

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

CP No.37/2017

UNDER SECTION 41(1) (b) OF CA/2013

IN THE MATTER OF

TULSYAN VYAPAR (INDIA) LIMITED

Coram: 1. Hon'ble Shri.Ratakonda Murali, Member Judicial
2. Hon'ble Shri.Ashok Kumar Mishra, Member Technical

Order delivered on 20th July, 2017

For the Petitioner: Ms. Deepa Poddar, PCS.

Per Hon'ble Shri Ratakonda Murali, Member (J) :

ORDER

Heard on 15.06.2017 and 30.06.2017.

This Petition is filed under Section 14(1) of the Companies Act, 2013 for conversion of Petitioner Company which is a Public Limited Company into a Private Limited Company. The averments in the petition are briefly stated hereunder:

The Petitioner Company was registered as a Public Limited Company, having its Registered Office at No.86-L, Road No.9, 1st Phase, KIADB Industrial Area, Jigni, Anekal Taluk, Bangalore, Karnataka – 562 106. The Company is not registered under Section 8 of the Companies Act, 2013. The Petitioner Company was incorporated on 07.06.2007 under the name TULSYAN POLYMERS (INDIA) PRIVATE LIMITED. The Corporate Identification No. (CIN) allotted to the Company is CIN-U2413KA2007PTC 043045. The Company further changed its main objects which was approved with fresh Certificate of Incorporation dated 05.11.2015. Again the Petitioner Company changed its name to TULSYAN VYAPAR (INDIA) PRIVATE LIMITED, and a fresh Certificate of Incorporation was issued on 10.11.2015. The Petitioner Company, in order to expand its business activities, had converted itself into a Public Limited Company and the Corporate Identification Number was allotted to the Company. The Registered Office of the Petitioner Company is situated at No.86-L, Road No.9, 1st Phase, KIADB Industrial Area, Jigni, Anekal Taluk, Bangalore, Karnataka – 562 106.

The Capital structure of the Company is that the Authorised Share Capital of the Company is Rs.75,00,000/- divided into 75,00,000/- Equity Shares of Rs.1/- each. The paid-

up Capital of the Company is Rs.70,00,000/- divided into 70,00,000/- Equity Shares of Rs.1/- each.

The main objects of the company is to carry on the business as manufacturers, processors, refiners, converters, exporters, producers, importers, traders, dealers in all kinds, grades of plastics, plastic raw materials, plastic products, blow moulding and injection moulding items, rigid PVC pipes, LLDPE tubes, HDPE tubes, laterals, sprinkler systems, pipes and tubes, synthetics, petro chemicals products, monofilament yarn, HDPE, PP woven fabrics, tapes, films, flexible films, packing materials, re-processed plastic granules, polymer products, by-products and derivatives thereof etc.

To carry on the business as manufacturers, producers, processors, makers, converters, importers, exporters, traders, buyers, sellers, retailers, wholesalers, suppliers, indenters, packers, movers, preservers, stockists, agents, sub-agents, merchants, distributors, consignors, jobbers, brokers, concessionaires, dealers in all kinds of card board packing, plastic packing, polythene packing, gunny bags, containers, bottles, hollow wares, whether made of leather plastic, HDPE, LDPE, polypropylene, plastic PVC and other man-made fibrous materials, paper and all kinds and varieties of packaging materials with or without lamination, all kinds of wood, plywood, veneer, fiber board, chipboard, particle board, veneered board, paper board, hard board, paste board, card board, straw board, pulp board, leather board, mill board, corrugated board, timber, forest products and all kinds of articles of any description made or prepared out all varieties of paper and wood and its by-products and also in all kinds of chemicals, pipes, ceramics, sanitary-wares, cement, marble, granite, stone tiles, building material, glass, hardware, ferrous and non-ferrous metals, iron and steel, aluminium, electrical goods, components, machinery, machinery parts, precision tools and implements and further in all kinds of jute, raw jute and jute products, textiles goods, cotton, yarns, cloths, readymade garments, natural and man-made fibers, laminated cloth, hosieries and all kinds of articles of any description made or prepared out all varieties of textiles, cloths and its by-products.

To carry on the business of advertising or publicity agents, sub-agents, contractors and for that purpose to purchase and sell advertising time or space on any radio station or television center in India or abroad or any other kind of media currently in vogue or which may be in vogue at any time, including newspapers, souvenirs, hoardings, neon signs and other display devices of all kinds and descriptions or to organize trade fairs, exhibitions, road



shows to promote the sale of any other interest of its clients. And to deal in all kinds of equipments, plant and machinery required for the purpose of carrying on the business of advertising or publicity agents.

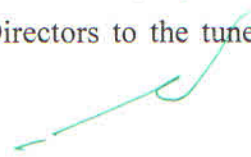

It is further stated that the Registered Office of the Petitioner Company is situated within the State of Karnataka and therefore, this Tribunal has jurisdiction to entertain this petition. It is averred that the Company has no deposits. The Petitioner Company wanted to convert from Public Limited Company into a Private Limited Company. In the Board meeting held on 30.09.2016, a decision was taken to convert the Company into a Private Limited Company as it was more conducive for the business of the Company.

In pursuance of Section 14(1)(b) of Companies Act, 2013, an Extraordinary General Meeting was held on 22.10.2016, wherein a resolution was passed to convert the Petitioner Company into a Private Limited Company and also passed a resolution altering the Memorandum of Association and Articles of Association of the Petitioner Company by adding the words "PRIVATE" to the existing name of the Company wherever it appears. Further, a resolution was passed that the Articles of Association be realigned as per provisions of Companies Act, 2013 which are provided for private companies. Certified true copies of notice calling for EGM together with explanatory statement are shown as Annexure-3. The special resolution was also filed in Form MGT-14 with ROC shown as Annexure-4. Minutes of EGM are shown as Annexure-5. The reason for the proposed conversion is that the Company is mainly a closely held Public Limited Company and does not have deposits. There are no trade creditors except loan availed from the Directors, who have given consent for conversion. The NOC is shown as Annexure-6.

Thus, it is prayed to approve the conversion of Petitioner Company from Public Limited Company into a Private Limited Company. A meeting of Members of the Company was held on 22.10.2016 and the Members approved conversion by means of passing special resolution shown as Annexure-5.

We have heard the counsel appearing for the Petitioner Company.

This Petition is filed under Section 14(1) of Companies Act, 2013 for approval of conversion of the Petitioner Company into a Private Limited Company. The report from ROC, Karnataka, at Bangalore was received. The ROC has certified that the Company has filed E-Form-MGT-14 on 25.11.2016. In the report it is stated that the Company has no secured creditors. But, the Company has obtained loan from the Directors to the tune of



Rs.52,08,127/- and that the Directors gave their consent for conversion. The Registrar of Companies has also certified that the Company has given paper publication in English and in the Regional language. The ROC has further stated that the Company has filed the Balance-sheet and the Annual report up-to-date. The Company has no secured creditors. However, the Company has obtained loan from the Directors, who have given their consent for conversion. Objections have not been received even though there was paper publication. The Board has approved the conversion. The Members in the EGM have also approved the conversion by passing the resolution. Therefore, there is no hurdle to approve the conversion.

The PCS for the Petitioner Company has filed Affidavit dated 15th July, 2017 of the Director of the Petitioner Company stating that in response to Affidavit dated 23rd January, 2017 "the Company has obtained all mandatory approvals from the concerned authorities, departments and substantial creditors (if any) in respect of conversion of Tulsyan Vyapaar (India) Limited from Public Limited Company to a Private Limited Company." The Deponent has clarified that concerned authorities in Para No.1 meant Registrar of Companies, Bangalore and Regional Director (South East Region). Further states that the Petitioner Company is not registered under Section 8 of the Companies Act. It is not registered with Securities and Exchange Board of India or any other regulatory body as mentioned in Rule 68(5)(c).

In the light of the foregoing legal position, it is hereby summarised that the Petitioner has complied with the 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 company to Private company is in the interest of the Company which is being made with a view to comply efficiently with the provisions of the Companies Act, 2013 causing no prejudice either to the members or to the creditors of the Petitioner. Therefore, the conversion is hereby allowed. Its name shall be changed from "M/s.Tulsyan Polymers (India) limited" to M/s. Tulsyan Polymers (India) Private Limited", with the status of all concerned to be in the same position as prior to conversion. Fresh Certificate of Incorporation be issued. The petition is accordingly allowed.


(ASHOK KUMAR MISHRA)
MEMBER (TECHNICAL)


(RATAKONDA MURALI)
MEMBER JUDICIAL