

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH, MUMBAI

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

Company Petition No. 18/14(1)/NCLT/MB/MAH/2016

In the matter of Section 14(1) of the Companies Act, 2013

And

In the matter of: M/s Induri Farm Ltd.

Present: Nrupang B. Dholakiya, Practising Company Secretary, for the Applicant

ORDER

Reserved On: 22.09.2016

Pronounced On: 04.10.2016

1. Petition under consideration was filed on 16.08.2016 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:-

"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*

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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 herein below), 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 twofold:

- 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 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 give effect of the order of NCLT by the Registrar within Fifteen days on receipt.

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- 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 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(c) 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)) 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 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 Induri Farm Limited (Petitioner) has passed a Resolution in the meeting held on 25.05.2016 approving the conversion to Private Limited Company. Thereafter in Extraordinary General Meeting held on 20.06.2016 the Members have also approved the conversion. The Petitioner has

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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 16.08.2016.

- 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"

- i. *In order to simplify various corporate compliances and since no purpose would be served by retaining the public limited character of the Company, it is felt that it would be expedient to convert the Company to a private limited company.*
 - ii. *The conversion of the Company into a private limited company would help the Company to eliminate and streamline its corporate compliances and increase efficiency in functioning.*
 - iii. *The members of the Company have unanimously resolved and approved the conversion of the Company into a private limited company.*
 - iv. *All the creditors of the Company as on 20th June, 2016 have conveyed their No Objection for the conversion.*
 - v. *The Company has not issued any Debentures.*
 - vi. *The Related parties of the Company will not be affected by the conversion.*
 - vii. *No prejudice will be caused to member, creditor or third party if the conversion is sanctioned by your good selves."*
- 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.20,00,000/- (Rupees Twenty Lakhs only) divided into 20,000 (Twenty Thousand) Equity Shares of Rs.100/ (Rupees Hundred only) each.
- b. Issued Share Capital:
The Issued Share Capital of the Company as on date is Rs.8,00,000/- (Rupees Eight Lakhs only) divided into 8,000 (Eight Thousand) Equity Shares of Rs.100/- (Rupees One Hundred only) each.
- c. Subscribed and Paid-up Share Capital
The Subscribed and Paid-up Share Capital of the Company as on date is Rs.8,00,000/- (Rupees Eight Lakhs only) divided into 8,000 (Eight Thousand) Equity Shares of Rs.100/- (Rupees One Hundred 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: -

"CREDITORS OF THE COMPANY AND THEIR NO OBJECTION"

- i. *The Company has 5 (Five) unsecured creditors as on 20th June, 2016 having outstanding in aggregate of Rs.5,30,529.16/- (Rupees Five Lakhs Thirty Thousand Five Hundred Twenty-Nine and Paise Sixteen) and does not have any secured creditors and debentures as on date.*
 - ii. *The Company has sent a Notice to all the Creditors on 23rd June, 2016 by way of Registered Post Acknowledgement Due.*
 - iii. *The Company has received No Objection Letters from all the unsecured creditors, copies of which have been enclosed.*
 - iv. *The Company has not received any Objection from Creditors or Members of the Company till the Date of filing of this Petition."*
 - e) The compilation consists Publication of Notification depicting intention of conversion in compliance of Rule 68 (5) of NCLT Rules, 2016.
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 hereby directed to give effect of the conversion by alteration in its Articles which is hereby addressed and communicate the altered Articles within a period of 15 days to the Registrar. C.P. No.18/2016 is, therefore, allowed. No order as to cost.

Dated: 4th October 2016

sd/-

Shri M.K. Shrawat
Member (Judicial)