

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA**

Company Petition No. 31/KB/2018

In the matter of Section 14 (1) of the Companies Act, 2013 read with Rules 68 of the National Company Law Tribunal Rules, 2016.

And

In the matter of

S.N.S. (MINERALS) LIMITED, a company having its registered office at 5C, Alipore Park Road, Kolkata - 700 027.Petitioner

Judgment delivered on: 14.09.2018

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Shri Jinan K.R., Hon'ble Member (Judicial)

Shri. Babu Lal Patni, Pr. C.S. } - For the Petitioner

ORDER

This Company Petition is filed under sub-section (1) of Section 14 of the Companies Act, 2013 (Act, 2013) seeking approval of this Tribunal to the conversion by altering the Articles of Association, as sought to be effected by a Special Resolution passed at the Extra-Ordinary General Meeting (EOGM) held on 20.02.2017, for the change of status of the Company from "Public Limited Company" to "Private Limited Company".

2. Rule 68 of the NCLT Rules, 2016 stipulates filing of a petition under sub-section (1) of section 14 of the Companies Act, 2013 for the conversion of a public company into a private company, in the prescribed format and the manner accompanied by such documents / information and requisite filing as mentioned in the said Rule. The instant Company Petition has been filed in terms of the said Rule.

3. The brief facts that emerged from the Petition are that the company was originally incorporated in the Union Territory of Delhi under the provisions of the Companies Act, 1956 on 15.03.1969 under the name and style of "S. N. Sunderson

(MINERALS) Private Limited.” Thereafter, the Company became a public company with effect from 07.04.1976 under the provisions of Section 43A of the Companies Act, 1956. Later on, the name of the Company was changed to S.N.S (MINERALS) LIMITED with effect from 05.03.2001. By an order dated 29.11.2016 passed by the Regional Director, Northern Region, New Delhi, the Registered Office of the Company was shifted to the State of West Bengal. At present the Company is registered with the Registrar of Companies, West Bengal as a Public Company Limited by shares under the name of “S.N.S. (MINERALS) LIMITED” having its registered office at Kolkata in the State of West Bengal. The Company is an unlisted Public Limited Company and is not registered under Section 8 of the Companies Act, 2013. The authorized share capital of the Company is Rs 5,00,00,000/- (Rupees Five Crores only) divided into 50,00,000 Equity Shares of Rs. 10 each. The present issued, subscribed and paid-up capital of the Company is Rs. 64,00,000/- (Rupees Sixty Four Lakhs only) divided into 6,40,000 Equity shares of Rs. 10 each. The Board of Directors of the Company comprises 04 Directors and there are 23 shareholders holding 6,40,000 Equity Shares of Rs. 10/- each. The Board of

Directors of the Petitioner Company has passed a resolution at the Board Meeting held on 16.01.2017, approving the proposed alteration of the Articles of Association of the company and decided to call an Extra Ordinary General Meeting (EOGM) of the members of the company on 20.02.2017 to obtain consent on this line. After due notice to the members, EOGM has been called and held on 20.02.2017. The Special Resolution has been passed at the said EOGM pursuant to Section 14 of the Companies Act, 2013 read with the Companies (Incorporation) Rules, 2014, for conversion of the status of the company from Public Limited to Private Limited and consequently, the name of the company be changed from "S.N.S. (Minerals) Limited" to "S.N.S. (Minerals) Private Limited" by inserting the word "Private" before the word 'Limited'. A new set of Articles of Association, as applicable to the Private Limited Company, has also been approved and adopted by the members of the Company. The reasons for conversion into Private Limited Company, as claimed in the Petition, is that the company has only 23 members and all the shares are held by the Directors and Associates and thus, the Board of Directors has considered desirable to convert the status of the company from Public

Limited to Private Limited which will reduce the burden of the legal compliance as prescribed under the Companies Act, 2013. It is also stated that out of 23 members in the Company, 06 members representing 98.68% shareholdings attended the Extra Ordinary General Meeting held on 20.02.2017 and unanimously voted in favour of passing the Special Resolutions for conversion of the Company from Public Limited to Private Limited and other consequential changes in the Articles of Association. The Petitioner Company has filed an updated list of 131 creditors drawn up to 31.10.2017 having an aggregated liability of Rs. 2,01,59,101.72, supported by an affidavit dated 30.11.2017 affirmed by the Managing Director and Director of the Petitioner Company.

4. As per directions issued by this Tribunal on 16.02.2018, the company has filed an affidavit dated 07.03.2018, stating that the advertisement has been published in English in "Financial Express"(English Newspaper) and in Bengali "Ekdin"(Bengal Newspaper) on 23.02.2018 and the notice has been served upon the Regional Director, Eastern Region, as well as upon the Registrar of Companies, West Bengal, on 27.02.2018. It is further stated that the individual notices have also been issued

to all the creditors as on 31.10.2017 by registered post with acknowledgment due on 02.03.2018.

5. The Registrar of Companies, West Bengal (ROC, WB) has submitted his report dated 12.04.2018, with his observations which are as under:

- i. The company is an active and unlisted public company. Its authorized share capital is Rs. 5,00,00,000/- and paid-up share capital is Rs. 64,00,000/-. It has 4 (Four) Directors, namely, Shri Sanjiv Beri, Shri Himanshu Kothari, Shri Arup Kumar Choudhry and Shri Satrugan Prasad Tiwai.
- ii. Financial Statement and Annual Return for the financial year ended on 31.03.2017 have been filed by the company and the company has not defaulted in filing the annual statutory returns.
- iii. The proposed conversion and the altered Articles of Association were approved by the members of the Company by a special resolution passed at the Extra Ordinary General Meeting held on 20.02.2017 and the relevant e-form of MGT-14 has been filed .

iv. There is no investor's complaint against the Company and also there is no prosecution proceeding launched against the company. No Technical Scrutiny / Inspection / Investigation process is initiated against the Company for the last three years.

v. The company has reported net profit of Rs. 85,86,497 and Rs. 2,87,11,460 for the financial year 2015-16 and 2016-17 respectively.

The ROC, WB in his report, has not raised any objection to the proposed conversion of the status of the Petitioner Company from Public Limited to Private Limited Company.

6. By a further affidavit dated 25.06.2018, the Petitioner Company has stated that the individual notices to all the creditors as on 31.10.2017 have been issued by registered post of acknowledgment due on 02.03.2018 and that no objection have been received from any of the creditors or the related parties.

7. As per directions issued by this Tribunal on 31.08.2018, the Petitioner has given an undertaking by filing an affidavit, affirmed by the Managing Director and Director of the Company

on 04.09.2018, to the effect that the interest of all the creditors whether secured or unsecured will be taken care of and interest of creditors will not be adversely affected after conversion of the Company into Private Company. It is further stated therein that no objection has been received from any of the creditors or related parties.

8. The matter was finally heard on 11.09.2018 when Shri Babu Lal Patni, Ld. Pr. C.S., appearing for and on behalf of the Petitioner Company has submitted that the required mandate under Rule 68 of the National Company Law Tribunal Rules, 2016 has been complied with; the company has 131 creditors as on 31.10.2017 and in spite of notice issued to all of them, none has filed any objection to the proposal of the company; the Board of Directors has approved the proposed conversion of the status of the company all the 06 equity shareholders representing 98.68% shareholdings attended the EOGM held on 20.02.2017 and unanimously approved the proposed conversion of the status of the company and none of the shareholders, has voted against the resolution.

9. Section 14 of the Companies Act, 2013 prescribes that a Company either a Public Limited Company or a Private Limited

Company may, by a Special Resolution, after its articles including alternations having the effect of conversion, if such conditions contained in its memorandum as also subject to the provisions of the Act. Such alteration, for the purpose of the said section, has the effect of conversion of a public company into a private company, Second proviso to sub section (1) of section 14 provided that any alteration having the effect of conversion of a Public Company into a Private Company shall not take effect except with the approval of the Tribunal which shall make such order as it may deem fit Rule 68 of the NCLT Rules, 2016 has laid down a procedure for the filing of a petition before the Tribunal for approval to conversion of a status of the Company from Public to Private and vice versa. A company desirous of converting its status is, therefore, required to comply with and follow the requirements as framed under Rule 68 of the NCLT Rules, 2016. Second proviso to Sub-Section (1) and Sub-Section (2) came into force w.e.f. 01.06.2016.

10. Heard Ld. Pr.C.S. appearing for the Petitioner Company and perused the case record and also the report of RoC, WB. It transpires from the materials on records that the proposal for conversion of the status of the company was passed by the

Board of Directors of the company at the meeting held on 16.01.2017 and thereafter, the Special Resolution to that effect was passed at the EOGM held on 20.02.2017, with the unanimous voting of 06 Equity Shareholders representing the 98.68% shareholdings as confirmed by the petitioner in its petition. The Special Resolution passed at the EOGM held on 20.02.2017 has been filed by the company on 09.03.2017 through e-form MGT-14, which was approved by the RoC, WB. The company is stated to be an unlisted public company and is not registered under section 8 of the Act, 2013. It appears from the list of creditors drawn up to 31.10.2017 that the company has 131 creditors having an aggregated liability of Rs. 2,01,59,101.72 and none has filed any objection or representation to the proposed change of status of the company. It also appears from the copy of the audited accounts and financial statements for the year ended on 31.03.2017 that the company earned a total revenue and profit before tax aggregated to Rs. 30,79,19,984 and Rs. 3,14,29,491 respectively as compared to total revenue of Rs. 24,42,92,638 and profit before tax of Rs. 1,25,55,403 during the previous year. It further appears that the profit after tax stood at Rs. 2,87,11,460 as

compared to profit after tax of Rs. 85,86,497 during the previous year. The company is stated to have engaged in the business of mining and sale of minerals and mineral products.

11. As regards compliance of the required Rule 68 of NCLT Rules, 2016, it may be noted that the company has published notice of the petition both in English and Bengali newspapers on 23.02.2018, indicating the intention of conversion from Public to Private status; the company has not received any objection / representation from any person in response to the public advertisement, as confirmed by the petitioner in its affidavit dated 25.06.2018. The Petitioner by its affidavit dated 25.06.2018, has confirmed that all the seven equity shareholders representing 98.68% shareholdings had attended the meeting and voted in favour of passing the Special Resolution pertaining to the change of status of the company from Public to Private and they also approved the new set of Articles of Association, in place of the existing Articles of Association of the Company. The Registrar of Companies, West Bengal has not raised any objection to the instant petition for change of status of the company from public to private.

12. Having regard to the facts and circumstances of the above case and since all the requisite statutory compliance has been fulfilled, the conversion of the status of the company from "Public Limited" to "Private Limited" as per Special Resolution passed at the EOGM held on 20.02.2017 is hereby approved in the interest of the company and such change of status of the company shall not cause any prejudice either to the members or the creditors of the petitioner company. The Petitioner shall, however, remain bound to comply with the statutory requirements in accordance with law. **Company Petition No. 31/KB/2018** is accordingly disposed of.

13. The Petitioner is hereby directed to file with the Registrar of Companies, West Bengal, a certified copy of the order of this Tribunal in the prescribed e-form together with a printed copy of the altered Articles of Association accompanied by requisite fee, within a period of 15 days in terms of the provision of sub-section (2) of Section 14 of the Companies Act, 2013 read with Rule 161 of NCLT Rules, 2016.

14. No order as to costs.

15. Urgent certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

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**(Jinan K.R.)
Member (Judicial)**

Signed this 14 day of September, 2018.

r.g.steno