

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
IA No. 17 of 2017 in TCP 5/74(2)/2016**

Coram: B.S.V. Prakash Kumar, Member (Judicial) &
V. Nallasenapathy, Member (Technical)

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

M/s Valecha Engineering Limited ... Applicant

Counsel for the Applicant

Shri. Virendra Ganda, Sr. Counsel, Mr. Vijay Modi, C.S, Tarun Mehta,
Advocate for the applicant.

ORDER

(Heard on 20.03.2017)

(Pronounced on 21.03.2017)

1. The applicant company filed this IA 17/2017 u/s 420(2) of the Companies Act 2013 (herein after referred as "Act") and Rule 11 of NCLT Rules 2016 for modification/clarification of the orders dated 22.2.2016 and 20.12.2016 passed by this Bench in CP5/2016 so as to enable the applicant to repay the fixed deposits outstanding by extending time as mentioned in the schedule.
2. Before going into merits of this application, this Bench recalls as to what happened when the very same applicant had on 17-4-2015 filed the petition u/s74(2) of the Act for extension of time for repayment of fixed deposits and the interest thereof. Since member was not present in CLB at Mumbai for a long time, CP 5/2016 filed before CLB Mumbai for the first time came for hearing on 21-1-2016 i.e. almost after 10 months to the filing of the said application. When it came for hearing on 21-1-2016, CLB listed the case on 22.2.2016 directing the company to file an affidavit within 10 days thereof giving plan of repayment to the depositors. Accordingly, when this matter came up for hearing on 22-2-2016, the whole time Director of the applicant company filed an undertaking affidavit for repayment of the depositors' money with a breakup with timelines agreeing to start making payments from March 2016 itself. With that break up, this Bench gave further

directions for constitution of hardship committee for distribution of the money directed to be paid by the company. Ever since this matter did not come up before CLB, again it was shown up before NCLT on 17-10-2016 on the depositors' applications. Since the applicants are only two, the company was directed to repay the same to them immediately, thereafter to find out as to whether this applicant company complied with the order dt.22-2-2016 passed by erstwhile CLB, this matter was posted to 20.12.2016. On the said day, this Bench noticed that despite there was a direction on 22-2-1016 against the company to make at least one core payment every month from March 2016 to August 2016 and from the month of August to make payment of 2.4 crores on every month up to December 2016, the company made only five percent payment out of the due outstanding, then this Bench held that there would not be of any use giving any further extension to the company to repay the deposits, in view of the same, CP 5/2016 for extension pending before NCLT was dismissed for non-compliance of the order dated 20-2-2016. The total amount that was payable by 20-2-2016 was ₹38.45 crores, out of which ₹17.41 crores was ordered to be paid by the end of December 2016 on the undertaking given by the company, but whereas the company made only ₹70 lakhs repayment. In fact, this was not the scheme given by CLB, the order dated 22.2.2016 had come into existence was on the undertaking given by the company with breakup of payments as mentioned in the order dated 22-2-2016.

3. Now this applicant has come up for modification stating that applicant filed an appeal before the Hon'ble NCLAT to enable the applicant company to move before the NCLT for modification of the impugned order under Section 420(2) of the Act 2013. Looking at the prayer, the Honourable NCLAT permitted the applicant to withdraw the appeal without expressing any opinion with regard to the maintainability or merit of the application as may be filed before the Tribunal.
4. On perusal of Section 420(2) of the Act 2013, it is evident that it is only a provision set out to correct the mistakes if any crept in the orders within two years from the date of the order. Here, no mistake has been crept in the order dated 22-2-2016 and it is also not the case of the applicant that mistake has

been crept in the order dt.22-2-2016, therefore, modification to the order which has no mistake will not fall within the ambit of section 420(2) of the Act 2013.

5. However, since orders u/s 74 of the Act 2013 are more like execution orders, an application could be filed in a changed situation or for further compliance depending upon the facts of the case. This applicant company has now come and say that they paid ₹3crores from the date of the order, basing on that ground, the applicant sought for modification. If at all at least $\frac{3}{4}$ th or at least $\frac{1}{2}$ of the amount payable to the depositors is paid, then it is understandable that there is a merit in seeking time for repayment of the remaining amount. The Applicant already whiled away almost two years from the date of filing CP5/2016, now if it is reopened giving time, it will be nothing but again remain waiting for compliance of another undertaking comes from the party.
6. In view of the same, this Bench does not find any merit in the application moved by the applicant company, hence forth the same is hereby dismissed.

Sd/-

B.S.V. PRAKASH KUMAR
Member (Judicial)

Sd/-

V. NALLASENAPATHY
Member (Technical)