

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

CP No. 302/14(1)/NCLT/MB/MAH/2017

Under Section 14(1) of the  
Companies Act (for  
conversion of Public  
Company into Private  
Company), 2013

In the matter of

M/s. TechProcess Payment  
Services Ltd.

..... Petitioner

Date of Hearing: 22.09.2017

Date of Order: 22.09.2017

**Coram :**

Hon'ble M.K. Shrawat, Member (J)

Hon'ble Bhaskara Pantula Mohan, Member (J)

**For the Petitioner :**

Mr. Mahesh Darji, Practicing Company Secretary.

*Per: M. K. Shrawat, Member (J)*

**ORDER**

1. Petition under consideration was filed on 19<sup>th</sup> July, 2017 under the provisions of Sec. 14 (1) (b) 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:

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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 subsection (2) shall, subject to the provisions of this Act, be valid as if it were originally in the articles"

2. The conversion of Private Company into Public Company and vice-versa is to be dealt with by NCLT (henceforth referred as "Tribunal") 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. 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 Tribunal in sub-section (2) of Section 14 of the Act. This subsection has prescribed that a copy of such alteration of the Articles along with a copy of the order of the Tribunal, 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 such 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.

3. In addition to the introduction of Section 14 in Companies Act, 2013, the MCA vide a Notification dated 21<sup>st</sup> July, 2016 (published in Gazette of India on 22<sup>nd</sup> August, 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 Petition for conversion of Public Company to Private Company is required to accomplish the conditions

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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 TechProcess Payment Services Limited (Petitioner) have decided in their meeting held on 27<sup>th</sup> April, 2017 to convert the Petitioner Company "TechProcess Payment Services Limited" to Private Limited Company by the name and style of " TechProcess Payment Services Private Limited". Thereafter, at the Extraordinary General Meeting held on 27<sup>th</sup> April, 2017 at the Petitioner Company's registered office at 501, 5<sup>th</sup> Floor, Jolly Board Tower – D. Ithink Techano Campus, Kanjurmarg (E), Mumbai - 400042, Maharashtra, India, a Special Resolution has been passed for conversion of the Petitioner Company from Public Limited Company to Private Limited Company. The Members/Shareholders have voted in favour of the resolution.
- b) The reason for conversion into a Private Company [Rule 68 (2) (e)] as set out in the Petition is specified as under:-

"IV. FACTS OF THE CASE ARE GIVEN BELOW"

- a) The Company was originally incorporated on 8<sup>th</sup> September, 2000 as a Public Limited Company under the name of TechProcess Payment Services Limited under the Companies Act, 1956. The current status of the Company is "Unlisted Public Limited Company".
- b) On 27<sup>th</sup> April, 2017 the Board approved the conversion of the Company into Private Company and for alteration of Articles of the Company.
- c) The members approved the proposed alteration in the Extra Ordinary General Meeting held on 27<sup>th</sup> April, 2017.
- d) As on 15<sup>th</sup> June, 2017 the Company have 66 creditors as certified by the Directors. And same has been enclosed as Annexure 4 dated 15<sup>th</sup> June 2017.
- e) To give effect of the proposed conversion, Memorandum of Association (MOA) and Articles of Association (AOA) of the Company shall undergo a change.



- c) As shown in their Company Petition the capital structure of Petitioner Company is as under:-

1. PARTICULARS OF COMPANY:

1. The Authorized Share Capital of the Company is ₹ 75,07,00,000/- (Rs. Seventy Five Crores Seven Lakhs only) divided into 6,50,70,000 (Six Crore Fifty Lakh Seventy Thousand) equity shares of Rs. 10/- each and 1,00,00,000 (One Crore) Redeemable Preference Shares of Rs. 10/- each.
2. The current issued, subscribed and paid-up capital of the Company is Rs. 29,70,04,970/- (Rs. Twenty Nine Crores Seventy Lakh Four Thousand Nine Hundred and Seventy only) divided into 2,97,00,497 (Two Crore Ninety Seven Lakh Four Hundred and Ninety Seven) equity shares of 10/- each.
3. The compilation consists Publication of Notification depicting intention of conversion in compliance of Rule 68 (5) of NCLT Rules, 2016.
4. Public Notice by advertising in Newspapers viz. "The Free Press Journal" and "Navshakti" was published on 24<sup>th</sup> August, 2017 and 25<sup>th</sup> August, 2017 respectively, relevant evidence is placed on record.
5. Requisite evidence is on record. Further it is stated that the Petitioner Company was incorporated on 8<sup>th</sup> of September, 2000 under the Companies Act, 1956. Petition consists the list of Shareholders/Members. There are 66 Creditors as on 15<sup>th</sup> June, 2017 pertaining totalling Rs. 3,39,54,068.07/- (Rupees Three Crore Thirty Nine Lakh Fifty Four Thousand Sixty Eight and Seven Paise only). The Company has so far not received any "Objection" for the said conversion. Further an "Undertaking" is given that no prejudice shall be caused to the Shareholders, Creditors or any other related party if the proposed conversion is permitted.
6. 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

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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 requisite alteration in its Articles which is hereby addressed and communicate the altered Articles within a period of 15 days to the Registrar. C.P. 302/14(1)/NCLT/MB/MAH/2017 is, therefore, allowed. No order as to cost.

Sd/-

**Bhaskar Pantula Mohan**  
**Member (J)**

Sd/-

**M.K. Shrawat**  
**Member(J)**

**Dated: 22<sup>th</sup> September, 2017**

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