

**NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH**

**CP NO. 66/Chd/2016**

Date: 16.02.2017

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

**In the matter of:**

**M/s Hind Inns and Hotels Limited having its registered office at  
15, Industrial Area, Phase-1, Chandigarh-160002.**

...Applicant Company.

Application for extension of time for repayment of depositors  
Section 74(2) of the Companies Act 2013 read with National  
Company Law Tribunal Rules, 2016.

**Present:** Ms. Riya Bansal, Advocate for petitioner.  
Mr. Santosh Kumar, Registrar of Companies, Chandigarh with Mr.  
Satya Pal Singh, Asstt. Registrar of Companies, Chandigarh and  
Mr. J.P.Singh, Sr. Technical Assistant on behalf of ROC and  
Regional Director.  
Ms. Eshna Kumar, Advocate for depositor at Sr. No. 87 of  
Annexure IX.  
Mr. Alok Kumar Jain, Advocates for depositors at Sr. No 75, 76,  
111, 208 and 270 of Annexure IX.  
Mr. Nitin Jain, Advocate for depositors at Sr.No.220,281 and 299  
of Annexure-IX.  
Mr.Manjit Singh Bhatia, depositor in person at Sr. No. 251 of  
Annexure IX.  
Ms. Surinder Kaur, depositor in person at Sr. No. 253 of Anne- IX.  
Ms. Surinder Talwar , depositor in person at Sr. No. 179 of  
Annexure IX.  
Mr. Raghav Agnihotri and Ms. Renu Agnihotri, depositor in person  
at Sr. No. 305, 313 and 502 of Annexure IX.  
Ms. Krishanjit Kaur, depositor in person at Sr. No. 72, 177, 70,  
326, 331, 339, 317 and 318 of Annexure IX.  
Mr. Harmeet Singh, depositor in person at Sr. No.323 of Annexure  
IX.  
Ms. Shashi Soni, depositor in person at Sr. No. 71, 77, 78, 255  
and 298 of Annexure IX.  
Ms. Rajni Sharma, depositor in person at Sr. No. 171 of Annexure  
IX.

*Deepa Krishan*  
*Dr*

**ORDER**

**R.P. Nagrath J., Member(Judicial) (Oral):**

The instant petition has been filed by the petitioner-company through Mr. Baldev Singh its Liaison Officer on the strength of the resolution of the Board of Directors dated 03.09.2016, Annexure-II. The main objects of the petitioner-company are to establish, manage, administer, own and run hotels, resorts, cafeterias, bistro, restaurants, suites, road houses etc. and other related items so as to enter into arrangements for franchise for national and international brands.

The prayer made in the instant petition is for extension of time in making payment to the public depositors in terms of Section 74 (2) of the Companies Act, 2013 (for brevity hereinafter referred to as 'the Act'). The petitioner has its registered office at Chandigarh and, therefore, the matter falls within the territorial jurisdiction of this Tribunal. Objections to oppose the instant petition were filed by Mr. Alok Jain, Advocate, Ms. Eshna Kumar, Advocate and Mr. Ashok Sachdeva, Authorised Representative for some of the depositors. Mr. Nitin Jain, Advocate adopted the reply/objection filed by Mr. Alok Jain, Advocate. Rest of the objectors also adopted the objections filed by the above persons.

When the matter was listed on 31.01.2017, the directions were issued to the petitioner to file the following statements/documents:-

- (i) Rent agreement of letting out the portion of the property of M/s Hind Motors (Scooter Division) and others;

*Querist*  
*12*

-3-

- (ii) The detailed list of the properties of the company as well as that of directors of the petitioner-company and the proprietorship concerns of the Directors and their spouses and to state clearly what nature of charge has been created by the company;
- (iii) Copies of notice under Section 13(2), 13(4) and 14 of SARFAESI Act, 2002, if any, issued by the bank from where loans were taken by the petitioner;
- (iv) The documents in proof of the fact that the bank has taken possession of the properties of petitioner and, if so, the particulars of such property of the company; and
- (v) Rent agreement executed with Carnation Hotels Pvt. Ltd.

It was further directed that the affidavit of Managing Director of the company shall also state the outstanding bank loans to be paid upto 31.03.2016. Failing to comply with the aforesaid directions the Managing Director to be present in person.

On the previous date the compliance was not made and the adjournment was granted for today. Learned counsel for the petitioner has filed the documents for showing the compliance of the previous orders. It is, however, submitted that since the matter pertains to a company duly incorporated, the list of personal properties of Directors and their spouses may be dispensed with. Copy of the affidavit of the Managing Director with the documents has been supplied to the counsel opposite. The documents filed today also include the list of depositors age-wise and those who have died.

*Dayan*

*[Signature]*

-4-

Along with this affidavit the petitioner has also filed the revised scheme for repayment of deposits.

We have heard the learned counsel for the parties and Mr. Ashok Sachdeva, Authorized Representative for some of the depositors at considerable length. Learned counsel for the petitioner also made a request for further adjournment to answer to some of the legal objections raised by the learned counsel/authorised representative of the depositors, but we do not find any justification for the same as the matter was fixed for final arguments. Having heard learned counsel for the parties and going through the record, we are of the view that the petition for extension is neither maintainable nor there is much substance on merits. We say so for various reasons to be enumerated hereafter.

In the instant case there is non compliance of mandatory provisions of sub-section (1) of Section 74 of the Act, which reads as under:-

(1) *"Where in respect of any deposit accepted by a company before the commencement of this Act, the amount of such deposit or part thereof or any interest due thereon remains unpaid on such commencement or becomes due at any time thereafter, the company shall ---*

a) *file, within a period of three months from such commencement or from the date on which such payments, are due, with the Registrar a statement of all the deposits accepted by the company and sums remaining unpaid on such amount with the interest payable thereon along with the arrangement made for such repayment, notwithstanding anything contained in any other*

*Aug 2016*  
*[Signature]*

*law for the time being in force or under the terms and conditions subject to which the deposit was accepted or any scheme framed under any law; and*

*b) repay within one year from such commencement or from the date on which such payments are due, whichever is earlier."*

Admittedly, such a statement was not filed with the Registrar of Companies within a period of three months from the commencement of the provisions of Section 74 or from the date on which payments have become due. However, learned counsel for the petitioner has contended that the said statement has since been filed with the Registrar of Companies on 19.12.2016, but that cannot save the petitioner-company from the rigors of aforesaid provision especially when the said compliance has been made much after the institution of the instant petition. In fact, it was on 15.11.2016 that the petitioner-company was directed to file an affidavit as to whether the company has filed with the Registrar of Companies, the statement of all the deposits accepted by the company before the commencement of the Act and the sums remaining unpaid on such account as required by clause (a) of Section 74 of the Act.

Mr. Ashok Sachdeva, Authorized Representative for some of the

deposited with the Section 74 of the Act is content that there is total  
renewal committed by the petitioner-company as the deposits accepted  
before the commencement of the Act were renewed by the company after  
commencement of this provision which amounts to acceptance of the deposits

of the same after coming into force of the Section 74 of the Act which thus

*Accepted*  
*B*

cannot be invoked for seeking extension. Both Sections 73 and 74 of the Act came into force w.e.f. 01.04.2014.

Section 73 (1) of the Act says that after commencement of this Act, no company shall invite, accept or **renew** deposits under this Act from the public except in a manner provided under this Chapter. The proviso to this sub-section exempts certain classes of the banking companies etc., which is not the present case. The worst part of the petitioner's case is that the deposits were renewed unilaterally as contended by the counsel/authorised representative of the objectors, there being no consent or the agreement entered into by the depositors seeking to renew the deposits.

It is apparent from the list of depositors Annexure IX, that maturity dates of the deposits are from 7.9.2016 to June, 2017 and the duration of the deposits is mentioned as one to two years. It is quite obvious that the renewal of deposits was made much after coming into force the aforesaid provisions of the Act, meaning thereby that the company accepted the deposits in violation of the provisions of Section 73 of the Act.

Mr. Sachdeva has further contended that after coming into force of the provisions of Section 73 of the Act a company may accept the deposits from its 'members' subject to compliance of various conditions laid down in sub-section (2) of Section 73 of the Act which reads as under:-

*" (2) A company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India,*

*Amrith*  
*Dr*

accept deposits from its **members** on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members subject to the fulfilment of the following conditions, namely:-

- a) issuance of a circular to its **members** including therein a statement showing the financial position of the company, the credit rating obtained, the total number of deposits and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;
- b) filing a copy of the circular along with such statement with the Registrar within 30 days before the date of issue of the circular;
- c) Depositing sum which shall not be less than fifteen percent of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account;
- d) providing such deposit insurance in such manner and to such extent as may be prescribed;
- e) certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits; and
- f) providing security if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company."

*Aug 2016*

*[Signature]*

Ms. Eshna Kumar, learned counsel for some of the depositors has referred to Rule 19 of the Companies (Acceptance of Deposits) Rules, 2014 which reads as under:-

*"Pursuant to provisions of sub-section (2) of section 76 of the Act, the provisions of sections 73 and 74 shall, mutatis mutandis, apply to acceptance of deposits from public by eligible companies."*

"Eligible company" is defined in clause (e) of sub-rule (xiv) of Rule 2 (1) of the aforesaid Rules which means a public company as referred to in sub-Section (1) of Section 76, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the public for acceptance of deposits.

In view of the aforesaid provisions, the statement made in Directors report at page 65 of the Balance Sheet (Annexure A-VI) to the effect that the company has not accepted any deposit within the meaning of Section 58 A of the Companies Act, 1956 during the year ending 31.03.2015 is not correct. After coming into force of the provisions of Sections 73 to 76 of the Act, 2013 the Director's report for the Financial Year ending 31.03.2015 should refer to the aforesaid provisions instead of Section 58 A of the Companies Act, 1956.

*Amruth*  
✓

It is pertinent to mention that report of Registrar of Companies was called when the petition was first taken up on 21.09.2016. The Registrar of Companies sent the report along with letter dated 19.10.2016 in consultation with the Regional Director. It is mentioned in the report against column No. 13 that in view of the maximum limit shown in the advertisement enclosed as Annexure-5, as per Balance Sheet position as on 31.03.2012, the company has accepted the deposit amount beyond its permissible limit and has not filed regularly the return of deposits and advertisements with Registrar of Companies as per Section 58 (A) of the Act and the Rules made thereunder. The Registrar of Companies thus reported that even upto 31.3.2014, the deposits were accepted in contravention of section 58 (A) of the Companies Act, 1956 and Companies (Acceptance of Deposits) Rules, 1975.

From the above discussion, we find no merit in the instant petition which is hereby dismissed without prejudice to the rights of the petitioner-company to seek other appropriate relief, if permissible, under the law.

Copy of this order be also sent to the Registrar of Companies for appropriate steps in view of the observations made by us with regard to violation of various provisions of the Act and the rules framed thereunder. Copy of this order be also sent to the petitioner.

—SD—  
(Justice R P Nagrath)  
Member (Judicial)

—SD—  
(Deepa Krishan)  
Member (Technical)

February 16, 2017  
arora