

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

CP NO. 65/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:**

- 1. M/s Hind Motors India Limited having its registered office at Plot No.9, Industrial Area, Phase-1, Chandigarh-160002.**
- 2. M/s Hind Motors Ltd. having its registered office at Plot No.9, Industrial Area, Phase-1, Chandigarh-160002.**

...Applicant Companies.

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 with Satya Pal Singh, Assistant Registrar of Companies and Mr. J.P. Singh Sr. Technical Asstt., on behalf of ROC, Chandigarh & Regional Director.

Mr. Alok Kumar Jain with Mr. Sandeep Saini, Advocates for depositors at Sr. No. 66, 67, 69, 70, 224, 375, 529, 530, 554, 578, 51, 196, 582, 583, 584, 603, 604, 605, 617 and 618 of Annexure XIII.

Mr. Parveen Gupta, Advocate for depositors at Sr. No. 585, 329, 477, 470, 656, 657, 330 and 522 of Annexure XIII. Also representing Mr. Rajinder Pal Singh Kang, depositor at Sr. No. 54, 55, 59 and 61 of Annexure XIII.

Mr. Raj Shekhar, Advocate for Dr. Manmohan Kaur depositor at Sr. No. 4 and 24 of Annexure XIII.

Ms. Eshna Kumar, Advocate for depositor at Sr. No. 213 and 302 of Annexure XIII.

Mr. Nitin Jain, Advocate for depositors at Sr. Nos. 181, 182, 183, 289, 290, 291, 349, 350, 351, 359, 360, 361, 505, 520, 569, 570, 362 and 387 of Annexure XIII.

Mr. Ashok Sachdeva, Authorised Representative for depositors at Sr. No. 52, 57, 58, 166, 365, 368, 145, 420, 421, 422, 428, 437, 588, 146, 144, 158, 268, 159, 340, 601, 129, 130, 128, 157, 435, 370, 504, 408, 409, 286, 423, 424, 503, 600, 345, 417, 488 of Annexure XIII.

Mr. Sumit Soni, depositor in person at Sr. No. 495 of Annexure XIII.

Ms. Shashi Soni, depositor in person at Sr. No. 249 of Annexure XIII.

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Mr. S.K. Agnihotri, depositor in person for self and for his son at Sr. No.633 and 635 of Annexure XIII.

Mr. Sandeep Bhalla depositor in person and for his son Mr. Paras Bhalla and wife Ms. Snigdha Bhalla and mother Ms. Sushila Kachru at Sr. No. 531 and 532, 478, 479, 678, 660 480, 481 and 482 of Annexure XIII.

Ms. Krishanjit Kaur, depositor in person at Sr. No. 93, 625 and 18 of Annexure XIII.

Mr. Jorawar Singh, depositor in person at Sr. No. 499, 500, 430 & 179 of Annexure XIII.

Mr. Ram Kumar Sangar for Ms. Gopika Kahol and Ms. Geeta Sudha Sangar.

Mr. O.P. Dabla, depositor in person at Sr. No.471 of Annexure XIII.

Mr. Vineet Chopra, depositor in person at Sr. No. 647 of Annexure XIII.

Ms. Surinder Kumari, depositor in person at Sr. No. 314 of Annexure XIII.

Mr. Swatanter Sehgal, depositor in person at Sr. No. 383 of Annexure XIII.

Ms. Ritu Sharma, depositor in person at Sr.No.296 of Annexure XIII.

### ORDER

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

The prayer made in the instant petition filed by two companies, namely; M/s. Hind Motors India Ltd. (for short P-1) and M/s. Hind Motors Limited (for short P-2) is for extension of time for payment to the public depositors in terms of Section 74 (2) of the Companies Act, 2013 (for brevity hereinafter referred to as 'the Act'). Both P-1 and P-2 have their registered office at Chandigarh and, therefore, this Tribunal has the territorial jurisdiction to entertain and dispose of the instant petition.

It is represented that P-1 company was incorporated on 19.09.2000 and P-2 on 11.06.1990. The authorised capital of P-1 company is 8,00,000 equity shares of ₹100/- each aggregating to ₹8,00,00,000/- and its issued, subscribed and paid up capital is 6,00,000 equity shares of ₹100/- each, totalling ₹6,00,00,000/-. The authorised capital of P-2 company is 3,50,000 equity shares of ₹100/- each and its issued, subscribed and paid up

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capital is 2,50,000 equity shares of ₹100/- each of the total value of ₹2,50,00,000/-. It was stated that the petitioner-companies started facing acute cash flow problems since the year 2011-12, due to financial troubles as detailed in paragraph 5.6 of the company petition.

Objections to the petition were filed by Mr. Alok Jain, Advocate, Mr. Raj Sekhar, Advocate, Ms. Eshna Kumar, Advocate, Mr. Parveen Gupta, 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 adopted the objections filed by the above persons.

When the matter was listed on 31.01.2017, the petitioners were directed to supply the following statements/documents:-

- (i) Rent agreement of letting out the portion of the property of M/s Hind Motors (Scooter Division) and others;
- (ii) The detailed list of the properties of the company as well as that of Directors of the petitioners' company (P-1 and P-2) 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 notices 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 petitioners; and

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(iv) The documents in proof of the fact that the bank has taken possession of the properties of petitioners and, if so, the particulars of such property of the company.

It was further directed that the affidavit of Managing Director in respect of both the petitioners shall also state about the outstanding bank loans to be paid up to 31.03.2016 and failing to comply with the aforesaid directions, the Managing Director was to appear in person.

On the previous date, however, the compliance was not made and adjournment was granted for today for making compliance of the previous order subject to payment of Rs. 2500/- as costs for adjournment to be deposited with the U.T. State Legal Services Authority, Chandigarh. Learned counsel for the petitioners has handed over receipt of the deposit of the aforesaid amount with U.T. State Legal Services Authority, Chandigarh. The learned counsel has also filed documents to contend that the compliance of the previous order has been made. Copies of the compliance report along with the documents have been supplied to the learned counsel for the respondents/objectors. It is, however, submitted that since the matter pertains to the companies which have their own distinct entities, the filing of list of properties of Directors and their spouses may be dispensed with.

The learned counsel for the petitioners has further sought time for an adjournment to clarify certain issues raised on behalf of the respondents.

We are, however, of the view that since the matter had been fixed for arguments, there is no justification in granting further adjournment.

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We have heard the learned counsel for the petitioners, learned counsel representing the objectors and also Mr. Ashok Sachdeva, Authorized Representative for some other depositors. Having heard them and going through the records, we are of the view that the petition for extension is neither maintainable nor having any merit in it. We say so for various reasons to be enumerated hereafter.

Annexure XIII is the list of depositors in respect of both the companies which has been relied upon by the petitioners. The instant case pertains to the public deposits of P1 and P-2 companies but this list relates to depositors of M/s Hind Motors (Scooters Division), which is admittedly a proprietorship concern of Mr. Ashish Mohan Gupta, Director of the petitioner-companies. This aspect is further fortified from the document Annexure XII which is an agreement entered into between P-1 company and Hind Hospitality Private Ltd. referred to as the First Party and Hind Motors (Scooter Division) SCO 48, Phase-2, Mohali through its proprietor Ashish Mohan Gupta referred to as the Second Party. The agreement is dated 31.03.2015. Under this agreement the public deposits to the tune of ₹7,39,89,023/- were transferred to the Second Party, though it is stipulated that responsibility and liability to pay the depositors shall be of the First Party. The petitioners do not allege that the depositors ever consented to the transfer of their deposits to a proprietorship concern. It is pertinent to mention here that P-2 is not a party to this agreement and Hind Hospitality Private Limited is not before us either as petitioner or a proforma respondent. We are of the considered view that the

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deposits having been transferred by P-1 company in favour of a proprietorship concern, the instant petition at the instance of petitioner-companies for extension of time would not be maintainable.

Further the matter pertains to deposits made with P-1 and P-2 separately but there is a combined list of 681 depositors (Annexure XIII) which neither segregate nor it is clear from the record as to who are depositors of P-1 and those of P-2 company respectively.

The other ground on which we find the instant petition to be not maintainable is non compliance of sub-section (1) of Section 74 of the Act. Sub-section(1) of Section 74 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 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."*

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When the matter was listed on 29.11.2016, it was submitted that the petitioner-companies have not filed with the Registrar of Companies the statements of all the deposits accepted by the company before the commencement of the Act and the same remained unpaid in terms of clause (a) of Section 74(1) of the Act. However, learned counsel for the petitioners contends that the said information has since been filed with the Registrar of Companies on 19.12.2016. We thus find that the compliance has been made much after the institution of the instant petition. The instant petition as originally filed is dated 16.09.2016.

Mr. Ashok Sachdeva, Authorized Representative for some of the depositors also referred to Section 73 of the Act in order to contend that there is total violation before the commencement of the Act as the deposits were renewed by company after the 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 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 accepted banking work etc., which is not the present case. The renewal of deposits after coming into force of these provisions would, thus, be a clear violation and, therefore, Section 74 of the Act is not applicable. This contention on behalf of the respondents is thus quite forceful. The worst part of the petitioner's case is that the deposits

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were renewed unilaterally as contended by the counsel for the objectors, there being no consent or the agreement entered into by the depositors seeking to renew the deposits.

From the list of depositors Annexure XIII, the petitioner-company has mentioned the maturity dates of the deposits from 7.9.2016 to June, 2017 and that duration of the deposits is mentioned as one to two years. It is manifest from this document that the renewal of deposits was made much after coming into force the aforesaid provisions of the Act.

Mr. Sachdeva has further contended that after coming into force the provisions of Section 73 of the Act, a company may only 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, 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;*

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- 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."*

Ms. Eshna Kumar, learned counsel for some of depositors 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 has been defined in clause (e) of sub-rule (xiv) of Rule 2 (1) of the aforesaid Rules which says that "eligible company" means

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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.

Report of Registrar of Companies was called when the petition was first taken up on 21.09.2016. The report was sent 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-4 as per balance sheet position as on 31.03.2012, the company has jointly accepted deposit amount beyond their limits and have 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. It is further reported that prima-facie it appears that the companies have accepted the deposits up to 31.3.2014 in contravention of section 58 (A) of the Companies Act, 1956 and Companies (Acceptance of Deposits) Rules, 1975.

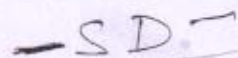
For the reasons stated above, we find no merit in the instant petition, which is, therefore, dismissed without prejudice to any rights of the petitioner under the Insolvency and Bankruptcy Code, 2016. Copy of this order be also sent to the Registrar of Companies for taking appropriate steps for violation of the provisions of the rules framed thereunder. Copy of this

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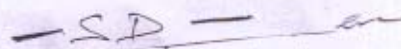
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order be also supplied to the petitioners.

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(Justice R P Nagrath)  
Member (Judicial)

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(Deepa Krishan)  
Member(Technical)

February 16, 2017  
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