

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

T.C.P. NO. 153/74(2)/NCLT/MB/MAH/2016

CORAM:

SHRI M. K. SHRAWAT
MEMBER (JUDICIAL)

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

PETITIONER:

M/s. Neumec Builders Private Limited
207, Regent Chambers
208, Nariman Point
Mumbai 400 021.

PRESENT ON BEHALF OF THE PETITIONER

Mr. D.K. Meena, Practising Company Secretary present for the
Petitioner.

ORDER

Reserved on : 08.02.2017

Pronounced on : 15.02.2017

1. Mr. D.K. Meena, Practising Company Secretary, representing the
Petitioner is present.
2. This Petition was filed on 31st 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:-

"4. Facts of the case are given below:

Section 74 to 76 of the Companies Act, 2013 which deals with Fixed Deposits have become applicable with effect from 1st April, 2014.

Section 74 of the Companies Act, 2013 deal with Fixed Deposit and interest thereon accepted under the erstwhile Companies Act, 1956 under Section 58A and outstanding as on 31st March, 2014.

The clause (a) and (b) of sub-section (1) of Section 74 read as under:

"74. (1) Where in respect of any deposit accepted by a company before the commencement of this Act, the amount of such deposit or part thereof or any interest due thereon remains unpaid on such commencement or becomes due at any time thereafter, the company shall:-

- (a) file, within a period of three months from such commencement or from the date on which h such payments, are due, with the Registrar a statement of all the deposits accepted by the company and sums remaining unpaid on such amounts with interest payable thereon along with the arrangements made for such repayment, notwithstanding anything contained in any other law for the time being in force or under the terms and conditions subject to which the deposit was accepted or any scheme framed under any law;
- (b) ***repay within one year from such commencement or from the date on which such payments are due, whichever is earlier."***

As required under the above said clause (a) sub-section (1) of Section 74 of the Companies Act, 2013 the Company has filed with the office of the Registrar of Companies, Maharashtra, Mumbai, a Statement regarding deposits existing on the commencement of the Act in Form No. DPT-4 showing the position of deposits outstanding as on 31st March, 2014 vide SRN No. C21266572 dated 20th September, 2014. A copy of the same with the acknowledgement of the office of the Registrar of Companies, Maharashtra, Mumbai, is attached herewith and marked as 'Exhibit A-2'.

Further clause (b) of sub-section (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 31st March 2015.

NEUMEC BUILDERS PRIVATE LIMITED is not an "Eligible Company" as per Section 76(1) and as per the definition given in Rule 2 of the Companies (Acceptance of Deposit) Rules, 2014. Therefore the Company is not allowed to accept deposits from 'Public'. However,

since the Company was allowed to accept deposits from Directors relative and shareholders under the erstwhile Companies Act, 1956, the Company has been accepting deposits from Directors relatives as well as 'Shareholders' till 31st March, 2014.

The Petitioner state that the Company has always been particular in complying with all the applicable provisions of the erstwhile Companies Act, 1956, / Companies Act, 2013, the Rules / Amendments and other enactments made thereunder from time to time and there never arose any cause for action against the Company under the provisions of the above referred Sections of the Companies Act and the Rules / Amendments made thereunder. The Company, till date of this application has been making payments of matured Fixed Deposits / interest amounts due thereon as and when the same became due to the Deposits holders.

As per Section 74(1) of the Companies Act, 2013, these deposits along with the interest on the same are required to be prematurely paid by 31st March, 2015.

Section 74(2) of the Companies Act, 2013 read as under:

"The Tribunal may on application made by the Company, after considering the financial condition of the Company, the amount of deposit or part thereof and the interest payable thereon and such other matters, allow further time for repayment of deposits thereon as it considers reasonable to repay the deposit."

Further, the sub-sections (8) and (9) of section 58A of the Companies Act, 1956 read as under:

"58A(8) – The Central Government may, if it considers it necessary for avoiding any hardship or for any other just and sufficient reason, by order, issued either prospectively or retrospectively from a date not earlier than the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), grant extension of time to a company or class of companies to comply with, or exempt any company or class of companies from, all or any of the provisions of this section either generally or for any specified period subject to such conditions as may be specified in the order.

Provided that no order under this sub-section shall be issued in relation to a class of companies except after consultation with the Reserve bank of India.

58A(9) – where a company has failed to repay any deposit or part thereof in accordance with the terms and conditions of such deposit, the Company Law Board / Tribunal may, if it is satisfied, either on its own motion or on the application of the depositor, that it is necessary so to do to safeguard the interests of the company, the depositors or in the public interest, direct, by order, the company to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as may be specified in the order.

Provided that the Company Law Board / Tribunal may, before making any order under this sub-section, give a reasonable opportunity of being heard to the company and the other persons interested in the matter."

4. In the Petition under consideration, the Petitioner Company had explained that the Petition has been filed on the following grounds:-

"5. GROUNDS OF APPLICATION

a) The Company is unable to accept deposits from Directors relative with effect from 1st April, 2014 in view of the introduction of the Companies Act, 2013 and the Rules made thereunder. All the deposits accepted under the erstwhile Companies Act, 1956 and outstanding as on 31st March, 2014 are required to be prematurely refunded alongwith interest thereon latest by 31st March, 2015.

b) The Audited Annual Accounts for the year ended 31st March, 2014 are attached herewith as 'Exhibit A-3'.

c) The nature of business of the Company requires it to maintain high level of working capital. During the last two years, the execution activities in Capital projects are delayed mainly due to sluggish economy, requiring larger working capital.

d) A part of the working capital requirement was financed through Directors relative and Shareholders Deposits. Further, the Company has not accepted any Fixed Deposits from other than directors in view of Section 76(1) of the Companies Act, 2013 and as per the definition given in Rule 2 of the Companies (Acceptance of deposits) Rules, 2014.

e) Being a small company the premature re-payment deposits of Rs.27.42 Crores as to the deposits holders will disturb the financial Management and availability of working capital for day to day requirements of the company. Therefore it was decided By the Board of Directors to seek the Extension under section 47(2) of The Companies Act, 2013.

f) The provisions of the Companies Act, 2013, which not only prevent the Company from accessing the deposits from Directors relatives and shareholders but also require to prematurely refund all the outstanding deposits from Public as well as Shareholders accepted under the erstwhile Companies Act, 1956, (Refer 'Exhibit A-6' attached herewith aggregating to Rs. 27.42 Crore). The premature repayment which we have to make by 31st

March, 2015, would seriously affect the working capital of the Company and thereby the day-to-day business operations resulting into adverse profitability and liquidity, since such huge premature repayments cannot be substituted in a short period. Any premature repayment would neither be in the interest of the Company nor in the interests of its depositors.

In view of the financial difficulties those are likely to be faced by the Company due to the premature repayment of all the deposits and interest due thereon the Board of Directors in their Board Meeting held on 30th March, 2015 (as per 'Exhibit A-5') has decided to make the present Petition before the Company Law Board for permission to retain the deposits accepted before 31st March, 2014 and outstanding as on 31st March, 2015 for the remaining period till 31st March, 2018 and for repayment of the same alongwith interest due thereon.

The Petitioner now submits this application for permission to retain the deposits accepted for the remaining period till their maturity as per the original terms of deposits and for repayment of the same alongwith interest due thereon as and when the same matures as per the original terms of deposits, and request that the Hon'ble Company law board, Mumbai Bench take a considerate view of the above circumstances being faced by the Company."

5. The Petitioner Company has sought the following reliefs:-

"10) Interim order if any, prayed for:-

Repayment of all deposits maturing after 31st March, 2015 but to be paid by 31st march, 2015 be stayed till the final outcome of this Petition / Application.

11. Relief(s) sought:

- (a) The Hon'ble Board may allow the Company in the interest of justice, to repay the outstanding deposits as on 31st March, 2015 (as per the details provided in 'Exhibit A-6') together with the contracted rate of interest that may accrue / due thereon at 31st March, 2018 instead of refunding with interest prematurely on or before 31st March, 2015."

6. The Petitioner Company had submitted in their Petition under consideration, details of deposits belonging to Directors, shareholders and others, which is reproduced below:-

| S. No. | Name | Amount of Deposit not matured |
|---------------|------------------------|--------------------------------------|
| 1 | Rajesh Jain | 16,77,145.00 |
| 2 | Deepak N. Gogari | 5,59,57,611.00 |
| 3 | Vipul B. Vora | 3,38,71,330.00 |
| 4 | Atul R. Shah | 2,82,54,058.00 |
| 5 | Parag K. Jain | 6,11,68,409.00 |
| 6 | Kamal K. Jain | 80,08,702.00 |
| 7 | Karan S. Jain | 3,84,77,303.00 |
| 8 | Karan S. Jain H.U.F. | 44,96,803.00 |
| 9 | Hemali K. Jain | 12,72,620.00 |
| 10 | Premlata P. Jain | 10,95,100.00 |
| 11 | Lotus Manaisha Company | 25,00,000.00 |
| | Total | 23,67,79,081.00 |

7. This Bench has on record a letter bearing No. ROC/STA(BDS)/U/s. 140/149536/22 dated 6th February, 2017 from the Registrar of Companies, Maharashtra, Mumbai stating that the Petitioner Company had filed revised DPT-4 on 6th October, 2016 vide SRN G13699574 mentioning the correct deposit amount of Rs.23,67,79,081/- which is not yet due for repayment and the correctness of the said figure has been certified by the Auditor.

8. In the light of the foregoing discussion and considering the facts and circumstances of the case, the admitted factual position is that one of the deposits under consideration did not belong to the Directors or relatives, as affirmed in the Petition itself vide para 5(a); therefore, seeking permission to grant extension to repay the said outstanding deposit. The requisite information has already been furnished before the RoC on 6th October, 2016 along with the requisite fees of ₹5,200/-. It is hereby directed that out of the list of 11 persons, the admitted factual position is that the persons from Sr. Nos. 1 to 10

being Directors and relatives falling under the category as per General Circular No. 5/2015 dated 30th March, 2015, the Petitioner Company needs no extension of time being out of the ambit of the definition of 'Deposits'. 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."

9. However, in respect of the entity named at Sr. No.11 i.e. M/s. Lotus Manaisha Company disclosing deposit of ₹25,00,000/-, it is directed to be repaid on or before 31st of March, 2018. The time for repayment of deposit of the said concern is extended by invoking powers enshrined u/s 74(2) of the Companies Act, 2013. Resultantly, the Petition is allowed on the terms ordered above. The Petition being finally disposed of is directed to be consigned to the records. No order as to costs.

Dated: 15th February, 2017

Sd/-
M.K. SHRAWAT
MEMBER (JUDICIAL)