

Date:16.09.2025

Legal Opinion

1. Amba Auto Sales and Services Private Limited, a company having its registered office at: Survey No.442/2A, 443/2B, 7, Hongasandra, Bangaluru, Karnataka-560068, has approached the undersigned for the purpose of obtaining legal opinion on following queries:-

- 1) The Agreement dated 10.04.2006 does not provide for time limit. Is there any law which states that the Agreement shall be valid for a period of three years from the date of its execution.
- 2) Whether the agreement provides for the services by the first party?
- 3) Is it necessary that the Security Deposit should be refundable or not in view of the provisions of Companies Act, 1956 and Companies (Acceptance of Deposit) Rules, 1975 and also under the new Companies Act, 2013 and rules made under the Companies (Acceptance of Deposit) Rules, 2014?
- 4) Does the provisions of Companies Act, 1956 and Companies (Acceptance of Deposit) Rules, 1975 and also under the new Companies Act, 2013 and rules made under the Companies (Acceptance of Deposit) Rules, 2014 put any restriction on the payment of interest?
- 5) Does the provisions of Companies Act, 1956 and Companies (Acceptance of Deposit) Rules, 1975 and also under the new Companies Act, 2013 and rules made under the Companies (Acceptance of Deposit) Rules, 2014 put any restriction on the period of Security Deposit?
- 6) Does the provisions of Companies Act, 1956 and Companies (Acceptance of Deposit) Rules, 1975 and also under the new Companies Act, 2013 and rules made under the Companies (Acceptance of Deposit) Rules, 2014 put any restriction on refund of part of the Security Deposit?

- 7) Does the provisions of Companies Act, 1956 and Companies (Acceptance of Deposit) Rules, 1975 and also under the new Companies Act, 2013 and rules made under the Companies (Acceptance of Deposit) Rules, 2014 requires that if Security Deposit is accepted then Services should be rendered or the provision for future services is permissible?
 - 8) Whether in your opinion the security deposit terms of agreement entered between the company and Banka Family and Mr. Vikash Lohia violates the provisions of the Companies Act, 2013 and Companies (Acceptance of Deposit) Rules, 2014?
2. The opinion is sought in background of following facts. The Amba Auto Sales and Services Private Limited (hereinafter to be referred as 'Company') had entered into Memorandum of Agreement dated 10.04.2006 with Uma Shankar Banka, Krishna Kumar Banka and Sarita Devi Banka (hereinafter to be referred as 'Banka Family') and M/s. Amba Auto Associate (hereinafter to be referred as 'Partnership Firm') for investment of Banka Family to the tune of Rs.5 Crores in form of security deposit for 25% of Commission or Dealership fees on sale of vehicles received from Bajaj Auto Limited. The Banka Family was not able to deposit Rs.5 Crores and the company entered into a supplementary agreement with Banka Family on 10.12.2014 wherein, the name of Dolly Banka was inserted with specific timeline of termination of Memorandum of Agreement dated 10.04.2006. Further, it is informed that the Banka Family could not invest Rs.5 Crore till 31.03.2025 and the company has returned the investment to relevant member of Banka Family as per the supplementary agreement.
3. Based on the above stated facts and circumstances, the undersigned is approached to form an opinion on the above referred questions.
4. Having considered the peculiar facts and circumstances my opinion is as follows:-

1) The Agreement dated 10.04.2006 does not provide for time limit. Is there any law which states that the Agreement shall be valid for a period of three years from the date of its execution

5. That, the contract without any duration is valid under Section 2(h) of the Indian Contract Act, 1872. Section 2(h) reads as “*an agreement enforceable by law is a contract*” such contract are termed as indefinite duration contracts. A classic example of such contracts are partnership agreements. There is no legal bar on such contracts except if such contract lacks consideration, is unlawful, based on wager or void for uncertainty. However, going through the entire memorandum of agreement dated 10.04.2006 it does not fall within any legal bar and thus, such contract is valid contract. Further, in present case a supplementary agreement is being executed which adds a termination clause in the memorandum of agreement dated 10.04.2006. Thus, even otherwise, without supplementary agreement the main contract being memorandum of agreement dated 10.04.2006 is valid under the eyes of law.

6. There is no provision under any law to restrict any agreement to be concluded within three years from the date of execution.

2) Whether the agreement provides for the services by the first party?

7. That the Memorandum of Agreement provides following terms and conditions in nutshell:-

- a. Banka Family was to invest Rs.5 Crores and only once the 5 Crores are invested the company shall pay 25% of the Commission or dealership fees on sales of vehicles received from Bajaj Auto Ltd.

- b. Once the 5 Crore is invested the Banka Family will be entitled to use brand name and make marketing of vehicles from the premises stated in the agreement.
 - c. Till Banka Family do not bring the amount of Rs.5 Crore the company shall pay interest as per mutual agreement.
8. That, going through the agreement it is evident that the amount so invested by Banka Family was an advance for getting towards the threshold of Rs.5 Crores as per the Memorandum of Agreement for the 25% Commission and use of Brand Name of the Company. Thus, it is prima facie evident that there is sufficient arrangement between Banka Family and the Company for services to be utilized upon completion of investment of Rs.5 Crores. Whether, such investment to be categorized as deposit will be answered at relevant para below.
- 3) Is it necessary that the Security Deposit should be refundable or not in view of the provisions of Companies Act, 1956 and Companies Acceptance of Deposit) Rules, 1975 and also under the new Companies Act, 2013 and rules made under the Companies (Acceptance of Deposit) Rules, 2014?**
9. That, Section 58A of the Companies Act, 1956 containing 11 sub-sections deals with acceptance of deposits by a company from the public or its members. Sub-section (2) provides that no company shall invite, or allow any other person to invite or caused to be invited on its behalf any deposit unless such deposit is invited or is caused to be invited in accordance with the rules made under Sub-section (1) of Section 58A. The Companies (Acceptance of Deposits) Rules, 1975 have been framed in exercise of the powers conferred by Section 58A read with section 642 of the Act. Sub-section (9)

provides that where a company has failed to repay any deposit or part thereof in accordance with the terms and conditions of such deposit, the CLB, if it is satisfied, either on its own motion or on the application of the depositor may direct, by order, the company to make repayment of such deposit within such time and subject to such conditions as may be specified in the order. The Explanation at the end of Section 58A as well as Rule 2(b) of Companies (Acceptance of Deposits) Rules, provide that 'deposit' means any deposit of money with, and includes any amount borrowed by, a company but shall not include exempted categories of amount. The exempted categories are enumerated in the Companies (Acceptance of Deposits) Rules.

10. The deposit of the Banka Family falls under Rule 2(b)(vi) being an exemption of an advance for purpose of business of the company. Thus, the same is an exempted deposit under the Companies Act, 1956 and the Companies (Acceptance of Deposits) Rules, 1975. Thus, the deposits received at the time period of applicability of the Companies Act, 1956 and the Companies (Acceptance of Deposits) Rules, 1975 falls within exemptions defined under the Act and the Rules, hence the issue of refund will be govern under the provisions of Indian Contract Act, 1872, ie. what is been agreed between the parties.

11. That, identically under Companies Act, 2013, Section 2(31) defines deposit while, the exclusions to the deposits are placed in definition of deposit under the Companies (Acceptance of Deposits) Rules, 2014 at Rule 2(c). That going through the nature of the transaction in question it falls within the definition at Rule 2(c)(xii)(c) ie. "as security deposit for the performance of the contract for supply of goods or provision of services;"

12. That, thus, even under the Companies Act, 2013 readwith the Companies (Acceptance of Deposits) Rules, 2014, the present transaction falls with the exemption. The deposit

in question squarely falls with the purview of exempted deposit and accordingly the issue of refund will not be governed by the Companies Act and Rules but by the Law of Contract ie. Agreement between the parties.

13. That, Hon'ble NCLT Hyderabad Bench in the case of Sreedivi Digital Systems Private Limited vs. Bhagyanagar Digital Services Private Limited and Ors. ¹ while interpreting amount received pursuant to MOU can be termed as deposit or not has held that such receipt of Money by the Company cannot be termed as deposit by observing:-

“...

40. Ld counsel further submits that clause 3 of the MOU says that: "3. The amount brought in shall be either in cash or in the form of materials/ inventory or equipment required for the business of the Company and as mutually agreed by the parties.", hence, it cannot never fall within the definition of deposit because as per law deposit means money only.

Our findings and observations

41. Before, we proceed further, we think it proper to reproduce para 27 to 39 of W.P.(Crl.) 559/2020 in the High Court of Delhi at New Delhi which can be relied upon to decide the point for our consideration. The same is reproduced as under:

"27. It is pertinent to note that the provisions of Companies Act 2013 did not come into force on a single date, rather they have come into operation in phases. In the first phase, the Ministry of Corporate Affairs vide its notification dated 12th September 2013 notified 12th September 2013 as the date on which certain provisions of the Companies Act, 2013 would come into force. It was followed up by a notification dated 27th February 2014, notifying Section 135 of the Companies Act, 2013 and Schedule VII, to be effective from 1st April 2014. Subsequently, in the third phase, by notification dated 26th March 2014, the Ministry notified 1st April 2014 as the date on which certain provisions and all remaining schedules of the Companies Act, 2013 would come into force.

28. Section 2(31) of the Companies Act, 2013 that defines "deposit", came into force from 1st April 2014 and as such, it cannot be applied retrospectively for the share-purchase agreement between the Company and Petitioner that was entered into between the parties back

¹ CP No. 681/73/HDB/2019 Decided On: 07.06.2024

in the year 2010, way back in time before the commencement of the 2013 Act and its provisions.

29. Furthermore, the Companies (Acceptance of Deposits) Rules, 2014 as notified by MCA vide notification No. G.S.R 256(E) dated 31st March 2014 came into force on 1st April 2014. Therefore, the said Rules of 2014 can also not be applied on the amount in question.

30. It is evident that amount in question was given by the Petitioner in the year 2010 and was returned to him by the Respondent Company in the year 2018. Hence, the same shall be governed by the provisions of the Companies Act, 1956 read with Companies (Acceptance of Deposits) Rules, 1975 and the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014 does not apply.

31. Rule 2(b)(vii) of the Companies (Acceptance of Deposits) Rules, 1975 reads as under:

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

(vii) any amount received by way of subscriptions to any shares, stock, bonds or debentures such bonds or debentures as are covered by sub-clause (x) pending the allotment of the said shares, stock, bonds or debentures and any amount received by way of calls in advance on shares, in accordance with the Articles of Association of the Company so long as such amount is not repayable to the members under the Articles of Association of the Company;"

32. It is clear that as per Rule 2(b)(vii), irrespective of the period for which shares are not allotted, any amount by way of subscriptions to any shares, pending the allotment of the said shares, shall remain excluded from the purview of "deposit".

33. As per the contents of the General Circular No. 05/2015 : MANU/DCAF/0020/2015, dated 30th March, 2015 issued by the Ministry of Corporate Affairs, it has been clarified as under:

"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 at the figure of such amounts and the accounting head in which such amounts have been shown in the financial statement."

34. As per this circular, the amount received by the 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 provided that the same was disclosed in financial statement for the financial year commencing on or after 1st April 2014.

35. Therefore, as per Rule 2(b)(vii) of Companies (Acceptance of Deposits) Rules, 1975 read with General Circular No. 15/2015, the share application money given by the Petitioner for allotment of shares cannot be treated as "deposits". Therefore, as such, the question of applicability of penal interest does not arise.

36. Having considered the entirety of facts and circumstances of this case, as well as the provisions of law as applicable, this Court has come to the conclusion that the amount in question cannot be treated as "deposit" and as such does not attract the penal interest that would have otherwise applied, for the following reasons:

a. firstly, the money was given by the Petitioner in the year 2010, and was returned by the Respondent Company to the Petitioner in the year 2018, and hence the same shall be governed by the provisions of The Companies Act, 1956 read with Companies (Acceptance of Deposits) Rules, 1975;

b. secondly, as per the General Circular No. 05/2015 dated 20th March 2015 released by the Ministry of Corporate Affairs in consultation with RBI, the amount received by the 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 provided that the same was disclosed by in financial statement for the financial year commencing on or after 1st April, 2014; and c. thirdly, as rightly contended by the learned counsel for the Respondents No. 1 & 2, the inaction of the Office on the said letters dated 11th December 2018 and 31st October 2019 was by virtue of the fact that the prayers contained therein were outside the purview of jurisdiction of Respondents No. 1 & 2.

37. Therefore, for the reasons as afore stated, this Court is of the opinion that no case for exercise of writ jurisdiction is made out. In any case, the contractual relations or other obligations arising therefrom between the Petitioner and the Respondent No. 3 are outside the scope of the instant writ petition. It is open for the Petitioner to explore and pursue other legal remedies for recovery of interest or any dues due to him on the part of Respondent No. 3 Company. As such, no cause of action has arisen against the Respondents No. 1 & 2, Ministry of Corporate Affairs and Registrar of Companies, for adjudication between a matter pertaining to the private contract between two individual parties.

38. Hence, in light of the foregoing discussion and analysis, there are no cogent reasons to entertain the petition and allow the prayers sought therein. In the aforesaid terms, the instant petition stands dismissed.

39. It is made clear that any observations made herein shall have no bearing whatsoever on the merits of the case arising from the set of facts and circumstances of this case, in the course of any proceedings before any other Court."

42. On careful perusal of the above case law, we find that the facts of this case squarely apply to the present case as in this case also the amount was given as share application money before 01/04/2014 and General Circular No. 05/2015 : MANU/DCAF/0020/2015, dated 30th March, 2015 issued by the Ministry of Corporate Affairs, is applicable in this case also which clarifies that 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 at the figure of such amounts and the accounting head in which such amounts have been shown in the financial statement. Further, as explained and also decided in the above case law, Section 2(31) of the Companies Act, 2013 that defines "deposit", came into force from 1st April 2014 and as such, it cannot be applied retrospectively for the share-purchase agreement between the Company and Petitioner and the amount paid by the petitioner to R1 company from 11/9/2013 to 12/3/2014.

43. Furthermore, the Companies (Acceptance of Deposits) Rules, 2014 as notified by MCA vide notification No. G.S.R 256(E) dated 31st March 2014 also came into force on 1st April 2014. Therefore, the said Rules of 2014 also cannot be applied on the amount in question.

44. We, further observe that there is no cogent argument submitted by petitioner to the point raised by the respondent that any amount received by a company from another company is not inferred in as deposit as per Rule 2(c)(vi) of companies (Acceptance of Deposits) rules 2014. For the sake of more clarity, we reproduce here under the said rule:

"2. Definitions.- (1) In these rules, unless the context otherwise requires-

(a) "Act" means the Companies Act, 2013 (18 of 2013);

(b) "Annexure" means the Annexure attached to these rules;

(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 -

(i)

.....

(vi) any amount received by a company from any other company;

(vii) any amount received and held pursuant to an offer made in accordance with the provisions of the Act towards subscription to any securities, including share application money or advance towards allotment of securities pending allotment, so long as such amount is appropriated only against the amount due on allotment of the securities applied for;

Explanation.- For the purposes of this sub-clause, it is hereby clarified that -

(a) Without prejudice to any other liability or action, if the securities for which application money or advance for such securities was received cannot be allotted within sixty days from the date of receipt of the application money or advance for such securities and such application money or advance is not refunded to the subscribers within fifteen days from the date of completion of sixty days, such amount shall be treated as a deposit under these rules."

45. Placing reliance on the above case law and keeping in view the above facts, we decide that companies (Acceptance of Deposits) rules 2014 is not applicable in the present case, therefore the amount in question cannot be treated as "deposit" and consequently direction cannot be issued to the respondents to refund it with interest. The point is accordingly decided.

... "

- 4) Does the provisions of Companies Act, 1956 and Companies (Acceptance of Deposit) Rules, 1975 and also under the new Companies Act, 2013 and rules made under the Companies (Acceptance of Deposit) Rules, 2014 put any restriction on the payment of interest?**

14. That, in the old regime (Companies Act, 1956 read with Companies (Acceptance of Deposits) Rules, 1975) and the present regime (Companies Act, 2013 read with

Companies (Acceptance of Deposits) Rules, 2014) do impose statutory restrictions and procedural requirements that affect payment of interest on deposits. The rules specifically regulate (a) the terms of deposits (tenor and interest), (b) premature repayment (with a mandatory reduction of interest in certain cases), (c) registers/disclosures of interest payable, and (d) penal/“penal interest” consequences for overdue/unpaid deposits.

15. The applicable provisions are given below:-

Companies Act, 2013

73. Prohibition on acceptance of deposits from public.—

(1) On and after the commencement of this Act, no company shall invite, accept or renew deposits under this Act from the public except in a manner provided under this Chapter:

Provided that nothing in this sub-section shall apply to a banking company and nonbanking financial company as defined in the Reserve Bank of India Act, 1934 (2 of 1934) and to such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.

(2) A company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfilment of the following conditions, namely:—

(a) issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;

(b) filing a copy of the circular along with such statement with the Registrar within thirty days before the date of issue of the circular;

(c) depositing such sum which shall not be less than fifteen per cent. of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account;

(d) providing such deposit insurance in such manner and to such extent as may be prescribed;

(e) certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits; and

(f) providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company:

Provided that in case where a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as “unsecured deposits” and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits.

(3) Every deposit accepted by a company under sub-section (2) shall be repaid with interest in accordance with the terms and conditions of the agreement referred to in that sub-section.

(4) Where a company fails to repay the deposit or part thereof or any interest thereon under sub-section (3), the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.

(5) The deposit repayment reserve account referred to in clause (c) of sub-section (2) shall not be used by the company for any purpose other than repayment of deposits.

Section 74 in The Companies Act, 2013

74. Repayment of deposits, etc., accepted before commencement of this Act.—

(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 such payments, are due, with the Registrar a statement of all the deposits accepted by the company and sums remaining unpaid on such amount with the 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; and

(b) repay within one year from such commencement or from the date on which such payments are due, whichever is earlier.

(2) The Tribunal may on an 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 as considered reasonable to the company to repay the deposit.

(3) If a company fails to repay the deposit or part thereof or any interest thereon within the time specified in sub-section (1) or such further time as may be allowed by the Tribunal under sub-section (2), the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees but which may extend to ten crore rupees and every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or with both.

16. These provisions set out the statutory framework for accepting and repaying deposits (including interest obligations) and provide penal consequences for non-payment. Further, the Companies (Acceptance of Deposits) Rules, 2014 lay down detailed conditions and procedures for accepting deposits (tenor limits, disclosures, board declarations, deposit trust deed, maintenance of registers showing rate of interest and due dates, creation of deposit repayment reserve, etc.). However, as stated hereinabove in paragraph 12 that the provisions of Contract Act will be applicable qua the quantum and schedule of interest as the deposit in question falls within purview of exempted deposits.
17. That identical in under the old regime i.e. the Companies Act, 1956 and the Companies (Acceptance of Deposits) Rules, 1975 equivalent provisions were there. Such provisions are reproduced herein:-

58A. Deposits not to be invited without issuing an advertisement

(1) The Central Government may, in consultation with the Reserve Bank of India, prescribe the limits up to which, the manner in which and the conditions subject to which deposits may be invited or accepted by a company either from the public or from its members.

(2) No company shall invite, or allow any other person to invite or cause to be invited on its behalf, any deposit unless -

*(a) such deposit is invited or is caused to be invited in accordance with the rules made under sub-section (1),²[***]*

(b) an advertisement, including therein a statement showing the financial position of the company, has been issued by the company in such form and in such manner as may be³[prescribed, and]

⁴[(c) the company is not in default in the payment of any deposit or part thereof and any interest thereupon in accordance with the terms and conditions of such deposit.]

(3) (a) Every deposit accepted by a company at any time before the commencement of the Companies (Amendment) Act, 1974, in accordance with the directions made by the Reserve Bank of India under Chapter IIIB of the Reserve Bank of India Act, 1934 (2 of 1934), shall, unless renewed in accordance with clause (b), be repaid in accordance with the⁵[terms and conditions of such deposit].

(b) No deposit referred to in clause (a) shall be renewed by the company after the expiry of the term thereof unless the deposit is such that it could have been accepted if the rules made under sub-section (1) were in force at the time when the deposit was initially accepted by the company.

(c) Where, before the commencement of the Companies (Amendment) Act, 1974, any deposit was received by a company in contravention of any direction made under Chapter IIIB of the Reserve Bank of India Act, 1934 (2 of 1934), repayment of such deposit shall be made in full on or before the 1st day of April, 1975, and such repayment shall be without prejudice to any action that may be taken under the Reserve Bank of India Act, 1934 for the acceptance of such deposit in contravention of such direction.

⁶[(3A) Every deposit accepted by a company after the commencement of the Companies (Amendment) Act, 1998, shall, unless renewed in accordance with the rules made under sub-section (1), be repaid in accordance with the terms and conditions of such deposit.]

(4) Where any deposit is accepted by a company after the commencement of the Companies (Amendment) Act, 1974, in contravention of the rules made under subsection (1), repayment of such deposit shall be made by the company within thirty days from the date of acceptance of such deposit or within such further time, not exceeding thirty days, as the Central Government may, on sufficient cause being shown by the company, allow.

(5) Where a company omits or fails to make repayment of a deposit in accordance with the provisions of clause (c) of sub-section (3), or in the case of a deposit referred to in sub-section (4), within the time specified in that sub-section, -

(a) the company shall be punishable with fine which shall not be less than twice the amount in relation to which the repayment of the deposit has not been made, and out of the fine, if

realised, an amount equal to the amount in relation to which the repayment of deposit has not been made, shall be paid by the court, trying the offence, to the person to whom repayment of the deposit was to be made, and on such payment, the liability of the company to make repayment of the deposit shall to the extent of the amount paid by the court, stand discharged;

(b) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine.

(6) Where a company accepts or invites, or allows or causes any other person to accept or invite on its behalf, any deposit in excess of the limits prescribed under subsection (1) or in contravention of the manner or condition prescribed under that subsection or in contravention of the provisions of sub-section (2), as the case may be, -

(a) the company shall be punishable, -

(i) where such contravention relates to the acceptance of any deposit, with fine which shall not be less than an amount equal to the amount of the deposit so accepted.

(ii) where such contravention relates to the invitation of any deposit, with fine which may extend to⁷[ten lakh rupees] but shall not be less than⁸[fifty thousand rupees];

(b) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine.

(7) (a) Nothing contained in this section shall apply to, -

(i) a banking company, or

(ii) such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.

(b) Except the provisions relating to advertisement contained in clause (b) of subsection (2), nothing in this section shall apply to such classes of financial companies as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.

²[(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, 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.]

⁶[(9) Where a company has failed to repay any deposit or part thereof in accordance with the terms and conditions of such deposit the¹⁰[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 the¹⁰[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.

(10) Whoever fails to comply with any order made by the¹⁰[Tribunal] under sub-section (9) shall be punishable with imprisonment which may extend to three years and shall also be liable to a fine of¹¹[not less than rupees five hundred] for every day during which such non-compliance continues.]

¹²[(11) A depositor may, at any time, make a nomination and the provisions of sections 109A and 109B shall, as far as may be, apply to the nomination made under this sub-section.]

Explanation. -For the purposes of this section "deposit" means any deposit of money with, and includes any amount borrowed by, a company but shall not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India.]

18. That similarly the Companies (Acceptance of Deposits) Rules, 1975 imposed limits and procedural requirements (including short repayment windows for deposits taken in

contravention of the Rules), and the case law under the 1956 Act upheld the constitutional validity and effect of those deposit provisions. However, as stated hereinabove in paragraph 12 that the provisions of Contract Act will be applicable qua the quantum and schedule of interest as the deposit in question falls within purview of exempted deposits.

19. That Hon'ble Delhi High Court in the case of Nitin Rekhan v. Union of India ² held that certain receipts given to a private company in 2010 (returned in 2018) could be governed by the 1956 Act/1975 Rules and observed that amounts received prior to 1st April, 2014 may fall to be considered under the earlier statutory regime depending on disclosure and facts.

5) Does the provisions of Companies Act, 1956 and Companies (Acceptance of Deposit) Rules, 1975 and also under the new Companies Act, 2013 and rules made under the Companies (Acceptance of Deposit) Rules, 2014 put any restriction on the period of Security Deposit?

&

6) Does the provisions of Companies Act, 1956 and Companies (Acceptance of Deposit) Rules, 1975 and also under the new Companies

² ..36. Having considered the entirety of facts and circumstances of this case, as well as the provisions of law as applicable, this Court has come to the conclusion that the amount in question cannot be treated as "deposit" and as such does not attract the penal interest that would have otherwise applied, for the following reasons:

a. firstly, the money was given by the Petitioner in the year 2010, and was returned by the Respondent Company to the Petitioner in the year 2018, and hence the same shall be governed by the provisions of The Companies Act, 1956 read with Companies (Acceptance of Deposits) Rules, 1975;.."

--Nitin Rekhan vs. Union of India and Ors. -[2023]239CompCas852(Delhi)

Act, 2013 and rules made under the Companies (Acceptance of Deposit) Rules, 2014 put any restriction on refund of part of the Security Deposit?

20. Both the queries being identical in nature are dealt with together hereinbelow.
21. That under provisions of Companies Act, 1956 and Companies (Acceptance of Deposit) Rules, 1975 there are no explicit terms to restrict the tenure on Security deposit only Rule 3 of Companies (Acceptance of Deposit) Rules, 1975 specifies that any deposit accepted for a period exceeding 36 months was treated as non-compliant, unless exempted. Since, the present facts falls under the exemption of deposit, the same rule is not applicable.
22. That under the provisions of the Companies Act, 2013, Section 74 lays out the provisions for the repayment of those deposits which have been accepted by the company before the commencement of the Act; wherein there is any amount of principal or the interest that stands unpaid. The company must:-
- a. File Form DPT – 4 with the Registrar within 3 months of the commencement of the Act or from the date on which the payments become due. The form will include details of:- a) All the deposits accepted by the Company. b) Amount remaining unpaid on those deposits including the interest element c) Arrangements made for these payments.
 - b. Repay the deposits within 3 years of the commencement of the Act or the expiry of the term of those deposits, based on whichever is the earliest.
 - c. Where the Company requires an extension of time to fulfill the payments, it may make an application to the Tribunal for such extension.
23. That further Rule 3 of the Companies (Acceptance of Deposit) Rules, 2014 specifies that any deposit accepted for a period exceeding 36 months referred under Sub-Section

2 of Section 73. However, as stated hereinabove the deposit in question is an exempted deposit both under Old law and New Law and thus, does not fall under these provisions for any restriction of tenure, unless agreed in the contract. The same is also applicable for refund of the deposit. In present circumstances, the contract on account of non-fulfilment of the conditions by 31.03.2025 gets terminated and the Company was liable to refund the deposits within 3 months under the provisions of Indian Contract Act, 1872.

24. The Hon'ble NCLT New Delhi Bench³ has distinguished the definition of Deposit by observing:-

“... ”

8. Heard the Learned Counsel for the Applicant and perused the present petition and documents annexed therewith. At this juncture, it will be relevant to refer the provisions relating to Deposits. Section 2(31) of the Companies Act, 2013 ('the Act') defines 'deposit' to include any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the RBI. Further, Rule 2(1)(c) of Companies (Acceptance of Deposit) Rules, 2014 also defines 'deposit' to include any receipt of money by way of deposit or loan or in any other form, by a company, but does not include certain transactions (18 transactions, generally referred to as 'exempted deposits').

9. The Rule 2(1)(c)(xii)(a) of the Companies (Acceptance of deposits) Rules, 2014, is as follow:-

2(1)(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 -

(i)***

(xi)***

³ Banwari Lal Arora and Sons Vs. S.R. Foils & Hygiene Private Limited | Company Petition No. 49/ND/2021 Decided On: 19.05.2023

(xii) any amount received in the course of, or for the purposes of, the business of the company,-

(a) as an advance for the supply of goods or provision of services accounted for in any manner whatsoever provided that such advance is appropriated against supply of goods or provision of services within a period of three hundred and sixty five days from the date of acceptance of such advance:

Provided that in case of any advance which is subject matter of any legal proceedings before any court of law, the said time limit of three hundred and sixty five days shall not apply:

10. From the above extract, it is evident that the advance received by the company has to be allocated or appropriated against identified or specified goods or services within 365 days of acceptance. It is not necessary for the company to actually deliver the goods or services within 365 days. Moreover, a company may actually supply goods / materials / services ordered at its convenience as long as the advance received by it is set aside for such goods or services within 365 days. Therefore, in that scenario the advance received would not be treated as 'deposit'.

11. It is a trite law that an advance given for a particular purpose cannot be treated as deposits. A mere monetary advance given without any purpose but intended to be refunded, with or without interest, would still be a deposit. However, if money is received as advance against any purpose, it is an advance and not a deposit. Only advances which are received without any purpose will amount to 'deposit'.
... ”

7) Does the provisions of Companies Act, 1956 and Companies (Acceptance of Deposit Rules, 1975 and also under the new Companies Act, 2013 and rules made under the Companies (Acceptance of Deposit) Rules, 2014 requires that if Security Deposit is accepted then Services should be rendered or the provision for future services is permissible?

25. That as long as the amount is received for rendering of services and with purpose it falls within the exemption of deposit the same is permissible even if the services are to

be rendered at future stage. The Hon'ble NCLT Bengaluru Bench in the case of Union of India vs. Ramaiah Nataraja⁴ and Ors. relying NCLT Delhi decision in the case of M/S Banwari Lal Arora and Sons v. S.R. Foils & Hygiene Private Limited has held:-

"..21. In so far as the contention of the Inspector pertaining to the amounts collected by the company under the garb of membership fee for providing trip services amounts to Advances collected for (Acceptance of Deposits) Rules, 2014 is concerned, it is noted as per Rule 2 (c) (xii) (a) of the 2014 Rules exempts any advance received for supply of goods or services against appropriation is done with 365 days from the definition of "deposit". The text of the rule is reproduced below:

"xii) any amount received in the course of, or for the purposes of, the business of the company:

(a) as an advance for the supply of goods or provision of services accounted for in any manner whatsoever provided that such advance is appropriated against supply of goods or provision of services within a period of three hundred and sixty five days from the date of acceptance of such advance."

22. In so far as the appropriation of advance is concerned, it is observed that the advance received by the company has to be allocated or appropriated against identified or specified goods or services within 365 days of acceptance. It is not necessary for the company to actually deliver the goods or services within 365 days. This means that a company may actually supply goods/materials/services ordered at its convenience as long as the advance received by it is set aside for such goods or services within 365 days. In such a scenario the advance received would not be treated as deposit. The same was held in the case of M/S Banwari Lal Arora and Sons v. S.R. Foils & Hygiene Private Limited CP No. 49/2021 by the Hon'ble NCLT Delhi vide order dt.19.05.2023. Additionally, the Hon'ble Corresponding Delhi Bench vide the same order also noted that "it is a trite law that an advance given for a particular purpose cannot be treated as deposits. A mere monetary advance given without any purpose but intended to be refunded with or without interest, would still be a deposit. However, if money is received as advance against any purpose, it is an advance and not a deposit. Only advances which are received without any purpose will amount to deposit.
...."

⁴ CP NO.66/BB/2021 decided on 28.06.2024

26. That, the observations of the Hon'ble NCLT do covers the facts and circumstances of the present opinion on hand. Here the amount was received and the agreement empower 25% of commission fees and use of office for marketing to the Banka Family subject to threshold of Rs.5 Crores, being pre condition for such services, further a supplementary agreement was entered to include new member from Banka Family to assist in reaching the investment threshold, a termination clause was also inserted by the Company and Banka Family. Since, Banka Family failed to reach threshold of investment, the Company refunded the amount as per the Agreement read with the supplementary agreement in accordance with the terms agreed by the parties. Hence, the entire transactions cannot be said to be mere advance without any purpose to fall within the definition of Deposit as per provisions of Companies Act, 1956 and Companies (Acceptance of Deposit Rules, 1975 and also under the new Companies Act, 2013 and rules made under the Companies (Acceptance of Deposit) Rules, 2014.

8) Whether in your opinion the security deposit terms of agreement entered between the company and Banka Family and Mr. Vikash Lohia violates the provisions of the Companies Act, 2013 and Companies (Acceptance of Deposit) Rules, 2014?

27. To answer the final query we must check if the facts and circumstances of the present opinion on hand to check if it violates the provisions of the Companies Act, 2013 and Companies (Acceptance of Deposit) Rules, 2014. The transaction in question needs to be fall within the ambit of Deposit under Section 2(31) of the Companies Act, 2013 readwith the Rule 2(1)(C) of Companies (Acceptance of Deposit) Rules, 2014. As stated hereinabove the entire transaction is based on Memorandum of Agreement dated 10.04.2006 readwith the Supplementary Agreement dated 10.12.2014 which

suggests that the amount so received by the Company was with intention to give 25% of the membership fees and other benefits including use of the office premises as stated in the agreement. This gives a definite purpose for Company to received such amount. On failure of the threshold of Rs.5 Crores the agreement gets terminated and amount is refunded back to Banka Family. Thus, the amount so received in 1st place falls under the exemptions carved out under provisions of Companies Act, 1956 and Companies (Acceptance of Deposit Rules, 1975 and also under the Companies Act, 2013 and the Companies (Acceptance of Deposit) Rules, 2014 to be termed as "Deposit".

28. That once, the transaction in question is being exempted from the term "Deposit" the violation of any provisions against "deposit" will not be applicable to the Company. Hence, in my opinion there is no violation of the Companies Act, 2013 and the Companies (Acceptance of Deposit) Rules, 2014 since, the transaction falls within the exemption of the term "Deposit". The present opinion is only limited to the extended of violation of the transaction in question upon with the opinion is sought and is limited to the issue of amount invested by Banka Family in the Company and not on any other issues or provisions.

29. Should you have any further clarification, please feel free to call on the undersigned.



Pratik Thakkar

Advocate