

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH**  
**COURT-IV**

**Company Petition No.49/(ND)/2021**

**Under Section 73(4) of the Companies Act, 2013 read with  
rule 73 of the National Company Law Tribunal Rules, 2016**

**IN THE MATTER OF:**

M/S. BANWARI LAL ARORA AND SONS

(Through its partner Shri Anil Arora)

Add: 202 Library Road, Azad Market, DELHI – 110006

**.... APPLICANT / DEPOSITOR**

**Versus**

M/s. S. R. FOILS & HYGIENE PRIVATE LIMITED

(Formerly Known: GMG Engineers & Contractor Private Limited)

(CIN: U21000DL2011PTC218267)

Reg. Office: Shop No. 7-10, 2nd Floor, MCD Mini Market,

Dakshin Puri New Delhi 110062

**.... RESPONDENT / DEPOSIT HOLDER**

**Order delivered on:19.05.2023**

**CORAM:**

**SH. P.S.N PRASAD, HON'BLE MEMBER JUDICIAL**

**ORDER**

**PER: SH. P.S.N PRASAD, HON'BLE MEMBER, JUDICIAL**

The present application has been moved on behalf of M/s. Banwari Lal Arora and Sons ('applicant'), a registered partnership firm through its partner Mr. Anil Arora under Section 73(4) of the Companies Act, 2013 against M/s. S. R. Foils and Hygiene Private Limited ('respondent') inter-alia seeking the following relief(s):-

- (i) The Respondent Company be directed to make repayment of the aforesaid Deposit amounting to Rs. 6,12,121/- with interest amounting to Rs.2,40,589/- due thereon;
- (ii) That such further order to be passed as the Tribunal may deem fit in the circumstances of the case.

2. Briefly stated, the facts of the present case as averred by the applicant in the petition are that Applicant had advanced Rs.58,70,000/- (Rupees Fifty-Eight Lakh and Seventy Thousand only) to the Respondent Company in consideration of which the Respondent Company had supplied various categories of aluminium foil papers for total amounting to Rs. 52,57,879 (Rupees Fifty-Two Lakh Fifty-Seven Thousand Eight Hundred and Seventy-Nine) during the period 19.07.2018 to 26.11.2018. It is submitted that the Applicant vide its email dated 28th November, 2018 had ordered certain goods to the Respondent Company for the supply against the advance payment, however, the applicant had never received the goods ordered and the same was intimated to the Respondent Company vide email dated 28.12.2018.

3. Further, it is submitted that the Applicant vide its email dated 19th March, 2019 had requested the agents/concerned person of the Respondent Company to refund the outstanding advanced amount of Rs.6,12,121 [Rupees Six Lakhs Twelve Thousand One Twenty One only]. The Applicant had sent several emails to the Respondent Company for the Refund of the balance amount, however, despite of enormous requests to repay the balance amount, Respondents haven't paid single penny till date and further erred in not refunding the same and retained the said balance amount since 26/11/2018.
4. The Applicant submitted that in view of the provisions of Rule 2(1) (c)(xii)(a) of the Companies (Acceptance of deposits) Rules, 2014, deposits include any receipt of money by way of deposit or loan or in any other form by the Company. The applicant further submitted that since 26.11.2018, the Respondent Company have not supplied goods to the applicant, the remaining amount of advance amounting Rs. 6,12,121/- given by the applicant to the Respondent be treated as Deposits and the Applicant shall be termed as Depositor as remaining balance of advance given is lying in the accounts of the Respondent Company since 26.11.2018 and 365 days already expired on 26.11.2019.
5. The Applicant submitted that the Respondent Company is in receipt of Rs.6,12,121/- from the Applicant, since November, 2018 and the said amount rose to Rs.8,52,710/- (Eight Lakh Fifty Two Thousand Seven Hundred Ten only) after computing interest at the rate of 18%, on the balance advanced amount till date i.e. 31st January 2021. Accordingly, the relief(s) sought is prayed to be granted.

6. This Tribunal in its order dated 29.07.2021 had issued notice to the Respondent Company, which was duly accepted by the Respondent Company and three weeks' time was granted to the Respondent Company for filing the reply. This Tribunal vide order dated 15.07.2022 had directed to issue fresh notice to the Respondent Company through all means. The applicant had placed on record affidavit of service dated 09.09.2022 proving the service of notice to the Respondent Company.
7. Despite, the multiple opportunities being provided by this Tribunal to the Respondent Company, the Respondent Company had failed to appear before this Tribunal. This Tribunal after giving several opportunities to the Respondent Company, had set Respondent Company ex-parte vide order dated 24.11.2022.
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)\*\*\*

(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:

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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'.
12. Now, coming to the merits of the case before us, the fact is itself unconditionally admitted by the applicant that the advance was made towards supply of various categories of aluminium foil papers. Further, the applicant vide email dated 28th November, 2018 had ordered certain goods to the Respondent Company for the supply against the advance payment. The extract of the e-mail dated 28.11.2018 evidencing the placing of the order for goods against the advance money are as below:-

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**ORDER FOR HOME FOIL**

1 message

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**Banwari Lal Arora And Sons** <banwari202@gmail.com>  
To: keyaccounts@srfoils.com

Wed, Nov 28, 2018 at 1:29 PM

Sir / Madam

Order for Home - Foil

HF JUMBO YELLOW 500GM = 12 CASE  
HF JUMBO BLUE 72 MTR. = 25 CASE  
HF JUMBO RED 99 MTR. = 12 CASE  
HF JUMBO MAROON 1 KG NET = 30 CASE

TOTAL = 79 CASES

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*Thanks & Regards*

**Aneel Arora**  
**M/S BANWARI LAL ARORA AND SONS**  
202-2 Library Road, Azad Market,  
DELHI - 6  
Contact: 09205267239

13.]

Tribunal is satisfied that the advance sum disbursed to the

Respondent is appropriated for the supply of various categories of home foils in pursuance of which the goods were duly supplied to the Applicant. A mere perusal of e-mail dated 28.11.2015, clearly shows that the advance money is already appropriated towards the Aluminium Foil as mentioned in the e-mail dated 28.11.2018.

14.Hence, the said advance of Rs.6,12,121/- cannot be qualified to be a deposit under Section 2(31) of the Companies Act, 2013 read with Rule 2(1)(c)(xii)(a) of the Companies (Acceptance of deposits) Rules, 2014 and other relevant provisions of the act as the amount has been appropriated within a period of 365 days from the date of receipt of advance. Resultantly, the present Company Petition 49./ND/2021, being devoid of merits stands dismissed. No orders to cost.

15.It is made clear that the Applicant is at liberty to seek other available remedy before appropriate forum other relevant law.

**Sd/-**

**SH. P.S.N PRASAD  
(MEMBER JUDICIAL)**