General Circular No. 09 /2015

No. 1/8/2013-CL-V
Government of India
Ministry of Corporate Affairs

5th Floor, A Wing, Shastri Bhavan,
Dr R.P. Road, New Delhi

Dated: 18th June, 2015

To

All Regional Directors,
All Registrars of Companies,
All Stakeholders.

Subject: Clarification on repayment of deposits accepted by the companies before the commencement of the Companies Act, 2013 under section 74 of the said Act

IndiaCorp

Sir,

This Ministry has received representations seeking clarification regarding processing of the deposits related complaints received from investors under section 74 of the Companies Act, 2013 (the said Act) in respect of defaults made by companies in repayment of deposits accepted by them before the commencement of the said Act i.e. before 1st April, 2014 and filing of prosecutions against defaulting companies by the Registrars of Companies/Regional Directors.

2. The matter has been examined in the Ministry and it is clarified that vide Removal of Difficulties (Second) Order [S.O. 1428(E)] dated 2nd June, 2014 and Removal of Difficulties (Fourth) Order [S.O. 1460(E)] dated 6th June, 2014, the Company Law Board has been empowered to exercise the powers of National Company Law Tribunal under sub-section (4) of section 73 and sub-section (2) of section 74 of the said Act, till the latter's constitution. Thus, a depositor is free to file an application under section 73(4) of the said Act, with the Company Law Board if the company fails to make repayment of deposits accepted by it. Further the company may also file application under section 74(2) of the said Act with the Company Law Board seeking extension of time in making the repayment of deposits accepted by it before the commencement of the provisions of the said Act .

3. Further, attention is also drawn to Explanation appearing below Rule 19 of the Companies (Acceptance of Deposits) Rules, 2014 which clarifies the conditions subject to which a company would be deemed to have complied with the requirements laid down in Section 74(1)(b) of the Companies Act, 2013. Companies can repay deposits accepted prior to 1st April, 2014 in accordance with terms and conditions for which the deposits had been accepted.

4. It is also clarified that there is no bar on the Registrar of Companies for filing of prosecution against a company if such company fails to make repayment of deposits accepted by it under the provisions of the Companies Act, 1956 or Companies Act, 2013, subject to the contents of para 3 above.

This issues with the approval of the competent authority.

Yours faithfully

(KMS Narayanan)
Assistant Director (Policy)

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2. Guard File