

**National Company Law Tribunal  
Guwahati Bench**

C.P.No.15/14(1)/GB/2018

*Under Section 14 (1) of the Companies Act, 2013*

In the matter of:

Suvida Consultants Ltd.

..... Petitioners

Coram:

Hon'ble Mr Justice P.K. Saikia, Member (J)

.....

**ORDER**

**Date of Order: 30<sup>th</sup> July, 2018**

This Bench, on 29.06.2018, has passed the following order:

*"Mr. G. J. Talukdar, learned counsel appears on behalf of the petitioner. Mr. Talukdar submits that this Bench vide its Orders dated 28<sup>th</sup> May, 2018 and 14<sup>th</sup> June, 2018, the petitioner was granted accommodation to enlighten this Bench, about the phrase "not less than three months from the date of passing of special resolution" as stated in Rule 68 of NCLT Rules, 2016. He also submits the guidelines for General Meeting to contend that "not less than three months" means "within the period of three months". However, he also submits that the leading counsel engaged in the matter, Mr. Bikash Sarma, could not appear before this Bench today due to some unavoidable reason. Therefore, he prays for adjournment of the matter for some time. His request is considered.*

2. *In view of above, list the matter on 30<sup>th</sup> July, 2018."*

2. In that connection, Mr B. Sharma, learned Advocate for the petitioner submits that the phrase "not less than three months" means "not within three months". In support of such contention, he has drawn my attention to the decision of NCLT,

Chandigarh Bench, Chandigarh in C.P.No.141Chd/Hry/2017 to contend that not less than three months means beyond three months. He has further drawn my attention to paras 4 & 8 of the said decision. For ready reference, said paras are reproduced below:

*“4. The petitioner-company resolved in the Extraordinary General Meeting (EOGM) held on 14.12.2016 to convert the petitioner-company from a public limited company to a private limited company and for adoption of new set of Memorandum and Articles of Association pursuant to the conversion. Copy of the resolution is at Annexure 5 (a) and copy of minutes of EOGM dated 14.12.2016 is Annexure 5(b). Copy of this resolution was also sent to the Registrar of Companies, NCT of Delhi and Haryana in Form MGT-14 which is at Annexure 5 (c).*

*“8. The list of creditors of the company which is required to be drawn up to the latest practicable date preceding the date of filing the petition by not more than two months as required under sub-rule (3) of Rule 68 of the Rules, is at Annexure 8 (b). The petition was filed on 28.03.2017 and, therefore, this list has been filed in accordance with the requirement of the Rules. The list contains the names and addresses of each of the creditor and amount due to them in respect of the debt claim or the liabilities. A reference is also made to affidavit dated 31.07.2017 sworn in by Mr Sachin Garg who has stated that the company has not issued any debentures nor there are any deposit holders.”*

3. It is found that in the aforesaid case, the Extra Ordinary General Meeting (in short, EOGM) was held on 14.12.2016 to convert the petitioner company from a public limited company to a private limited company and for adoption of new set of Memorandum of Association (in short, MOA) and Articles of Association (in short, AOA) pursuant to such conversion.

4. In the aforesaid proceeding, the company petition was filed on 28.03.2017 which indicates that the company petition was filed beyond the period of three months. In view of the such revelations, I am of the opinion that not less than three months means not within three months from the date of adoption of the EOGM Resolution for conversion from public limited company to private limited company.

5. Coming to the present application, it is found that the EOGM for adoption of the resolution for conversion of petitioner company from public limited company to private limited company and consequent alteration of the MOA & AOA was convened on 05.01.2018 whereas the petition was filed before this Bench on 26.04.2018.