



present proceeding.

3. This Bench, on receipt of the petition rendered the following order on 30.07.2018:

*"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 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.

6. That being so, I have no difficulty in concluding that this petition was filed in accordance with the prescription of rule 68 (1) of the National Company Law Tribunal Rules, 2016 (in short, Rules of 2016) as far as time limit is concerned. Accordingly, this petition is admitted for hearing.

7. I have perused the application and found that the application has been filed in accordance with the provisions of Rule 68 (1) (2) (3) & (4) of the Rules of 2016. Therefore, the petitioner company is directed:

- (1) to advertise the petition in Form NCLT- 3A not less than 14 days before the date fixed for hearing at least once in vernacular newspaper 'Protideen' and once in English newspaper 'Sentinel' circulating in the District where the registered office of the company is situated.
- (2) The advertisement shall state:
  - (a) the date on which the application, petition or reference was presented.
  - (b) the name and address of the applicant, petitioner and his authorised representative, if any;
  - (c) the nature and substance of application, petition or reference;
  - (d) the date fixed for hearing;
  - (e) a statement to the effect that any person whose interest is likely to be affected by the proposed petition or who intends either to oppose or support the petition or reference at the hearing shall send a notice of his intention to the concerned Bench and the petitioner or his authorised representative, if any, indicating the nature of interest and grounds of opposing so as to reach him not later than two days previous to the day fixed for hearing.
- (3) The advertisement is also be placed on the website of the company, if any.
- (4) An affidavit shall be filed before this Bench not less than 3 days before the date fixed for hearing stating whether the petition has been advertised in accordance with Rule 35 of the Rules of 2016 and whether the notices, if any, have been duly served upon the persons required to be served, provided that the affidavit shall be accompanied with such proof of advertisement or of the service, as the case may be.
- (5) The company shall serve by registered post with A/D individual notice in Form NCLT-3B to the effect set out in sub-rule (a) of Rule 35 (b) on each debenture-holder and creditor of the company and also serve by

*registered post with A/D, a notice together with the copy of the petition to the Central Government and Registrar of Companies requiring them to respond to the prayer in the petition.*

8. *List this matter on 10.09.2018."*

4. As directed in para 7 (4) of the order dated 30.07.2018, an affidavit has been filed stating that the petition has been advertised in accordance with Rule 35 of the National Company Law Tribunal Rules, 2016 (in short, Rules of 2016) and in proof of such fact, the copies of newspapers where advertisement has been published have been annexed with the affidavit. Further, copies of postal receipt in respect of letters dispatched to the ROC, Regional Director and the Reserve Bank of India have also been annexed.

5. It may be stated here that Rule 68 (3) & (4) of the Rules of 2016 runs as follows:

*"(3) There shall be attached to the application, a list of creditors and debenture holders, drawn up to the latest practicable date preceding the date of filing of petition by not more than two months, setting forth the following details, namely: -*

- (a) the names and address of every creditor and debenture holder of the company;*
- (b) the nature and respective amounts due to them in respect of debts, claims or liabilities;*
- (c) in respect of any contingent or unascertained debt or any such claim admissible to proof in winding up of the company, the value, so far as can be justly estimated of such debt or claim:*

*"Provided that the petitioner company shall file an affidavit, signed by the company secretary of the company, if any, and not less than two directors of the company, one of whom shall be a managing director, where there is one, to the effect that they have made a full enquiry into the affairs of the company and, having done so, have formed an opinion that the list of creditors is correct, and that the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts of, or claims against, the company to their knowledge.*

*"(4) A duly authenticated copy of the list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of the sum of rupees ten per page to the company."*

6. However, the petitioner, vide page 51 of its petition, has stated that it has only one creditor, namely, Nayan Agencies Limited, 106, Girish Ghosh Road,

Belurmath, Howrah, which is duly certified by two Directors of the company. Said Creditor has consented that he has no objection if the petitioner company is converted to a private limited company vide statement made at page 52 of the petition.

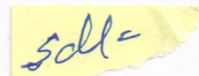
7. Further, as required under proviso to Rule 68 (3), it has also been submitted by the two Directors of the Company, they being Dinsayal Jajodia and Saurabh Agarwal, that they have made a full enquiry into the affairs of the company and having done so, they have formed an opinion that the list in respect of the creditors is correct.

7. I have found that the petition has been properly filed, it has been duly advertised well before the date fixed for hearing. Further, notice has also been sent to all the stakeholders by Registered Post also as is evident from the A/D submitted along with the affidavit.

8. But in spite of advertisement of the petition in accordance with the requirement of law notifying the petition under consideration to all concerned, no response has been received from those authorities and as such, I am of the opinion that they have no response to make against the prayer made in the petition under consideration.

9. In view of the above, the application is allowed and the special resolution of the petitioner company dated 13.11.2017 resolving to alter the Articles of Association of the company to convert it from Public Company into a Private Company is approved.

10. Copy of this order be filed with the ROC together with a printed Articles of Association within a period of fifteen days of receipt of certified copy of this order.



Member (Judicial)  
National Company Law Tribunal,  
Guwahati Bench,  
Guwahati.

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