

**NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH**

CP No. 01/73/2017

In the matter of:

Smt. Saroj Devi Sharma

Applicant

V/s

Premia Projects Ltd.

Respondent

SECTION: 73(4)

Order delivered on 18.12.2017

Coram:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)

Present: Mr. Abhishek Atrey with Mr. Ravindra Lokhande for applicant.

ORDERS

This petition has been filed under Section 73(4) under Companies Act, 2013. As per averments, the applicant was lured into a scheme floated by the Respondents for booking a Corporate Studio, assuring 12.5% returns on down payment. The petitioner was taken in by the several advertisements in newspapers, internet, hoardings TV and radio channels glorifying Mr. Tarun Shienh, the man behind the project, as a property guru having great expertise in the construction industry and promising to give good returns. Taken in by the huge advertisements specifically in respect of Premier Corporate City being developed in Knowledge Park 5, Greater Noida (West), UP, the applicant paid a total sum of Rs. 18,28,610 vide two

disbursals of Rs. 1,82,861/- and Rs. 16,45,749/- on 27.02.2013 and 13.03.2013 respectively. As per the agreement dated 22.03.2013 executed by the Respondent, she was assured of a regular payment of Rs. 18,477/- per month w.e.f. 02.03.2013 for a period of 50 months or till possession, whichever was later. A bank guarantee was also furnished by the respondents which however lapsed after 1 year. The respondent paid the assured amount less TDS till April, 2016. Thereafter, they defaulted in making the assured remittances. The bank guarantee was also not renewed as promised. Even the TDS on the last 4 instalments paid was not deposited with the Tax Authority.

2. The petitioner pursued her grievance with the respondents who falsely assured her that the monthly returns would be credited directly to her bank account through RTGS. On making enquires, the petitioner also learnt that the respondent had wrongly asserted that they were in possession of 15 acres of land situated in Knowledge Park 5, Greater Noida (West) and that they had all statutory permissions and approved layout and building plans to develop the project under the name and style of Premia Corporate City. All the aforesaid information given by the Respondents to the petitioner and the public at the time of booking turned out to be false, and therefore no construction commenced even after 4 years of launch of the project.

3. The petitioner further learnt that the Respondent Company was neither the owner of the property nor had any sanction for development of the project. The said land was infact allotted to M/s. Solitaire Infomedia



Private Limited, a subsidiary company of the Respondent Company, which did not have any sanctioned plans as on the date of the agreement. A follow up with the SFIO has not yielded any result. The petitioner had alleged that the affairs of the Respondent company were conducted fraudulently by the Directors of the company with the intention to cheat and deceive people by falsely inducing them to invest their money in a project for which there was no hope of getting possession. All investments, including that of the petitioner have been misappropriated by the respondent company. As per a report published in newspapers, the respondent company had raised almost 1750 crores for its two projects.

4. Given the facts of the case, Ld. Counsel for the petitioner submits that the payment made to the respondent company has to be treated as a fixed deposit on which a return of Rs. 18,477/- was assured as interest every month. The tenure of 50 months has expired and in the facts and circumstances of the case, where possession of built up property is not possible, the petitioner seeks to invoke her claim under Section 73(4) of the Act. Ld. Counsel for the applicant has fortified his arguments that the investment made by the petitioner herein squarely falls within the definition of "deposits" placing reliance on its definition under Section 2(31) of the Act, which is applicable to the provisions of Section 73 and 74 of the Companies Act, 2013.

"2(31) – Deposit" includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such

categories of amount as may be prescribed in consultation with the Reserve Bank of India."

It is further submitted that in exercise of the powers conferred by clause (31) of Section 2, Section 73 and Section 76 read with Section 469 (1) and (2) of the Companies Act, the Central Government in consultation with the Reserve Bank of India has issued the Companies (Acceptance of Deposits) Rules 2014. In Rule 2(1) (c). These rules explain the circumstances where the amount received by a company shall not be treated as deposit for the purpose of Companies Act with exceptions explained in the Proviso. Rule 2(1) (c) (xii) is important for the purpose of present matter and the same is reproduced below:

"2. Definitions: (1) In these rules, unless the context otherwise requires,

(a) "Act" means the Companies Act, 2013 (18 of 2013);

(b) "Annexure" means the Annexure attached to these rules;

(c) "deposit" includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include

(xii) Any amount received in the course of, or for the purpose of, the business of the company,

(a) xxxxxxxx

(b) As advance, accounted for in any manner whatsoever, received in connection with consideration for property under an agreement or



arrangement, provided that such advance is adjusted against the properties in accordance with the terms of agreement or arrangements;

(c) xxxxxxxxx

(d) xxxxxxxxx

Provided that if the amount received under items (a), (b) and (d) above become refundable (with or without interest) due to the reasons that the company accepting the money does not have necessary permission or approval, wherever required to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under these rules:

Explanation: For the purpose of this sub-clause the amount referred to in the first proviso shall be deemed to be deposits on the expiry of 15 days from the date they become due for refund."

5. Reliance is also placed on a decision of the Hon'ble High Court of Delhi in the matter of National Spot Exchange Limited Vs. State of Maharashtra reported in 2015 SCC on line Bombay 6583 to clarify that the payment made in the present case would fall within the definition of the term "deposit".

6. Id. Counsel submits that as against the payment made by the petitioner, nothing has been delivered, neither was there any hope or possibility for delivering as promised.

7. Upon service through the process of the Bench, the Respondent has chosen not to appear before this Forum or offer any defence.

8. In view of the facts and circumstances of the case, the petitioner has been able to satisfy this Bench that the amount invested falls within the definition of a "Deposit" and the provisions of Section 73 of the Companies Act are attracted. As the Respondent company has failed to repay the same, the provisions of Section 73(4), 76A & 447 of the Companies Act 2013 are fully applicable. Accordingly, this petition is disposed off with directions to the ROC to initiate necessary prosecution. Though a report of the ROC is on record, it is only cursory in nature with no explanation as to what steps have been taken by them pursuant to complaint received. It is clearly a case of mass duping of investors and involves public interest. Complaint to the SFIO has gone unheeded.

9. In view of the facts of the case, and the provisions of Section 73(4), 76A(b) read with Section 447 of the Companies Act 2013, the following directions are being passed:-

- a. Ministry of Corporate Affairs through the office of the SFIO shall scrutinise the funds and inter corporate deposits, and if retrievable, take adequate steps to protect them from being further dissipated
- b. All accounts/fixed assets of the company are directed to be frozen.
- c. The company shall pay double the amount to the petitioner together with interest at the rate of 18% per annum with monthly interest, the recovery of which the petitioner may seek through execution proceedings.
- d. The ROC shall initiate criminal prosecution under Section 73(4) and

u/s 447 of the Companies Act, 2013 in the Court of the Special Judge, Delhi against Mr. Tarun Shienh and all directors of the company involved in the project to be developed as "Premia Corporate City" who have accepted deposits from various investors and are liable to be punished under Section 447 of the Act, having acted against public interest in duping several investors.

10. A monthly report be filed before this Bench by the office of the RD(NR) in respect of steps taken on the 1st of every month w.c.f. 1st February, 2018 onwards.

Copy of the order be sent to the Regional Director (Northern Region) and the ROC (Govt. of NCT of Delhi).

Sd-

(Ina Malhotra)
Member Judicial

(Sapna Bhatia)