

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI
COMPANY APPEAL(AT) NO.223 OF 2018

(ARISING OUT OF IMPUGNED ORDER DATED 3.3.2017 PASSED BY NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH, MUMBAI IN T.CO. APPEAL NO.2055/2013)

IN THE MATTER OF:**BEFORE NCLT****BEFORE NCLAT**

Narendra Kumar Dhoot
S/o Sh Srinivas R Dhoot,
B-86, Ganesh Marg,
204, Pearl Arun
Bapu Nagar,
Jaipur 302015 (Rajasthan)

Petitioner

Appellant

Vs

M/s Premier Ltd
Mumbai-Pune Road,
Chinchwad,
Pune 411019

1st Respondent1st Respondent

Investor Education Protection Fund Committee
Ministry of Corporate Affairs,
Shastri Bhawan,
5th Floor,
Dr. R.P. Road,
New Delhi 110001

2nd Respondent2nd Respondent

For Appellant:- Mr. Sameer Gupta and Mr. Abhishek Nahata, Advocates.

For Respondents: - Mr. Anurag Bhatt, Advocate for R-1.
Mr. P.S. Singh and Ms Annu Singh, Advocates for R-2.

JUDGEMENT**MR. BALVINDER SINGH, MEMBER (TECHNICAL)**

The present appeal has been preferred by the appellant under Section 421 of the Companies Act,2013 against the impugned order dated 03.03.2017 passed by the National Company Law Tribunal, Mumbai Bench, Mumbai

whereby and whereunder the appeal filed by the appellant has been dismissed vide the above said impugned order.

2. The brief facts of the case are that the appellant alongwith his father namely Mr. Shrinivas R Dhoot, Mrs Raj Kumari R Dhoot and Devendra S. Dhoot on 7.10.1977 made a Fixed Deposit of Rs.1 lakh in the 1st respondent vide FDR No.315346 for a period of three years, thereafter the same was renewed on 7.10.1982 vide receipt No.370660, and the same was again renewed on 7.10.1985, 7.10.1988 vide receipt No.71574. The appellant stated that the FDR was last renewed on 27.8.1991 for three years for Rs.150000/- (Page 32 & 95) against a maturity value of more than Rs.156335/- vide FDR No.71574 and the overdue and unpaid interest and a part of the principal was to be sent, but it was not received till date.

3. The appellant stated that he made several correspondences with the 1st respondent since December, 1992 seeking status/refund of the maturity amount of the said FDR. The appellant further stated that the correspondence continues till 2013.

4. The appellant stated that the appellant received a letter dated 20.3.2013 (Page 49) intimating that the FDR No.370660 for Rs.1 lakh renewed for three years vide FDR No.71574 on 7.10.1985 matured for payment on 7.10.1988. However, the amount remains unclaimed by the appellant. The appellant stated that the 1st respondent intimated him that the amount which was unclaimed and unpaid for a period of 7 years from the dates that they became due for payment have been transferred to Investor Education and Protection Fund.

5. The appellant stated that the appellant then approached Investor Education Protection Fund on 20.5.2013 to claim the said amount, who directed the appellant to complaint to ROC, Pune. The appellant then approached the ROC, Pune vide its letter dated 2.9.2013, who in turn forwarded the said complaint to 1st respondent vide letter dated 22.10.2013 (Page 27) also stating that the reply dated 29.7.2013 sent by 1st respondent is not satisfactory. 1st respondent replied to ROC, Pune vide its letter dated 7.11.2013 (Page 70) intimated that the unclaimed amount has been deposited with the IEPF vide challan dated 21.4.2004.

6. The appellant stated that the ROC did not give any satisfactory reply, therefore, the appellant filed a complaint before the Company Law Board, Mumbai on 9.9.2013 (Page 30-31). On coming into existence NCLT, the complaint was transferred to NCLT, Mumbai.

7. 1st respondent filed its reply admitting that the FDR was last renewed on 27th August, 1991 (Page 77). 1st respondent further stated that the all amounts relating to the purported claim have been deposited by 1st respondent with the IEPF, which remains unpaid and unclaimed for a period of more than 7 years. 1st respondent further stated that the claim submitted by the appellant is time barred as it has been filed in 2013. At last the 1st respondent stated that the application be dismissed and/or rejected with costs.

8. Reply was also filed by the ROC before the NCLT, Mumbai. ROC stated that 1st respondent had deposited the "unclaimed matured deposit" of Rs.561180.01 in the account of IEPF on 27.4.2004 and submitted the Form 1 alongwith the challan on 5.5.20014. ROC further stated that there are no

details mentioned on the challan, in respect of whom the amount was deposited in the account IEPF and the details are available with the company only (Page 104).

9. After hearing the parties, the NCLT passed the impugned order dated 3.3.2017 thereby dismissing the company petition without costs. The relevant portion of the impugned order is as under:-

“18. R1 having shown material surrendering the unclaimed deposits and dividend to the Central Government, now it can't be said merely the names have not been reflected in that surrender, that seven years old matured FDR of the applicant was not surrendered to Central Government. Moreover, the explanation u/s 205(c) has made it clear that no claims shall lie against the Investor Education and Protection Fund or the Company in respect of individual amount unpaid or unclaimed for period of 7 years from the dates that they first became due for payment and no payment shall be made in respect of such claims, therefore, this applicant is not entitled to seek the remedy after lapse of 7 years from the date of amount due for payment.”

19. Therefore, this application is hereby dismissed without costs, with a clarification that this order will not become a bar to the applicant if he is otherwise entitled to make any claim for his deposit from the competent authorities.”

10. Being aggrieved by the said impugned order the appellant has filed the present appeal.

11. The appellant has stated that the NCLT has passed the impugned order without taking into account the pleadings and documents filed before NCLT.

12. The appellant stated that the impugned order is in violation of Section 58A of the Companies Act, 1956.

13. The appellant stated that he had made various communication to 1st respondent since 1992 seeking refund of the maturity amount of the FDR and also made various visits to the office of 1st respondent but no amount has been received back so far.

14. Reply on behalf of 1st respondent has been filed. 1st respondent stated that the claim of the appellant is extremely belated and is hopelessly time barred. 1st respondent stated that the father of the appellant made a deposit with it and the same was renewed from time to time and was lastly renewed on 27.8.1991 for a cumulative time period of 3 years maturing in 1994. 1st respondent stated that no communication was received from the father of the appellant or appellant till the year 2013. 2nd respondent further submitted that as per Section 205 C of the Companies Act, 1956 all matured deposits with the companies which are unclaimed for a period of 7 years shall be deposited with the Investor Education and Protection Fund. 2nd respondent further submitted that Section 205(c) of the Companies Act, 1956 clearly provides that no claim against the Fund or the Company shall be entertained if the same has been made after 7 years from the date when the same became due.

15. 1st respondent stated that they have transferred a sum of Rs.5,61,180/- towards all the unclaimed deposits on 27.4.2004 to IEPF in requisite Form 1 alongwith the challan of Punjab National Bank and the 1st respondent have discharged its liability towards the deposit of the appellant by transferring the same to IEPF.

16. Reply on behalf of 2nd respondent has been filed. 2nd respondent stated that as per available record no claim in E Form IEPF-5 has been filed with 2nd respondent. 2nd respondent further stated that if any claim has been filed the same will be considered according to Section 125(3) of the Companies Act, 2013 read with Rule 7 of IEPF Rules, 2016. 2nd respondent stated that the appeal qua 2nd respondent may be dismissed.

17. We have heard the parties and perused the record.

18. Learned counsel appearing on behalf of the appellant argued that the appellant's father and other three members of the family made an FDR to tune of Rs.1 lakh on 7.10.1977 which was got subsequently renewed on different dates for different periods. Lastly the FDR was in the name of appellant and his father. Learned counsel further argued that the said FDR was lastly renewed on 27.8.1991 for Rs.150000/- under cumulative scheme and the 1st respondent was approached vide letters 17.12.1992 (Page 39), 25th January, 1995 (Page 38) and 4th May, 2000 (Page41) to inform the status and also make the payment which is overdue. Learned counsel for the appellant further argued that the postal receipt and courier receipt in lieu of acknowledgement are at Page 40 and 43. Learned counsel further argued that no response was received and no payment was received.

19. Learned counsel appearing on behalf of the 1st respondent argued and admitted that fixed deposit was made by the appellants which was got renewed on different dates and was finally renewed on 27.8.1991 for a cumulative time period of three years. Learned counsel for the 1st respondent further argued that the said amount due to be claimed by the father of the appellant in year 1994, however, no communication of any sort was received by them from the appellants.

20. On hearing the arguments of both the counsel, we observe that the FDR was made by the appellants with the 1st respondent and the same was lastly renewed on 27.8.1991 for a cumulative time period of 3 years, maturing on 27.8.1994. Therefore, there is no dispute on this issue. We further observe that the letters dated 17.12.1992 (Page 39) and 25.1.1995 (Page 38) are

written by late Sh Shrinivas Dhoot, who has since expired on 30.11.1998. In both these letters late Shri Shrinivas Dhoot has given the reference of 1st respondent letter No.AC/CTD/012948 dated 31.7.1992. Learned counsel for the 1st respondent has not replied whether these letters have been received by them and also the letter No.AC/CTD/012948 dated 31.7.1992 has not been issued by them. The appellants have annexed the postal department receipt and courier receipt this effect. These two letters were also filed before the NCLT but there are no findings on these letters in the impugned order. Therefore, we observe that the appellants have sufficiently approached the 1st respondent about his FDR in the year 1992, 1995 and 2000.

21. Learned counsel for the appellant argued that the appellant approached 1st respondent through letters and made visits for refund of maturity amount of the said FDR but no response was received and the 1st respondent intimated vide letter dated 20.3.2013 (Page 49) that the FDR was matured for payment on 7.10.1988, however, the amount remains unclaimed and was transferred to IEPF as per the Companies Act. Learned counsel for the appellants argued that firstly the respondent has wrongly intimated that the FDR was matured for payment on 7.10.1988 whereas the 1st respondent has himself admitted in his reply in para 2 (Pages 7 and 11 of the reply) that the FDR was finally renewed on 27.8.1991 for a cumulative time period of 3 years and was to be matured in the year 1994. Learned counsel further argued that the appellant was approaching 1st respondent to refund the matured amount since 1992 and it cannot be said that the appellants have not claimed the amount. Learned counsel for the appellants further argued that Section 205 C of the Companies Act, 1956 does not apply in the present case. Appellants

further argued that the appellant has been constantly approaching the 1st respondent for refund of matured amount since 1992 to 2000 and have already placed complete details in this regard before the Tribunal.

22. Learned counsel for the 1st respondent argued that the FDR of the appellants was to be matured in 1994 and the amount was not claimed by the appellant or his father, therefore, in view of provisions of Companies Act, 1956 the respondent deposited the same to the IEPF in the year 2004 amounting to Rs.5,61,180.01 vide Banker's Cheque No.247290 dated 21.4.2004 vide Challan No.80 dated 27.4.2004. Learned counsel for the 1st respondent further argued that no communication was received from the appellants claiming the amount. Learned counsel further argued that 1st respondent places reliance upon Section 205C of the Companies Act, 1956 and argued that no claim of any investor lies against the Fund or the company in case the amount has remained unclaimed. Learned counsel for 1st respondent further argued that the FDR of the appellants matured in 1994 and the same remained unclaimed and, therefore, the 1st respondent deposited the amount of the appellant in IEPF on 27.4.2004.

23. On hearing the parties we observe that the FDR was lastly renewed on 27.8.1991 as admitted by the 1st respondent himself. 1st respondent has wrongly intimated the appellant vide letter dated 20.3.2013 (Page 49) that the FDR was matured for payment on 7.10.1988. We have already observed in para No.21, that the appellants were approaching the 1st respondent for payment of FDR since 1992 to 2000 and the 1st respondent should have refunded the FDR matured amount to the appellants when they had claimed earlier.

24. Learned counsel for the appellants argued that on receipt of letter dated 20.3.2013 from 1st respondent, the appellants made enquiries on IEPF web portal but the appellants have been unable to trace any details of his FDR. Learned counsel for the appellants attached a screenshots of queries and the results which mentioned “**No Records Found**” (page 57). Learned counsel for the appellants argued that the 1st respondent has only intimated the total amount which has been deposited by 1st respondent with IEPF but no details thereof were intimated about the amount of appellant.

25. Learned counsel for the 1st respondent argued that the unclaimed fixed deposit amount of Rs.561180/- was paid to IEPF in requisite Form I alongwith Challan of Punjab National Bank and 1st respondent had discharged its liability towards the deposit of the appellant by transferring the same to IEPF.

26. We have perused the reply dated 10.11.2014 (Page 104) filed by the ROC, Pune before the Company Law Board, Mumbai (now NCLT, Mumbai). ROC, Pune has clearly stated in his reply at para 5 that “***there are no details mentioned on the challan, in respect of whom the amount was deposited in the account Investor Education and Protection Fund and the details are available with the company only.***”

A copy of the Form No. I filed by the appellant is placed below:

50

FORM NO. 1
(See Rule 3)

Registration No : 11 - 04208
Authorised capital : Rs. 30 Crores

STATEMENT OF AMOUNTS CREDITED TO INVESTOR EDUCATION AND PROTECTION FUND
To be submitted by the company to the concerned Registrar of Companies along with the copy of the challan)

Name of the company and address of its registered office : **THE PREMIER AUTOMOBILES LIMITED**
Lal Bahadur Shastri Marg,
Kurla, Mumbai : 400 070.

Date of payment of amount to the fund : **27th April, 2004**

Particulars of the Challan : **Challan No. 80 dated 27th April, 2004**

Mode of payment (DD/Cash) : **Banker's Cheque No. 247290 dated 21.04.2004**
for Rs. 5,61,180.01

Details of the amount which are credited to the fund


(a) amounts in the unpaid dividend accounts of companies;	---
(b) the application moneys received by companies for allotment of any securities and due for refund;	---
(c) matured deposits with companies- Unclaimed Fixed Deposits as on 31st March, 2004	---
(d) matured debentures with companies;	---
(e) interest accrued on the amounts referred to in clauses (b) to (d) be shown separately for each item, both in challan and in this form.	---
(f) Grants and donations	---

Financial year(s) to which the amount(s) relates : **Various**

Details of filing Form 1A under section 205A(6) and (7) of : **Not Applicable**
Companies Act, 1956. **For The Premier Automobiles Ltd**

Mihir Doshi & Associates
Company Secretaries

Mihir Doshi
Mihir Doshi
Proprietor
CS No. 17661
P No. 5964



Signature of person presenting the return

L. Krishnamoorthy
L. Krishnamoorthy,
Vice President &
Company Secretary.

Certificate from Company Secretary in Practice.

Narendrasoon

CERTIFIED TRUE COPY

As per the records made available to us, we have Verified the above information and found correct.

Place : Mumbai.
Date : 03.05.2004

We have also perused the Form No.1 at Page 50 filed by 1st respondent with the ROC, Pune and noted that incomplete form has been filed. We further note in the column i.e. “**Financial year(s) to which the amount(s) relates**”, 1st respondent has mentioned as “**Various**”. We have also perused the reply filed by 2nd respondent before this Appellate Tribunal (Page 2 of reply of 2nd respondent) and stated that no claim in E Form IEF-5 has been filed by the appellant till 31st August, 2018 and if any claim is received that will be considered according to Section 125(3) of the Companies Act, 2013. On careful analysis we observe that 1st respondent is a listed company and is very well aware of the statutory compliances. By filing an incomplete information as stated by ROC, Pune, a doubt comes in our mind either 1st respondent has filed incomplete information with ROC, Pune or that whether he has deposited the whole amount or some amounts have not been deposited. We further observe that by not filing the correct information, no investor can access to the status of his deposit. If the details in respect of whom the amount was deposited, would have been mentioned in the challan which was submitted with the concerned ROC Pune, then the same details would have been uploaded on the MCA website portal and every investor had conveniently viewed their amount on the said MCA website portal and then he can file the claim in E Form IEPF 5. In absence of any details, submitted by the 1st respondent to ROC Pune, no investor is able to file the claim. In this way the depositor may have lost the trail of their hard earned money by giving deposit to 1st respondent. Thus, even if the ROC Pune wants to help the appellant, he cannot help because no details has been provided by the 1st respondent.

27. During the course of hearing the appellant has filed an affidavit thereby annexing a chart of calculation showing the actual amount due as on date. The appellant has claimed interest @ 15% p.a. on Rs.156335/- from 27.8.1988 to 31.10.2018 and the total amount (principal +interest) comes to Rs.12,407,355/-. The appellant argued that the interest has been calculated on half yearly basis. The appellant has also claimed Rs.250000/- as litigation expenses.

28. Learned counsel for the 1st respondent argued that the appellants are not entitled to any amount as they have already deposited the amount with the IEPF and it is now for the appellant to approach IEPF.

29. On hearing the parties, we asked the counsel for 1st respondent to show how much amount of appellant has been transferred to IEPF as no details have been filed by them and ROC, Pune has also confirmed that no details, in respect of whom the amount, alongwith financial years, has been deposited by 1st respondent with IEPF. On this, learned counsel for the 1st respondent did not give any reply. Further we also observe that the appellant has flatly charged interest @ 15% p.a. on the principal amount and the interest has been calculated on half yearly basis. We have perused copy of the FDR filed by the appellant at page No.35 and noted that the rate of interest % p.a. mentioned is 14.50 from 7.10.1982 to 7.10.1985. The appellant should have correctly calculated the interest.

30. We observe from the record that the 1st respondent is a public limited company and having a large number of shareholders and is very well aware of the statutory compliances. We further observe that the 1st respondent is giving contradictory statement about the FDR. 1st respondent vide its letter

dated 20th March, 2013 (Page 50 of appeal) has intimated the appellant that the FDR was matured for payment on 7.10.1988 but remained unclaimed, therefore, the same was transferred to IEPF as per the Companies Act. On the other hand, 1st respondent in its reply in para 2(Pages 7 and 11 of the reply) has admitted that the FDR was finally renewed on 27.8.1991 for a cumulative time period of 3 years. As such 1st respondent is taking contradictory stand to mislead the Tribunal.

31. We further observe, as per 1st respondent statement, that FDR was renewed on 27.8.1991 for a period of three years which means that the FDR matured on 27.8.1994. Further the appellant is claiming the amount and also asking about the status of FDR since 1992. No reply has been given by 1st respondent to the appellants. Further 1st respondent has argued that since the amount was not claimed, therefore, the amount was transferred to IEPF as per Companies Act. We noted that the FDR was to mature on 27.8.1994, as per 1st respondent admission, but the amount lying with 1st respondent as unclaimed deposit was claimed to have been transferred to IEPF in 2004. But no detail was provided to the ROC Pune about the financial years to which the amounts relates and the amount was in whose name. ROC Pune have also confirmed that no details have been provided by the 1st Respondent about the deposit of unclaimed amount. **Here we also observe that even the ROC Pune has not sought any clarification from 1st respondent about the details of the financial years and the details of the individuals to which this deposit belongs and silently accepted the unclaimed deposits.** Even if we presume that the unclaimed amount of appellant was deposited with IEPF, then a doubt arises in our mind that the

FDR matured on 1994 and as per Companies Act it was to be deposited with IEPF in 2001 or 2002, then why it was deposited in 2004 that too with no details of financial year and the name of the deposit holder/s to whom the amount belongs. If the details would have been provided by the 1st respondent, then 1st respondent had discharged its liability lawfully. In this way the appellants would have approached IEPF to seek the claim. As no details have been provided in respect of financial year and the names of the depositors to whom the amount belongs, IEPF and ROC, Pune are unable to process the claim, if any lodged with them. We are satisfied that 1st respondent has not able to satisfy us that unclaimed amount of appellant has been deposited with the IEPF. We would have appreciated that before transferring any unclaimed amount to IEPF, 1st respondent as good governance would have sent a notice to the appellants before transferring any amount to IEPF. We are satisfied that 1st respondent has not complied with statutory compliances in law and spirit, has given contradictory statements, which is proved on documents, provided no details to ROC Pune about the unclaimed deposits and the financial years to which it belongs and also is not able to satisfy us that the amount which has been deposited actually belongs to the appellants or other investors. By not intimating the details, 1st respondent has compelled the appellants to approach pillar to post to claim their hard earned money with interest. This is for this reasons that the public in large has lost faith to keep their deposits with the companies. In this case also, one of appellants expired in 1998 claiming his FDR amount from 1st respondent since 1992. This is all proved on documents.

32. We further observe that as per rules, if a deposit is matured and is not claimed for 7 years by the depositor then the said matured deposit will be deposited with the IEPF within 30 days when it becomes due. In this case the 1st respondent has himself admitted in its reply at Page 77 that the FDR was lastly renewed on 27.8.1991 for a period of three years, therefore, maturing on 27.8.1994 and, as per 1st respondent, it remained unclaimed for 7 years. Therefore, in our view, it should have been deposited with IEPF by 27.9.2001 (27.8.1994 being maturity date + 30 days). But the appellant stated it was deposited with IEPF on 27.4.2004. We have perused the challan at Page 74 which has the stamp of Asstt. Registrar of Companies also. We observe that in the third column, the 1st respondent has mentioned as under:-

“Unclaimed fixed deposits as on 31st March, 2004)

(payable during FY 31st March, 2004

Under Section 205C of the Companies Act, 1956).”

On careful reading of this column we observe that the 1st respondent has deposited the amount with IEPF which was payable during the FY 31st March, 2004 whereas in the case of appellant it was payable during **FY 2001-2002**.

On analysis of this document we observe that the 1st respondent has deposited the amount of other depositors whose deposit was due for transfer in the FY 31st March, 2004. Therefore, 1st respondent is unable to convince us that the amount of appellant has been deposited with the IEPF. There is a maxim in law that a man can lie but a document cannot. Therefore, we are satisfied that there is not enough proof that company had discharged its obligation with reference to this FDR while depositing with IEPF.

33. We further observe that the company has written letter dated 20.3.2013 (Page 49) to appellant at the Jaipur address. The said letter shows that the letter seems to have been written without any reference to a previous letter but it is mute point to consider why this letter has been written without any reference from the appellant. No such letter has been placed before that such exercise has been done from 1994 onwards without any reference being received from the appellant or other investors. We observe that when the letter dated 20.3.2013 (Page 49) has been written to the appellant at his Jaipur address. Further it is noted that previous correspondences on records are not from Jaipur address. This is only possible if there is correspondence between the parties over a period of time, including from new address of the appellant. Therefore, 1st respondent cannot deny that he has not received the earlier letters of the appellant. It establishes that the 1st respondent is giving contradictory statements and suppressing some information.

34. In the light of our observations, the conclusion drawn by NCLT are not acceptable to us. In the interest of justice to the appellant who has been approaching 1st respondent for more than two decades, we direct 1st respondent to make payment to the appellant. The following order is passed:

- a) Impugned order dated 3.3.2017 is set aside.
- b) 1st respondent is directed to pay the principal amount plus interest at the contracted rate of interest to the appellant from 7.10.1988 to 27.8.1994.
- c) Further we award 9% p.a. simple interest on the matured amount from 28.8.1994 to till the date of actual payment within 30 days. .

d) 1st respondent is directed to pay costs of Rs.1,00,000/- to the Appellant within 30 days.

e) ROC, Pune is directed to ensure compliance of the order.

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

(Mr. Balvinder Singh)
Member (Technical)

New Delhi

Dated: 01-4-2019