

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT – 1

ITEM No.305
CP 49 of 2020

Order under 42,59,73(4) 76(A) of Companies Act, 2013

IN THE MATTER OF:

ILABEN ASHOKBHAI MODI

.....Applicant

V/s

CHICCEM HEALTHCARE PRIVATE LIMITED

.....Respondent

Order delivered on: 02/04/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

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**SAMEER KAKAR
MEMBER (TECHNICAL)**

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**SHAMMI KHAN
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-I, AHMEDABAD**

CP. No.49 of 2020

[An application filed under Section 42,59,73(4) 76(A) and another applicable provisions of the Companies Act, 2013 read with Rule 2(C)(VII)(A) of the Companies (Acceptance of Deposits) Rules, 2014 and Rule 34 and 11 of the NCLT Rules, 2016]

In the matter of:

ILABEN ASHOKBHAI MODI

C-403,NYSA Courtyard, Near Sabri School,
Vasna Road, Racecourse,
Vadodara, Gujarat-390007

... Applicant

Versus

CHICCEM HEALTHCARE PRIVATE LIMITED

CIN: U74999GJ2017PTC096853
A/505,506,507,
Safal Solitaire Corporate Park,
Nr. Divya Bhaskar, SG Highway,
Makaraba Ahmedabad-380015

... Respondent

Order pronounced on: 02.04.2024

CORAM:

SH. SHAMMI KHAN, MEMBER (JUDICIAL)

SH. SAMEER KAKAR, MEMBER (TECHNICAL)

APPEARANCE

For Applicant : Mr. Dheeraj Garg, Advocate

For the Respondent : Mr. Abhishek Chhajed, Advocate

ORDER

[Per: Bench]

1. This CP 49/2020 is filed by one Ms. Ilaben Ashokbhai Modi under Sections 42,59,73(4) 76(A) and another applicable provision of the Companies Act, 2013 read with Rule 2(C)(VII)(A) of the Companies (Acceptance of Deposits) Rules, 2014 and Rule 34 and 11 of the NCLT Rules, 2016 seeking the followings prayers.

- a. That this Hon'ble Tribunal be pleased to allow the present application;*
- b. That the company, above respondent company be directed to make repayment of the share application money(deemed to be converted into deposits) of INR 10,00,000/- along with interest @ 12 per cent per annum from the 24.11.2017 till the date of actual repayment;*
- c. Allow and order the cost of this application to be borne by the respondent company;*
- d. Direct the concerned Registrar of Companies to file criminal complaint with the special Court under Section 76A read with section 439 of the Companies Act, 2013 for violation of the provisions of the Companies Act, 2013;*
- e. That such further orders as this Hon'ble Tribunal may deem fit to meet the ends of justice under the circumstances of the case.*

2. The submissions of the Applicant herein are summarized as under:-

- I. The applicant has paid a sum of Rs. 10 lakh on to the Respondent on 25.09.2017 by Banking Transactions ID No. 917033 by way of share application money to the applicant's bank account maintained with State Bank of India. Copy of bank account evidencing such payment is attached as an annexure A.
- II. It is the contention of the applicant that no shares were allotted to the applicant and consequently under explanation (a) of Rule 2(c)(vii) of the Companies (Acceptance of Deposits) Rules, 2014 (hereinafter referred as "Rule"), the same has acquired the status of deposits.
- III. The applicant states that till 2017, no payment has been received and that the applicant is entitled to interest at the rate of 12 per cent from 24.11.2017 till the date of this application which amounts of Rs. 3,52,438 i.e. total amount paid is Rs. 13,52,438.

3. It is stated that several times the applicant has written to the company more particularly on 01.03.2019, and 21.05.2019, asking for refund of the share application money. However, the respondent

company has replied by correspondence written on 02.04.2019, and 23.05.2019, and stated that the amount is held as security.

4. It is the admitted position of the applicant that no written share application form was ever signed by the applicant.
5. The applicant has attached the financial statements of the respondents for 2017-18 and 2018-19.
6. The applicant states that the respondent company has expressed inability to refund the amount owing to some internal mismanagement in the company and due to the taking over of the management by one Mr. Yoo Hong Shik, who is designated as Chief Executive Officer.
7. It is stated that the applicant has earlier lodged the complaint with the Registrar of the Companies on 02.11.2020, which is annexed as annexure E.
8. It is stated that since the amount invested by the applicant company was towards the share application money and amount of the company, was statutorily obliged to allot the securities within 60 days under

Section 42(6) of the Companies Act, 2013 and that under Rules 2(c)(vii) of the Companies (Acceptance of Deposit) Rules, the application money shall be treated as deposit and, hence, the applicant has filed the present application.

9. The reply was filed by the Respondent under Inward Diary No. 3566 dated 13.04.2021. The affidavit in reply is affirmed by one Mr. Nawed Anwar, in the capacity of Director, and the affidavit was affirmed on 12.04.2021. The summary of the reply of the respondent is as below:-

- I. The petitioner has no locus.
- II. Amounts were received.
- III. Amounts were paid for advance to get the goods from the company were shown as advance from customer . The applicant is provoked by one Mr. Nitin Kumar ArjunBhai Kaklotar with whom the Respondent Company has dispute.
- IV. No resolution was passed by the company for any issue of shares to any person by way of rights issue or preferential issue. No offer letter has been placed by the petitioner. As such the reliance placed by the applicant regarding Rule 2(c)(vii) is misplaced. The company is waiting for

the requisition order by mail or letter from the applicant. The company has kept goods in warehouse till date and is paying rent/financial burden on the respondent.

10. To the reply of the respondent, a rejoinder were filed by the applicant vide an affidavit dated 19.06.2021 filed in this Tribunal on 01.07.2021 under Diary No. 5204.

11. In rejoinder, the applicant has submitted as under:-

- I. Applicant is a partner in a partnership concern with her husband Mr.Nitin Kumar ArjunBhai Kaklotar
- II. Applicant vehemently denies allegations of being provoked to file the present petition.
- III. The applicant states the claim is legitimate.
- IV. Applicant admits that no offer letter was received but relies upon the doctrine of 'indoor management'.
- V. No document produced by the respondent to prove that amounts were received towards, "advance against goods" of the things.

12. We have heard the various counsels in the matter and also perused the documents.

13. The applicant states that a sum of Rs. 10 lakh was paid by the applicant to the respondent on 25.09.2017. This fact is not disputed. The receipt of Rs. 10 lakh is not disputed by the respondent.
14. It is also a fact that the applicant has failed to produce before us any letter of offer or share application form based on which the applicant has paid the above amount of Rs. 10 lakh to the respondent.
15. The respondent in his reply at page No. 7 point No. viii has stated as under:-

*VIII. it is further submitted that the content mentioned in Para (x) are wrong and denied to the fact that the amount is not deposit and company has taken the amount in form of advance from customer is sincerely waiting for the product requisition order via mail or letter from the applicant and already mentioned in the email too vide dated April 2nd, 2019 attached here with as **Annexure A**. Company has already imported goods for petitioner for which he has transferred the said amount. Company has kept those goods in warehouse till date and paying the rent for the petitioner which is a financial burden only to the company.*

16. We reproduce Rule 2(c)(xii) of the Companies (Acceptance of the Deposits) Rules, 2014.

(xii) Any amount receive in the course of , or for the purpose 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:
- (b). *as advance, accounted for in any manner whatsoever, received in connection with (Substituted by the Companies (Acceptance of Deposits) Amendment Rules, 2015 vide Notification No. G.S.R 241 (E) dated 31stMarch, 2015 w.e.f. 31.03.2015, for the words, “consideration for property”.)][consideration for an immovable property] under an agreement or arrangement, provided that such advance is adjusted ((substituted by the Companies (Acceptance of Deposits) Amendment Rules, 2015 vide Notification No. G.S.R 241 (E) dated 31st March, 2015, w.e.f. 31.03.2015, for the words “against the property”.) [against such property] in accordance with the terms of agreement or arrangement;*
- (c) *As security deposit for the performance of the contract for supply of goods or provision of services;*
- (d) *As advance received under long term projects for supply of capital goods except those covered under item (b) above.*

((inserted by the Companies (Acceptance of Deposits) Amendment Rules, 2016 vide Notification No. G.S.R 639 (E) dated 29th June, 2016, 29.06.2016)) [(e) as an advance towards consideration for providing future services in the form of a warranty or maintenance contract as per written agreement or arrangement, if the period for providing such services does not exceed the period prevalent as per common business practice or five years, from the date of acceptance of such service whichever is less;

- (f) As an advance received and as allowed by any sectorial regulator or in accordance with directions of Central or State Government;*
- (g) As an advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications;]*

Provided that if the amount received under items (a), (b) and (d) above becomes refundable (with or without interest) due to the reasons that the company accepting the money does not have necessary permission or approval, wherever required, to deal in the goods or properties or services for which the money is taken then the amount received shall be deemed to be a deposit under these rules:

Explanation:- For the purposes of this sub-clause the amount (Substituted by the Companies (Acceptance of Deposits Amendment Rules, 2015 vide Notification NO. G.S.R 241 (E) dated 31st March, 2015, w.e.f 31.03.2015, for the words “referred to in the first proviso”.)
[[([Omitted by the Companies (Acceptance of Deposits) Amendment Rules, 2016 Vide

Notification No. G.S.R 639 (E) dated 29th June, 2016, the words “referred to in the proviso”.)) Shall be deemed to be deposits on the expiry of fifteen days from the date they become due for refund.

17. The respondent has not denied but on the contrary has stated that the amount was received as an advance from the applicant and till now no goods have been supplied by the respondent to the applicant. Moreover, we are also guided by the Audit Report dated 21.10.2020 filed by the applicant more particularly, to the Note No. 5 by the Auditor which is reproduced below.

In our opinion and according to the information and explanations given to us, the company has received advances from the customer for supply of goods and such amount has not appreciated against supply of goods within a period of three hundred and sixty five days from the date of acceptance of such advance. Hence, the company is not complied with provision of Section 73 to 76 of the Companies Act, 2013 and rules made thereunder. Further, the Company may have face legal consequences and may affected financial position of the company.

18. As such, in our view, the Respondent Company has breached the Companies (Acceptance of Deposit) Rules, 2014.

19. By exercising the powers conferred on this Tribunal under Section 73(4) of the Companies Act, 2013, we hereby order the respondent company to pay a sum of Rs. 10 lakh plus interest at the rate of 12% as prayed for by the applicant as per prayer (b) within a period of 30 days from the date of this order.
20. In terms of the above, the application bearing C.P. No. 49 of 2020 is allowed and disposed of.
21. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

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SAMEER KAKAR
MEMBER (TECHNICAL)

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SHAMMI KHAN
MEMBER (JUDICIAL)

K. Gaurav/Steno