

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH, MUMBAI

Company Petition No. 13/14(1)/NCLT/MB/MAH/2016

Coram: Shri M.K. Shrawat, Member (Judicial)

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

In the matter of: M/s Ceasefire Industries Ltd.

Present: Mr. D.K. Meena, Practising Company Secretary, for the Applicant

ORDER

Reserved On: 17.10.2016

Pronounced On: 24.10.2016

1. Petition under consideration was filed on 08.08.2016 under the provisions of Sec. 14 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 sub-section (2) shall, subject to the provisions of this Act, be valid as if it were originally in the articles"

2. It is important to clarify that the transition period of Companies Act, 1956 into Companies Act, 2013 was fairly large; hence, in the interregnum, certain arrangements were made by the Ministry of Corporate Affairs, and one of such arrangements was in respect of the provisions of Section 14 of Companies Act, 2013. In this regard, during the hearing of this C.P., a notification dated 11.06.2014 is placed on record; relevant portion extracted below: -

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“Ministry of Corporate Affairs

*‘A’ Wing, 5th Floor, Shastri Bhawan
Dr. Rajendr Prasad, New Delhi-110001*

Dated: 11 June, 2014

*To
All Regional Directors
All Registrars of Companies
All Stakeholders*

*Subject:- Clarification for filing of form No. INC-27 for conversion of company
from public to private under the provisions of Companies Act, 2013 –
reg.*

Sir,

Attention of the Ministry has been drawn to difficulties being faced by stakeholders while filing form INC-27 for conversion of a public company into a private company. The relevant provisions of Companies Act, 2013 (second proviso to sub-section (1) and sub-section (2) of section 14) have not been notified. In view of this, the corresponding provisions of Companies Act, 1956 (Proviso to sub-section (1) and sub-section (2A) of Section 31) shall remain in force till corresponding provisions of Company's Act, 2013 are notified. The Central Government has delegated such powers under the Companies Act, 1956 to the Registrar of companies (ROCs) vide item No. (c) of the notification number S.O. 1538(E) dated the 10th July, 2012 and this delegated power remains in force. Applications for such conversions, therefore, have to be filed and disposed as per the earlier provisions.

2. This issues with the approval of the Competent Authority.

*Sd/-
(Sanjay Kumar Gupta)
Deputy Director
Ph: 23384657”*

- 3. By issuance of the Notification it was made clear that the corresponding provisions of Companies Act, 1956 shall remain in force till corresponding provisions of Companies Act, 2013 are notified. As a result, the impact of this Notification was that after the MCA Notification dated 01.06.2016 (to be discussed hereinbelow), the applicability of the old provisions along-with the attached rules got suspended. To proceed with the matter, it is requisite to hold that Rule 33 of the Companies (Incorporation) Rule, 2014, which had prescribed that for effecting the conversion of a Private Company into a Public Company was to be approved by the competent authority i.e. Central Government; had become redundant.*
- 4. My reason to hold Rule 33 as redundant is two-fold:*
- a) First is that Section 14(2) of the Act 2013 vide an official Gazette of India, Extraordinary Part II dated 01.06.2016 (S01934(E) in exercise of the powers conferred, the Central Government has appointed/ declared the date 01.06.2016, as the date on which certain provisions of the Act came into force, and among the long list of several sections, the Second proviso to sub-section (1) of section 14 and sub-section (2) of section 14 were included. As a result, the powers conferred*

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vide section 14(2) of the Act to the Tribunal (NCLT) to pass an appropriate order in connection of proposed conversion, had superseded the old provisions. Therefore, the operation of Rule 33 of the Companies (Incorporation) Rule 2014 shall be limited to the extent to give effect of the order of NCLT by the Registrar within Fifteen days on receipt.

- b) Second reason to proceed with the matter is that once the provision of Section 14(2) (now stood notified supra) has enshrined power to NCLT; hence the settled law is that the Statute prevails over the Rules. There are no two opinions in respect of this accepted position of interpretation of statute.
5. The outcome of the above discussion is that the issue of conversion of Private company into Public Company and vice-versa is to be dealt with by NCLT 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(1)(a)&(b) 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 (NCLT). 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 NCLT in sub-section (2) of Section 14 of the Act. This sub-section has prescribed that a copy of such alteration of the Articles along with a copy of the order of the NCLT, 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 such clauses of an Article.
6. In addition to the introduction of Section 14 in Companies Act, 2013, the MCA vide a Notification dated 21.07.2016 (published in Gazette of India on 22.08.2016 GSR 716 (E)) has 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 company is, therefore, expected to undertake the compliances as framed in Rule 68 of NCLT Rule, 2016. Herein below the compliance made by this Petitioner shall be examined.
7. A Petition for conversion of Public Company to Private Company is required to accomplish the conditions laid down under Rule 68 of NCLT Rules 2016. For the

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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 Ceasefire Industries Limited (Petitioner) has passed a Resolution in the meeting held on 02.05.2016 approving the conversion to Private Limited Company. A special resolution has also been passed on 25.05.2016 NCLT Rule 68 (1) prescribes that a Petition under the second proviso to Section 14(1) of the Act for the conversion shall; not less than three months from the date of passing of special resolution; be filed to NCLT. The present Company Petition is filed on 08.08.2016.
- b) The reason for conversion into a Private Company (Rule 68(2)(e)) as set out in the Petition is that to streamline the corporate compliance and to increase the efficiency the conversion is required. In the Company Petition it is further specified as under: -

“REASON FOR CONVERSION AND ITS EFFECT

1. *The Company is a closely held public limited company with no intention of accessing public capital markets and the government has notified several Sections of the new Companies Act' 2013. On perusal thereof it is noticed that legal compliances required by a public company is more onerous than in the case of private companies. To enable the company to carry on its business more efficiently it is proposed that the company be converted into a private limited company and the same is duly explained under explanatory statement to the Special Resolution passed by the members on 25-May-2016.*
2. *In view of the above, the Company has decided to present a petition before the National Company Law Tribunal, Mumbai for seeking approval under section 14 of the companies' act, 2013.”*

- c) The Company is stated to be “Unlisted Public Company” and not registered u/s. 8 of the Act with the following Capital Structure: -

“Capital structure of the Company as on date is as under: -

- a. The Authorized Share Capital:
The Authorized Share Capital of the Company as on date is Rs.1,00,00,000/- (Rupees One Crore only) divided into 10,00,000 (Ten Lakh) Equity Shares of Rs.10/ (Rupees Ten only) each.
- b. Issued Share Capital:
The Issued Share Capital of the Company as on date is Rs.5,00,000/- (Rupees Five Lakhs only) divided into 50,000 (Fifty Thousand) Equity Shares of Rs.10/- (Rupees Ten only) each.
- c. Subscribed and Paid-up Share Capital
The Subscribed and Paid-up Share Capital of the Company as on date is Rs.5,00,000/- (Rupees Five Lakhs only) divided into 50,000 (Eight Thousand) Equity Shares of Rs.10/- (Rupees Ten only) each.”

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- d) In compliance of Rule 68 (3) the Petition consists the list of creditors setting forth the following information: -
- i) Affidavit verifying the list of creditors together with the proof of notice to them by RPAD.
 - ii) A certificate of the Chartered Accountant that by such conversion there is no violation of the provisions of Companies Act.
 - iii) A public notice was issued in an English newspaper and in a newspaper of vernacular language.
- e) A report of Deputy Registrar of Companies, Mumbai dated 05.10.2016 has also been placed on record wherein it is certified that the requirement of Section 14 of Companies Act, 2013 r.w.r 68 of NCLT Rules has been complied with; relevant portion is reproduced below:

1. *The Company has filed the petition on 06.08.2016. The resolution was passed on 25.05.2016 within 3 months.*
2. *Date of Board Meeting :- 02.05.2016.*
3. *Date of general Meeting:- 25.05.2016.*
4. *Registered Office:- 602 DOLI CHAMBERS, NEAR STRAND CINEMA, 6TH FLOOR, COLABA, MUMBAI.*
5. *No. of Members attended the meeting:- 5 Members present.*
6. *Reason for conversion:- As per para 5 of the petition.*
7. *Listed or unlisted :- Unlisted.*
8. *Nature of Company:- Public Limited (loosely held as per para 1 of the petition.)*
9. *Details as to whether Company is registered under Section 8:- No*
10. *List of Creditors:- List of Creditors attached with the petition.*
11. *Affidavit:- Two Affidavits signed by two directors separately duly attached.*
12. *Advertise:- Petition advertised in newspaper on 30.07.2016 in two languages.*
13. *Notice to creditors:- Attached.*
14. *Notice of petition filed with ROC / NCLT / Regional Director:- ROC*
15. *The Company has attached the required document with the Petition mentioned in Annexure "B" NCLT Rules, 2016.*
16. *The Company has completed the requirements of Section 14 of the Companies Act, 2013 read with rule 68 of the NCLT Rules, 2016.*

In view of the above, Hon'ble Tribunal may decide the matter on its merits.

Yours faithfully,
Sd/-
(M.S. PACHOURI)
DEPUTY REGISTRAR OF COMPANIES
MAHARASHTRA, MUMBAI"

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8. 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 directed to give effect of the conversion by alteration in its Articles. Communicate the altered Articles within a period of 15 days to the Registrar. C.P. No. 13/14(1)/NCLT/MB/MAH/2016 is, therefore, allowed. No order as to cost.

Dated: 24.10.2016

sd/-

Shri M.K. Shrawat
Member (Judicial)