

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP No.286/14(1)/NCLT/MB/MAH/2017

Under Section 14 (1) of the Companies
Act (for conversion of Public Company
into Private Company), 2013

In the matter of

M/s. Shapoorji Pallonji Bumi Armada
Offshore Ltd.

.... Petitioner/Applicant

Date of Hearing: 11.12.2017

Coram :

Hon'ble Bhaskara Pantula Mohan (J)

For the Petitioner :

Pratik Kirit Pujara, Practising Company Secretary.

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

Date of Order: 20.12.2017

1. Petition under consideration was filed on 18th July, 2017 under the provisions of Sec. 14 (1) 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

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. 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 sub 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 clauses of an Article.

3. 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 M/s Shapoorji Pallonji Bumi Armada Offshore Ltd. (Petitioner) have decided in their meeting held on 10th April, 2017 to convert the Petitioner Company " Shapoorji Pallonji Bumi Armada Offshore Limited" to Private Limited Company by the name and style of "Shapoorji Pallonji Bumi Armada Offshore Private Limited". And at the Extraordinary General Meeting held on 18th April, 2017 at the Petitioner Company's registered office at Forbes Building, Charanjit Rai Marg, Fort, Mumbai - 400001, 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 29th October, 2010 as a Public Company limited by shares

under the name Forbes Bumi Armada Offshore Limited under Companies Act, 1956. The Company has changed its name as Shapoorji Pallonji Bumi Armada Offshore Limited by passing a Special resolution in its Extraordinary General Meeting held on 9th March, 2017 and obtained fresh certificate consequent on change of name on 25th March, 2017.

- b) The Company is involved in the business activities such as to establish, construct, build, acquire, own, purchase, exchange, let, hire, charter, supply vessels, tugs and barges, crafts, floating processing storage offloading vessel/platform and floating storage offloading vessel/platform, crane barges, seismic vessels, anchor handing tug and supply vessels, various kinds of marine and other vessels, pilot boats, water barges, supply boats, supply tankers, offshore construction activities, marine management, manning, technical support and services, vessel management/marine services, participate in oil field and gas related activities, oil and gas exploration and production related activities, import/export of vessels and shores needed for oil and gas activity, dry docking and repairs of vessels, towing operations, salvage operations and liaise with government and other related authorities.
- c) The Board of Directors of the Applicant company were contemplating to convert the status of the Company from Public Limited to Private Limited as the company was originally formed as a Public Limited Company. However, there is no involvement of Public in the shareholding or management of the company and presently, the number of members is below two hundred. In the near future the company has no plan to go public and membership number is not likely to go beyond the limitation of two hundred. It was also found that the Company had to comply with various onerous provisions of the Act as applicable to public companies. The Company has not availed any deposits from public; almost all the shares are with the people associated with the management of the Company and their relatives; the number of members are below two hundred; and, there is no intention to issue shares to the public in the foreseeable future.
- d) Also there are lesser compliances in the case of Private Limited Company, which facilitates better management, quick decision making and is also economical in terms of various compliance related cost in long run. Considering the aforesaid, the Board of Directors and shareholders have approved to convert the Company into a Private Limited. The current status of the Company is "Unlisted Public Company".



- e) On 10th April, 2017 the Board approved the conversion of the Company into Private Company and for alteration of Articles of the Company.
- f) The members approved the proposed alteration in the Extra Ordinary General Meeting held on 18th April, 2017.
- g) 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:

- i. The Authorized Share Capital of the Company is ₹ 15,00,00,000/- (Rs. Fifteen Crores only) divided into 1,50,00,000 (One Crore Fifty Lakh) equity shares of Rs. 10/- each.
 - ii. The current issued, subscribed and paid-up Share Capital of the Company is Rs. 10,00,00,000/- (Rs. Ten crores only) divided into 1,00,00,000 (One Crore) equity shares of Rs. 10/- each.
 - iii. The compilation consists Publication of Notification depicting intention of conversion in compliance of Rule 68 (5) of NCLT Rules, 2016.
4. Public Notice by advertising in Newspapers viz. "Dainik Mumbai Lakshadeep" and "Business Standard" was published on 6th October, 2017, relevant evidence is placed on record.
5. Requisite evidence is on record. Further it is stated that the Petitioner Company was incorporated on 29th October, 2010 under the Companies Act, 1956. Petition consists the list of Shareholders/Members and Creditors. 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, Creditors or any other related party if the proposed conversion is permitted.
6. 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. 286/14/NCLT/MB/MAH/2017 is, therefore, allowed. No order as to cost.

Sd/-

Bhaskara Pantula Mohan
Member (J)

Dated: 20th December, 2017

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