

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

COMPANY PETITION NO. 58/74(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. Darshan Jewel Tools Private Limited
Unit No.4, Mahavir Industrial Estate
32, Mahal Industrial Estate
Mahakali Caves Road
Andheri (East), Mumbai 400 093.

PRESENT ON BEHALF OF THE PETITIONER

Ms. Bina Shah, Company Secretary in Practice.

ORDER

Reserved on : 20.01.2017

Pronounced on : 17.02.2017

1. Ms. Bina Shah, Company Secretary in Practice 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:-

"14. Facts of the case:

The Company – Darshan Jewel Tools Private Limited was incorporated on 12th April, 2005 as a Private Limited Company under the Companies Act, 1956 with paid-up capital of Rs.1,00,000/- with the object of buying, selling, trading, dealing in all kinds of jewellery making tools, machinery and parts.

The Company had taken unsecured loan from its Directors and shareholders for working capital requirements of the Company in compliance with the provisions of the Companies Act, 1956.

As on the date the outstanding loan from shareholders is Rs.3,42,39,040/-.

15. Justification of the case: The Directors of the Company are desirous of paying the amount of Deposit along with interest due on or before 31st March, 2018 since there is no adequate liquidity as the amount borrowed through such loan from Shareholders is utilized in such asset which is not immediately possible to be liquidated etc.

16. Relief sought: Pursuant to the provisions of section 74(2) of the companies Act, 2013 the Directors of the Company hereby request the Hon'ble Bench to kindly grant extension of time for a period of 3 years i.e. upto 31st march, 2018 for repayment of deposits alongwith interest payable thereon upto the date of repayment.

4. The Petitioner has submitted a letter to the Registry of Company Law Board, Mumbai on 16th January, 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:-

"With reference to the captioned subject, we would like to state as under:

1. The Company is a Private Limited Company and had accepted deposits from 26 shareholders other than Directors or their relatives prior to 1st April, 2014. The total amount of such deposits outstanding as on 31st March, 2014 was Rs.3,42,39,040/-

2. Pursuant to the provisions of Section 74(2) of the Companies Act, 2013 the Company had filed petition on 30th March, 2015 for extension of time for repayment of deposit.

3. Subsequent to the filing of the petition as mention in Pt. no.2, the Ministry of Corporate Affairs, Government of India, vide General Circular No. 05/2015 F. No. 1/8/2013-CL-V dt. 30th March,

2015 clarified that the deposits accepted by Private Limited Companies prior to 1st April, 2014 from their members, Directors or their relatives shall not be treated as deposits under the Companies Act, 2913 and the Companies (Acceptance of Deposits) Rules, 2014 subject to the condition that the relevant private company shall disclose in the notes to its financial statement for the financial year commencing on or after 01st April, 2014 the figure of such amounts and the accounting head in which such amounts have been shown in the financial statement.

In the light of the clarification given in the General Circular dt. 30th March, 2015 as elaborated above and the facts of the case, we hereby request the Hon'ble Bench to allow us to withdraw the petition filed by the Company & oblige."

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. 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.

Sd/-

Dated: 17th February, 2017

M.K. SHRAWAT
MEMBER (JUDICIAL)