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**National Company Law Tribunal
Guwahati Bench**

C.P.No.07/14(1)/GB/2018
(Diary No.696/2017)

Under Section 14 (1) of the Companies Act, 2013

In the matter of:

M/s Apex Yarn Ltd. Petitioners

Coram:

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

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ORDER

Date of Order: 9th February 2018

Heard Mr B. Debnath, C.S. is present for the petitioner. Also heard Mr N. Gogoi, learned Advocate appearing on behalf of Mr S. Saikia, learned Advocate for the Income Department as well as Mr D. Mam, learned Advocate for the Central Government/Registrar of Companies.

2. This Bench, on the last occasion, passed the following order:

"Mr B. Debnath, C.S. is present for the petitioner.

2. *This is an application filed under Section 14 (1) of the Companies Act, 2013 (in short, Act of 2013) read with Rule 35 & 68 of the National Company Law Tribunal Rules, 2016 (in short, Rules of 2016) by M/s Ashoka Weaving Ltd. seeking conversion of the company from Public Limited Company to Private Limited Company.*
3. *I have heard Mr B. Debnath, C.S. appearing on behalf of the petitioner and also perused the application filed in Form No. NCLT 1. Registry is directed to register the application.*
4. *Perused the application. It appears that the petitioner was incorporated as Public Limited Company by its Promoters in 1997 with the intention of raising money from the public by issuing shares. However, the petitioner never raised fund from the public nor has it been planning to raise fund from the public.*

Therefore, in order to get the benefit of Private Limited Company, the company wanted it to be converted to a Private Company.

6. In that connection, it has been submitted that the shareholders of the company, in its Annual General Meeting (AGM for short) held on 19.09.2017 resolved to convert the company in question to a Private Company. The Resolution so adopted can be found in Annexure-3 to the application.

7. On perusal of the same it appears to me that the requirement of Rule 68 has been complied with.

8. It may be stated here that a list of Creditors, Debenture Holders drawn up not more than 2 months has been attached with the application setting forth:

- (a) the names and addresses of every creditor and debenture holder of the company,
- (b) the nature and respective amounts due to them in respect of claims, debts or liabilities,
- (c) in respect of any contingent or unascertained debt or any such claim, the value of such debt and claim.

9. The petitioner/company has also filed an affidavit signed by two Directors to the effect that they have made a full enquiry into the affairs of the company and having done so they have formed an opinion that the list of creditors is correct and that, the estimated value, as given in the list of debt or claims, payable on contingency or unascertained are proper estimates of such value of debt and claim and that there are no other debts or claims against the company to their knowledge.

9. It has also been stated that a duly authenticated copy of the list of creditors has been kept at the office of the Registrar of Companies for inspection or for taking extracts thereof on payment of a sum of Rs. 10/- per page to the company any time during the ordinary hours of business.

10. In view of the above, as required under Rule 35, the company is directed that it shall advertise in Form NCLT-3A, not less than fourteen days before the date fixed for hearing, at least once in a vernacular newspaper in the District in which the registered office of the company is situated and at least once in an English newspaper circulating in that District.

11. Such advertisement shall state the following:

- (a) the date on which the application, petition or reference was presented;
- (b) the name and address of the applicant, petitioner and his authorized representative, if any;
- (c) the nature and substance of application, petition or reference;
- (d) the date fixed for hearing;
- (e) a statement to the effect that any person whose interest is likely to be affected by the proposed petition or who intends either to oppose or support the petition or reference at the hearing shall send a notice of his intention to the concerned Bench and the petitioner or his authorized representative, if any, indicating the nature of interest and grounds of opposition so as to reach him not later than two days previous to the day fixed for hearing.

Where the advertisement is being given by the company, then the same may also be placed on the website of the company, if any.

An affidavit shall be filed to the Tribunal, not less than three days before the date fixed for hearing, stating whether the petition has been advertised in accordance with

this rule and whether the notices, if any, have been duly served upon the persons required to be served.

12. *The company shall at least 14 days before the date of hearing serve by registered post with A/D individual notice in Form No. NCLT-3B to the effect set out in sub-rule (a) of Rule 68(5) on each debenture-holder and creditor of the company and to the Central Government, Registrar of Companies and Income Tax Department.*
13. *It may be stated here that Mr S.C. Keyal has been authorized to represent the Central Government before this Bench. A copy of the notice be also sent to him for doing the needful in accordance with law.*
14. *It may also be stated here that Mr Saumitra Saikia, Advocate, has been appointed by the Income Tax Department to represent it before this Bench. Therefore, notice to be served on the Income Tax Department through Mr Saumitra Saikia.*
15. *List this matter for hearing on 09.02.2018."*

3. Mr B. Debnath, CS, submits that offices of both Central and State Government remained closed in the month of January for various festivals such as Magh Bihu, Republic Day etc. and, therefore, the petitioner company could not take steps in the matter of service of notice etc. on various authorities as directed in the order dated 11.01.2018. Therefore, Mr Debnath prays that he may be given some more time to comply with the directions, rendered in the order dated 11.01.2018.

4. In that connection, I have also heard the learned Advocates representing the Income Department as well as Central Government/Registrar of Companies (in short, ROC). On hearing the parties, the prayer made by Mr Debnath, CS, seeking extension of time is accepted.

5. As required under the order dated 11.01.2018, the petitioner company is directed that it, at least 14 days prior to the date of hearing, shall serve on each debenture-holder and creditor of the company by registered post with A/D, individual notice in Form No. NCLT-3B to the effect set out in sub-rule (a) of Rule 68 (5).

6. However, since Central Government/ROC and the Income Tax Department have already entered appearance, notice need not be served on them. The petitioner company is, accordingly, exempted from service of notice on those two authorities. Those authorities, if so advised, may respond to the prayer made in the present application on or before the next date.

7. All other directions, given in the order dated 11.01.2018, are to be complied with in the manner as specified therein.

8. List this matter on 14.03.2018.

Sdl-

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

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