

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

C.P. NO. 05/14/NCLT/MAH/MUM/2017

CORAM:

SHRI M.K. SHRAWAT
MEMBER (JUDICIAL)

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

In the matter of **Kraftwares (India) Limited**, having its Registered Office at G-10/E, Laxmi Mill Compound, Shakti Mill Lane, Mumbai-400011 Maharashtra, India.

PRESENT FOR PETITIONER:

Mr. Nithish Bangera, Practising Company Secretary for the Petitioner.

Date of Hearing: 21st March, 2017.

ORDER

Reserved on: 21.03.2017

Pronounced on: 24.03.2017

1. Petition under consideration was filed on 06th January, 2017 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

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 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 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 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 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.

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. The Board of Directors of Kraftwares (India) Limited (Petitioner) have decided in their meeting held on 1st October, 2016 to convert the Petitioner Company "M/s. Kraftware (India) Limited" to Private Limited Company by the name and style of "M/s. Kraftware (India) Private Limited". Thereafter, at the Extraordinary General Meeting held on 1st November, 2016 at the Petitioner Company's registered office at G-10/E, Laxmi Mill Compound, Shakti Mill Lane, Mumbai, a resolution has been passed for conversion of the Petitioner Company from Public Limited

Company to Private Limited Company. The Members have also approved the conversion.

- a) The related facts for conversion into a Private Company (Rule 68(2)(e) as emerged from the petition are considered-

That the Petitioner Company was incorporated in Mumbai on 15th January 1986 with the object that "To carry on all or any of manufactures, processors, fabricators, importers, exporters, merchant and dealers in utensils etc. and to act as commission agent and contractors.

That the Board of Directors Company in its meeting held on October 01, 2016 decided to convert the company from a Public Limited Company to Private Limited Company as it was considered to be more conducive to the business of the Company.

That by Resolutions duly passed by the Members of the Company held on November 01, 2016 after giving due notice as provided in the Companies Act, 2013 and the Articles of Association of the Company, a copy of which is annexed hereto annexed, it was resolved as follows:

"RESOLUTION ALTERING ARTICLES OF THE COMPANY SO AS TO INCLUDE RESTRICTION, LIMITATION AND PROHIBITION, SPECIFIED IN SECTION 2(68) OF THE COMPANIES ACT, 2013, CONVERTING A PUBLIC COMPANY INTO A PRIVATE COMPANY"

"RESOLVED THAT pursuant to the provisions of section 13,14 and all other applicable provisions of the Companies Act, 2013, if any and subject to the approval of the Tribunal, the consent of the members of the company be and is hereby given to convert the company from 'Public Limited' to 'Private Limited' and consequently the name of the company be changed from "KRAFTWARES (INDIA) LIMITED" to "KRAFTWARES (INDIA) PRIVATE LIMITED" by addition to the word 'Private' before the word 'Limited'.

RESOLVED FURTHER THAT for the purpose of giving effect to this resolution, the Board of Directors of the company

be and is hereby authorized to execute all such documents, instruments and writings as may be required and to take all such steps and actions and give such directions as may in its absolute discretion deem necessary and to settle any question that may arise in this regard”.

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

“The Authorized share capital of the company is Rs. 25,00,000/- (Rupees Twenty-Five Lacs Only) divided into 10,000 (Ten Thousand) equity shares of Rs. 100/- (Rupees Hundred Only) each and 15,000 (Fifteen Thousand) Preference share of Rs. 100/- (Rupees Hundred Only) each. The current issued, Subscribed and paid-up capital of the company is Rs. 10,00,000/- (Rupees Ten Lacs Only) divided into 10,000 (Ten Thousand) equity shares of Rs. 100/- (Rupees Hundred Only)”.

7. In their Company Petition under consideration, the Petitioner Company has cited the following reasons for the proposed conversion from Public Company to Private Company reproduced below: -

“The company was originally incorporated on January 15, 1986 as a private company under the provisions of the Companies Act, 1956. On January 08, 1998 the company was converted from Private Limited Company to public Limited company by virtue of the provisions of section 43A (1A) of the Companies Act, 1956. As per the provisions of the Companies Act, 2013, section 43A is repelled. Hence the board now proposes to convert the company from Public Limited Company to Private Limited Company, which would help the board to carry out its affairs more efficiently and economically”

- 7.1 Keeping all this in view, it has been considered by the Petitioner that it is advantageous to convert the company from public limited to private limited company so as to smoothly run its business and to avail of the benefits available to a Private Limited Company.

- 7.2 That it is pleaded that if the alteration is allowed by the National Company Law Tribunal as provided under Section 14(1) of the Companies Act, 2013, the Company would be able to carry out its business activities more economically, efficiently and smoothly.
- 7.3 That it is informed that no Shareholders, Creditors, Debenture holders, or any other related parties of the Company will be prejudiced by the proposed conversion of the Company from a Public Limited Company to a Private Limited Company and its proposed conversion is just and equitable.”
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 requisite alteration in its Articles which is hereby addressed and communicate the altered Articles within a period of 15 days to the Registrar.
CP 05/14/NCLT/MAH/MUM/2017, therefore allowed.
9. No order as to cost, and to be consigned to record.

Dated: 24th March, 2017

Sd/-
M.K. SHRAWAT
MEMBER (JUDICIAL)