

**Before the National Company Law Tribunal,
Chandigarh Bench
Corporate Bhawan, Plot No.4B, Sector 27-B, Madhya Marg,
Chandigarh.**

Ref No. Estt /NCLT/759.

Date:

CP (IB) No.03/Chd/2017

Under Section 60 of Insolvency & Bankruptcy Code, 2016

In the matter of:

M/s. Hind Motors Ltd.

mohali Pvt.

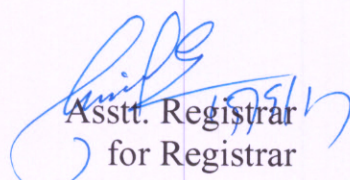
...Petitioner/Corporate Debtor

To

Shri Krishan Vrind Jain,
Resolution Professional
SCO 345-346 Sector-35-B
Chandigarh

Please find enclosed herewith a certified copy of order dated 12.09.2017
for your information and necessary action

Encl: Copy of order.


Asstt. Registrar
for Registrar
NCLT, Chandigarh Bench

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

CP (IB) NO. 03/Chd/2017

Under Section 60 of the Insolvency
and Bankruptcy Code, 2016

In the matter of :

M/s. Hind Motors Mohali Private Limited,
B-16, Industrial Area, Phase-2,
Mohali (Punjab)-160055.

.....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.
Mr. Krishan Vrind Jain, CA, Resolution Professional.

ORDER (Oral)

This petition filed under Section 10 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the 'Code') by the Corporate Debtor for initiating the insolvency resolution process was admitted on 20.02.2017 declaring moratorium in terms of Section 14 of the Code and appointing Mr. Manik Goyal as the Interim Resolution Professional with necessary directions who caused public announcement to this effect on 23.02.2017. The Interim Resolution Professional collected the claims and constituted the Committee of Creditors on 08.03.2017 and held first meeting of Committee of Creditors on 10.03.2017 where Sh. Manik Goyal was decided to be replaced by another Resolution Professional.

2. While monitoring the progress reports, this fact came to the



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notice of the Tribunal and matter was listed on 19.05.2017 and notice was directed to be issued to the Union Bank of India, the only Financial Creditor.

3. CA No. 69/2017 was filed by the Bank in terms of sub-section (4) of Section 22 of the code and name of Mr. Krishan Vrind Jain as Resolution Professional was forwarded to the Insolvency and Bankruptcy Board of India (IBBI) for its confirmation. The IBBI confirmed the name of Mr. Krishan Vrind Jain who has also been allotted fresh Registration No. IBBI/IPA-001/IP-P00284/2017-18/10528 for the current year. Mr. Krishan Vrind Jain was appointed as Resolution Professional for the Corporate Debtor for proceeding further in the matter in accordance with the law vide order dated 16.06.2017. He held the meetings of Committee of Creditors on 24.07.2017, 02.08.2017, 11.08.2017 and 17.08.2017 and subsequently filed various reports in this Tribunal from time to time. In the meeting of Committee of Creditors held on 17.08.2017, it was resolved that the company be recommended for liquidation and the Liquidator so appointed be paid fee in accordance with Regulation 4 (3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

4. It has been reported that the company is a non working unit and there is no apparent cash flow and the Committee of Creditors having voting share of 100% has passed resolution for liquidation of the company after rejecting resolution plan presented in the meeting. The



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resolution plan was submitted by Mr. Ashish Mohan Gupta, promoter who attended the meeting with his representative Mr. Naresh Aggarwal. On 17.08.2017 in the last meeting of COC the resolution plan submitted by Mr. Ashish Mohan Gupta was outrightly declined by the Financial Creditor.

5. It was noticed that Mr. Ashish Mohan Gupta had produced a letter dated 16.08.2017 from the Corporation Bank with the resolution plan which stated that *"please note that this letter doesn't tantamount to firm commitment for sanction of the said loan."* The Union Bank of India rejected the proposal of Resolution as proposed by Ashish Mohan Gupta for making payment of ₹1.25 crores as against the total outstanding of claim of Union Bank of India which amounts to ₹3.51 crores. It was noted that Shri Ashish Mohan Gupta presented the same resolution plan as was presented by his representative in the previous meeting. Also, he miserably failed to amend the resolution plan and come up with some workable Resolution plan in accordance with the specified regulations of Insolvency & Bankruptcy Code, 2016. Union Bank of India, being the sole member of Committee of Creditors proposed that the company should be wound up/liquidated and Honourable NCLT, Chandigarh Bench be informed accordingly. The said letter has also been sent along with minutes of the meeting of the Resolution Professional.

6. The period of 180 days from the date of admission of the petition under Section 10 of the Code expired on 19.08.2017. Under



Regulation 39 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, a resolution is to be prepared in accordance with the Code and has to be submitted at least 30 days before the expiry of maximum period permitted under Section 12 of the Code but this was not done in this case. The Resolution Professional further submits that there were no depositors or other Financial Creditors of the company. Only Union Bank of India is the Financial Creditor which has passed the resolution process seeking liquidation of the company.

7. 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.

“Initiation of Liquidation” 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."*

8. This 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.

9. 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.

10. 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.”

11. 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;

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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.

12. 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.

13. 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.

14. 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.



15. 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.

16. 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.



September 12, 2017

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