

ATTENDANCE-CUM-ORDER SHEET OF HEARING

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH

C.P.No.09/14(1)/GB/2017

Auto Impex Ltd.

... Petitioner

Present : Hon'ble Mr.Justice P K Saikia, Member(J)

Date of Order: 19th May 2017

Name of the Company	Auto Impex Ltd.		
Under Section	14(1)		
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

ORDER

Heard Mrs S. Tejawat, PCA for the petitioner company. Also heard Mr K. Sanyal, Asstt. Director, O/o Regional Director, N.E. Region, Shillong representing the Central Government.

2. This is a petition filed under Section 14 of the Companies Act, 2013 seeking following reliefs:

- "a) the alteration of Memorandum of Association and Articles of Association of the company to be effected by the Special Resolution set out in paragraph 6 (a) above and passed at the Extraordinary General Meeting held on 30th December, 2016 for change of status of the Company from Public Company to Private Company.
- b) Such further order or orders be made or other directions be given affording necessary relief to the petitioner as in the premises of the National Company Law Tribunal, Guwahati Bench may deem fit and proper."

3. The petitioner, namely, Auto Impex Ltd. in its application has stated that it was incorporated as a Public Limited Company on 26.03.1985 vide CIN U51909AS1985PLC002334 issued by the Registrar of Companies, Shillong (for short, ROC) but it is not a listed company.

4. The company is limited by shares and its authorized Share Capital is Rs.15,20,00,000/- divided into 1,52,00,000/- equity shares of Rs.10/- each. As on 31.03.2016, the paid up share capital of the company is Rs.15,18,50,000/- divided into 1,51,85,000 equity shares of Rs.10/- each. Presently, the company is engaged in trading of real estate property.

5. On 30.12.2016, a special resolution was adopted by the shareholders of the company in the AGM seeking its conversion from public to private company. Such conversion from public to private company has been sought for on business considerations which have no adverse effect, whatsoever on any of the stake holders in the company. Therefore, the company has filed the present petition strictly in accordance with the requirement of law and rules framed thereunder seeking reliefs which have already been reproduced hereinbefore.

6. On receipt of the petition, this Tribunal ordered issuance of notice on all concerned in terms of Section 14 read with Rule 68 of the NCLT Rules, 2016 requiring them to file objection, if any against the prayer made in the present proceeding within the time fixed by law vide order dated 25.04.2017.

7. On being so required by this Tribunal, the petitioner has served notice on all concerned and in response to the notice, the Central Government through the Regional Director submitted its report on 17.05.2017 in terms of the order of this Tribunal dated 25.04.2017. The relevant part of said report is reproduced below:

"1. The Regional Director on behalf of the Central Government most respectfully submits before this Hon'ble National Company Law Tribunal, Guwahati Bench that he has been directed to vide order dated 25.04.2017 to submit the representation on the application made under second proviso to section 14(1)(b) of the Companies Act, 2013 by M/s Auto Impex Limited to change the status of the company from 'Public' to 'Private'.

"2. That as desired by the Hon'ble Tribunal a report in the matter is submitted as under: -

(a) The company has passed a special resolution in the Extra ordinary General Meeting of the company held on 30.12.2016 which was duly convened with a notice dated 5.12.2016.

- (b) *The Petitioner company has submitted in petition before this Hon'ble Tribunal that the special resolution was passed with the approval of 19 out of 21 members. However, in this regard the petitioner company may be asked to submit a minute of the meeting approving the special resolution for change of status of the company from public to private with a statement showing the number of votes cast for the resolution and the number of votes against the resolution.*
- (c) *Further the company has also resolved to change its MOA & AOA after passing of order by this tribunal confirming the status of the company in its name clause. Also the company will be required to incorporate the definition of private company in its AOA.*
- (d) *The altered MOA & AOA to be submitted with ROC.*
- (e) *As required under the provisions of section 14 (1) of the companies Act, 2013, the company has passed special resolution altering its status to private Ltd from Public Limited and filed the certified true copy of the report with ROC, shilling in MGT – 14 with the requisite fee.*
- (f) *As seen from the data base that the company is regular in filing its statutory returns with ROC.*
- (g) *As regards complaints against the company the jurisdictional ROC's view in the matter may be taken.*
- (h) *It is observed that the petitioner company has not obtained the creditors consent in respect of long term and short term liabilities. Which may please be obtained by the petitioner.*

In view of the circumstances as stated in the above mentioned paras it is humbly by prayed that the: -

- (i) *This Hon'ble tribunal may be pleased to direct the petitioner to obtain the consent of the creditors in respect of short term and long term liabilities.*
- (ii) *Further it is also prayed that the petitioner may be directed to certified copy of the altered MOA & AOA with ROC after confirmation of the change of status of the company.*
- (iii) *This Hon'ble Tribunal be pleased to pass such order or orders as deemed fit and proper under the circumstances of the present case."*

8. In regard to the observations made in 2(i) of the aforesaid report, Mrs S. Tejawat submits that notice has already been served on the creditors to give their responses to the prayer made in the present proceeding. In proof of service of notice on the creditors from the side of the petitioner, an affidavit has been filed confirming the service of notice on the creditors of the company.

9. Further, the petitioner company has also obtained NOC from the creditors to show that they have no objection in conversion of the company from 'public' to 'private'.

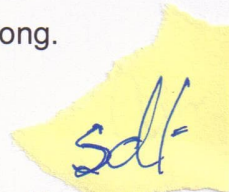
10. Mr Chandan Kumar, ROC, who is also present before this Tribunal, submits that no complaint is pending against the company and, as such, reliefs sought for by the petitioner in this proceeding may be granted.

9. On going through the materials on record including report submitted by the authority concerned having regard to the submission made by ROC, Shillong as well as the Regional Director, Ministry of Corporate Affairs, N.E. Region, Shillong, I am of the opinion that the present petition is required to be accepted. Accordingly, the petition is allowed.

10. Since the petition is allowed, the petitioner company is directed to change the name clause of MOA and incorporate the definition of private company in the AOA in terms of prayer made in para (v) of the petition.

11. The petitioner company is further directed to send Form INC 27 along with a certified copy of the order as well as copy of altered MOA and AOA within 15 days of receipt of copy of the order to the ROC, Shillong.

12. The petition is accordingly allowed.



Member (Judicial)
National Company Law Tribunal,
Guwahati Bench,
Guwahati.

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