

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

**CP (IB) No.03 (Chd)/2017.
Date of Order: 20.02.2017.**

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

In the matter of:

M/s Hind Motors Mohali Pvt. Ltd.
B-16, Industrial Area,
Phase-2, Mohali (Pb)-160055.
Email: paed@hindmotors.in

....Corporate Applicant.

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

Present: Mr.Ajay K.Jain with Shri Rakesh Bhatia and Mr.Atanu
Mukherjee Advocates for applicant.
Mr.Manik Goyal, Chartered Accountant, Insolvency
Professional.

ORDER.

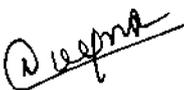
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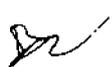
This is an application filed by M/s Hind Motors Mohali Pvt. Ltd.,
a "Corporate Debtor" itself in Form 6 as prescribed by sub rule (1) of Rule 7
of the Insolvency and Bankruptcy (Application to Adjudicating Authority),
Rules, 2016 (for brevity 'the Rules') for initiating corporate insolvency
resolution process. This form is filed with the application under Sections 10,
13 and 14 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the
Code') 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 the Code.

2. It is represented that the applicant company was incorporated on 11.07.2011 with the Registrar of Companies, Punjab, Himachal Pradesh and Chandigarh, as per the Certificate of Incorporation Annexure B, having been allotted Corporate Identity Number (CIN No.U50100PB2011PTC035267. The authorised share capital of the company is ₹2 crores i.e. 20,00,000 equity shares of ₹10/- each and issued, subscribed and paid up capital is ₹1.01 crore i.e. 10,10,000 equity shares of ₹10/- each. The applicant claims that presently the company has on its Board two Directors, namely; Ashish M.Gupta and Rajesh Sharma having separate distinct DIN numbers as per Annexure 'A'. There are in all three shareholders of the company as per Annexure 'C' namely; Ashish Mohan Gupta, Shuchi Gupta and Hind Motors India Ltd with major shareholding of M/s Hind Motors India Ltd. to the extent of 50.50%.

3. Annexure 'D' is the copy of the Board of Directors resolution authorising Ashish Mohan Gupta, Director to initiate the corporate insolvency resolution process and to do all the necessary acts in the said proceedings. Later on another resolution of the Company dated 04.02.2017 was filed disclosing the address of Ashish Mohan Gupta for communication purposes and also authorising him to accept the process on behalf of the company.

 4. The learned counsel for the applicant has represented that the applicant company has the following financial creditors:



Sr. No	Name of the Bank/ Operational creditors	Address.	Total debt	Amount in default.
1.	Union Bank of India.	Main Branch, SCO No.64/65, Bank Square, Sector 17-B, Chandigarh-160017.	CC limit of ₹4,00,00,000.00	₹3,08,22,250.00
2.	<u>Operational Creditor.</u>			
	Insta Glib Technologies.	SCO 839, 2 nd Floor, Cabin. No.2, NAC, Manimajra. Chandigarh	Paint suppliers.	₹99,869.00

Apart from the above, the petitioner company also owes an amount of ₹27,430.00 to its staff and workers. It is also represented that there is no depositor as creditor of the applicant 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 'Rules', 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. Mr. Manik Goyal has filed another declaration in form 2 dated 03.02.2017 at page 34-A of the paper book furnishing complete information with regard to the paragraph (vi) of form 2 to the effect that, (a) he is eligible to be appointed as an independent director on the Board of the applicant company in terms of Section 149 of the Companies Act,

2013; (b) He is not a related party of the applicant company; and (c) he is not an employee or proprietor or a partner etc. of applicant company. Mr. Manik Goyal has also recorded his statement on oath today that he has been appointed as Insolvency Resolution Professional in CP (IB) No.1 (Chd) of 2017 M/s Hind Motors Ltd. vide order of this Tribunal, dated 14.02.2017 and further that the applicant company in this case belongs to the same group of companies having common directors.

6. Learned counsel for the applicant further represents that due to the defaults committed in payment of loan, the Union Bank of India has served the applicant company with a notice Annexure-I, 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. The notice published in "The Tribune" proclaims that the Authorised Officer has taken possession of the properties mentioned therein. With regard to the transaction with unsecured creditor, the applicant company has filed the list of the Bills/Invoices along with one copy of Bills/Invoices of the transactions as at Annexure 'J'.

7. It is also represented that by way of security, equitable mortgage of the land measuring 13 kanals 8 marlas, situated at village Raje Majra near Ropar owned by M/s Hind Motors India Limited was created on 17.10.2011 in favour of the Bank. The valuation of this property was done by the Creditor Bank, which is to the tune of ₹1.55 crore and the copy of the estimate of the valuer is Annexure 'F'.

8. It is further represented that equitable mortgage in respect of the land, Building on plot No.B-16, Industrial Area, Phase-II, Mohali, Punjab measuring 10 kanals owned by M/s Hind Motors India Limited was created in favour of Union Bank of India on 10.05.2013 and that equitable mortgage was extended by the Bank in respect of the loan of the applicant-company. The estimated value of the property as per the creditor is ₹12.10 crores as per the estimate prepared by the valuer Annexure 'G'. The applicant company has attached the Certificate of Registration

of the charge issued by the Registrar of Companies (ROC) in the year 2011 and modified in the year 2013 as Annexure 'H'. Both the aforesaid mortgages are created in respect of the loans of the applicant as well as M/s Hind Motors India Ltd. and M/s Hind Motors Ltd.

9. We have heard learned counsel for the applicant. The instant application filed in form 6 has been filed in terms of Section 10 of the Code by the Corporate Debtor. Section 10 of the 'Code' is extracted hereinunder:

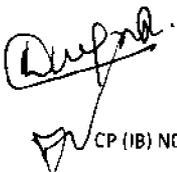
- (1) *Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority.*
- (2) *The application under sub-section (1) shall be filed in such form, containing such particulars 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".

10. 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 Code'. There is also the statement in this regard made by the applicant in the applications under Sections 13, 14 and 10 of 'the Code' to the effect that the instant application is not barred by Section 11 of 'the Code'. The averments in the application are supported by the affidavit of Ashish Mohan Gupta, Director of the Company.

Ashish Mohan Gupta


11. 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 'the Code' 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.

12. In relation to information relating to books of accounts, audited financial statements have been filed for preceding two years i.e. the year ending 31.03.2015 and 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.

13. The applicant has also named the Interim Resolution Professional as required under the 'Code', the application being an application made by a Corporate Debtor. Mr. Manik Goyal has been registered by the Board with Registration No.IBBI/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.IBBI/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 Rules' 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.

14. The learned counsel for the applicant has represented that the financial information given by the applicant for the period ending 31.03.2015, 31.03.2016 as well as the provisional financial statement for the period ending 15.01.2017 discloses the following:

HIND MOTORS MOHALI PVT. LTD.

Accumulated profit/loss of the 'corporate debtor':

As on 15.01.2017	- 4,90,65,932
As on 31.03.2016	-4,72,56,084
As on 31.03.2015	-2,71,61,201
As on 31.03.2014	-1,99,81,865

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

As on 15.01.2017	3,34,66,888
As on 31.03.2016	3,22,90,739
As on 31.03.2015	6,30,49,365
As on 31.03.2014	6,50,02,098

Current Liabilities:

As on 15.01.2017	4,18,57,625
As on 31.03.2016	4,59,97,674
As on 31.03.2015	35,21,629
As on 31.03.2014	22,80,998

Revenue from Operations:

As on 15.01.2017	46,15,691
As on 31.03.2016	52,98,082
As on 31.03.2015	97,14,998
As on 31.03.2014	8,77,13,593

15. The figures extracted above indicate further losses with continued fall in operation of the 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 the Code. 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 Code, supported with affidavit of Ashish Mohan Gupta, Director, the applicant owes an amount of ₹3.09 crores to Union Bank of India for which proceedings under SARFAESI Act, 2002 have also been initiated. It has also been represented that the applicant intends to settle with the Bank amicably under the onetime 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 an amount of ₹1.25 crore to be paid in 12 months.

16. The Corporate Applicant has to pay a sum of ₹3,12,56,635/- to Hind Motors India Ltd. and ₹1,05,01,121/- to M/s Hind Motors. It is represented that both Hind Motors (India) Ltd. and Hind Motors Ltd. have filed application under Section 10 of the Code before this Tribunal for initiating corporate insolvency resolution process. The application in respect of M/s Hind Motors Ltd. has been admitted by this Tribunal on 14.02.2017.

17. The Corporate Applicant proposes to inter-se settle the recoverable dues from both Hind Motors India Ltd. and Hind Motors Ltd. under a comprehensive resolution plan inter-alia merging the Corporate Applicant along with both Hind Motors India Ltd. and Hind Motors Ltd. after seeking the approval of the financial creditors.


 18. The learned counsel for the applicant further represents on the basis of averments made in the application under Sections 13 read with

Sections 14 and 10 of the Code that the applicant company was incorporated as a Subsidiary of Hind Motors India Ltd. and engaged itself in dealership of Volkswagon Cars. It raised a loan of ₹6 crores from TATA Capital; ₹4 crores against plant and machinery and equipments etc. and ₹2 crores as working capital from Union Bank of India. However, the sale of the vehicles was much below the projections resulting into losses suffered by the applicant company. The applicant repaid the loan taken from TATA Capital by obtaining unsecured loan from holding company. The holding company raised the funds by selling out of its asset located at Panchkula. It is also represented that the applicant company has since shut down its business.

19. 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 'the Code' 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 Code' 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 Code', from the date of his appointment, the powers of the Board of Directors shall stand suspended and the

A. Gupta


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 Code' 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 "the Code. 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 'the code', 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; and
- (vi) Interim Resolution Professional or the Resolution Professional as the case may be, are further directed to look into the valuation of the mortgaged property got assessed by the Bank at the time of grant of loan and compare minutely with the statement, now attached as per the estimate of the Valuer of the year 2016 in order to look into the variation, if any, for the purpose of proposing a resolution plan.

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20. Further in terms of Section 13 of 'the Code', 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.

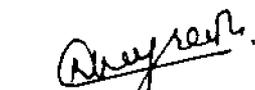
21. The Interim Resolution Professional appointed by this Tribunal is also directed to cause a public announcement within 3 days from the date of this order as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 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.

22. 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 applicant company and Interim Resolution Professional forthwith.


(Deepa Krishan)
Member (Technical)

February 20, 2017.

Ashwani


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