NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

IA 10/2016 with T.P. No. 97/74(2)/NCLT/AHM/2016 (New)
C.A. No. 43/74(2)/CLB/MB/2015 (Old)

Coram: **Present: Hon'ble Mr. BIKKI RAVEENDRA BABU**
MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 30.01.2017

Name of the Company: Jewel Consumer Care Pvt. Ltd.

Section of the Companies Act: Section 74(2) of the Companies Act, 2013

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.				
2.				

ORDER

None present for petitioner.

Order pronounced in open court. Vide separate sheet attached.

30.1.17
BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 30th day of January, 2017.

NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

Date: 30th day of January, 2017

I.A. No. 10/74(2)/NCLT/AHM/2016

IN

T.P. No. 97/74(2)/NCLT/AHM/2016 (New)

C. A. No. 43/74(2)/CLB/MB/2015 (Old)

Jewel Consumer Care Private Limited,
Having its Registered Office at
"Subhaag", B-16, Ramin Park,
Old Padra Road,
Baroda – 390 020, Gujarat. ..... Applicant.

Appearance: -

Mr. Piyush A. Luktuke, Advocate for the Applicant.

FINAL ORDER

1. This application is filed seeking permission to withdraw T.P. No.97 of 2016.

2. The facts, in brief, that are germane for the disposal of this interlocutory application are as follows:

3. The Applicant herein filed C.A. No.43 of 2015 before the Company Law Board, Mumbai Bench, seeking extension of time for repayment of borrowings/deposits. The said application was transferred to NCLT, Ahmedabad Bench, and re-numbered as T.P. No.97 of 2016. During the pendency of T.P. No.97 of 2016 before this Tribunal, this application is filed.

4. The Applicant-company is a company registered under the Companies Act, having its registered office in Gujarat State. The Applicant-company is a Private Limited Company. The Applicant-company borrowed money from shareholders amounting to Rs.218.46 lacs on contractual terms and conditions as on 31st March, 2014 repayable on 29.02.2016. The Applicant-company filed T.P. No.97 of 2016 (C. A. No.43 of 2015) stating that the money procured by the company falls within the purview of the term "*deposits*" under the Companies Act, 2013, which was not the case in the Companies Act, 1956. Section 74 of the Companies Act, 2013 came into force with effect from 01.04.2014. Section 74(1)(b) says that any deposit accepted by a company before the commencement of the Companies Act, 2013, the amount of such deposit or part thereof or any interest due thereon remains unpaid as on 01.04.2014 or becomes due at any time thereafter, the company shall repay the same within one year from 01.04.2014 or within one year from the date on such payments are due, whichever is earlier. The purport of clause (b) of sub-section (1) of Section 74 is that all deposits remained unpaid as on 01.04.2014 shall be repaid on or before 01.04.2015 or within one year from the date on which payments are due, whichever is earlier. In the case on hand, as per the averments made in the petition, as on 31.03.2014, the amount of deposits taken by the Applicant-company from its shareholders, including interest, was Rs.218.46 lacs. It is the case of the Applicant-company that the said amount was borrowed from the shareholders of the company and the due date for repayment was 29.02.2016. In that view of the matter, the Applicant-company sought for extension of time for repayment of the said amount.

5. This application is filed in view of Circular No. 05/2015 issued by the Government of India, Ministry of Corporate Affairs, on 30th March, 2015. It is stated in the application that, in view of Circular No. 05/2015, issued by the Ministry of Corporate Affairs, deposits received by the Applicant-company from its shareholders prior to

01.04.2014 shall not be treated as "*deposits*" under the Act and, therefore, there is no need for the Applicant-company to take recourse to Section 74(2) and seek extension of time and, hence, they are seeking withdrawal of T.P. No. 97 of 2016 (C.A. No.43 of 2015).

6. There is a rider in paragraph 3 of the said Circular, which says any renewal or acceptance of fresh deposits on or after 1st April, 2014 shall, however, be in accordance with the provisions of the Companies Act, 2013 and the Rules made thereunder. Learned Advocate appearing for the Applicant-company referred to the order of the ***Company Law Board, New Delhi Bench***, passed on 09.10.2015 in ***C. P. No.61(MB)/2015*** in the matter of ***Reliance Formulations Private Limited*** and contended that the word "*renewal*" used in the circular applies only to the Fixed Deposits but not to the amounts borrowed by the company from its shareholders on contractual basis. In the above said order referred to by the learned Advocate for the Applicant, it is clearly held that, if any fixed deposits are matured, and then, if the companies wish to seek extension of time, the question of renewal will arise.

7. In the case on hand, it is the case of the Applicant-company that it has borrowed money from its shareholders on contractual basis. Therefore, in view of Circular No.05/2015 issued by the Government of India, Ministry of Corporate Affairs, this application seeking withdrawal of T. P. No.97 of 2017 (C.A. No.43 of 2015) deserves to be allowed.

8. In the result, this application is allowed. T. P. No.97 of 2016 [C. A. No.43 of 2015 (Old)] is permitted to be withdrawn.

30.1.17

Bikki Raveendra Babu
Member Judicial

Pronounced by me in open court on this the 30th day of January, 2017.