

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

**NEW DELHI**

**Company Appeal (AT) No.52 - 53 of 2018**

[Arising out of Order dated 08.12.2017 passed by National Company Law Tribunal, New Delhi Bench in Company Application No.8 of 2016, C.A. No.39/2017 & 144/2017 in C.P. No.27/2/2013]

**IN THE MATTER OF:**

M/s. Ind-Swift Limited  
781 Industrial Area Phase – II,  
Chandigarh – 160002

...Appellant

Versus

Registrar of Companies  
(Punjab & Chandigarh)  
Corporate Bhawan,  
151, Madhya Marg,  
27B, Sector – 26  
Chandigarh

...Respondent

**Present: Dr. U.K. Chaudhary, Senior Advocate with Ms. Manisha Chaudhary, Shri Himanshu Vij and Ms. Samridhi Gogia, Advocates for the Appellant**

**Shri P.S. Singh and Shri Annu Singh, Advocates for ROC**

**J U D G E M E N T**

**A.I.S. Cheema, J. :**

Once having obtained relief before CLB under Section 58AA read with Section 58A(9) of the Companies Act, 1956 ('old Act', in short) and got instalments fixed to repay deposits, Appellant sought re-fixing of periods, instalments and rate of interest from NCLT, New Delhi ('NCLT', in short)

under Section 74 of the Companies Act, 2013 ('new Act', in short). This Appel is against rejection of the application/s.

**Earlier Relief taken from CLB under old Act**

1. The Appellant – M/s. Ind-Swift Limited incorporated on 6<sup>th</sup> June, 1986 is a listed Company. The Company filed petition before Company Law Board, New Delhi having CP No.27/2/2013 under Section 58AA of the old Act read with Rule 44 of the Company Law Board Regulations, 1991. Under the said Section, the Appellant had submitted a scheme for repayment of its deposits as per the schedule of repayment and sought exemption for the Company from requirement to maintain liquid assets under Rule 3A of the Companies (Acceptance of Deposits) Rules, 1975 till the validity of the scheme as may be sanctioned by the Board. The Appellant claimed before the CLB that against authorized capital of Rs.40 crores, the paid up capital of the company was 23.43 crores as on 31.03.2013. The Company was in business of manufacture of drugs and formulations at six units. In the Financial Year ending 31<sup>st</sup> March, 2013, sales turnover of the Company stood at Rs.399.46 crores. The Appellant claimed before CLB that it had been regular and punctual and sincere in deposit/payments of its taxes as well as repayment of fixed deposits and interest accrued. As public limited company, it had accepted deposits since 2002 and regularly paid back till 28<sup>th</sup> February, 2013. In 2013, it started facing liquidity problems and incurred losses to the extent of Rs.111.29 crores. The Appellant gave

reasons for the liquidity problems to CLB. It was claimed that as on 31.03.2013, the liabilities of the Appellant aggregated to Rs.1178.48 crores. It was claimed that in the next 3 years, there was cash outflow which is not met by cash inflow and so there is cash deficit which does not warrant repayment of fixed deposits unless the repayment is rescheduled/restructured. The Appellant referred to the efforts it was making with the banks, and, the Petition filed before CLB stated as to the remedial measures/steps it wanted to take. It was claimed that there were outstanding fixed deposits of Rs.49.83 crores which had become due for payment as on 31.05.2013 and that there were further fixed deposits to the value of Rs.44.99 crores which had not yet matured. Cheques issued by the Company towards repayment of deposits had been dishonoured and default had occurred. It claimed that most of the depositors were small depositors and thus the petition under Section 58AA of the old Act. The Appellant divided 7917 depositors in 5 categories depending on the slabs of money due and proposed schemes.

1.1 CLB got advertisements issued in newspaper and received 789 objections and consent of 8 fixed deposit holders. CLB also took report from Registrar of Companies, Punjab and Chandigarh. After hearing the Appellant, CLB recorded that Company had on 31.05.2013 outstanding liability of Rs.49.83 Crores and in addition FDs to the tune of Rs.44.99 crores will accrue in one year. CLB sanctioned the scheme of repayment

as follows to fixed deposit holders and by Order dated 30.09.2013 directed the Appellant to make the repayment of fixed deposits as per the guidelines laid down:-

- “(i) The Respondent Company is to pay the contracted rate of interest on fixed deposits till the date of maturity and thereafter, the interest @ 8.% per annum be paid till the date of repayment.
- (ii) The scheme shall be effective from 1<sup>st</sup> October, 2013 and will deal with the applications of fixed deposits which have matured for payment but not yet paid and also, those which will become due for payment in future.
- (iii) All deposit holders having fixed deposits up to Rs.15,000/- shall be paid within one year from the date of maturity of deposits.
- (iv) In regard to the fixed deposits ranging from Rs.15,001/- to Rs.25,000/-, payment shall be made within four years from the date of maturity of deposits, at 25% in the first year 25% in the second year, 25% in the third year and balance 25% in the fourth year. The interest for both pre and post maturity period will be paid along with the last instalment.
- (v) All the fixed deposits of Rs.25,001/- to Rs.50,000/- shall be paid within four and half years from the date of maturity of deposits at 20% in the first year, 20% in the second year, 25% in the third year, 25% in the fourth year and the remaining 10% in the next six months of the fifth year. The interest for both pre and post maturity period will be paid along with the last instalment.
- (vi) With regard to deposits of Rs.50,001/- to Rs.1,00,000/-, payment shall be made within 5 years from the date of maturity of deposits by 15% in the first year, 15% in the second year, 20% in the third year, 30% in the fourth year and the remaining 20% in the fifth year. The interest for

both pre and post maturity period will be paid along with the last instalment.

- (vii) Regarding fixed deposits of Rs.1,00,001/- and above, payment shall be made within five years from the date of maturity of deposits, at 10% in the first year, 15% in the second year, 20% in the third year, 25% in the fourth year and the remaining 30% in the fifth year. The interest for both pre and post maturity period will be paid along with the last instalment.
- (viii) In regard to the hardship cases like serious illness, senior citizen above 65 years of age, widows/widowers marriage and higher education of dependent children etc. payment shall be made on priority basis to the extent of Rs.15 lakhs as quarter.”

1.2 Thus, when the new Companies Act, 2013 was already on the scene and initial enforcements had begun w.e.f. 12.09.2013, with stringent Section 74 about to follow suit, long instalments to the extent of 4 – 5 years were got fixed with reduced rate of interest even for small amounts of Rs.15,001/- to Rs.25,000/- deposits.

**With New Act - Fresh Scheme filed to re-fix schedules/instalments**

2. The Appellant has after such cushioning as above, on 27.09.2016 filed CA 08/2016 in the original Company Petition 27/2/2013 under Section 74 of the new Act (Annexure – X) in CLB. Referring to the earlier developments, the Appellant claimed in this fresh application that it was complying with the earlier orders of the Company Law Board. Although the Appellant had not filed any Appeal against the Order of CLB, in this fresh

application, it has made grievance that earlier the proposal “as given” by the Company was not accepted “in full” by the Hon’ble Company Law Board. The Appellant claimed that it had made “substantial” payments to its depositors and the list of depositors was being appended. It was stated that it was complying with the orders passed by the hardship committee and payments for hardship cases were made. It again came up with various reasons relating to its difficulties and submitted before NCLT that it was still facing liquidity problems and it has become difficult to repay the fixed depositors as per the repayment schedule given by the CLB. In para – XIV, it has given particulars as to why it was in financial stress w.e.f. 2013 - 2014 like reduction of domestic sales; termination of agreement with Roche Diagnostic; exit of key personnel; constraint on raw material supply; high interest cost; increase in working capital intensity; repayment of fixed deposits; increase in amount of debtors; high inventory holding and failure to achieve targeted export sale and profit. Giving such various reasons, the Appellant again came up with a “scheme” as mentioned in Para – XVII of the application. Again it proposed reschedule of repayment of deposits for different slabs with extension of periods and suggesting instalments as is mentioned in the Company Application. The Appellant stated the scheme to be:-

“That the Applicant Company prays for the following scheme for consideration and approval of this Hon’ble Tribunal:-

- a) The applicant company is praying for further re-scheduling of the repayment of the deposits in respect of the deposits from Rs.10,000-50000 by extension of two years and extension of three years in repayment of deposits in respect of deposits from Rs.50,001 and above in addition to the relief granted by the Hon'ble CLB vide its order dated 30<sup>th</sup> September, 2013.
- b) The Fixed Deposits up-to the amount of Rs.10,000/- shall be paid fully in one year from the date of order.
- c) The repayment of Fixed Deposits ranging from Rs.10,001/- to Rs.15000/- will be made within 2 years from the date of order, at 50% in the first year and 50% in the second year.
- d) All Fixed Deposits ranging from Rs.15,001/- to Rs.25,000/- will be paid in 6 years tenure, 15% in the first year, 15% in the second year, 15% in the third year, 15% in the fourth year, 15% in the fifth year and 25% in the sixth year.
- e) With regard to deposits ranging from Rs.25,001/- to Rs.50,000/- payments will be made in 6 years, 10% in the first year, 15% in the second year, 15% in the third year, 20% in the fourth year and remaining 20% in the fifth year and 20% in the sixth year.
- f) In regard to fixed deposits ranging from Rs.50,000/- to Rs.1,00,000/-, payments will be made in eight years, 5% in the first year, 10% in the second year, 10% in the third, fourth and fifth year and 10% in the sixth and 20% in the seventh year and 25% in the eighth year.
- g) Regarding Fixed Deposits of Rs.1,00,000/- and above payments are proposed to be made in total 8 years, 5% in the first year, 10% each in the second, third year, fourth and fifth year, 10% in sixth year, 20% in seventh year and 25% in the eighth year.

- h) Further with respect of hardship cases like serious illness, senior citizen above 65 years of age, widows/widowers marriage and higher education of dependent children etc. payment shall be made on priority basis to the extent of Rs.15 Lakh per quarter.
- i) It is also prayed that the committed interest which has been ordered to be paid at 8% be reduced to 4% and payments be made accordingly.
- j) It is further prayed that as ordered earlier, interest may kindly be paid with the last instalment in all cases.
- k) That the applicant company while implementing the above scheme will adhere to following guidelines:-
  1. The payments will be made in the order of the maturity date of respective deposits.
  2. The repayment will be spread over all the months.
  3. Hardship cases will be taken as per the earlier arrangement.”

2.1. Although CLB in its Order had gone beyond the contractual liabilities and reduced the interest to 8%, in the scheme now proposed, interest payable was sought to be further reduced to only 4% and that too, to be paid with the last instalment in all cases. The Appellant made prayer for reconstructing the repayment schedule as per the scheme it was again proposing and to modify/extend the time schedules as given by the Company Law Board.

### **Plight of Depositors**

3. The learned NCLT issued Notice to the Registrar of Companies and also directed Public Notice. Impugned Order refers to Affidavit filed by Appellant, where it was stated before the NCLT that out of 5575 depositors, the Company had received 45 objections. Few of the objectors filed objections even in the Tribunal. Registrar of Companies filed Report dated 29.09.2016 in consultation with Regional Director. The ROC informed the NCLT that ROC was regularly receiving complaints against the Appellant regarding repayment of fixed deposits which had been forwarded to the Company for necessary actions. The NCLT noted from the Report of Registrar of Companies that the Company had failed to file written undertaking that it had not violated the CLB Orders. The Registrar of Companies opposed further extension of time.

4. It appears that various depositors filed objections in the NCLT. One U.C. Wadhwa - fixed deposit holder of Rs.3 Lakhs has on 22.10.2011 raised objections that the Company agreed to pay on expiry of 3 years with interest @ 12.50% per annum and that the Company had issued two cheques. One was dated 22.10.2014 for Rs.1,20,608/- and another cheque was for Rs.3 Lakhs but the cheques bounced. This Wadhwa claimed before NCLT that he had to recover Rs.1,72,000/- from the Company and he was 80 years old and also a cancer patient. There was yet another depositor - Sushma Wadhwa of Rs.2 Lakhs claiming that she was 76 years old and

had to recover Rs.1,72,000/-. It also appears that there were other objectors who opposed further extension of time. Learned NCLT in Impugned Order took note of their objections. One Mr. Subramanian Chandrashekhar claimed that out of fixed deposit of Rs.3 Lakhs, the balance as on date was Rs.1,99,500/- with interest and that in terms of the Order passed by CLB, the Company paid 10% of the amount in December, 2015 but failed to pay the rest of the amount. CLB took note of the other objectors also, and these defaults.

**Offering yet another “Revised Scheme”**

5. It appears that when CA 08/2016 was being looked into by NCLT, the Appellant filed yet another CA 39/2017 on 28.03.2017 putting up yet another “revised scheme” in the nature of a “concrete plan” claiming that Punjab National Bank one of the secured lender had issued Notice under Section 13(4) of SARFAESI Act. The Appellant made reference to different banks and secured creditors of the Company and outstanding amounts of secured creditors to be more than Rs.862 crores as on 31.12.2015. In this CA 39/2017, the Appellant offered fresh scheme for rescheduling the payments outstanding on 30.06.2016 and offered that for senior citizens above 60 years, the payments shall be made as per CLB Order dated 30.09.2013 but with effect from the date of the Order of the Tribunal. For rest of the depositors, the Appellant offered before NCLT that it would pay as per different schedule of payments given, seeking two to seven years of

time and proposing re-fixing of percentage of payments and instalments in addition to relief granted by CLB in the Order dated 30.09.2013.

**Still another proposal to tone down liability**

6. It further appears that yet another CA 144/2017 was filed by the Appellant on 12.09.2017 stating that there was improvement in financial position of the Companies of the Appellant. It referred to its other Company – M/s. Ind. Swift Laboratories Ltd. and another group Company – M/s. Essix Biosciences Ltd. to show as to how they had also received orders from CLB and were doing well regarding their repayments. Referring to their good performance, the Appellant appears to have come back pointing out its own losses claiming that it suffered losses to the tune of Rs.120.94 crores in 2012 – 2013 which had been constantly increasing and in 2016 -2017 the Appellant suffered losses of Rs.362.91 cores, it was stated. The Appellant in this CA 144/2017 claimed before the NCLT that it had made a “revised proposal” in CA 39/2017 to pay senior citizens as per CLB Order dated 30.09.2013 from the date of Order of the Tribunal and for rest of the depositors also, it prayed that it will pay the depositors as per original Order dated 30.09.2013 but from the date of the Order of the NCLT.

**Impugned Order – Discussion**

7. NCLT took note of the fact that the Appellant had not made any payments to the fixed deposit holders since the institution of the application before NCLT. It was then observed:-

“The only amount being paid after institution of the instant application is the amount of Rs.15 lacs per quarter for meeting requirement of hardship cases which was increased to Rs.30 lacs per quarter vide order dated 18.08.2017 on the prayer made on behalf of the applicant company. Can the applicant company now be permitted to implement the order of the year 2013 w.e.f. the date of order passed by this Tribunal? This all depends on whether this miscellaneous application filed in CP No.27/02/2013 is at all maintainable in view of the circumstances of the case. It would be seen that when in the original scheme sanctioned by the Company Law Board, there was a big relief to the company in granting extensions and the details thereof have already been described while narrating the facts of the case.”

8. NCLT referred to Section - 74 of the new Act and further observed:-

“30. Such a stringent provision has to be interpreted in the light of the objective of safeguarding the interests of the fixed deposit holders. When once the company had sought the sanction of the scheme from the Company Law Board by bringing its financial position to its notice at the relevant time in the year 2013 and got the relief of huge extension, there is no reason to accept the plea for further extension, especially as prayed in the latest application undertaking to abide by the original scheme, but with effect from the date of order of this Tribunal. The Company Law Board while sanctioning the scheme of payment in the year 2013, directed the company to file the affidavit once in three months on the state of repayment of deposits i.e. on 01.01.2014 with the Company Law Board with copy to the Registrar of Companies. It was also directed that failure to comply with the order shall attract the penal provisions contained in Section 58A (10) and Section 274(1)(g) of 1956 Act.

31. It is not that the financial position of the company should be the only consideration, but the Tribunal

must safeguard the interest of the deposit holders, who have already suffered such a huge delay in repayment of the amount having invested their hard earned money on the attractive term of higher rate of interest. The Company Law Board having extended the time for so many years in the year 2013, there is no question of giving indulgence to the request for another extension. The legislature had laid down severe punishment in case of failure of the company to make the payments to the deposit holders within the extended time and this provision has to be implemented in letter and spirit.”

9. Although before NCLT, the Appellant submitted that second application or further extension was maintainable but NCLT held that this was not permissible. The NCLT did not accept the reference made to CLB Orders. NCLT in addition to above finding took note of file projection and cash flow submissions and the net loss projected for the financial year ending 31.03.2017 as well as 2018-2019 and observed:-

“40. Having earned extension for such a long duration from the original period of maturity of fixed deposits and even getting the relief of reduced interest @ 8% per annum after the date of maturity, how can the company bring another excuse of its difficult financial position in stopping unilaterally the payments and then move application for extension of time. There should be some end to the period of extension having sought a large flexibility in making payments to the deposit holders.”

10. NCLT observed that with the financial position of the Company, there seemed to be no sincere effort at all on the part of the Company to

comply with directions of the CLB in 2013. Discarding the arguments which were raised before it, NCLT observed:-

“For how much period, the depositors would keep suffering because of such kind of the excuses by the company without any fault of theirs. The depositors have been constantly urging on the implementation of the directions passed in the order of the year 2013 of the Company Law Board.”

11. Thus the NCLT concluded that there was no merit and rejected the application.

#### **Application for modification of Impugned Order - withdrawn**

12. The Appellant after such Impugned Order passed on 8<sup>th</sup> December, 2017, appears to have filed yet another application for modification which the Appellant claims was better proposal but the NCLT was not with the Appellant and the said CA 28/2018 was withdrawn with liberty to avail appropriate remedy. Thus, the present appeal has been filed.

#### **The Appeal**

13. The present appeal also lists out the various reasons for distress and the earlier developments before and after orders of CLB and the Appellant claims that after passing of the Order dated 8<sup>th</sup> December, 2017, the Appellant Company has paid Rs.1.02 cores to various fixed deposit holders during the period 01.12.2017 to 22.01.2018. The appeal claims that the Appellant was to pay Rs.11.66 crores from 01.10.2016 to 31.12.2017 as per the scheme sanctioned by CLB out of which it had paid

a sum of Rs.2.82 crores. Thus, leaving unpaid amount of Rs.8.84 crores. The Appellant claims that the Company intends to sell 20 built-up flats valuing Rs.90 crores which are ready for occupation which belongs to the group company of the Appellant Company. Those flats are lying vacant and ready to sell. The Appeal claims that the Tribunal was requested to let the Appellant Company pay the fixed deposit holders mutually/immediately upon sale of these flats which in all likelihood would be sold within a period not exceeding six months. In para – 7.36, it is claimed that this Court should consider appointing committee to oversee sale of those flats and “as and when the flats would be sold” the first preference shall be given to fixed deposit holders holding fixed deposits up to Rs.25,000/- and second preference to FD holders upto Rs.50,000/-. The Appeal is raising various grounds to show that the learned NCLT erred in not giving extension to the Appellant for payment of the fixed deposits which are to be repaid. In the prayer of Appeal, the Appellant is again claiming that this Tribunal should appoint an independent committee to decide time, value and other terms and conditions for sale of 20 flats which it has referred and to permit the Appellant to repay sum of Rs.50 Lakhs per month as against a sum of Rs.1 crore payable every month, and to pay Rs.15 Lakhs per quarter in respect to the hardship cases where expenses are required for medical emergency, etc.

### **Response of ROC**

14. The Respondent – ROC has filed counter Affidavit in this Appeal.

Part of the Affidavit refers to the provisions. It is stated that whether second extension of time for repayment of deposits can be granted, is a matter to be decided by this Tribunal. It is claimed in the Affidavit that the NCLT rightly dismissed the application of the Appellant seeking further extension of time in repaying public deposit holders. According to the ROC, interest of the public deposit holders is required to be secured. The Appellant was granted sufficient time by CLB while extending the time for repayment vide Order dated 30<sup>th</sup> September, 2013. Even for deposit holders of Rs.15,001/- minimum period of 4 years was provided along with lower rate of interest @ 8%. ROC has claimed that in spite of such benefit, the Appellant Company defaulted in making payments in terms of the Order dated 30<sup>th</sup> September, 2013. The Impugned Order shows that deposit holders had raised objections against the application seeking further extension of time. According to ROC, the performance of other group companies has no bearing on the present Appeal and the performance of other Companies cannot be taken as indicator in the present Appeal.

### **Counsel heard**

15. The Counsel for both sides have been heard. Counsel for Appellant referred to the pleadings and the case as was made out before CLB on earlier occasion and as was claimed before the NCLT at the time of present applications to submit that the NCLT should have appreciated that the Appellant had paid a sum of Rs.2.82 crores between 1.10.2016 to

31.12.2017 out of Rs.11.66 crores, leaving unpaid sum of Rs.8.84 crores which was proposed to be paid by sale of 20 flats. According to him, for this, an independent committee was sought and the flats could have been sold off in six months but the request was not considered. The learned counsel referred to the various attempts made and being made by the Appellant to raise amounts to repay the deposits.

16. The learned counsel for the Appellant referred to the provisions of Section 74 of the new Act to submit that the Tribunal had the power to grant time as sought by the Appellant relying on Section 74(2) of the new Act. The counsel referred to Judgement in the matter of “**Jainendra Sahai Sinha vs. Jaiprakash Associates Ltd.**” where against grant of time to pay, Appeal was filed and which was decided by the Bench of this Tribunal in Company Appeal (AT) 11 of 2016. It has been argued that in that Judgement, this Tribunal observed in para – 12 of the Judgement as under:-

“We make it clear that a number of extensions of time cannot be granted under sub section (2) of Section 74 without any ground, particularly when the company has not shown any interest in paying part of the deposit with interest to depositors either during the pendency of the Company Petition or this appeal.”

17. It is stated that against the said Judgement of this Tribunal, the parties in that matter had moved the Hon’ble the Supreme Court of India in Civil Appeal 4525 – 4526 of 2017 which stayed the said Judgement of

this Tribunal and the NCLT, Allahabad Bench which was seized of the Company Petition, accepted the belated payment of fixed deposits and disposed the matter. The submission of the counsel is that there is no bar to filing successive applications for extension of time to repay the deposits and thus in the present matter, NCLT erred in rejecting the applications filed by the Appellant on the basis that after having once got extension of time, subsequent application could not be filed.

18. We have heard the counsel and have gone through the material placed before us. Going through the Impugned Order, we find that the NCLT did not reject the applications filed by the Appellant only on the ground that it was another application for further extension of time. The Judgement shows that the NCLT considered that the Appellant had at the time of first grant of time got relief of huge extension and that there was no reason to accept the plea for further extension. The NCLT appears to have found that when big relief had already been granted to the Company, further extension was not justified. NCLT noted that there was absolutely no reason for the Appellant to have stopped making payments just because the application had been filed in NCLT. The NCLT considered the objections of depositors who had raised objections and which included old persons aged 80 and 70 years. Objector – U.C. Wadhwa claimed before NCLT that he was 80 years old and a cancer patient also. With such depositors objecting, and complaints of default as well as complaints of

cheques given bouncing, the NCLT rightly appears to have declined to entertain the applications for extension of time.

19. The record shows that the Appellant once came up with a scheme which Appellant got settled from CLB. Then Appellant came up with CA 8/2016 making proposals by way of fresh scheme to repay by re-fixing instalments and time gaps. During the pendency of the matter, yet another CA 39/2017 was filed making suggestions as revised scheme and even before they could be settled, filed yet another CA 144/2017 making further alternative proposals to tone down liability by deferring payments. Having stopped payments on moving NCLT on the second occasion, these schemes after schemes were being put up and the matter remained pending. In the NCLT and also in this Appeal, the Appellant is making different offers and it has also been argued for the Appellant that this Tribunal should appoint a Committee who can oversee the sale of 20 flats said to be situated at Zirakpur, Punjab valuing Rs.9 crores which belong to the “group company” of the Appellant namely, M/s. Fortune India Constructions Limited and which it is stated, in all likelihood would be sold within a period not exceeding six months and the money thus raised can be used to repay the deposits. It is then mentioned in the Appeal (below para - 7.36) that “as and when the flats would be sold”, the preference shall be given to the fixed deposit holders holding FD upto Rs.25,000/- and second preference to those holding FDs up to Rs.50,000/-. Question is when such large-hearted

proposal was being made to NCLT and then to this Tribunal, if the flats were ready and in control of the Appellant with its group company, why the same have not been sold by Appellant itself when the matter was pending in NCLT and now here in this Appeal for more than six months and the money not tendered for payment? Such schemes after schemes of payment with changing stands and lack of efforts, and without positive actions to support do not spell out bona fides. The offer to pay “as and when the flats would be sold” is effort to take us for a ride. We have gone through the various reasons given why even after CLB gave time, the deposits could not be paid or why it is claimed that there are financial constraints. We do not think that these reasons being given are of such a nature which would show that there was any natural calamity or facts showing situations which could be said to be beyond control of the Appellant. Thus on merits of the claim for time, we do not find that there is any substance. In earlier petition under Section 58AA of the old Act, which basically dealt with small depositors who deposit in a financial year a sum not exceeding Rs.20,000/- in the Company (see Explanation below Section 58AA), the Appellant obtained a huge relief in terms of not only multiple instalments over many years, but also in terms of interest not merely with regard to small depositors but even others. The list of depositors filed with ROC in view of Section 74(1)(a) of the new Act (Diary No.6022) does not show that the list was limited to depositors of amounts less than Rs.20,000/-. The CLB Order shows deposit holders being put in

slabs of even Rs.50,000/-, Rs.1 Lakh and Rs.1 Lakh and above. We are aware that we are not sitting in Judgement over the Order of CLB. Our reference is limited for the purpose that when relief had been obtained even beyond contractual rates of interest and comfortable instalments were got fixed in terms of slabs and time, the Appellant failed to keep up with the scheme settled before CLB and came up with the present fresh application before NCLT to again re-fix the instalments and time frame. With objectors claiming bouncing of cheques, we find no reason to interfere and ask them to further wait.

20. The Companies Act, 2013 came up with Chapter – V relating to acceptance of deposits by Companies. Section 73 provides for prohibition on acceptance of deposits from public and lays down how deposits from members could be accepted. Section 74 deals with repayment of deposits, etc. accepted before commencement of this Act. Section 76 deals with acceptance of deposits from public by certain companies and Section 76A lays down punishment for contravention of Section 73 or 76. Section 76 makes it clear that legislature has put in many safeguards when deposits are to be taken from public. One of the important provisions is to ensure that the Company creates a charge of its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders. Reading of the Sections of Chapter – V shows anxiety of the Legislature to safeguard the public when companies accept deposits from, the members as well as

when certain Companies accept deposits from the public. In this context, it would be appropriate to reproduce Section 74 for further discussion. Sub-Section (1) of Section 74 came into force w.e.f. 1<sup>st</sup> April, 2014. Sub-Sections (2) and (3) came into force w.e.f. 6<sup>th</sup> June, 2014. Section 74 of the new Act reads as under:-

**“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.”

21. It appears that the Appellant in view of Section 74(1)(a) filed statement with ROC with Form GNL-2. The Form annexed was DPT-4 along with a certificate of Chartered Accountant and list of depositors. This form appears to have been submitted to ROC on 28.08.2014. Section 74(1)(a) inter alia requires the Company to state as to 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. Thus, even if CLB had accepted a scheme of repayment under the old Act, it was obligatory for the Appellant to inform ROC as to what arrangements it made for repayment of the deposits. Below Form DPT – 4, the Appellant appears to have simply added a note that since the Company had got its fixed deposits restructured through Orders of CLB dated 20.09.2013 “wherein maturity of all the outstanding FDs was extended” deposits were now being paid as per new repayment schedule. We are not

entering into the question whether or not ROC should have accepted such statement. We are referring to this only to see the bona fides of the Appellant. Here is an Appellant who just before stringent provisions of new Act are to be enforced, rushes to CLB under the old Act and gets a comfortable scheme settled for repayment of deposits which were due and would become due within one year and then under the new Act declares to the ROC that maturity of all the outstanding FDs has been extended. We do not think that such Appellant deserved indulgence from NCLT, even if it was to be held that such second application could be maintained.

22. As regards whether such second application could be maintained, we find that if Section 74 as reproduced above is seen, where in respect of any deposit accepted by a Company before the commencement of the Act, the amount of such deposit or part thereof or interest due thereon remains unpaid on the commencement (that is w.e.f. 01.04.2014) or becomes due at any time thereafter, the Company shall repay within one year from such commencement or from the date on which such payments are due, whichever is earlier. This is clear from Section 74(1)(b). This provision grants one year's time from the date of commencement of the Act or date when the repayment is due, whichever is earlier. It is obvious that all deposits accepted before commencement of the new Act are required to be paid not later than one year from the date of commencement of the Act irrespective of whether such deposits had fallen due for payment or not

and whether or not the Company was regular in payment of interest/deposit or not.

23. In this context, it would be appropriate to refer to “The Companies (Acceptance of Deposits) Rules, 2014” (“Rules”, in short). Rule 19 is as under:-

**“19. Applicability of sections 73 and 74 to eligible companies.-** Pursuant to provisions of sub-section (2) of section 76 of the Act, the provisions of sections 73 and 74 shall, *mutatis mutandis*, apply to acceptance of deposits from public by eligible companies.

Explanation.— For the purposes of this rule, it is hereby clarified that in case of a company which had accepted or invited public deposits under the relevant provisions of the Companies Act, 1956 and rules made under that Act (hereinafter known as “Earlier Deposits”) and has been repaying such deposits and interest thereon in accordance with such provisions, the provisions of clause (b) of sub-section (1) of section 74 of the Act shall be deemed to have been complied with if the company complies with requirements under the Act and these rules and continues to repay such deposits and interest due thereon on due dates for the remaining period of such deposit in accordance with the terms and conditions and period of such Earlier Deposits and in compliance with the requirements under the Act and these rules;

Provided further that the fresh deposits by every eligible company shall have to be in accordance with the provisions of Chapter V of the Act and these rules;”

24. What appears from the above Rule is that the rigor of Section 76(2) read with Sections 73 and 74 would apply to acceptance of deposits from

public by eligible Companies but it saves the Company which had accepted or invited public deposits under the relevant provisions of the old Act and Rules thereunder and has been repaying such deposits and interests thereon in accordance with such provisions, then the provisions of Clause (b) of Sub-Section (1) of Section 74 of the new Act shall be deemed to have been complied with. This is, however, subject to the fact that the Company complies with the requirements under the Act and the Rules and “continues to repay such deposits and interest due thereon on due dates for the remaining period” as per the terms and conditions. Considering these provisions, it appears to us that Section 74(1)(b) was attracted and when it appears from record that the Appellant defaulted, the penal provisions would get attracted. We are not convinced with the argument of the learned counsel for the Appellant that the reference to the matter of “Jainendra Sahai Sinha” (Supra) helps the Appellant to state that multiple applications for extension of time could be filed. When once a scheme had been got settled, from CLB, default on the part of the Appellant would attract penal provisions as the earlier scheme itself laid down. If we accept the argument of the counsel for the Appellant that more than one application could be filed under Section 74(2) of the Companies Act, it would be like rewriting the Section to read that “The Tribunal may on an application made by the company, from time to time, after considering the financial condition of the Company .....” allow further time to the Company. We cannot read or add words like “from time to time” in the

provision as no such multiple applications are provided for. Else, the provision will become a tool to stall recovery suits and Insolvency Proceedings, which cannot be allowed.

25. We do not find any substance in this Appeal.

The Appeal is rejected. No orders as to costs.

[Justice A.I.S. Cheema]  
Member (Judicial)

[Balvinder Singh]  
Member (Technical)

New Delhi

19<sup>th</sup> September, 2018

*/rs/nn*