

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI**

C.P. NO. 83/14(1)/NCLT/MB/MAH/2017

CORAM:

SHRI M.K. SHRAWAT
MEMBER (JUDICIAL)

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

In the matter of **M/s. Breakbounce India Ltd.**, having its Registered Office at 14, Peninsula Centre, Dr. S. S. Rao Road, Parel, Mumbai – 400012, Maharashtra, India.

PRESENT FOR PETITIONER:

Mr. Maharshi Ganatra – Practicing Company Secretary, Authorised Representative for the Company.

Date of Hearing: 11th April, 2017.

ORDER

Reserved on: 11.04.2017

Pronounced on: 22.05.2017

1. Petition under consideration was filed on 06th March, 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 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

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)

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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 1st June, 2016 [S01934(E)] in exercise of the powers conferred the Central Government has appointed/declared the date 1st June, 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

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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.

- 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 (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 sub-section 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

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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 21st July, 2016 (published in Gazette of India on 22nd 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 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 M/s Breakbounce India Limited (Petitioner) have decided in their meeting held on 05th November, 2016 to convert the Petitioner Company "M/s. Breakbounce India Limited" to Private Limited Company by the name and style of "M/s. Breakbounce India Private Limited". Thereafter, at the Extraordinary General Meeting held on 01st December, 2016 at the Petitioner Company's registered office at 14, Peninsula Centre, Dr. S. S. Rao Road, Parel, Mumbai – 400012, Maharashtra, India, a Special Resolution has been passed for conversion of the Petitioner Company from Public Limited Company to Private Limited Company. The Members 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 petitioner Company was incorporated as a public limited Company on 11th May, 2013.
 - b) Though the petitioner Company is a Public Company, it is closely held with very few shareholders and its requirement of funds is being met by the its shareholders, directors or their relatives. Further the Petitioner Company does not intend to raise any funds from the public for its operations. Hence, to do away with the onerous compliances to be done by the public limited companies as per Companies Act, 2013 and various other Acts & Regulations and for facilitating simplicity in doing business, the Petitioner Company is desirous of converting its status from a Public Company to Private Company in terms of S. 14 (1) of the Companies Act, 2013 and other applicable rules thereunder.
 - c) On 05th November, 2016 the Board approved the conversion of the Company into Private Company and for alteration of Articles of the Company.
 - d) The members approved the proposed alteration in the Extra Ordinary General Meeting held on 01st December, 2016.
 - e) As on 30th November, 2016 the Company have 5 unsecured creditors as certified by the Directors. And same has been enclosed as Annexure A – 10 of the Petition.
 - f) To give effect of the proposed conversion, Memorandum of Association (MOA) and Articles of Association (AOA) of the Company shall undergo a change. The copy of altered Memorandum of Association (MOA) and Articles of Association (AOA) is also enclosed as Annexure A – 1.
- c) As shown in their Company Petition the capital structure of Petitioner Company is as under:-

"I. PARTICULARS OF COMPANY:

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- c. The Authorized Share Capital of the Company is ₹ 10,00,000/- (₹ Ten Lacs only) divided into 1,00,000 (One Lakh) equity shares of ₹ 10/- (₹ Ten only) each.
 - d. The Paid up Capital of the Company is ₹ 5,07,930/- (₹ Five Lacs Seven Thousand Nine Hundred and Thirty Only) divided into 50,793/- (Fifty Thousand Seven Hundred and Ninety Three) Equity Shares of ₹ 10/- (₹ Ten Only) each.
- d) The compilation consists Publication of Notification depicting intention of conversion in compliance of Rule 68 (5) of NCLT Rules, 2016.

7. The Petitioner has stated that, there is only one unsecured Creditor namely, "M/s. Golden Seams Industries Pvt. Ltd." having outstanding balance of ₹ 42,11,029 as on 31st March, 2017. The said unsecured creditor has vide a letter dated 31st March, 2017 has furnished "no objection" for conversion of the petitioner company to a private limited company. The Petitioner has also placed on record a public notice issued on 10th March, 2017 published in the "Free Press Journal" and "Navshakti Marathi News Paper". In the petition list of shareholders is annexed according to which no member of the Public is a shareholder but the family member and the directors are the shareholders of the petitioner company. It is stated with full sense of responsibility that; the petitioner company is nothing but in nature of "Closely Held Public Limited Company".

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.

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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. No. 83/14(1)/NCLT/ MB/MAH/2017 is, therefore, allowed. No order as to cost.

Dated: 22nd May, 2017

Sd/-

M.K. SHRAWAT
MEMBER (JUDICIAL)

22/5/17