

In the National Company Law Tribunal

New Delhi Bench

C.P No-80/14/ND/18

In the Matter of

Rockland Hospitals Limited

Order Delivered on – 28.08.2018

CORAM:

SMT. INA MALHOTRA, MEMBER (JUDICIAL)

SMT. DEEPA KRISHAN, MEMBER (TECHNICAL)

For the Petitioner: Mr. Mohsin Kahna

For the Respondent: Mr. A.K. Thakur & Mr. Rishi Raj, Advocates

ORDER

DEEPA KRISHAN, MEMBER (T)

1. M/s Rockland Hospitals Limited (hereinafter called the Applicant) having CIN No. U85110DL2004PLC128077 and registered office at B-33-34, Qutub Institutional Area, New Delhi-110016, has filed the instant petition on 19.12.2017 under section 14(1) of the Companies Act 2013. In this petition the Applicant prays for conversion of its status from a Public Limited Company to a Private Limited Company.

2. The Applicant Company was incorporated on 04.08.2004 as a Public Limited Company and is the wholly owned subsidiary Company of VPS Health Care Private Limited, which is having its registered office at Royal Towers, Door No.-41/113 E, Marottichuvadu Road, Edapally, Kochi Ernakulam Kerala 682 024. It is stated in the petition that the holding company is a closely held private limited company with no involvement of public in the shareholding or management thereof and it has no future plans of inviting subscription from the public at large for shares, equity or preference by way of any public offerings. The management of the Company is of the view that it can effectively carry out its business as a private limited entity without impacting or affecting debts, liabilities, obligations or contracts incurred or entered into, by or on behalf of the Company. Its funds requirements are primarily met by its shareholders and it does not intend to raise any funds from the public. Under such circumstances, with a view to do away with the onerous compliances required from a public limited company, a decision was taken by the Board of Directors for converting its status to a Private Company.
3. The petitioner company has a total of 8 equity shareholders. While the holding company M/s VPS Health Care Private Limited is holding almost 100 per cent of the issued share capital, 7 other shareholders who

are the nominees of M/s VPS Health Care Private Limited are holding one share each on behalf of the holding company.

4. It is stated in the petition that the Board of Directors of the Petitioner Company vide resolution passed at their meeting held on August 14, 2017 has resolved to convert the Company from public limited to private limited company, subject to the approval of the members at a General Meeting of the Company and also subject to the approval of this Tribunal. Certified true copy of the resolution passed by the Board of Directors is annexed along with the petition and marked as Annexure A-4. This Annexure is the certified true copy of item number 3 of the resolution, namely, “to discuss and approve the conversion of the company into private limited company”, passed by the Board of Directors of the Petitioner Company at their meeting held on Monday 14 August 2017 at 11.00 am at Nellikkot Chalappuram P.O. Kozhikode-673002, Kerala.
5. Annexure A5 filed along with the petition is the notice dated 14.08.2017 stating that the Extra ordinary General Meeting of the members of Rockland Hospitals Limited shall be held on Monday 14 August 2017 at 12.00 noon at Nellikkot Chalappuram P.O. Kozhikode-673002, Kerala to transact the following special business, namely,
 - i. Alteration of object clause contained in the Memorandum of Association.

- ii. Conversion of Public Company into Private Limited Company
 - iii. Alteration of the name clause contained in the Memorandum of Association
 - iv. Adoption of new set of Articles of Association of the company pursuant to the Company Act 2013 and conversion to a Private Limited Company.
6. Letters dated 14.08.2017 from six of the shareholders holding 1 equity share each on behalf of the holding company, giving their consent for holding the EGM on Monday 14 August 2017 at 12:00 pm at Kerala at a shorter notice, have been filed along with the petition. It is also seen that the Company Secretary of the Applicant Company has by email sent at 10:01 am on 14.08.2017 issued a notice to Shri Hari Mohan another nominee shareholder on behalf of the holding company. To this email, the said shareholder has given his consent for holding the EGM at a shorter notice vide email sent at 12:10 pm at the same date.
7. A-6 is the minutes of the proceedings of EGM held on 14.08.2017 which commenced at 12:00 noon and concluded at 1.00 pm at Nellikot Chalappuram P.O. Kozhikode-673002, Kerala where the following were present.

Dr. Shamsheer Vayalil Parambath	Chairman & Managing Director
Mr. Hafiz Ali	Managing Director

Mr. A J Pai	Independent Director and Chairman of Audit Committee, Nomination & Remuneration Committee
Ms. Kalpana Merchant	Independent Director

It is stated that Ms. Priyanka Ahluwalia Company Secretary was in attendance.

The minutes were signed by the Chairman at New Delhi on 25.08.2017.

8. It is also stated that e-Form MGT-14 on 25.08.2017 vide SRN G51297448 intimating about passing of Special Resolution for conversion of Public Company to Private Company has been filed with ROC. Certified true copy of e-Form MGT-14 along with the copy of challan thereof are annexed hereto and marked as Annexure A-7 (colly).

9. The Members of the Applicant Company vide Special Resolution duly passed at the Extra-ordinary General Meeting (EGM) held on August 14, 2017 have accorded their unanimous consent for conversion of Company from Public Limited Company to Private Limited Company, as per details given below: -

Total number of Members in the Company	Number of Members present in the Meeting-5		Number of Members voted in favour-5		Number of Members voted in Against	
	Number of Shares	Percentage (%)	Number of Shares	Percentage (%)	Number	Percentage (%)
7 (Seven)*	3,48,72,184**	100	3,48,72,184**	100	Nil	Nil

{ * As on the date of EGM i.e. 14th August, 2017 }

{** Total Number of Shares: 34,87,21,86_ Six nominee shareholders holding 1 share each on behalf of VPS Health Care Private Limited (100% shareholder)}

Certified true copy of the minutes of the said Meeting have been annexed along with the petition and marked as Annexure A-6.

10. In the said meeting, necessary steps for altering the Company's Articles of Association and Memorandum of Association were also initiated. Subsequently, the Company in its Extra Ordinary General Meeting held on 14.08.2017, unanimously resolved to convert the Company into a Private Limited Company and the name of the Company was proposed to be changed from "Rockland Hospitals Limited" to "Rockland Hospitals Private Limited" subject to approval of this Tribunal.

11. The petition is accompanied with an affidavit of the Company's Director, Mr. Varinder Gulati deposing that all due compliances have been carried out. Publication has been effected in "The Indian Express" in English and "Jansatta" in Hindi both dated 16.01.2018, which have been filed on record by way of additional affidavit dated 01.02.2018. Thus it appears that the advertisement has been affected after filing of petition on 19.12.2017.

12. The petition is annexed with the audited Financial Statements for the year ending 31.03.2016, a certified copy of the Resolution passed in the EGM dated

14.08.2017, compliance of filing MGT-14 with the office of the RoC. It is also stated that the company has 1 Secured and 794 Unsecured Creditors. It is stated in the additional affidavit filed on 1.02.2018 that individual notices of the application for conversion of the applicant company from public limited company to private limited company was given in Form NCLT No. - 3B which was issued to the Creditors on 16.01.2018. Copies of letters (not affidavits) conveying their no objections received from 35 Creditors including Secured Creditor have been filed. These 35 Creditors are stated to constitute 87% of the total debt. It is also submitted that the creditors who are holding only 0.05% of the total debt of the applicant company plus contingent debt of 1.39(total 1.44%) have raised objection to the present application.

13. It is mentioned in the petition that the latest audited financial statement of the company is of 31.03.2016 because the applicant company has taken extension for conducting the AGM for 2016-17.

14. Several parties have filed applications before us, wherein they have objected to the proposed conversion of the company into Private Limited Company. These are briefly as follows:

14.1 Prabhat Kumar Shrivastav and Rishi Kumar Shrivastava on 29.01.2018 have filed objections along with affidavit. It is stated that they were the original promoters of the applicant company original Promoter /

erstwhile Director of the applicant Company. It is stated that the ownership of the company^{is} disputed and the matter is *sub judice* and hence the conversion is patently irregular in the eyes of Law. It is stated that a complaint has already been made to the ROC, MCA, Regional Director and Board of Directors. It is also stated that Rishi Kumar Shrivastav is an unsecured creditor of the applicant company but his name has not been mentioned in the list of unsecured creditors.

14.1.2 It is further stated that according to Rule 68(7) of the National Company Law Tribunal Rules, 2016 the conversion of a company shall be disallowed if such conversion is not in the interest of the company. It is submitted by the Objectors that the conversion of RHL from public limited company into a private limited company opposes the interest of the company as there is a pending dispute regarding the ownership of the company.

14.1.3 The erstwhile promoters have stated in their objections that the Financial Statements for the FY 2015-16 on the basis of which the petition is filed before the Tribunal is forged and fabricated. The purportedly appointed Statutory Auditor of VPS Lead RHL, M/s Dayanand Yadav & Co., Chartered Accountants (FRN:- 023389N) had reviewed and signed the Financial Statement for the Financial Year 2015-16 within a period of less than 24 hours after the resignation of earlier auditors M/s Deloitte Haskins

& Sells and their appointment on the same date. It is also stated that several complaints have been made against M/s Dayanand Yadav & Co. in the Institute of Chartered Accountants of India. (Copy of the said complaint is annexed as Annexure A-11). Further, ICAI vide its letter dated 18th December 2017 informed that in absence of the Written Statement from M/s Dayanand Yadav & Co., the Authority is moving ahead with the documents available with them. (Copy of the said letter is annexed as Annexure A-12).

14.1.4 It is also contended that Case no. 8519/17, Prabhat Kumar Shrivastav Vs Shamsher is pending before the Metropolitan Magistrate-4 in the Saket Court, New Delhi. A copy of the order of the learned Judge in this case dated 23.08.2017 has been attached along with the additional affidavit filed by the applicant. This order states that *“in order to unearth the seemingly grave criminal conspiracy involving a private sector bank, DDA loan and their stake holders apart from other associated individuals. The application at hand under Section 156(3) Cr.P.C. is hereby allowed in the substantial interest of justice. The concerned SHO is hereby directed to registered an FIR on the basis of the complaint made by the complainants at the police stations and to initiate the investigation in the present case at the earliest in accordance with the law”*. A copy of the FIR filed in this case has also been attached.

14.1.5 It is also stated that upon conversion of the Company into Private Limited Company, requirement of appointing Independent Directors will not be applicable. It is further submitted that upon conversion of Company into Private Limited Company, Section 197 of the Companies Act, 2013 would not be applicable & hence, the Company may pay any amount of remuneration to its directors without any approval from the Central Government which will adversely effect the rights of the promoters.

14.1.6 The erstwhile promoters have also filed a copy of the audited balance sheet of the Applicant company as at 31st March 2017 along with their application. It is stated that the same has not been filed by the applicant along with the instant application for conversion which has been filed on 19.12.2017. They have also alleged discrepancies in the account.

14.1a In response to the aforesaid objections made by the erstwhile promoters, the applicant companies have filed a reply dated 26.02.2018 clarifying that:

- i. a) Entire allegations/averments have nothing to do with the issue in hand. The objector has failed to show that how such allegations effect the present application to be allowed. When VPS stepped into the shoes of the management of the Applicant Company, it was found that the Objectors had misrepresented/concealed a number of liabilities while execution of Share Purchase Agreement.


b) It is further submitted that that there is no dispute in sale of 100% shareholding of the Applicant Company to VPS Health Care Private Limited from the erstwhile promoters. The erstwhile promoters itself acknowledged the fact of sale of 100% shareholding of the Applicant Company to VPS Health Care Private Limited in the Board Meeting held on 30.06.2016. A copy of board resolution signed by one of the objectors namely Mr. Prabhat Kumar Shrivastav providing for sale of shares of the Applicant Company to VPS Health Care Private Limited. Further the fact of sale of 100% shareholding of the Applicant Company to VPS Health Care Private Limited has also been recorded in the Minutes of meeting of the consortium of lenders of the Applicant Company held on 06.08.2016. It is also submitted that the Hon'ble High Court of Delhi also restrained the erstwhile promoters from entering the premises of the Hospitals until the culmination of the arbitration proceedings as the erstwhile promoters were trespassing into the premises of the Hospitals, attacking employees, damaging equipment and causing immense disturbance to the patients.

c) The applicants have stated that the dispute between Rockland Hospitals Limited and another Vs Prabhat Kumar Shrivastav and another, is pending before the Arbitral Tribunal comprising of Mr. Hiroo Advani (Presiding Arbitrator), Hon'ble Mr. Justice (Retd.) Tirath Singh Thakur and

Hon'ble Mr. Justice (Retd.) Aftab Alam. Thus, it appears that this matter is also subjudice.

d) It is further clarified that the Applicant Company is an unlisted company and wholly-owned subsidiary of VPS Healthcare Private Limited and an unlisted Company which is a wholly-owned subsidiary is exempted from the requirement of appointing Independent Directors on its Board. A Copy of MCA Notification No. G.S.R. 839(E) dated 05.07.2017 & MCA Circular No. 09/2017 dated 05.09.2017. Otherwise also, such is only a presumption that the current board will not be able to run the affairs in the transparent manner and ought to dismiss such allegations.

e) It is submitted herein that the Applicant Company is an Unlisted Company and wholly-owned subsidiary of VPS Healthcare Private Limited and pursuant to the provisions of Rule 7 (2) of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, Companies other than listed companies and subsidiary of a listed company may without Central Government approval pay remuneration to its managerial personnel, in the event of no profit or inadequate profit beyond ceiling specified in Section II, Part II of Schedule V, subject to complying with the conditions mentioned therein.

 f) The Balance sheet as on 31st March 2017 has been signed by both the Auditors M/s Dayanand Yadav & Co. and the Directors of the Applicant

Company on 23rd October 2017 and a copy of the same has been attached along with the reply of objections raised by M/s Paul Pharmacy. However, the same was not filed along with the application under consideration which was filed subsequently on 19.12.2017. Though a copy of Form No. AOC-4 XBRL has been filed along with the reply which shows that the date of AGM was 30.11.2017 and it is also stated that the financial statement relating to 01.04.2016 to 31.03.2017 giving the date of Board of Directors meeting in which financial statement were approved as 23.10.2017, was uploaded on MCA website. However, the Master Data downloaded from MCA website on 03.08.2018 reflects the date of last AGM as 25.11.2016 and date of balance sheet as on 31.03.2016. It does not reflect the filing of both Forms along with the financial statement as on 31.03.2017. Be that as it may be, there is no satisfactory explanation as to why the latest balance sheet as on 31.03.2017 that was duly adopted by the Board of Directors in the meeting held on 23.10.2017 was not filed along with the instant application that had been filed on 19.12.2017. Only after the raising of objections has the applicant come up with the copy of the balance sheet as on 31.03.2017.

- g) In their reply filed by the applicant on 26.02.2018 to the objections raised by Paul Pharmacy, the applicants have stated that at the time of filing of present application “At the time of filing of present application with the Hon’ble Tribunal, financial Statements for FY 2016-17 are not available

therefore the same was not attached with the application. Further, at present, financial Statements for FY 2016-2017 are duly filed with Registrar of Companies on 16.01.2018. A Copy of the Form AOC-4 XBRL along with Challan are attached and marked as Annexure - F”.

- h) A perusal of Form no. AOC4-XBRL stated to have been filed with the ROC states that the Board of Directors while resolution no. -9 dated 23.10.2017 has authorized Shri Virender Gulati, Director to sign this form. The copy of form shows that the date of signing as well as the date of e-form filing date are left blank. Thus, the contention of the applicant that financial statements for FY-2016-17 were not available at the time of filing of present application on 19.12.2017 is not correct. Even, subsequently, when the additional documents were filed on 01.02.2018, the financial statements for FY 2016-17 were not filed. As per the Master Data downloaded on 03.08.2018, the balance sheet as on 31.03.2017 have still not been filed with MCA. A cursory glance at the balance sheet at the audited balance sheet as on 31.03.2017 filed by the applicant before us on 26.02.2018 shows that there has been a drastic reduction in the reserves and surplus as on 31.03.2016 from ~~the~~ more than 82 crores to a negative figure of more than 18 crores as on 31.03.2017. Similarly, long term borrowings have gone up from 287 crores to 576 crores while there are also significant changes in current liabilities.

14.2 M/s E&Y LLP has also filed their objections against the conversion of the company. It is submitted that the company has not mentioned true and correct facts as the objector has not been mentioned as a creditor in the list of creditors of the company.

14.2a In this regard the Applicant has stated that the objection of E&Y LLP is full of incorrect and misconceived submissions. It is submitted that the erstwhile promoters of the Applicant Company had entered into an agreement with E&Y LLP vide an engagement letter dated 11.08.2015 which mandates the E&Y LLP to identify, negotiate and aid in sale of hospitals business of the Applicant Company. Further, sale of business of Applicant Company to VPS was made without any sort of intervention from E & Y LLP. It is stated that the disputed amount between the E & Y LLP and the Applicant Company is Rs 10 Crores and the same dispute is pending before Indian Counsel of Arbitration, New Delhi which will continue even if the status the Company has been changed to private limited company. The applicant has stated that this is a matter of arbitration and the presiding arbitrator is Ms. Justice Gyan Sudha Mishra. Thus, the matter is clearly *sub judice*.

15 It is stated in the same additional affidavit that notices were received from several objectors, namely, Paul Pharmacy, Hind Texpo Co.

(outstanding due paid and claims satisfied), and International Fabric, but these Creditors did not oppose the present application.

15.1 It is stated that notices opposing the application were also received from 9 unsecured creditors, namely, Teknosurg International, Event Medi Systems, Black Pepper Events, Adlife Enterprises, Tech Wizard IT Services Private Limited, E & Y, Lands End Direct Merchant, Medex India Private Limited and Atharv Facilities Services Pvt. Ltd. Out of these 9 Creditors, the applicant companies had paid the dues of 2 creditors, namely, Teknosurg International and Event Medi System.

15.2 Medex India Private Limited has also filed an application opposing the petition.

15.3 It is stated that with respect to objection of M/s Paul Pharmacy to the application an NOC has been received by email dated 1st May 2018. A copy of this email has been filed in the court.

16 A Certified true copy of list of Creditors is annexed with the petition and marked as Annexure A-9. On-going through the said Annexure it is seen that the list of creditors include several government authorities such as Income Tax Authority, Service Tax Authority, Director of Health Services, NDMC etc. as contingent / unascertained debt / claim admissible to proof of winding up.

17 As per the master data obtained from MCA website on 03.08.2018, it is seen that the last AGM was held on 25.11.2016 and the date of last balance sheet was 31.11.2016. It is noted from the Master Data downloaded on 03.08.2018 that a new Director has been appointed during the pendency of the present petition before this Tribunal. Both the independent Directors have also resigned after the passing of resolution for conversion in the Board meeting held on 14.08.2017

18 While the consent regarding holding EGM at a shorter notice has been filed along with the petition, from the nominee shareholders who hold one share each on behalf of the holding company, there is no such consent on behalf of the holding company that holds almost 100 per cent of the shareholding. No Board resolution on behalf of the holding company regarding consent for conversion of the petitioner company from public to private limited company has also been filed.


19 In the master data downloaded from the MCA website on 03.08.2018, the number of members of the company are shown as zero (0). Authorised capital is Rs. 37,00,00,000/- and paid up capital is Rs. 34,87,21,860/-. However, in the petition filed before us there are eight members of the applicant company.

20 As per Rule 68 of NCLT Rules 2016, the application is to be filed within 3 months from the date of passing of special resolution. In this case,

the special resolution was passed in the EGM held on 14.08.2017 (though the minutes were signed on 25.08.2017) but the petition has been filed on 19.12.2017. There is no application for condonation of delay.

21 After going through the application for conversion and objections filed by the objectors as well as the replies of the applicant and their written submissions, it is seen that the application filed u/s 14 (1) of the Companies Act, 2013 for conversion of M/s Rockland Hospitals Limited to a Private Limited Company suffers from the following shortcomings: -

- The application is delayed as it has not been filed within a period of not less than three months from the date of passing of special resolution by the applicant company in their EGM held on 14.08.2017, as required under Rule 68 (3) of NCLT Rules 2016. There is no application for condonation of delay.
- The EGM has been held without giving the required notice of 21 days u/s 101 of the Companies Act, 2013. It is seen that the Board meeting was held at 11.00 am on 14.08.2017 at Nellikkot Chalappuram P.O. Kozhikode-673002, Kerala wherein the resolution was passed for conversion. Subsequently, at 11.00 am, notice was given for holding the EGM from 12.00 noon to 1.00 pm on the same date i.e. 14.08.2017. No reason for giving

 the shorter notice for EGM has been given. Copy of the notice for calling Board meeting has also not been filed before us. It is seen that the Board

meeting was held at 11:00 am and immediately thereafter the notice for holding of EGM at shorter notice was issued and the EGM was held on the same date between 12:00 noon and 1:00 pm. We cannot help but observe the haste in which Board meeting and EGM are held and concluded within a short span of three hours to decide and approve the conversion of the applicant company from Public Limited to Private Limited.


- Consent letters from the 7 Nominee shareholders who hold one share each on behalf of the holding company have been filed along with the application. However, no consent from the holding company along with Board Resolution of the said company has been filed in this regard.
- From the documents filed during the course of hearing, it is seen that the resignation of the Statutory Auditors, M/s Deloitte Haskins & Sells on 17.10.2016 was accepted on the same date, and the new auditors, M/s Dayanand Yadav Co. gave their eligibility letter u/s 139 (1) of the Companies Act, 2013 to the Board of Directors of Rockland Hospitals Limited on the same date i.e. 17.10.2016, and as per form no. ADT-1 filed along with the additional affidavit, M/s Dayanand Yadav & Co. were appointed on the same date, namely, 17.10.2016. The newly appointed Auditors have also signed and prepared form ADT-1 on the same date. Such resignation of Statutory Auditors and appointment of new Auditors on the same date, as well as the new Auditors signing the balance sheet on the same


date, raises a question as to whether the new Auditors actually conducted an audit and prepared the balance sheet. To our mind, it is well nigh impossible for an Auditor to conduct the audit within a single day, of such a large company having a turn over of more than Rs. 114 crores as well as other income of more than 2 crores.

- A new Director has been appointed during the pendency of this application.
- It is also noticed that two independent Directors of the Company who are stated to have attended the Board meeting on 14.08.2017 have subsequently resigned. Copies of the resolutions passed by the Board of Directors at their meetings on 16.10.2017 and 21.10.2017 accepting the resignations tendered by M^s. Kalpana Merchant and Mr. A J Pai, independent Directors have been enclosed along with the application regarding objections raised by M/s Paul Pharmacy. Independent directors resigned after passing of resolution for conversion. This fact was not revealed in the petition, but confirmed later only after the objection was raised by objector.
- The claims of two objectors, namely, the promoters and erstwhile Directors of the Company and M/s Ernst and Young, LLP are pending in arbitral Tribunals. Hence, the matters are *sub judice*. During such pendency, it would not be proper to permit conversion of the company from public to private limited.

22 In view of the above shortcomings, we are unable to persuade ourselves that the proposed conversion of the applicant company from a Public Limited Company to a Private Limited Company would be in public interest. It appears that the applicants have not come with clean hands before us and have concealed material particulars, namely, the balance sheet as on 31.03.2017 was not filed before this Tribunal until the same was objected to by the Objectors.

23 Accordingly, the application is rejected.


(Deepa Krishan)
Member (T)


(Ina Malhotra)
Member (J)