NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

2. CA/370/2022 CP/412(MB)2021

IN THE MATTER OF

Vimla T Dedhia … Petitioner

Vs

Anusmera Realty And Infra Pvt Ltd … Respondent

U/s 73(4) of the Companies Act, 2013

Order Delivered on 21.01.2026

CORAM:

SH. MOHAN PRASAD TIWARI
MEMBER (J)

SH. CHARANJEET SINGH GULATI
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Petitioner:

For the Respondent:

ORDER

CA/370/2022- The above CA is listed for pronouncement of order. The same is pronounced in open Court, vide a separate order.

Sd/-
CHARANJEET SINGH GULATI
Member(Technical)

Sd/-
MOHAN PRASAD TIWARI
Member(Judicial)

/Ziyaul/

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT V

Company Application 370 of 2022
In
Company Petition 412 of 2021

IN THE MATTER OF:

ANUSMERA REALTY & INFRA PRIVATE LIMITED

CIN: 04520MH2009PTC197060

A.F.F 83/A N.G ACHARYA MARG, CHEMBUR, MUMBAI – 400 071

….Applicant

Vs

VIMLA THAKARASHI DEDHIA

14, ARJUN SMRITI, 3rd FLOOR NANDIVALI ROAD, NEAR D.N.C SCHOOL, OPP. PRAGATI COLLEGE, DOMBIVALI (E) - 421201

….Respondent

Order pronounced on: 21.01.2026

***Coram*:**

SH. MOHAN PRASAD TIWARI, HON'BLE MEMBER (JUDICIAL)

SH. CHARANJEET SINGH GULATI HON'BLE MEMBER (TECHNICAL)

Appearances:

For the Applicant : Adv. Rajan Agarwal a/w Adv Varun Agarwal

For the Petitioner : Adv Ramesh Chheda VC

ORDER

1. The Company Application No. 370 of 2022 has been filed under Rule 11 of the National Company Law Tribunal Rules, 2016 by the Applicant, inter alia, challenging the maintainability of Company Petition No. 412 of 2021 filed by Respondent under Section 73(4) read with Section 76(2) of the Companies Act, 2013 seeking the dismissal the same as it is barred by limitation and not maintainable.

Submissions of the Applicant, in brief:

2. The Applicant submits that the Company Petition is not maintainable, misconceived, and an abuse of the process of this Tribunal, as the Respondent has wrongly invoked Sections 73(4) and 76(2) of the Companies Act, 2013 **(the Act 2013)** for recovery of alleged monies which do not constitute "deposits" in law.

3. Sections 73 and 76 of the Act, 2013 regulate the acceptance of deposits. Section 73 generally prohibiting acceptance of deposits from the public and permitting acceptance only from members, while Section 76 provides an exception allowing eligible public companies to accept deposits from persons other than their members, subject to statutory

conditions. The Respondent being a member/shareholder since 2013–14, as reflected in statutory filings including Form MGT-7 available on the MCA portal, invocation of these provisions is wholly misconceived.

4. Further averred that the definition of "deposit" under section 2(31) of the Companies Act, 2013 is substantially on the same matter with the definition in the Explanation to section 58A of the Companies Act, 1956, reflecting continuity of legislative intent. While the 2013 Act refers to "receipt of money by way of deposit or loan or in any other form," the expression "loan" is synonymous with "amount borrowed" in law and common usage, and the phrase "in any other form" must be construed ejusdem generis with "deposit." Accordingly, the definition cannot be expansively interpreted to include every receipt of money, but only those receipts which are genuinely in the nature of a deposit.

5. Further that Saraswat Bank had sanctioned a term loan facility to Respondent No. 1. As per Clause 2.1 of the common terms and conditions mandated *"subordination of unsecured loans of Rs. 750.00 lacs"* for the Bank's record. The monies in question were thus brought in pursuance of the Bank's directive, and cannot be characterized as deposits.

6. Pursuant to the conditions imposed by Saraswat Bank, the promoters brought in funds into the Company by way of unsecured loans. The amounts were infused solely to comply with the stipulations contained in the sanction letter and to meet the requirements of the lending Bank.

7. As per Rule 3 of the Companies (Acceptance of Deposits) Rules, 2014,

no company is permitted to accept deposits repayable on demand or within less than six months or beyond thirty-six months. Consequently, even if the amounts were claimed to be repayable on demand, they cannot constitute a deposit under the Act, and no deposit was accepted by the Applicant.

8. Further that sections 73 and 76 of the Companies Act, 2013, read with the Companies (Acceptance of Deposits) Rules, 2014, regulate the invitation, acceptance, and repayment of deposits. Further it is averred that in **Dr. Lohith Shivateja v. Anytime Medicare Services P. Ltd.** *[2019] 213 Comp Cas*, wherein the this Tribunal has held that amounts paid without any invitation by the company did not qualify as deposits under section 73(4). Similarly, in the present case, no material exists to show that the Respondent's payment was in response to any statutory invitation. There was never any invitation, circular, or advertisement issued by the Applicant Company for acceptance of deposits, nor were any statutory compliances such as issuance of deposit receipts or filing of prescribed statements undertaken.

9. The Respondent has failed to comply with mandatory procedural requirements under Rule 73 of the NCLT Rules, 2016, including filing of Form NCLT-11 and annexing essential documents such as any agreement, deposit receipt, or terms and conditions governing the alleged deposit.

10. The Respondent has failed to make ROC a party who can determine whether the purported monies amount to deposits before approaching the tribunal. The allegations regarding false filings of annual reports before the ROC and suppression of documents are bald,

unsubstantiated, and raised only to pressurize the Applicant. No complaint has ever been lodged with the ROC, which itself falsifies such allegations.

11. The Respondent has taken contradictory and mutually destructive stands by alternately claiming to be a depositor and a shareholder seeking AGM notices and annual reports, that such inconsistent pleas attract the doctrine of estoppel and disentitle the Respondent from any relief.

12. The Respondent has attempted to mislead this Tribunal by alleging credit of interest to a "depositor", whereas the documents relied upon, including TDS certificates, do not describe the Respondent as such.

13. The Petition is barred by limitation. The alleged transactions pertain to the year 2015 and earlier, whereas the Petition was filed only in 2021, well beyond the limitation period of three years prescribed under Section 433 of the Companies Act, 2013 read with Article 113 of the Limitation Act, 1963.

14. The reliefs sought by the Respondent relate to alleged oppression, mismanagement, or repayment of a disputed loan, for which independent statutory or civil remedies are available. Section 73 of the Companies Act cannot be invoked as a recovery mechanism.

Contentions of the Respondent

15. The Respondents have not filed any reply in respect of the present Company Application. The matter was argued orally, and no written

submissions have been filed, despite opportunities been given to them.

16. On the basis of the material available with us the following question arises for determination:

> *"Whether the amount in question constitutes a "deposit" within the meaning of the Companies Act, 2013 and Companies (Acceptance of Deposit) Rules, 2014?"*

Analysis & Findings

17. During the course of oral arguments, the Respondent contended that Section 73 of the Companies Act, 2013 permits acceptance of deposits only upon strict compliance with the conditions prescribed therein. Our attention has been drawn towards the provisions mandated under Section 73(2), which mandates, inter alia, the passing of a resolution in the general meeting and compliance with the rules framed in consultation with the Reserve Bank of India, including issuance of a circular to members disclosing the financial position of the company, filing of such circular with the Registrar of Companies, creation of a deposit repayment reserve, and compliance with deposit insurance requirements.

18. It is submitted by the Respondent that none of the aforesaid statutory requirements were complied with. Further argued that there was no issuance of any circular to members, no filing with the Registrar of Companies, no evidence of creation of a deposit repayment reserve, and no deposit insurance.

19. The Respondent further contends that once the amounts in question are

characterized as deposits, the statutory provisions governing acceptance of deposits under Sections 73 and 76 of the Companies Act, 2013 become fully applicable. The Respondents submitted that Section 73 imposes a general prohibition on acceptance of deposits from the public and permits acceptance of deposits only from members, subject to fulfillment of the conditions prescribed therein.

20. Section 2(31) of the Companies Act, 2013 defines "deposit" in an inclusive manner but expressly excludes such categories of amounts as may be prescribed in consultation with the Reserve Bank of India.

21. It is an admitted position that the Applicant Company had availed term loan facilities of 2000 lakhs from Saraswat Bank. The sanction of such facilities was subject to specific terms and conditions imposed by the lending bank, including stipulations requiring subordination of unsecured loan of Rs 750 lakhs.

22. Perusal of the sanction letters of Saraswat Bank placed on record indicates that the lending bank had expressly stipulated that the promoters were required to bring in unsecured funds as a condition precedent and/or concurrent to the sanction and continuation of the loan facilities.

> Clause 2.1 of the common terms and conditions mandated *"subordination of unsecured loans of Rs. 750.00 lacs"* for the Bank's record

23. At this stage, it is necessary to examine Rule 2(1)(c)(xiii) of the Companies (Acceptance of Deposits) Rules, 2014, which excludes certain money brought in the company from the definition of "deposit":

"Rule 2(1)(c)(xiii) of the Companies (Acceptance of Deposits) Rules, states that:

"any amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank subject to fulfillment of the following conditions, namely: -

(a) The loan is ***brought in*** *pursuance of the stipulation imposed by the lending institutions on the promoters to contribute such finance;*

(b) The loan is provided by the promoters themselves or by their relatives or by both; and

(c) The exemption under this sub-clause shall be available only till the loans of financial institution or bank are repaid and not thereafter;"

24. The expression "brought in" under Rule 2(1)(c)(xiii) is of wide amplitude and covers unsecured financial infusions brought in by the promoters in various forms. The determining requirement, however, is **clause (a) of Rule 2(1)(c)(xiii),** namely that such infusion must be pursuant to a stipulation imposed by a lending bank. Once such stipulation is established, the exclusion operates, and the amount ceases to be a 'deposit'

25. In view of the above, this Tribunal finds that the amounts in question squarely fall within the exclusion contemplated under Rule 2(1)(c)(xiii) of the Companies (Acceptance of Deposits) Rules, 2014.

26. Once the transaction is covered by the statutory exclusion, the amount so received cannot be treated as a "deposit" within the meaning of

Section 2(31) of the Companies Act, 2013. Consequently, Section 73 of the Companies Act, 2013, which regulate acceptance and repayment of deposits, are not attracted, and the transaction in question is, therefore, an **exempted transaction** under the Companies Act, 2013. In absence of amount being "deposit", the invocation of Section 73(4) and 76(2) of the Companies Act, 2013 is wholly unsustainable.

27. The Applicant has also raised a specific objection that the Company Petition is barred by limitation. It is not in dispute that the alleged transactions, pursuant to which the Respondent claims repayment, pertain to the period prior to the year 2015. The Company Petition, however, came to be filed only in the year 2021.

28. Section 433 of the Companies Act, 2013 provides that the provisions of the Limitation Act, 1963 shall apply to proceedings before the Tribunal, as far as may be. In the absence of any specific period prescribed under the Companies Act, 2013 for an application under Section 73(4), the residuary Article 113 of the Schedule to the Limitation Act, 1963 becomes applicable, which prescribes a limitation period of three years from the date when the right to sue accrues. The right to apply under Section 73(4) accrues upon default in repayment of the alleged deposit. Even assuming the Respondent's case at its highest, no material has been placed on record to demonstrate any acknowledgment of liability under Section 18 of the Limitation Act, 1963 or any subsequent written promise extending the period of limitation.

29. There is also no pleading or evidence to suggest that the alleged cause of action was continuing in nature so as to extend limitation under Section 22 of the Limitation Act, 1963. The Hon'ble Supreme Court in

B.K. Educational Services (P) Ltd. v. Parag Gupta & Associates (2019) 11 SCC 633 in para 27-28 it has been categorically held that the Limitation Act applies to proceedings before the NCLT and that stale claims cannot be revived by resorting to special statutes.

30. In the present case, the Company Petition having been filed after more than six years from the date of the alleged transactions, is ex facie beyond the prescribed period of limitation and therefore is not maintainable.

31. In view of the facts and circumstance of the case, the Company Application is **allowed.**

Sd/-	**Sd/-**
Charanjeet Singh Gulati	**Mohan Prasad Tiwari**
Hon'ble Member (T)	Hon'ble Member (J)
/Smeet, LRA/	