

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. <sup>1</sup> 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*

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<sup>1</sup> 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."*