

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

**COMPANY PETITION NO. 54/74(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. Elegant Modular Furniture Private Limited  
Gala No.1 and 3  
B-Building, Akhil Industrial Estate  
Village – Waliv  
Vasai (East)  
Thane, Maharashtra, India 401 208.

**PRESENT ON BEHALF OF THE PETITIONER**

Mr. Vijay Rangale, Accounts Manager of the Petitioner.

**ORDER**

**Reserved on : 30.01.2017**

**Pronounced on : 08.02.2017**

1. Mr. Vijay Rangale, Accounts Manager was present on behalf of the Petitioner.
2. This Petition was filed on 30<sup>th</sup> 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 in India of elsewhere with or without collaboration, the business to manufacture , sell, deal, buy, market, import, export, repair, to act as merchants, agents, factors and particularly to manufacturers, dealers of all types of modular office and home furniture, storage systems, electrical protection and distribution equipments from solid wood, particle board, MDF, pre laminated boards, steel and plastics required for homes, offices, educational institutions, hotels, industries, hospitals and carry out interior work for Companies, School, Banks, Offices and other institutions. ....
3. The amount of deposit alongwith interest outstanding is 20,78,511 (as per form DPT-4).
4. Break up of deposit Outstanding are as follows:
  - (a) Deposits due for payment, but Not paid on the date of Application: 20,78,511
  - (b) Deposits due but not claimed on the date of application: NIL
  - (c) Deposits not yet due for repayment on the date of application: NIL
5. Deposits overdue for payment for 2 years and more and for less than 3 months: 20,78,511.
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: NIL"

.....

14 & 15. Facts & Justification of the case:

Clause (b) of subsection (1) of section 74 of the Companies Act, 2013 requires all Companies to repay all the deposits with interest accrued thereon within one year from commencement of the Companies Act 2013 i.e. by 31<sup>st</sup> March 2015. The Company has always been particular in complying with the provisions of the Acts.

In view of the financial difficulties those are likely to be faced by the company due to premature repayment of all fixed deposits due to shareholders latest by 31<sup>st</sup> March 2015. The Board of Directors in their meeting held on 22<sup>nd</sup> January, 2015 decided to make an application before the Company Law Board for permission to retain the deposit."

4. The Petitioner has submitted a letter to the Registry of Company Law Board, Mumbai on 19<sup>th</sup> May, 2015 requesting for withdrawal of the aforesaid Company Petition because the amount outstanding belongs to the shareholders, wherein reasons for withdrawal are stated as under:-

"We request you to kindly withdraw the petition filed by the Company u/s. 74(2) of the Companies Act, 2013 in respect of Extension of Time for repayment of deposits as it is not applicable to us as per the circular issued by Ministry of Corporate Affairs, dated 30<sup>th</sup> March 2015 stating amounts received by private companies from their members, directors or their relatives before 1<sup>st</sup> April 2014 shall not be treated as deposits under the Companies Act 2013.

We have published the advertisements in newspapers on 26<sup>th</sup> March, 2015 and filed the petition with Company Law Board, Mumbai Bench on 30<sup>th</sup> March 2015 for the above matter.

We request you to withdraw the petition and kindly issue the order for withdrawal of petition at the earliest."

5. Reproduced below is relevant portion of General Circular No. 05/2015 dated 30<sup>th</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 30<sup>th</sup> March, 2015 has clarified that the amounts received by a Private Limited Company from their members, Directors and relatives prior to 1<sup>st</sup> 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: 8<sup>th</sup> February, 2017

**M.K. SHRAWAT**  
MEMBER (JUDICIAL)