

**IN THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"
(Exercising the powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)**

IN
CP (IB) NO. 01/Chd/2017

Under Section 10 of IBC, 2016.

In the matter of:

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

Order delivered on: 28.08.2017

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

For the Petitioner: Mr. Rakesh Bhatia, Advocate

Resolution Professional: Mr. Krishan Vrind Jain, Resolution Professional

ORDER (Oral)

CP (IB) No.01/Chd/2017 filed under Section 10 of the Insolvency and Bankruptcy Code, 2016 (for short the Code) by the 'Corporate Debtor' was admitted by this Tribunal as Adjudicating Authority on 14.02.2017 declaring the moratorium in accordance with Section 14 of the Code and appointing Mr. Manik Goyal, Registration No. IBBI/IPA/01/2016-17/549 as Interim Resolution Professional proposed by the 'Corporate Debtor'. The interim resolution constituted the Committee of Creditors comprising of the three Financial Creditors, namely; Union Bank of India, State Bank of India and ICICI Bank and 37 depositors. The first meeting of the Committee of Creditors was held on 10.03.2017. The minutes of the meeting of Committee of Creditors show that the said meeting was attended by the three Financial



Creditors and 35 depositors. The lead bank is Union Bank of India holding more than 75% of the voting share of the Committee of Creditors. The Chief Manager(Legal) representing the Union Bank of India requested for filing an application to the Adjudicating Authority for replacement of the Interim Resolution Professional by another Resolution Professional. It was noticed by this Tribunal on 19.05.2017 while monitoring the progress reports that no such application had been filed thus far. Notice was directed to be issued to the Union Bank of India, State Bank of India through the Chief Managers to appear in person.

2. CA No.68/2017 was filed by Union Bank of India for appointment of another Resolution Professional proposing the name of Mr. Krishan Vrind Jain, Registration No. IBBI/IPA-001/IP-00619/2016-17/1396 in terms of sub-section (4) of Section 22 of the Code and his name was forwarded to the Insolvency and Bankruptcy Board of India (IBBI) for confirmation vide order dated 31.05.2017. He has been issued fresh Registration No.IBBI/IPA-001/IP-P00284/2017-18/10528 by IBBI.

3. IBBI confirmed the name of Mr. Krishan Vrind Jain as Resolution Professional (RP) and he was appointed as such by order dated 16.06.2017 passed by this Tribunal with a direction to send fortnightly reports. Mr. Krishan Vrind Jain (RP) convened the meeting of the Committee of Creditors on 24.07.2017, 02.08.2017 and 11.08.2017. The last meeting of Committee of Creditors was held on 11.08.2017, the minutes of which were submitted to the Tribunal by Mr. Krishan Vrind Jain on 14.08.2017. The meeting was attended by all the Financial Creditors and 25 depositors out of 37 were also represented in the said meeting. The resolution plan was proposed by the



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'Corporate Debtor' and it is stated that a composite resolution relating to three companies which had separately filed applications under Section 10 of the Code but I am presently concerned with the resolution plan to be adopted in the present case only. The Managing Director of the 'Corporate Debtor' was represented through Mr. Naresh Aggarwal who attended the meeting.

4. I have perused the record and heard the Resolution Professional and the learned counsel representing the 'Corporate Debtor'. The resolution plan was presented in the meeting of Committee of Creditors for the first time on 02.08.2017 which considered the plan submitted on behalf of the Managing Director of the 'Corporate Debtor'. The same is said to be not in conformity with the Regulation 38 of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. It was resolved that the terms are not acceptable to the Union Bank of India holding more than 75% of the voting share. Even the Depositors rejected the proposed plan. However, last opportunity was granted to the 'Corporate Debtor' to come up with some credible resolution plan in accordance with the specific regulations of the Code and next meeting of Committee of Creditors was fixed for 11.08.2017.

5. Under Regulation 39(1) of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (for brevity, 'IRP Regulations') a resolution plan to be prepared in accordance with the Code and this resolution plan is to be submitted to the Resolution Professional 30 days before the expiry of the maximum period permitted under Section 12 for the completion of the Corporate Insolvency Process. The period of 180 days as provided in sub-section (1) of Section 12 of the Code from the



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date of admission of the application to initiate such process expired in this case on 13.08.2017, unless it is extended in accordance with sub-sections (2) and (3) of Section 12 of the Code.

6. In the minutes of the meeting held on 11.08.2017 the 'Corporate Debtor' and its Managing Director were again represented by Mr. Naresh Aggarwal son of Shri R.S. Aggarwal who submitted the sketchy resolution plan as observed in the minutes in respect of the three Group Companies in which the petitions filed by all of them were admitted by this Tribunal on different dates. The other two petitioners are Hind Motors (India) Ltd. and Hind Motors (Mohali) Ltd. It was resolved in the meeting that Union Bank of India holding 75.74% of the voting share out rightly declined the proposal. Even the depositors declined the proposal. Only the State Bank of India having 14.49% voting share requested for grant of some more time which was not agreeable to other members of Committee of Creditors.

7. Resolution Professional is required to examine the resolution plan received by him to see whether the same is in conformity with the various requirements of sub section (2) of Section 30 of the Code but according to the Resolution Professional, the plan submitted to the Committee of Creditors on behalf of the Managing Director of the 'Corporate Debtor' was out rightly rejected.

8. The learned counsel representing the Managing Director of the 'Corporate Debtor' submits that the Resolution Professional Mr. Krishan Vrind Jain could only hold three effective meetings after he was appointed because the Interim Resolution Professional Mr. Manik Goyal, IRP held only one meeting from the date of his appointment till the appointment of Resolution



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Professional. It is further submitted by the learned counsel that the Managing Director of the 'Corporate Debtor' was throughout detained in custody in an FIR registered by the depositors and, therefore, there was no effective participation on his behalf. After the petition under Section 10 of the Code is admitted, the Interim Resolution Professional is appointed, the name of whom is mandatorily required to be proposed by the 'Corporate Debtor' only. 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. One of the Financial Creditor holding major shareholding made request for replacement of the Interim Resolution Professional but the application was filed under sub-section (2) of Section 12 after a notice was issued by the Adjudicating Authority to two of the Financial Creditors. After expiry of 180 days or 270 days in case of 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:-

"Initiation of liquidation 33 (1)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;*



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- (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."*

9. Therefore, the order is passed in accordance with Section 33 of the Code requiring the 'Corporate Debtor' to be liquidated by issuing the public announcement stating that the Corporate Debtor is in liquidation and to intimate the Registrar of Companies, Chandigarh about this order.

10. 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.

11. 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



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(c) on the website, if any, designated by the Board for this purpose."

12. 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, 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.

- (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



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liquidation process with the substitution of references to the liquidator for references to the Interim Resolution Professional.

13. 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.

14. 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.

15. 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 fortnightly thereafter.

16. It is clarified that the Financial Creditors are not debarred having recourse to enforce of the personal guarantees and to take proper steps in this regard. Copy of this order to the 'Liquidator' forthwith.



Ed/-

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

August 28, 2017
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