IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH, COURT-III

SINGLE BENCH

COMPANY PETITION NO. 13/KB/2024

An Application under Section 73(4) of the Companies Act, 2013

IN THE MATTER OF:

MR. RAHUL MAROO

…PETITIONER/DEPOSITOR

-Versus-

BRUCK PHARMA PRIVATE LIMITED

…RESPONDENT COMPANY

Pronouncement: 31.07.2026

CORAM:

Shri Cheekati Radha Krishna, Hon'ble member (Judicial)

APPEARANCE:

For the Petitioner:

Ms. Arati Agarwal, Adv.

Ms. Rosy Banerjee, Adv.

For Respondent No. 1:

Mr. Milan Singh Negi, Adv.

Mr. Nikhil Kr. Jha, Adv.

For Respondent No. 2 & 3:

Ms. Aditi Sharma, Adv.

ORDER

Per: Cheekati Radha Krishna, Member (Judicial):

1. The court convened through hybrid mode.

2. The learned counsel for both the parties were heard.

3. The instant petition being C.P. No. 13/KB/2024 has been preferred by Mr. Rahul Maroo (hereinafter referred to as the 'Petitioner'), against M/s Bruck Pharma Private Limited (hereinafter referred to as the 'Respondent'), and seek the following reliefs:

a. *The Respondent be directed to make repayment of Deposit of Rs. 2,60,00,000/- along with 18% penal interest per annum till the date of payment as per the provisions of Rule 17 of the Companies (Acceptance of Deposits) Rules, 2014;*

b. *That proceedings be initiated against the Respondent under Section 76A for contravention of Section 73 of the Companies Act, 2013 and accepting deposit and for failing to repay the deposit or part thereof or any interest due thereon;*

c. *That such further orders be passed as the Tribunal deem fit and proper.*

4. Factual Matrix

4.1 The Petitioner paid a total amount of Rs. 2,60,00,000/- to the Respondent on various dates from 04.03.2017 to 18.05.2017. Since the Respondent and the Petitioner could not agree upon the valuation of shares to be allotted, they mutually decided on 09.04.2018 to treat the entire investment of Rs. 2,60,00,000/- as financial assistance which would be repaid.

4.2 Thereafter, a legal notice dated 02.08.2021 was served on the Respondent for payment of the aforesaid amount with interest. Subsequently, the Respondent sent a Reply dated 11.08.2021, stating that the Appellant never gave any loan to the company.

4.3 The Petitioner filed a petition under Section 7 of the Code which was dismissed by the NCLT vide order dated 06.07.2022.

4.4 Aggrieved by the dismissal, the Petitioner preferred an appeal before the Hon'ble NCLAT wherein the dismissal was upheld.

4.5 Thereafter, the Appellant preferred an appeal to the Hon'ble Supreme Court, which was later withdrawn as the appellant opted to take recourse to appropriate remedy for the recovery of his amount.

4.6 Hence, the present application under Section 73(4) of the Companies Act, 2013 has been filed.

5. Submissions on Behalf of the Petitioner:

5.1 It is submitted that with mutual understanding between the Petitioner and the Respondent company, it was decided that the Petitioner shall invest in the Respondent company and be allotted shares against that investment. Accordingly, a total amount of Rs. 2.7 Crores was paid in instalments across various dates from 04.07.2017 to 22.06.2017. Out of the aforesaid amount, Rs. 10,00,000/- was not paid by the Petitioner and the rest of Rs. 2.6 Crores was paid by the Petitioner towards share application money as unsecured loan.

5.2 It is claimed that the draft MOU shared by the Petitioner on 15.11.2017 via email mentions that the total amount of Rs. 2.7 Crores is to be repaid based on the cash flow situation of the Respondent company. Further, the MOU also provided that the Petitioner shall be actively involved in the day to day management of business. **A**fter several telephonic conversations, the Respondent company made certain changes to the MOU and shared it via mail on 08.01.2018.

5.3 It is averred that since the Petitioner and the Respondent could not agree on the valuation of shares to be allotted, they mutually decided to treat the entire amount of Rs. 2.6 Crores as financial assistance which would be repaid. Further, on 10.09.2018, the Respondent company sent a copy of ledger via mail, showing Rs. 2.6 Crores due to the Petitioner as on 01.04.2018.

5.4 It is further submitted that legal notice dated 02.08.2021 was served to the Respondent company for payment of Rs. 2.6 Crores with interest. In response, the Petitioner received a reply dated 11.08.2021 against the legal notice.

5.5 It is claimed that the Petitioner filed a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as IBC, 2016) which was dismissed vide order dated 06.07.2022. Aggrieved by the said order, the Petitioner preferred an appeal before the Hon'ble NCLAT, which vide order dated 10.11.2023, upheld the dismissal. Furthermore, it was also observed that the sum advanced cannot be treated as relating to Section 42 of the Companies Act, 2013. Later, the Petitioner preferred an appeal before the Hon'ble Supreme Court vide Diary No. 53618 of 2023 against the order of Hon'ble NCLAT which was dismissed as withdrawn.

5.6 It is further claimed that if the amount is not treated as share application of money, then it is clearly a deposit as per Rule 2(c) of the Companies (Acceptance of Deposits) Rules, 2014. The relevant extract of the aforesaid Rule in reproduced herein below:

"Without prejudice to any other liability or action, if the securities for which application money or advance for such securities was received cannot be allotted within sixty days from the date of receipt of the application money or advance for such securities and such application money or advance is not refunded to the subscribers within fifteen days from the date of completion of sixty days, such amount shall be treated as a deposit under these rules."

Since the Respondent company has not repaid it even after demanding repayment, the instant application is maintainable.

5.7 It is submitted that the Respondent first denied the existence of liability on 11.08.2021 in response to the Demand Notice issued by the Petitioner. Thus, the right to apply accrued on 11.08.2021 and the limitation period would expire on 10.08.2024. Hence, the present application has been filed on 14.01.2024 which is within the period of limitation.

5.8 It is further submitted that the Hon'ble Supreme Court in **Re: Cognizance for Extension of Limitation, Suo Moto Writ Petition (C) No. 3 of 2020** directed that the entire period from 15.03.2020 to 28.02.2022 shall stand excluded for the purpose of limitation in all judicial and quasi-judicial proceedings.

5.9 It is submitted that by notification dated 18.05.2025, this Special Hon'ble Single Bench was constituted to hear matters under Section 73(4) of the Companies Act. Thus, the objection raised by the Respondent on the issue of jurisdiction is misconceived.

6. Submissions on Behalf of the Respondent:

6.1 It is contended that the alleged amount of Rs. 2.6 Crores is neither a deposit nor a loan. The present proceeding, sought to be initiated by the Petitioner under Section 73(4) of the Companies Act, 2013 is an abuse of process of law and non-est in law.

6.2 It is submitted that the Respondent company has changed its place of Registered Office from West Bengal to Maharashtra as confirmed by an order of Regional Director on 25.09.2023. Thereafter, certificate INC-22 was issued by the ROC, Mumbai on 05.01.2024, officially certifying the said change.

6.3 It is contended that there is nothing on record to indicate either special resolution in the general meeting of the Respondent company was passed or any mandatory pre-requisites under Section 73(2) of the Companies Act, 2013 were carried out. Therefore, in the absence of compliance of the mandatory pre-requisites, the said amount can not be treated as deposit.

6.4 It is contended that the Petitioner herein is not a member of the Respondent company and thereby not a depositor as per Section 73(4) of the Companies Act, 2013. Therefore, the Petitioner does not have any locus standi to prefer the present application.

6.5 It is contended that the amount of Rs. 2.6 Crores has been duly adjusted/repaid by the Respondent company by way of consolidated adjustment entered between Kamdar Agriculture Private Limited, a private limited company being the group entity of the Respondent company and Ekatma Developers LLP, which is jointly controlled and managed by the Petitioner's father and brother. Moreover, an amount of Rs. 1,70,76,820/- (Rupees One Crore, Seventy Lakhs, Sixty Six Thousand, Eight Hundred and Twenty Only) has been repaid by the Respondent to Ekatma Developers LLP. Further, the balance sum of Rs. 89,23,180/- (Rupees Eighty Nine Thousand, Eight Hundred and Twenty Only) was repaid to the Petitioner through sale of 'Summit Units' to Omkar Realtors & Developers Pvt. Ltd., wherein the Petitioner is the Chief Executive Officer.

6.6 It is contended that no underlying agreement entered into by the parties at any point of time for conclusion of the allotment of shares to the Petitioner by the Respondent.

6.7 It is claimed that the Hon'ble NCLT in CP(IB) No. 362/KB/2021 and NCLAT in CA (AT) (Ins) 1156 of 2022 has held that the said amount cannot be treated to be an amount in response to private placement invited by Respondents. Thus, Section 42(6) of the Companies Act and Rule 2(c)(vii) of the Deposit Rules would not be applicable as the said amount does not fall within the purview of Deposit.

6.8 It is contended that the period of limitation shall be computed from the last date of disbursal of payment, i.e., 18.05.2017. Therefore, admittedly, in the present case the limitation comes to an end on 18.05.2020, whereas the petition has been filed only on 14.01.2024, which is much after the expiry of the limitation period, as such the present petition is hopelessly barred by law of limitation.

6.9 It is contended that the amount of Rs. 2.6 Crore is not a Deposit as the said amount was neither raised under private placement as per Section 42 of the Companies Act, 2013 nor the requirements under the Act and the Companies (Acceptance of Deposits Rules, 2014) were fulfilled. Additionally, the Hon'ble NCLAT in Company Appeal (AT) (Ins) No. 1156 of 2022 held that the said Amount is not a deposit.

6.10 It is stated that the Hon'ble NCLAT rejected the contention that the said Amount qualified as share application of money raised through private placement.

6.11 It is contended that the Respondent is a private company and the Petitioner herein is not a member of the Respondent Company. Hence, the basic requirements under Section 73(2) have not been fulfilled for any amount received from the Petitioner to be qualified as Deposit. Consequently, the Petitioner could not have invoked the jurisdiction of this Hon'ble Tribunal. Respondent is accepting on affidavit that they have accepted inspite of prohibition under law to accept any deposit from non-members.

7. Rejoinder on Behalf of the Petitioner:

7.1 It is stated that C.P. IB. No. 362 of 2021 was filed before this Tribunal in the capacity of a Financial Creditor by invoking Rule 2(1)(c)(vii) wherein if no shares are allotted within 60 days from the day of receipt of the money, then the said amount is treated as deposit.

7.2 It is further stated that the the Petitioner's claim in the insolvency proceedings before the NCLT and Hon'ble NCLAT was rejected solely on the limited ground that the Petitioner does not qualify as a Financial Creditor under the IBC and does not Adjudicate upon the Petitioner's rights or entitlements in respect of the said amount as a deposit under the Companies Act.

7.3 It is submitted that as per Rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014, the term "deposit" includes receipt of money by way of deposit, loan, or in any other form. The expression "any other form" brings within its ambit all modes of receipt of money including the present transaction.

7.4 It is submitted that under Section 73(1) of the Companies Act, 2013, no company is permitted to invite accept, or renew deposits from the public except in accordance with the provisions of Chapter V of the Act. However, the Respondent accepted money from the Petitioner without adhering to the mandatory requirements of Section 73(2) of the Act.

7.5 It is further submitted that under Section 76A of the Companies Act, 2013, acceptance of deposit in contravention of Section 76 or Section 73, or the rules made thereunder, or failure to repay such deposits or interest within the prescribed or extended period attracts penal consequences. In such cases, refund of the deposit along with the interest is mandatory.

7.6 It is submitted that the alleged adjustment of Rs. 2.6 Crore was never effected and the Respondent's stand of these alleged transactions has been inconsistent throughout the present proceedings. Further, Kamdar ownership is completely different and no documentary evidence has been submitted substantiating any payment to the Petitioner or showcasing any adjustment.

7.7 It is further stated that the Respondent itself issued a legal notice dated 06.12.2021 to Ekatma Development LLP and its partners, demanding Rs. 1,70,76,820/- thereby acknowledging that the amount was not treated as an adjustment or repayment to Petitioner. Furthermore, Petitioner and Ekatma Development LLP are separate legal entities.

7.8 It is submitted that the Respondent has claimed that an amount of Rs. 89,23,180/- was adjusted through the sale of a Summit Unit to Omkar Realtors & Developers Pvt. Ltd. However, the Petitioner was not a party to the said settlement as evidenced by the settlement agreement.

8. The learned parties have been heard, the records have been perused and the rival contentions of both the parties have been noted.

9. Analysis:

9.1 The primary issues for consideration before this Tribunal are as follows:

a. Whether the present petition has been filed within the period of limitation?

b. Whether the Tribunal has territorial jurisdiction to adjudicate upon the present dispute?

c. Whether the amount advanced in the present transaction amounts to a deposit?

A. On the Period of Limitation

9.2 It is an admitted position that Rs. 2.6 Crore was advanced by the Petitioner on various dates from 04.07.2017 to 22.06.2017. The subsisting liability was first denied by the Respondent on 11.08.2021 in the Reply to the Legal Notice dated 02.08.2021 issued by the Petitioner.

9.3 In the absence of any prescribed limitation period under Chapter V of the Companies Act, Article 137 of the Limitation Act, 1963 becomes applicable. It stipulates that in cases where no limitation period is expressly provided, an application must be filed within the period of three years from the date of accrual of right to sue.

9.4 At this juncture, this Tribunal deems it apposite to rely upon **Indian Evangilical Lutheran Church Trust Association v. Sri Bala & Co., 2025 INSC 42**, wherein the Apex Court observed that:

> *"9.9 Thus, generally speaking, the right to sue accrues only when the cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted…"*

9.5 A conjoint reading of Article 137 of the Limitation Act, 1963 and the view of the Hon'ble Supreme Court on the accrual of right to sue indicates that the period of limitation would begin either on the infringement of, or on the threat of infringement of a right by the defendant.

9.6 In this regard, the Respondent's contention that the period of limitation began in 2017 upon last disbursal of the amount in question is misconstrued. There is no evidence on record which indicates any infringement, or even a threat of infringement to the rights of the Petitioner existed at the time of the last disbursal.

9.7 It is only in the Reply dated 11.08.2021 when the subsisting liability was first denied by the Respondent Company. This very denial amounted to an unequivocal threat to infringe the right of the Petitioner, thereby resulting in the accrual of the right to sue.

9.8 Therefore, the limitation period would commence in August 2021 till end of August 2024. Since the present application has been filed on 14.01.2024, it is well within the period of limitation.

B. On the Territorial Jurisdiction of this Tribunal

9.9 The Respondent Company contends that since its Registered Office has been relocated from West Bengal to Maharashtra, this Tribunal lacks the necessary jurisdiction to adjudicate upon the present Application.

9.10 However, it is pertinent to note that, vide notification dated 18.05.2025, the Hon'ble President, in exercise of powers conferred under Section 419(3) of the Companies Act, 2013, constituted this Special Single Bench at Kolkata specifically to hear matters relating to Section 73(4) under Chapter V of the Companies Act, 2013. The said notification categorically excludes the jurisdiction of other Regional Benches and vests exclusive jurisdiction upon this Bench to adjudicate matters arising under Section 73(4) of the Companies Act, 2013.

9.11 Additionally, the Hon'ble Principal Bench vide order dated 25.04.2025 in TA (Co. Act) 43(PB)/2024 had transferred the present petition to be listed before this Bench for the purpose of adjudication.

9.12 In view of the aforesaid notification dated 18.05.2025 read with the order dated 25.0.04.2025, this Tribunal possesses the requisite jurisdiction to adjudicate upon the present dispute.

C. Nature of the Amount Advanced in the Present Transaction

9.13 It is certain that the Petitioner advanced an aggregate amount of Rs. 2.6 crores to the Respondent Company. However, the nature of the amount in question and the alleged adjustment thereof are disputed.

9.14 It is evident through the Memorandum of Understanding, several e-mail correspondences and a copy of ledger placed on record that a sum of Rs. 2.6 Crore was paid by the Appellant towards share allotment. However, the Respondent neither allotted shares against the investment, nor did they make any attempts to refund the amount.

9.15 At this stage, the Tribunal deems it appropriate to rely upon explanation (a) of Rule 2(1)(c)(vii) of the Companies (Acceptance of Deposits) Rules, 2014, which is provided as under:

> *Without prejudice to any other liability or action, if the securities for which application money or advance for such securities was received cannot be allotted within sixty days from the date of receipt of the application money or advance for such securities and such application money or advance is not refunded to the subscribers within fifteen days from the date of completion of sixty days, such amount shall be treated as a deposit under these rules*.

9.16 Furthermore, Section 2(31) of the Companies Act, 2013 provides that:

> *"deposit" includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India;*

9.17 A conjoint reading of Explanation (a) of Rule 2(1)(c)(vii) of the Companies (Acceptance of Deposits) Rules, 2014 and Section 2(31) of the Companies Act, 2013 indicates that when a company does not allot shares within 60 days of receiving share application money, and also fails to refund it within a period of 60 days, such share application money undergoes a statutory transformation and is deemed to be a deposit under the Act.

9.18 In the present case, it is evident that neither shares were allotted within the prescribed period of 60 days, nor was the amount refunded within the additional 15-days window. Consequently, by operation of law, the entire amount of Rs. 2.6 Crore loses its original character and assumes the nature of a deposit.

9.19 The Respondent's contention that the amount cannot be treated as deposit as no prerequisites mandated by Section 73(2) of the Companies Act, 2013, is erroneous in law. Failure to comply with the stipulated statutory conditions results in penalty for the Company and has no bearing upon the nature of deposit.

9.20 The Respondent Company also claims that the entire amount of Rs. 2.6 Crore has been repaid through several financial adjustments namely:

a. Repayment of Rs. 1.7 Crores to *Ekatma Developers Limited* (jointly controlled and managed by the brother and father of the Petitioner), by *Kamdar Agriculture Private Limited*, (a private limited company being the group entity of the Respondent Company).

b. Adjustment of Rs. 89,23,180/- through sale of summit Unit Omkar Realtors & Developers Pvt. Ltd.

9.21 However, the Petitioner and Ekatma Developers Limited are two separate entities and the Petitioner is not a party to the settlement agreement executed between Ekatma Developers Limited and Kamdar Agriculture Private Limited. Further, the Respondent itself issued a legal notice to Omkar Realtors Developers Pvt. Ltd. for recovery of the amount alleged as an adjustment. This conduct clearly undermines the plea of adjustment and suggests that the alleged adjustments are purely speculative.

9.22 The Respondent has relentlessly relied upon the decision of the co-ordinate Bench of NCLT in CP (IB) No. 362/KB/2021 and the Hon'ble NCLAT in Company Appeal (AT) (Ins) 1156 of 2022, to contend that the entire amount of Rs. 2.6 Crore does not amount to deposit. However, it is pertinent to note that the aforesaid proceedings arose exclusively out of Section 7 of the IBC, 2016 wherein the limited issue for consideration was whether the amount of Rs. 2.6 Crore constituted a 'Financial Debt' under Section 5(8) of IBC, 2016. Neither the NCLT, nor the Hon'ble NCLAT have adjudicated upon the issue as to whether the said amount constitutes deposit under Section 2(31) of the Companies Act, 2013. The Respondent has repeatedly used the term 'deposit' in the present Petition while relying upon the orders of the NCLT and the Hon'ble NCLAT, however, those orders refer exclusively to 'Financial Debt' and nowhere mentions the term 'deposit'.

9.23 The Respondent is unnecessarily harping upon the aforesaid decisions despite the fact that they have attained finality and are wholly inapplicable to the present proceedings. This persistent reliance is a deliberate attempt to conflate two distinct statutory regimes, thereby misleading this Tribunal into believing that the findings rendered in insolvency proceedings under Section 7 of IBC, 2016 govern the issues arising under the present proceedings under Section 73(4) of the Companies Act, 2013.

9.24 Thus, the advance of Rs. 2.6 Crores is a deposit under Section 2(31) of the Companies Act, 2013 read with Explanation (a) of Rule 2(1)(c)(vii) of the Companies (Acceptance of Deposits) Rules, 2014.

9.25 Hence, the Respondent Company is hereby directed to refund Rs. 2,60,00,000/- (Rupees Two Crore, Sixty Lakhs Only) along with the penal interest at the rate of 18% in accordance with Rule 17 of the Companies (Acceptance of Deposits) Rules, 2014 till the last date of payment within a period of 30 days from the receipt of this order.

9.26 In the light of continued non-compliance with statutory obligations and hardships faced by the Petitioner, a fine of Rs. 1,00,00,000 (One Crore Only) is imposed upon the Respondent Company. Further, a fine of Rs. 25,00,000/- (Rupees Twenty Five Lakhs) is imposed severally on Mr. Shirish Devendra Kejriwal and Anshu Devendra Kejriwal, being the Directors of the Company, all fines payable to the Ministry of Corporate Affairs, Government of India.

9.27 In view of the foregoing discussions, the **C.P. No. 13/KB/2024** is **allowed** and **disposed of**.

9.28 A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Cheekati Radha Krishna
Member (Judicial)

Order signed on 31st day of July 2026.

Anubhuti S. (LRA)