

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P.No. 09/2017

UNDER SECTION 14 OF COMPANIES ACT 2013

In the matter of M/s Mr.Prabhu Structures Limited

Judgement/Order delivered on 4th July 2017

Coram: Hon'ble Shri Ratakonda Murali, Member (Judicial)
Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

For the Petitioner (s) Thirupal Gorige, Practising Company Secretary

Per: Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

Heard on: 06.03.2017, 17.04.2017, 16.06.2017, 04.07.2017

O R D E R

The petitioner company has filed an application under Section 14 of the Companies Act 2013 for converting the petitioner company from Public Limited company to Private Limited company and sought the approval for the alteration of appropriate clauses in the Articles of Association. The averments made in the application are as under:-

- 1) Petitioner was originally incorporated as a private company on 6th January 1971 under name and style "Steelocrete Consultants Private Limited" in the State of Karnataka and subsequently got converted into public company "Steelocrete Consultants Limited on 28th September 1973 thereafter the company changed its name by obtaining fresh certificate of incorporation various occasions respectively "Bhoruka Engineering Industries Limited" on 14th October, 1981, Bhoruka Reality & Services Limited on 9th April 2010 and finally fresh certificate of incorporation was



issued under the name of style of Prabhu Structures Limited on 25th April 2012 as per provisions of Companies Act 1956.

2) The corporate identification number allotted to the company by Ministry of Corporate Affairs (MCA) is U281 12KA 1971PLC001987

3) Registered Office address of Petitioner:

Whitefield Road, Mahadevapura Post, Bengaluru 5600048 Karnataka, India

4) Share Capital

The authorised share capital of the Company is Rs.7,00,00,000/- (Rupees seven crores only) divided into 70,00,000 (Seventy lakhs only) equity shares of Rs.10/- (Rupees Ten only) each. The issued, subscribed and paid-up share capital of the Petitioner is Rs.19,95,800/- (Rupees Nineteen lakhs ninety five thousand eight hundred only) consisting of 1,99,580 (One lakh ninety-nine thousand five hundred eighty only) equity shares of Rs.10/- (Rupees ten only) each.

The main object of the petitioner company is to carry on the business of builders and developers, to acquire, take on lease or in exchange or in any other lawful manner any area, land, building, structures and to turn the same into account, develop the same and dispose off

To carry on the business in real estate, purchase, sell, develop, take in exchange, or on lease, hire, or otherwise acquire whether for investment of sale any real or personal estate including lands, business etc. The abstract of main objects of the company read as **ANNEXURE "A"** to the petition.

The petitioner has also declared that the subject matter of the petition is within the jurisdiction of NCLT Bengaluru Bench as its Registered Office is situated within the State of Karnataka.



Approval of the Board of Directors of the company through the resolution has been given in the Board Meeting held on 5th October 2016. The proposal of conversion of Company from Public to Private Limited was approved. The extract of the Board resolution is at **Annexure B** to the petition (**Enclosure page 44**)

Shareholders have approved the conversion in their extraordinary general meeting held on 8th November 2016. The extract of appropriate Resolution is shown at **Annexure C** of the petition (**Enclosure Page No.45**)

The notice to the shareholders for the meeting was sent along with the explanatory statement pursuant to Section 102 of the Companies Act 2013. They have filed the requisite form also with the MCA Form No. MGT 14 on 6th December 2016.

The petitioner company had also stated in the petition the reasons for conversion into a private company; effect of such conversion on shareholders, creditors is as stated below:



The petitioner is a closely held public company. A list of shareholders and shareholding patterns is appended to this petition as ANNEXURE F. No public interest is directly or indirectly involved in the company. The entire shareholding is held by the promoters through their investment company and its nominees. After considering all relevant factors such as exemptions, privileges, advantages etc. available under the Act to a private company, the Board of directors of the Company decided to convert the Company into a private company to avail the same. There is no effect on the members of the company creditors, debenture holders and other related parties.

The petitioner company has furnished the list of creditors shown as **Annexure G**.



The Practising Company Secretary for the Petitioner Company clarified at first hearing on 6th March 2017 that the period of 3 months as required under Rule 68 (Sub Rule 1) of NCLT Rules, 2016 read with Section 14 of the Companies Act for filing petition is over by February 2017 and since 3 months period is already over by the hearing date and accordingly may be permitted to go ahead with the issue and he desired that he will clarify the issue through an affidavit.

Subsequently the Practising Company Secretary for the petitioner company also submitted an memo for compliance of all the provision of Rule 68 of NCLT Rules, 2016 and Rule 35 of NCLT Rules, 2016 for publication in the English newspaper i.e. Hindu and Udayavani in Kannada on 16th March 2017. The same is at Annexure "A" of the memo dated 8th June 2017. The Director of the petitioner Company also confirmed the following in its affidavit dated 13th April 2017.

- (i) Petitioner served individual notices, by registered post with acknowledgement due to every creditors of the company in form NCLT 3B on 15/03/2017
 - (ii) Petitioner served by registered post with acknowledgement due, a notice together with the copy of the petition to the Registrar of Companies, Karnataka on 15/03/2017
 - (iii) Petitioner is neither listed company nor having any foreign investment and the petitioner does not come under jurisdiction of the Reserve Bank of India and the Security Exchange Board of India;
 - (iv) The Petitioner further stated that Petitioner is not regulated by any other sectorial regulator.
 - (v) Petitioner has not received any objections from any authority or any person as on date
 - (vi) Following documents were enclosed to the affidavit
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- Proof of paper advertisement in English language
- Proof of paper advertisement in Kannada language
- Proof of sending notice to Central Government (The Regional Director)
- Proof of serving notice to the Registrar of Companies Karnataka

They have also submitted NOC from the Reliance Commercial Finance Limited who have provided them corporate guarantee.

Petitioner Company has also submitted the independent auditors report from P.K. Rungta & Co Chartered Accountants. As per their report dated 20th December 2016 in respect of their financial and operational health of the company. The company is profit making company and the contingent liabilities is stated at Note 22 para 1 of the Chartered Accountants report.

The Practising Company Secretary for the petitioner company himself has submitted a memo and confirmed the following as under:-

- (1) Public advertisement of the petition in Kannada language in Kannada new paper "Udayavani" Bengaluru edition was made on 16th March 2017 (**A copy of same is enclosed as Annexure-A**)
- (2) Public advertisement of the petition in English language in English news paper "The Hindu" Bengaluru edition was made on 16th March 2017 (A copy same is enclosed as **Annexure-B**)
- (3) Individual notices in form NCLT-38 were served by registered post with acknowledgment due to effect set out in sub-(a) on each creditor of the company. (A copy of same is enclosed as **Annexure-C**).
- (4) The Petitioner served, by registered post with acknowledgement due, a notice together with the copy of the petition to the Central Government, (Regional Director) on 15 March 2017.
- (5) The Petitioner served, by registered post with acknowledgement due, a notice together with the copy of the petition to the registrar of Companies, Karnataka on 15th March 2017 (**A copy of same is enclosed as Annexure-E**) and

- (6) The petitioner has also submitted an affidavit confirming the above compliance with the Hon'ble Tribunal on 13th April 2017 (**A copy of same is enclosed at Annexure-F**)

The ROC vide its letter No.ROCB/SVK/Conversion/1987/2017 dated 2nd May 2017 has reported as follows:

- (a) Reasons for conversion

The company is a closely held company and the entire shareholding is held by the promoters through their investment company and its nominees. The directors state that to avail the exemptions, privileges available to private companies under the Companies Act, they have decided to convert the company into private company

- (b) Whether MGT-14 filed along with SRN No.

Yes. The company has passed special resolution on 8/11/2016 and MGT 14 to this effect has been filed vide SRN G28460632 and the same has been taken on record.

- (c) Whether any List of creditors and debenture holders entitled to object to the applications attached.

Yes, List of creditors attached.

- (d) Whether any affidavit verifying the list of creditors filed

Yes

- (e) Whether any paper publication given by the Company

Yes

- (f) Filing position of the Company: UPTODATE

The PCS of the Petitioner company have stated that they have complied with all of relevant provisions of the Companies Act 2013 and NCLT Rules and other related Rules. Considering all the facts and circumstances as stated above and as the Petitioner Company

has complied with all the related statutory requirements due approval is accorded to the Petitioner Company for conversion into a private Limited Company i.e. the existing name of the company shall be changed from "Prabhu Structures Limited" to "Prabhu Structures Private Limited" and accordingly appropriate changes in Article and Memorandum of Association is approved and they will comply with all the relevant Provisions of the Companies Act, 2013 and related rules. The petition is allowed. Fresh certificate of incorporation should be issued by ROC. They will have to serve the copy of this order to the Registrar of Companies within 15 days from the date of order.

Any person related in the matter shall be at liberty to apply to the Tribunal for any directions that may be necessary.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RATAKONDA MURALI)
MEMBER, JUDICIAL