

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP No. 462/14/NCLT/MB/MAH/2017

Under Section 14 of the
Companies Act (for
conversion of Public
Company into Private
Company), 2013

In the matter of

M/s. Terraplazo Realty
Management Ltd.

..... Petitioner

Date of Hearing: 08.11.2017

Coram :

Hon'ble M.K. Shrawat, Member (J)
Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

Mr. Sachin Dedhia, Practicing Company Secretary.

Per: *Bhaskara Pantula Mohan, Member (J)*

ORDER

Reserved on: 08.11.2017
Date of Order: 09.11.2017

1. Petition under consideration was filed on 21st September, 2017 under the provisions of Sec. 14 of Companies Act, 2013 (herein below referred as "the Act"). At the outset, it is worth to reproduce the relevant portion of the Section as under:-

"Alteration of Articles"

14. (1) Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a special resolution, alter its articles including alterations having the effect of conversion of —

- (a) a private company into a public company; or
 - (b) a public company into a private company:
- Provided that

Bhaskara Pantula Mohan:

Provided further 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.

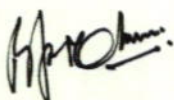
(2) Every alteration of the articles registered under subsection (2) shall, subject to the provisions of this Act, be valid as if it were originally in the articles"

2. By issuance of the Notification dated 11th June, 2014 it was made clear that the corresponding provisions of Companies Act, 1956 shall remain in force till corresponding provisions of Companies Act, 2013 are notified. As a result, the impact of this Notification was that after the MCA Notification dated 01.06.2016 (to be discussed herein below), the applicability of the old provisions along with the attached rules got suspended. To proceed with the matter, it is requisite to hold that Rule 33 of the Companies (Incorporation) Rule, 2014, which had prescribed that for effecting the conversion of a Private Company into a Public Company was to be approved by the competent authority i.e. Central Government; had become redundant.

3. My reason to hold Rule 33 as redundant is twofold:

a) First is that Section 14(2) of the Act 2013 vide an official Gazette of India, Extraordinary Part II dated 1st June, 2016 [S01934(E)] in exercise of the powers conferred the Central Government has appointed/declared the date 1st June, 2016, as the date on which certain provisions of the Act came into force, and among the long list of several sections, the Second proviso to sub-section (1) of section 14 and sub-section (2) of section 14 were included. As a result, the powers conferred vide section 14 (2) of the Act to the Tribunal (NCLT) to pass an appropriate order in connection of proposed conversion had superseded the old provisions. Therefore, the operation of Rule 33 of the Companies (Incorporation) Rule 2014 shall be limited to give effect of the order of NCI-T by the Registrar within fifteen days on receipt.

4. Second reason to proceed with the matter is that once the provision of Section 14(2) (now stood notified supra) has enshrined power to NCLT; hence, the Statute prevails over

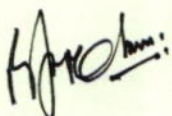


the Rules. There are no two opinions in respect of this accepted position of interpretation of statute.

5. The outcome of the above discussion is that the issue of conversion of Private Company into Public Company and vice-versa is to be dealt with by NCLT (henceforth referred as "Tribunal") within the ambits of Section 14 of the Act. This Section prescribes that a company, either a Public Company or a Private Company, can alter its Article if such condition is contained in its Memorandum, but by a special resolution. Such alteration, for the purpose of this section, has the effect of conversion of a Public Company into a Private Company. The issue in hand is dealt with by second proviso to Section 14 (c) which says that any alteration having the effect of conversion of a Public Company into a Private Company shall not come into operation except with the approval of the Tribunal. The Tribunal shall make such order as it may deem fit. Further, a procedure is also laid down to give effect of the order of the Tribunal in sub-section (2) of Section 14 of the Act. This subsection has prescribed that a copy of such alteration of the Articles along with a copy of the order of the Tribunal, approving the alteration, is required to be filed with the Registrar of Companies, within fifteen days. The Registrar thereupon shall register the change. The Companies Act, 2013 has further made it clear to remove any ambiguity by legislating such Section 3 of Section 14 that any such alteration of the Articles registered shall be valid as if it were originally in the Articles, meaning thereby, the change so incorporated of "Conversion" shall be in supersession of the old such clauses of an Article.

6. In addition to the introduction of Section 14 in Companies Act, 2013, the MCA vide a Notification dated 21st July, 2016 (published in Gazette of India on 22nd August, 2016 GSR 716 (E)) also framed National Company Law Tribunal Rules, 2016. The Rule connected to conversion of Public Company to Private Company is Rule 68 which has laid down the guidelines for the implementation of such conversion. A Petition for conversion of Public Company to Private Company is required to accomplish the conditions laid down under Rule 68 of NCI-T Rules 2016. For the purpose of disposal of this Company Petition the conditions accomplished by this Petitioner as prescribed in the Rule are examined as under:-

a) The Board of Directors of Terraplazo Realty Management Limited (Petitioner) have decided in their meeting held on 18th May, 2017 to convert the Petitioner Company "Terraplazo Realty Management Limited" to Private Limited Company by the name and style of " Terraplazo



Realty Management Private Limited". Thereafter, at the Extraordinary General Meeting held on 9th June, 2017 at the Petitioner Company's registered office at 23-A, Shah Industrial Estate, Veera Desai Road, Andheri (West), Mumbai - 400053 Maharashtra, India, a Special Resolution has been passed for conversion of the Petitioner Company from Public Limited Company to Private Limited Company. The Members have voted in favour of the resolution.

- b) The reason for conversion into a Private Company [Rule 68 (2) (e)] as set out in the Petition is specified as under:-

"IV. FACTS OF THE CASE ARE GIVEN BELOW"

- a) The Company was originally incorporated on 31st December, 1971 as a Public company limited by shares under the name of TERRAPLAZO REALTY MANAGEMENT LIMITED under the Companies Act, 1956. The current status of the Company is "Unlisted Public Company".
- b) On 18th May, 2017 the Board approved the conversion of the Company into Private Company and for alteration of Articles of the Company.
- c) The members approved the proposed alteration in the Extra Ordinary General Meeting held on 9th June, 2017.
- d) As on 18th May, 2017 the Company don't have the creditors. And an affidavit verifying it has been enclosed as Annexure A8 dated 20th September, 2017.
- e) To give effect of the proposed conversion, Memorandum of Association (MOA) and Articles of Association (AOA) of the Company shall undergo a change.
- c) As shown in their Company Petition the capital structure of Petitioner Company is as under:-

1. PARTICULARS OF COMPANY:

1. The Authorized Share Capital of the Company - is ₹ 5,00,00,000/- (Rs. Five Crores only) divided into 40,00,000 (Forty Lakh) equity shares of 10/- each and 10,00,000 (Ten Lakh) preference shares of ₹ 10/- each.

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2. *The paid-up capital of the Company is Rs. 34,00,000/- (Rs. Thirty-Four Lakh only) divided into 3,40,000 (Three Lakh Forty Thousand) equity shares of 10/- each.*

3. *The compilation consists Publication of Notification depicting intention of conversion in compliance of Rule 68 (5) of NCLT Rules, 2016.*

7. The ROC Mumbai has submitted the report and expressed its No Objection for the said conversion. Public Notice by advertising in Newspapers viz. "Navshakti" and "The Free Press Journal" was published on 24th October, 2017, relevant evidence is placed on record.

8. Requisite evidence is on record. Further it is stated that the Petitioner Company was incorporated on 31st of December, 1971 under the Companies Act, 1956. Petition consists the list of Shareholders/Members. There are no Creditors as on 18th May, 2017. The Company has so far not received any "Objection" for the said conversion. Further an "Undertaking" is given that no prejudice shall be caused to the Shareholders or any other related party if the proposed conversion is permitted.

9. In the light of the foregoing legal position, it is hereby summarised that the Petitioner has complied with provisions of Section 14 to be read with Rule 68 of NCLT Rules, 2016. Therefore, having regard to all the circumstances, the conversion from public to private is in the interest of the Company which is being made with a view to comply efficiently with the provisions of Companies Act, 2013 causing no prejudice either to the members or to the creditors of the Petitioner. Therefore, the conversion is hereby **allowed**. The Petitioner is hereby directed to give effect of the conversion by requisite alteration in its Articles which is hereby addressed and communicate the altered Articles within a period of 15 days to the Registrar. C.P. 462/14/NCLT/MB/MAH/2017 is, therefore, **allowed**. No order as to cost.

Sd/-

Bhaskar Pantula Mohan
Member (J)

Sd/-

M.K. Shrawat
Member(J)

Dated: 09th November, 2017