

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI**

T. C. P. NO. 72/74(2)/NCLT/MB/MAH/2015

CORAM:

SHRI M. K. SHRAWAT
MEMBER (JUDICIAL)

In the matter of Sections 74 (2) of the Companies Act, 2013.

PETITIONER:

M/s. Splendor Shelters Private Limited
Shop No. 5, Patil-Bhoir Appartment,
Shahid Bhagat Singh Road, Opp. KDMC Office,
Dombivali (East), Thane, Maharashtra, India 421 201.

PRESENT ON BEHALF OF THE PETITIONER

Mr. Parag Prabhudesai – Chartered Accountant for the Petitioner.

ORDER

Reserved on : 06.04.2017

Pronounced on : 07.04.2017

1. Mr. Parag Prabhudesai, Chartered Accountant was present on behalf of the Petitioner.
2. This Petition was filed on 30th March, 2015 before the erstwhile Company Law Board, Mumbai Bench under the provisions of Section 74 (2) of the Companies Act, 2013. The Petition was thereafter transferred to National Company Law Tribunal, Mumbai Bench.
3. As per the Petition, the facts of the case are as under:-
 - 1) ...

Main business: 1. To carry on the business of land and property developers, builders and general construction contractors, and to develop any land, estate or property acquired or to be acquired including agricultural lands, N.A. Plots and excess lands by the Company or in which the Company is interested and in particular by developing of slum and other areas as per the policy of the State Government or Local Authorities and by laying out, altering, pulling down, improving, constructing or restructuring of dwelling houses, residential flats, shops, godowns, warehouses, office premises, industrial estates, works and convenience of all kinds and by consolidating, connecting or sub-dividing properties into small plot of lands and to sell or let out the same or dispose of the same or any part thereof to the builders or promoters of Co-operative Housing Societies, industrial estates, shopping arcade and any other societies or organisations by entering into contracts and/or arrangements, with them.

3. The amount of deposit alongwith interest outstanding is ₹ 78,00,000/- (as per Annexure – B).
4. Break up of deposit Outstanding are as follows:
 - (a) Deposits due for payment, but Not paid on the date of Application: NIL
 - (b) Deposits due but not claimed on the date of application: NIL
 - (c) Deposits not yet due for repayment on the date of application: ₹ 88,00,000/-
5. Deposits overdue for payment for 2 years and more; for one year and more but less than 2 years; for six months and more but less than 1 year; for 3 months and more but less than 6 months; and for less than 6 months: NIL
6. Number and total amount of deposit due for Payment upto Rs.20,000 in each case is: NIL
7. Number and total amount of deposit due for payment to senior citizen: ₹ 15,00,000/- OF Mr. Anil Bhagwat aged 62 years"

14 & 15. Facts & Justification of the case:

The petitioner Company has, till date, a good track record of timely payment of interest/principal in respect of Deposits. Similarly there are no overdue deposits as on the date of application as per the terms of acceptance. The Company is confident of meeting the liability in respect of interest/principal repayment of the outstanding deposits as on the date as per the scheduled maturity

dates in 2015-16, 2016-17. The petitioner Company proposes to approach Company Law Board, Mumbai Bench, with a request for permission of the Principal in respect of outstanding deposits in accordance with the scheduled maturity dates as per the terms of the acceptance of the said Deposits instead of by 31st March, 2015."

4. The Petitioner has submitted a letter to the Registry of National Company Law Tribunal, Mumbai Bench on 06th April 2017 requesting for withdrawal of the aforesaid Company Petition because the amount outstanding belongs to the shareholders, wherein reasons for withdrawal are stated as under:-

".... However, with reference to the General Circular No. 05/2015 dated 30th March, 2015 it has been clarified that unsecured loans received by private companies prior to 1st April, 2014 shall not be treated as 'deposits' under the Companies Act, 2013 and allowed the Private Companies to accept the deposits from their members, directors or their relatives prior to 1st April, 2014.

.... With reference to the General Circular No. 05/2015 dated 30th March, 2015, the Private Companies have allowed to accept the deposits from its members. So the company has not violated any of the provisions of the Companies Act, 2013.

In light of the submissions made by the Company, we request your good self to kindly take a lenient view of the matter in this case and request the Hon'ble Bench to consider our request and kindly dismiss the petition filed u/S. 74 (2) of the Companies Act, 2013."

5. Reproduced below is relevant portion of General Circular No. 05/2015 dated 30th March, 2015 issued by Ministry of Corporate Affairs, Government of India.

"Stakeholders have sought clarifications as to whether amounts 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 rules 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 rules made thereunder."

6. 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 a 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 is 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.

7. Facts of the case have revealed that an outstanding amount of ₹ 15,00,000/- (₹ Fifteen Lacs Only) of one Sri. Anil Bhagwat was repaid on 29th June, 2015, and an outstanding amount of ₹ 10,00,000/- of one Sri. Pramod Dustkar was repaid on 19th May, 2014 stated to be not a member, Director or relative. It has also been stated that rest of the deposits amounting to be ₹ 63,00,000/- (₹ Sixty Three Lacs Only) had been received from the relatives/members that to^o prior to 1st April, 2014.

8. In the light of the above discussion and the present legal position, the Company Petition, now under consideration, has become

redundant. The General Circular (supra) issued by Ministry of Corporate Affairs dated 30th March, 2015 has clarified that the amounts received by a Private Limited Company from their members, Directors and relatives prior to 1st April, 2014 shall not be treated as 'deposits' under the Companies Act, 2013. In the financial statements and in the Petition, the Company has duly recorded the figures of such amount along with relevant details. As a consequence of the said General Circular, this Petition has now become redundant. The same is, therefore, dismissed due to non-applicability of the relevant provisions of Companies Act, 2013. No order as to cost.

Dated: 7th April, 2017

Sd/
M.K. SHRAWAT
MEMBER (JUDICIAL)