

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Company Petition No.62/2014

Mrs. Meenal Dedhia ...Petitioners
Vs
Neesa Leisure Limited & others ...Respondents

AFFIDAVIT
Of the Respondent No.1

I, Vrushal Pardesi of the respondent company, duly authorized by the respondent company hereby state on oath and solemn affirmation as under:-

1. I say that I am duly authorized by the respondent company for filing this affidavit and I have read and understood the contents of the memo of the petition, reply etc. and conversant with the facts of the case and competent to depose the instant affidavit.
2. I say that the affidavit in reply in the petition has already been filed by the respondent company opposing the petition; the present affidavit is being filed with a view to bring on record the legal development on the subject matter pertaining to the controversies involved in the petition.
3. I say that the petition is filed for winding of the respondent company allegedly and broadly on the ground that the petitioner/s had made deposit/s with the respondent company for different amount/s and the FDRs for the same have been issued by the respondent company and that the payment had not been made on maturity date of the FDRs issued by the respondent company and broadly on such facts and thereafter the petitioner/s had given the notice under Section 433 and 434 of the Companies Act 1956 calling the respondent company to make the payment of the amount as demanded in the said statutory notice/s and the respondent company failed to

make the payment of the amount within the statutory period of 21 days raising the statutory presumption of inability to make payment of debt.

4. It is stated and submitted that the one of the contentions on the part of the respondent company in opposing the petition for winding up of respondent company is that Section 74(1) provided for statutory extension for a period of one year for repayment of the amount of deposit or part thereof or any interest due thereon remaining unpaid on the commencement of Section 74 from earlier of the date of commencement of Section 74 and the date on which the payment of deposit became due as per the terms of acceptance of the deposit.
5. It is the stated and submitted that Companies Act 2013 and rules framed thereunder brought material change in the criteria of eligibility for any company willing to raise/continue raising the deposits from public and eligibility criteria under the Companies (Acceptance of Deposits) Rules 2014 was prescribed in terms of minimum requirement of net worth of Rs.100 crores and turnover of Rs.500 crores of a given company for accepting the deposits from public and said drastic change in criteria resulted into rendering majority of the company's ineligible to continue accepting the deposits and Section 74(1) in essence provided the companies to pay entire amount of deposit within extension of a period of one year subject to the filing of the statement as provided in the said section. It is further submitted that one year period provided under Section 74(1)(b) was no match to compensate the effects of drastic change in eligibility criteria which in form was prospective, however, had multi-faceted adverse impacts and had the effect of ruining the long term planning made prior to change of eligibility criteria.
6. It is stated and submitted that the legislature had attempted to care of troublesome situation for the corporate world by providing very important right under Section 74(2) of the Companies Act 2013 which provides that the company should make application to the Tribunal for getting further time to repay the amount of deposit and the National Company Law Tribunal could, after considering the financial condition of the

company and various other factors in consideration, allowed the time as might be considered to be reasonable to company to repay the amount of deposit.

7. It is stated and submitted that the respondent company preferred an application under Section 74(2) of the Companies Act 2013 before the Hon'ble Company Law Board, invested with the powers of National Company Law Tribunal by the Government through issuance of the Companies (Removal of Difficulties) Fourth Order 2014 dated 06.06.2014 long back and narrated the reasons of difficult financial conditions of the respondent company and has sought for relief of extension and repayment of each deposit.
8. It is stated and submitted that despite having submitted the application for extension of time for repayment under Section 74(2) of the Companies Act 2013 before the Company Law Board invested with the powers of National Company Law Tribunal vide the order as referred to hereinabove, the application was not taken up for hearing by the Hon'ble Company Law Board in absence of any reasons attributable to the respondent company.
9. It is stated and submitted that the Ministry of Corporate Affairs, vide notification published on 01.06.2016 being S.O.1936(E) has notified that in exercise of the powers conferred by Clause A of Sub Section 1 of Section 434 of the Companies Act 2013, the Central Government appointed the day of the first day of June, 2016 on which all matters are proceeding or cases pending before the Board of Company Law Administration (Company Law Board) shall stand transferred to National Company Law Tribunal and it shall dispose of such matters or proceeding or cases in accordance with the provisions of Companies Act 2013 or Companies Act 1956. A copy of the said notification is annexed hereto and marked as **Annexure Q-1** hereto.
10. It is submitted that in light of the notification, pending application of the respondent company under Section 74(2) stands automatically transferred to NCLT, is pending before the Hon'ble National Company Law Tribunal.

11. It is stated and submitted that vide circular dated 07.06.2016 the Ministry of Corporate Affairs has notified that as reiterated that the National Company Law Tribunal and National Company Law Appellate Tribunal have been constituted with effect from 01.06.2016 with the location and postal address of NCLT, Ahmedabad being Anand House, Ground, First and Second Floors, S.G.Highway, Thaltej, Ahmedabad-380054. A copy of the said circular dated 07.06.2016 is annexed hereto and marked as **Annexure Q-2** hereto.

12. It is stated and submitted that it would be also pertinent to mention here that the Government has proposed the Companies (Amendment) Bill 2016 for amending various provisions relating to private placement, forward dealing and inside trading, managerial remuneration, loans to directors and other interested persons, number of subsidiary companies, investments made to a company through investment companies and the aspect of deposits. It is submitted that the said bill being Bill No.73 of 2016 in Clause No.16, proposes as under:-

“In Section 74, in Sub Section 1, for Clause (b) the following clause shall be substituted, namely:-

(b). Repay within three years from such commencement or on or before expiry of the period for which the deposits were accepted whichever is earlier.”

A copy of the said bill proposed on the floor of the Parliament is annexed hereto and marked as **Annexure Q-3** hereto. The bill is passed by the House of People already in March 2016 and is on the floor of the Council of States for passing by the Council.

12. It is stated and submitted that the above would indicate that Section 74(1) provided for extension for a period of one year in repayment of the deposit irrespective of any existing scheme framed under law and the amendment bill proposed in 2016 now prescribes for extension for a period of three years irrespective of any existing schemes framed under any law.

13. It is submitted that apart therefrom the respondent company has statutory right to opt for further extension in time of repayment of deposits and the respondent company has already filed an application under Section 74(2) of the Companies Act

2013 for further extension way back and the same now stands transferred to National Company Law Tribunal and is likely to be taken up for hearing subject to the development on the aspect of the Companies (Amendment Bill) 2016.

14. It is submitted that the respondent has availed statutory remedy of filing the application for extension of time period for repayment of the deposits under Section 74(2) of the Companies Act 2013 and unless and until the same is decided by Hon'ble Company Law Tribunal, order of winding up, or proceeding further with the instant proceedings would render the statutory right of the respondent available under Section 74(2) otiose and might run in contravention of the statutory provisions of Section 74 of the Companies Act 2013.

15. It would be also pertinent to bring on record on 31st May, 2016, there was a joint lenders meeting of lenders having extended facilities for different purposes to respondent company and as discussed in said meeting, lenders have in principal agreed not to have recourse to coercive action, to allow the company to sell certain assets and to they have also shown agreement to earmark 15% of sale proceeds for statutory authorities. It would thus be seen that lenders having exposure in excess of Rs.500 crores have shown faith in company and are willing not to go for any coercive action or liquidation proceedings but to resolve the aspects in bests interests of all stake holders. Copy of said JLM minutes is annexed hereto and marked as **Annexure Q4**. It is stated and submitted that under such circumstances, allowing small depositors to pursue the remedy of last resort i.e. liquidation of respondent company would be in no one's benefit and would bring no good result to them as in case of liquidation, entire proceeds are likely to go to secured creditors.

Solemnly affirmed and stated on oath on ... day of June, 2016 at Ahmedabad.

Deponent