

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH,
KOLKATA

CP No.98 / KB / 2018

In the matter of the Section 14(1) of the Companies Act, 2013

And

In the matter of

Enlightened Projects Limited, a Company incorporated under the
Companies Act, 1956 and having its registered office at 32, Ezra Street,
910,Todi Centre, South Block, Kolkata -700001.

..... Petitioner

Coram : Shri Madan B Gosavi, Member (Judicial)

Date of Pronouncement of the Order :

For the Petitioner :

Shri Sunil Kumar Maheshwary, Pr. C.S.

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Per Shri Madan B Gosavi, Member (Judicial)


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1. The instant Petition is filed under sub Section (1) of Section 14 of the Companies Act, 2013 (Act, 2013) read with Rule 68 of the National Company Law Tribunal Rules, 2016, seeking approval of this Tribunal to the conversion of the Company into Private Limited Company, as sought to be effected by a Special Resolution passed at the Extra Ordinary General Meeting (EOGM) held on 28.04.2017.

2. Briefly the facts that emerged from the petition are that the Company was incorporated as unlisted Public Company limited by shares on 23.03.2005 under the provisions of the Companies Act, 1956 as M/s. Enlightened Projects Limited and is engaged in real estate business and construction business. The authorized share capital of the Company is Rs.47,00,000 /- (Rupees Forty Seven Lacs only) divided into 4,70,000 (Four Lakhs seventy thousand only) Equity Shares of Rs.10/- each and the issued subscribed and paid up equity share capital of the company is Rs.46,11,250 /- (Rupees Forty Six Lakhs eleven thousand two hundred and fifty only) divided into 4,61,125 (Four Lakhs Sixty one thousand one hundred twenty five only) equity shares of Rs.10/- each.

3. The Board of Directors of the Company comprises of 3 (three) Directors and the Company has 09 (Nine) shareholders.

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4. The Board of Directors of the Petitioner Company has passed a resolution at the meeting of the Board on 03.04.2017 approving the proposed alteration of the Articles of Association of the Company and decided to call an EOGM of the Members of the Company on 28.04.2017 to obtain consent on this line. After due notice to the members, EOGM has been called and held on 28.04.2017. A Special Resolution has been passed at the said EOGM pursuant to the Section 13 & 14 of the Companies Act, 2013 and other applicable provisions and rules made thereunder, for conversion of the Company into a "Private Limited Company" and the name of the Company be changed from "M/s. Enlightened Projects Limited" to "M/s. Enlightened Projects Private Limited" by addition of 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 by the Members and adopted the new set of Articles of Association of the Company. The reason for conversion into Private Limited Company as mentioned in the petition, is that the petitioner company is closely held company with a very small number of shareholders with limited business activities. The statutory compliances under the Companies Act, 2013 required by a public limited company is more onerous than in the case of a private limited Company since the private limited companies were granted a number of exemptions

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and concessions, from time to time, under the various provisions of the said Act and since no purpose would be served by retaining the public limited character of the company. The conversion of the Company into a private limited company would help the company to eliminate and streamline its corporate compliances and increase the efficiency in functioning. It is further stated that the proposed conversion into Private Limited Company would not prejudice the rights or interest of any creditors and shall not affect any debts, liabilities, obligations or contracts incurred or entered into, by or on behalf of the petitioner company, if any. It is further stated that the Company is at present an Unlisted Public Company limited by shares and is not registered under Section 8 of the Companies Act, 2013. The Company has duly filed its Special Resolution with the Registrar of Companies, West Bengal on 09.08.2017 in Form No.MGT-14 vide SRN G50033018, which has been approved by the said Registrar.

5. As per direction of this Bench passed on 28.02.2018, the Company has filed its Affidavit dated 06.04.2018, stating that the advertisement as required under Rule 68 read with Rule 35 of NCLT Rules, 2016, has been published once in English in "Financial Express" on 18.03.2018 and once in Bengali "Aajkal" on 18.03.2018 and a copy of the petition has also been served upon the Registrar of Companies, West Bengal and Regional Director,

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Eastern Region, on 19.03.2018. By a further Affidavit dated 04.04.2018, it has been stated that the Company has not received any opposition to the petition from any person or concern. Rejoinder to the ROC Report dated 01.02.2018 by way of an Affidavit dated 04.04.2018 was also filed. The Company has also filed "No Objection" as received from its two Corporate Creditors by way of an Affidavit dated 20.04.2018. A supplement affidavit was also filed dated 05.05.2018 stating the compliance of section 68.

6. As per direction of this Bench passed on 09.08.2018, the Company has filed the resolution under section 113 of the Companies Act, 2013 for authorization to Corporate Shareholders, Board Resolution of Corporate Creditors and Auditors Certificate certifying List of Creditors.

7. It is submitted that the required mandate under Rule 68 of the National Company Law Tribunal Rules, 2016 has been complied with; and the Company has received "No Objection" from its Two Corporate Creditors; the Company has not received any objection either from any member or creditor of the Company, the Board of Directors and all the shareholders of the Company have unanimously approved the proposed conversion of Company to Private Limited Company; the company is not registered under Section 8 of the Companies Act, 2013; and hence, the prayer for approval of



the proposed conversion of the said Company from Public Limited Company to Private Limited Company may be accorded, as sought to be effected by the Special Resolution passed on at the EOGM held on 28.04.2017.

8. The Section 14 of the Companies Act, 2013 which came into force w.e.f. 01.06.2016 prescribes that a Company either a Public Limited Company or a Private Limited Company may, by a Special Resolution, alter its articles including alterations having the effect of conversion, if such conditions contained in its memorandum and 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 provides 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.



9. The Registrar of Companies, West Bengal, has filed his report dated 01.02.2018 stating, inter alia, that his office has not received any objection from any member or creditor of the company; there is no investor complaint against the company not any prosecution/ compounding/ adjudication proceedings/ pending against the company and its directors/ KMPS; no technical scrutiny/ inspection/ investigation has been initiated against the Company; Financial statements and Annual Return for the year ended on 31.03.2017 were filed by the Company and that e-form MGT-14 was also filed for the proposed conversion and the altered Articles of Association of the Company.

10. Perused the case record and considered the submissions of Ld. Pr.C.S. appearing for the Petitioner.

11. It transpired from records that the Special Resolution for conversion was passed by the Board of Directors of the Company on 03.04.2017 and thereafter, at the EOGM held on 28.04.2017, Eight (08) Members of the Company had attended out of nine(09) and unanimously approved the conversion resolution. The Special Resolution passed at the EOGM held on 28.04.2017 has been filed by the Company on 09.08.2017 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.

12. As regards compliance of the required Rules 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 18.03.2018, indicating the intention of conversion from Public to Private status; the Company does not have any Secured creditors as on 31.08.2017 but have two unsecured creditors as on 31.08.2017 and an auditors certificate with respect to Secured creditors and unsecured creditors as on 31.08.2017 has been filed alongwith the affidavit affirmed by two Directors of the Company; the notice has been issued to the Regional Director, Eastern Region as also to the Registrar of Companies, West Bengal; the Company has not received any objection either from its members, Creditors or from any person with regard to the proposed status of the company; and that eight members (out of total nine) of the Company attended the EOGM on 28.04.2017 and approved the Special Resolution passed at the said Meeting.


13. Having regard to the facts and circumstances of the above case and since all the requisite statutory compliances having been fulfilled, the conversion of the status of the Company from "Public Limited" to "Private



Limited" as per Special Resolution passed at the EOGM on 28.04.2017 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.

14. The C.P.No. 98/KB/2018 is accordingly allowed and disposed of.

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


26/9/2018
(Madan B. Gosavi)
Member (Judicial)

Signed on this 26th day of Sept- 2018.

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