.01.2017 attested by the director of the applicant company.

15. The applicant has also named the Interim Resolution Professional as required under the IBC, the application being an application made by a Corporate Debtor. The designated Registrar of this Tribunal has also verified from the website of the Insolvency and Bankruptcy Board of India that the name of Mr. Manik Goyal has been registered by the Board with Registration No.1BB1/IPA/01/2016-17/549 and his enrolment number is IPA is IPA-01/2016-17/IP-00326. The proposed resolution professional has given his Registration No.1BB1/IPA-IP/00326/2016-17 in Form 2. The Interim Resolution Professional named in the application has duly filed Form No.2 as prescribed under the Insolvency and Bankruptcy (Application to Adjudication) Rules, 2016 in which the declaration as required to be made to the effect that no disciplinary proceedings are pending against him, which is a pre-requisite as per Section 16 of the Code has also been made.

16. A perusal of the financial information filed for the period ending 31.03.2015, 31.03.2016 as well as for the period ending 15.1.2017 discloses the following:

HIND MOTORS LTD.

Accumulated profit/loss of the 'corporate debtor':

As on 15.01.2017	- 1,88,39,800
As on 31.03.2016	-1,78,43,256
As on 31.03.2015	68,66,426
As on 31.03.2014	68,58,507

Long Term Borrowings and other liabilities discloses the following for the above years:

As on 15.01.2017	6,94,26,500
As on 31.03.2016	6,73,44,675
As on 31.03.2015	4,00,20,408
As on 31.03.2014	3,80,08,163

It is represented by the learned counsel for petitioner that in the financial statement for the year ending 31.03.2016, the long term borrowing and other liabilities were shown as ₹4,14,67,888/-, but the figure has been reconciled by the provisional balance sheet as on 15.01.2017 by re-grouping to arrive at the figure of ₹6,73,44,675/- by adding in the previous year amount the figure of ₹1,27,51,920/- as other payables, ₹15,81,758/- as advance from customers and reducing the figure of ₹4,02,10,467/- as other receivables. With the above statement, the difference in the amount of ₹4,02,10,467/-, the figure of the last year's balance against current liabilities would also stand reconciled.

Current Liabilities:

As on 15.01.2017	32,10,393
As on 31.03.2016	1,60,55,417
As on 31.03.2015	21,82,286
As on 31.03.2014	27,74,868

Revenue from Operations:

As on 15.01.2017	10,88,20,373
As on 31.03.2016	15,63,74,528
As on 31.03.2015	21,00,20,192
As on 31.03.2014	23,89,32,916

17. The figures extracted above indicate further losses with continued fall in operation of applicant. It seems to have fallen into a debt trap and has admitted default thereby competent for setting in motion the Insolvency Resolution Process as contemplated under IBC. On the basis of the aforesaid statement of affairs of the Company and as per averment contained in the application filed under Sections 13

and 14 read with Section 10 of the IBC, supported with the affidavit of Ashish Mohan Gupta Director, the applicant owes an amount of ₹4.80 crores to Union Bank of India for which proceedings under SARFAESI Act, 2002 have also been initiated. It was also stated that the applicant intends to settle with the Bank amicably under the one time settlement scheme and therefore, the action initiated under SARFAESI Act has not been challenged before the Debt Recovery Tribunal. The applicant proposes to settle with the Bank for amount of ₹4.50 crores to be paid in 12 months.

18. It is further represented that in view of the adverse circumstances, the applicant has violated in making repayment to the public depositors, some of whom have filed consumer complaints against the Corporate Applicant and in some cases, the decrees have also been passed. The depositors have filed execution proceedings and in some of the cases arrest warrants have been issued against the Managing Director and orders for two years imprisonment have been passed. It is further contended that on the basis of the said application, that amount outstanding towards the depositors in respect of M/s Hind Motors Ltd. & M/s Hind Motors India Ltd. jointly are around ₹8.59 crores and the Applicant had therefore, approached this Tribunal under Section 74(2) of the 2013 Act with the proposal to repay the depositors over a period of time. M/s Hind Motors Ltd. & M/s Hind Motors India Ltd. jointly owes around ₹8.59 crores to its depositors and therefore, a joint application under Section 74 (2) of 2013 Act has been filed before this Hon'ble Tribunal, wherein the proposal to repay the depositors was filed.

19. The Corporate Applicant has to recover a sum of ₹3.33 crores from Hind Motors India Ltd. on account of funds transferred by Union Bank of India to the account of M/s Hind Motors India Ltd. The Corporate Applicant has also to recover a sum of ₹1.05 crores from M/s Hind Motors Mohali Pvt. Ltd. It is submitted that both Hind Motors India Ltd. and Hind Motors Mohali Pvt. Ltd. have filed application under

Section 10 of IBC before this Tribunal for initiating corporate insolvency resolution process.

20. The Corporate Applicant proposes to inter-se settle the recoverable dues from both Hind Motors India Ltd. and Hind Motors Mohali Pvt. Ltd. under a comprehensive resolution plan inter-alia merging the Corporate Applicant along with both Hind Motors India Ltd. and Hind Motors Mohali Pvt. Ltd. under the IB Code, 2016.

21. However, the applicant company save some sketchy particulars has not given any road map as to how it is going to keep itself afloat as a going concern. However, keeping in perspective the objects for which IBC has been brought into force and to balance the interest of all stakeholders, we are satisfied that the instant application warrants to be admitted to prevent further erosion of capital and to safeguard the assets of the Applicant Company/Corporate Debtor. For the reasons aforementioned while admitting the application, we issue the following directions:-

- (i) Appoint Manik Goyal, SCF 174, Grain Market, Sector 26, Chandigarh, CA No.IBBI/IPA/01/2016-17/549, a Practicing Chartered Accountant and Registered Insolvency Professional (IRP) as the Interim Resolution Professional as contemplated under Section 16 of the IBC and his term of appointment shall be for a period of thirty days from the date of this order or as may be determined by the Committee of Creditors whichever is earlier;
- (ii) In terms of Section 17 of the IBC, from the date of his appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the IBC including taking control and

custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of 'IBC'. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor.

- (iii) The Interim Resolution Professional shall strictly act in accordance with IBC, all the Rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standard of ethics and moral.
- (iv) The Interim Resolution Professional shall endeavour to constitute the Committee of Creditors at the earliest but not later than two weeks from the date of this Order.
- (v) It is hereby directed that the Corporate Debtor its properties, personnel and persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor.

22. Further in terms of Section 13 of the IBC, this Tribunal declares a moratorium in relation to the following matter as contemplated under Section 14 as follows:-

- (a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any Court of Law, Tribunal, Arbitration panel or other Authority;
- (b) Transferring encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

- (d) The recovery of any property by any owner or lessor or where such property is occupied by or in the possession of the corporate debtor.

23. The Interim Resolution Professional appointed by this Tribunal is also directed to cause a public announcement within 3 days from the date of this order as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against the Corporate Debtor.

24. It is further directed that the Interim Resolution Professional shall positively file a report of events before this Tribunal every week in relation to the Corporate Debtor. Copy of this order be supplied to the Interim Resolution Professional forthwith.

Sd/-

(Deepa Krishan)
Member (Technical)

Sd/-

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

February 14, 2017.

Ashwani