

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI
BENCH, MUMBAI

Transfer Company Petition No. 64 of 2015
Coram: M. K. SHRAWAT, Member (Judicial)

Order under Section 74(2) of the Companies Act 2013.

In the matter of: M/s. Maayaa Clothing Pvt. Ltd. ... Petitioner

Present: Mr. Arjun J. Soni, Practising Company Secretary for the Petitioner.

ORDER

(Heard on: 19.12.2016)

(Pronounced on: 21.12.2016)

1. The Petitioner has moved this petition on 31.03.2015 before the erstwhile CLB, Mumbai Bench under the provisions of Section 74(2) of the Companies Act, 2013. As per the Petition the unsecured loans/ deposits; the total amount of deposits on the date of application and interest, outstanding for re-payment was Rs. 6,78,00,000/- (Principal): Rs. 0(Interest).
2. The said Petition thereafter transferred to NCLT, Mumbai Bench. On the date of hearing Mr. Arjun J. Soni, Practising Company Secretary appeared and made a statement that on account of the issuance of the circular from the Ministry of Corporate Affairs dated 30.03.2015 the Petition under consideration does not survive.

Mr. Arjun J. Soni, Practising Company Secretary appeared and referred the facts of the case as under:

1. *The Company has obtained unsecured loans from the relatives of directors. Such unsecured loans were not included in the definition of deposits under the provisions of Section 58A of the Companies Act, 1956 read with Companies (Acceptance of Deposit) Rules, 1975.*
2. *However, under the Companies Act, 2013 any amount received from relative of director and member were excluded from the exempted category of deposit and therefore amount received from relative of director or member are included in the term deposit.*

3. Consequently, the unsecured loans received from the relatives of directors which were not deposit under the Companies Act, 1956 are become repayable on or before 31st March, 2015.

4. The Company has been running through tough time and could not generated the sufficient surplus to repay the aforesaid repayable deposit on or before 31st March, 2015 as required under Section 74(1)(b) of the Companies Act, 2013 and therefore required an extension of time for 3 to 5 years for repayment of deposit.

5. The Company is private limited company and being operated by the family members which are directors as well as shareholders of the Company. The person from whom the unsecured loans were accepted is the close relatives of the directors of the company. Further all such relatives understand the financial position of the company and have given their consent for extension of time for repayment of their loans.

a. The Ld. Representative appeared and given the reasons for withdrawal of this CP in writing as under:

"However, MCA vide General Circular No. 05/2015 dated 30th March, 2015 clarified that amount received by private Companies from their members, directors or their relatives prior to 1st April, 2014 shall not be treated as 'deposits' under the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014 subject to the condition that relevant private company shall disclose, in the notes to its financial statement for the financial year commencing on or after 1st April, 2014 the figure of such amount and the accounting head in which such amounts have been shown in the financial statement.

Based on the above clarification given by the MCA the deposit accepted by the Company shall not be treated as 'deposits' under the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014 & therefore there is no requirement for seeking extension of time for repayment of Deposit.

We therefore request the Hon'ble National Company Law Tribunal, Mumbai Bench to withdraw the above mentioned case."

3. For ready reference the relevant portion of the General Circular No. 05/2015, Ref No. F. NO. 1/8/2013-CL-V, Government of India, Ministry of Corporate Affairs dated 30.03.2015 is reproduced below:

"Subject: Amount received by private companies from their members, directors or their relatives before 1st April, 2014 – Clarification regarding applicability of Companies (Acceptance of Deposits) Rules, 2014.

Sir,

Stakeholders have sought clarification as to whether amount received by private companies from their members, directors or their relatives prior to 1st April, 2014 shall be considered as deposits under the Companies Act, 2013 as such amounts were not treated as 'deposits' under section 58A of the Companies Act, 1956 and rule made thereunder.

2. The matter has been examined in consultation with RBI and it is clarified that such amounts received by private companies prior to 1st April, 2014 shall not be treated as 'deposits' under the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014 subject to the condition that relevant private company shall disclose, in the notes to its financial statement for the financial year commencing on or after 1st April, 2014 the figure of such amounts and the accounting head in which such amounts have been shown in the financial statement.

3. Any renewal or acceptance of fresh deposits on or after 1st April, 2014 shall, however, be in accordance with the provisions of Companies Act, 2013 and rule made thereunder."

4. The above mentioned circular has now clarified the provisions of Section 74 (2) of the Companies Act, 2013. As per the Companies Act, 2013 Section 74 is introduced in respect of repayments of deposits accepted before commencement of the Act. This Section prescribes that where any deposit was accepted by a Company before the commencement of this Act, the amount of such deposits remained un-paid on the commencement of the Act or becomes due at any time thereafter, the Company shall file

within of period of three months from the commencement of the Act or from the date on which the payment was due a statement of the details of the deposits with the Registrar and **shall also repay within one year** from the commencement of the Act or from the date on which the repayment was due, whichever was earlier. The Tribunal has been given jurisdiction under Section 74(2) to pass such an order on an application allowing further time as considered reasonable to the Company to repay the deposits.

5. In the light of the above discussion and the present legal position I hereby hold that consequence upon the General Circular dated 30.03.2015, *supra*, the Petition under consideration has become redundant. The Petitioner/ Legal Representative is justified in withdrawing this Petition. The request of the withdrawal is hereby granted and the Petition is disposed of as withdrawn.

Sd/-

M. K. SHRAWAT
Member (Judicial)

Dated: 21st December, 2016.