

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

T.C.P. NO. 51/74(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. Khemka Klothings Private Limited
413, Bussa Udyog Bhavan
Tokersi Jivraj Marg
Sewree
Mumbai 400 015.

PRESENT ON BEHALF OF THE PETITIONER

None present from the Petitioner's side.

ORDER

Reserved on : 27.01.2017

Pronounced on : 10.02.2017

1. Nobody is present on behalf of the Petitioner. This Bench observes that during the hearing held on 21st December, 2016 also none was present from the Petitioner's side. The Registry of NCLT, Mumbai Bench had sent to the Petitioner a Show Cause Notice bearing No. 51/74(2)/NCLT/MB/MAH/2015/1&2 dated 3rd January, 2017 for non-attendance and notifying the Petitioner that the next hearing is fixed on 27th January, 2017 and in case of non-appearance the matter shall be decided on merits.

2. This Petition was filed on 27th 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:

1) The petitioner Company has obtained unsecured loans from the relative of directors prior to the commencement of the Companies Act, 2013. 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) Below is the extract of the definition of deposit provided under clause (b) of Rule 2 of Companies (Acceptance of Deposits) Rules, 1975:

(b) "deposit" means any deposit of money with, and includes any amount borrowed by, a company, but does not include-

(ix) any amount received by a private company from a person who, at the time of the receipt of the amount, was a **director, relative of director or member:**

Provided that the director or member, as the case may be, from whom money is received, furnishes to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting from others;

3) However under the Companies Act, 2013 any amount received from (1) relative of director, and (2) 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. Below is the extract of the definition of deposit provided under clause (c) of sub Rule (1) of Rule 2 of Companies (Acceptance of Deposits) Rules, 2014:

(c) "deposit" includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include

(viii) any amount received from a person, who, at the time of the receipt of the amount, was a **director** of the company:

Provided that the director from whom money is received, furnishes to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others;

- 4) Consequently the unsecured loans received from the relatives of directors which were not deposit under the Companies Act, 1956 are become deposit under the Companies Act, 2013 and as provided under Section 74(1)(b) are became repayable on or before 31st March, 2015.
- 5) The Company has running through a 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 require an extension of time for 3 years for repayment of the said deposit.

15. Justification of the Case:

The Company is a 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 are 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.

3.1 The Petitioner Company had given in their Petition under consideration details of deposit belonging to senior citizens which is reproduced below:-

"7. Number and total amount of deposits due for payment to Senior Citizens and relatives or Directors.

Details of deposit belonging to Senior Citizens are as follows:

S. No.	Name of the person	Amount in Rs.
1.	Bhagwatibai Laxminarayan	74,54,690/-

2.	Dropatidevi Khemka	9,00,000/-
3.	Gopaldas Khemka	11,97,289/-
4.	Kiran G Khemka	1,79,594/-
5.	Pushpa H Khemka	4,47,000/-"
	Total	1,01,78,573/-"

4. The Petitioner has submitted a letter to the Registry of NCLT, Mumbai on 20th December, 2016 requesting for withdrawal of the aforesaid Company Petition, wherein reasons for withdrawal are stated as under:-

"... we would like to draw the kind attention of the H'ble Tribunal that after filing the aforesaid petition the Central Government has issued General Circular No. 05/2015 dated 30th March, 2015 and clarified that the amount received by private companies from their members, directors and their relatives prior to 1st April, 2014 which were not termed as deposit under section 58A of the Companies Act, 1956 shall not be treated as deposit under the Companies Act, 2013.

In view of the said circular we would like to say that the amount received by the Company from its members, directors and their relatives would not fall under the term "Deposit" and consequently compliance of Section 74 do not apply to the Company. A copy of the said circular is attached herewith for your ready reference.

We, therefore, request the Hon'ble Tribunal to treat this petition as withdrawn and order accordingly."

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 from shareholders, Directors or relatives by a Private Limited Company 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: 10th February, 2017

M.K. SHRAWAT
MEMBER (JUDICIAL)