

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
BENCH, AT MUMBAI

TRANSFER COMPANY PETITION NO. 60/74(2)/NCLT/MB/MAH/2015

Coram : Shri M.K. Shrawat, Member (Judicial)

Order Under Section 74(2) of the Companies Act, 2013.

In the matter of **SAMARTH LAND CONCEPTS PRIVATE LIMITED**. ... Petitioner.

None has appeared from the side of the Petitioner although notices have been served.

ORDER

Reserved on : 13.01.2017.

Pronounced on : 13.01.2017.

1. None has appeared from the side of the Petitioner. This Petition is filed on 31.03.2015 before the erstwhile Company Law Board, Mumbai Bench under the provisions of Section 74(2) of the Companies Act, 2013. As per the Petition, the unsecured loans taken by the Petitioner/Company were amounted to Rs. 65,45,044/- (Rupees Sixty-five Lakhs Forty-five Thousand and Forty-four only) **outstanding as on 31.03.2014**. The Petition was thereafter transferred to National Company Law Tribunal, Mumbai Bench.
2. As per the Petition, facts stated therein are as under :-
 - (a) *The Company is engaged in the business of land infrastructure and developers such as to undertake, build, construct, erect, plant, execute, carry out, improve, enlarge, alter, develop etc. of land and building. Detail object and working of the company is mentioned in a certified copy of the Memorandum and Articles of Association of the Company. It is mainly into infrastructure industry. The Company in order to improve working capital of company took over the unsecured loans.*
 - (b) *The unsecured loan of Rs. 65,45,044/- was taken over by the Company and the amount now stood as unsecured loan from the relative of member of the Company which was under exempted category of the deposit.*
 - (c) *It is further stated that after Notification of New Companies Act, 2013 w.e.f. 01.04.2013 and the Companies (Acceptance of Deposit) Rules, 2014, the unsecured Loan from a member relative of the company have been covered under the definition of the "deposit" as per the rule 2(1)(c) of the new rules.*

(d) *The outstanding balance of unsecured loan from member relatives as at March 31, 2014 was Rs. 65,45,044/- (Rupees Sixty-five Lakhs Forty-five Thousand and Forty-four only) of which the outstanding deposit payable on or after 31st March, 2015 is Rs. 65,45,044/- (Rupees Sixty-five Lakhs Forty-five Thousand and Forty-four only) and Rs. 6,58,691/- (Rupees Six Lakhs Fifty-eight Thousand Six Hundred Ninety-one only) as an interest amount due on 31st March, 2015.*

(e) *By the virtue of Section 74(1)(b) of the Companies Act, 2013, every Company having deposits which are unpaid as on the commencement of the Companies Act, 2013 i.e. 01.04.2014 shall repay it within one year from such commencement i.e. till 01.04.2015 or from the date on which such payments are due, whichever is earlier. Therefore, by virtue of Section 74(1)(b), the Company is required to repay the deposits outstanding with it by 31st March, 2015.*

3. There is a latest development in the applicability of the provisions of Section 74(2) of the Companies Act, 2013. A Notification Circular is issued by Ministry of Corporate Affairs on 30th March, 2015. For ready reference the relevant portion of the **General Circular No. 05/2015, Ref. No. F. No. 1/8/2013-CL-V, Government of India, Ministry of Corporate Affairs dated 30.03.2015** is reproduced below :

“ Subject : Amount received by private companies from their members, Directors or their relatives before 1st April, 2014 – Clarification regarding Applicability of Companies (Acceptance of Deposits) Rules, 2014.”

Sir,

Stakeholders have sought clarification as to whether amount 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 rule 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 statement.

4. 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 unpaid 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 was 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.

5. 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 30.03.2015 has clarified that the amounts received 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 figure of such amount and 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.

Date : 13th January 2017.

Sd/-

Shri M.K. Shrawat.
Member (Judicial)