

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

C.P. NO. 21/14(1)/NCLT/MB/MAH/2016

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. Biostadt Mhseeds Limited**, having its Registered Office at Poonam Chambers, 602A, Dr. Annie Besant Road, Worli, Mumbai 400 018, Maharashtra, India.

PRESENT FOR PETITIONER:

Ms. Kumudini Paranjape, Practising Company Secretary for the Petitioner.

Date of Hearing: 6th February, 2017.

ORDER

Reserved on: 06.01.2017

Pronounced on: 06.02.2017

1. Petition under consideration was filed on 29th August, 2016 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:

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 as under:-

- a) The Board of Directors of Biostadt Mhseeds Limited (Petitioner) have decided in their meeting held on 4th July, 2016 to convert the Petitioner Company "M/s. Biostadt Mhseeds Limited" to Private Limited Company by the name and style of "M/s. Biostadt Mhseeds Private Limited". Thereafter, at the Extraordinary General Meeting held on 7th July, 2016 at the Petitioner Company's registered office at Poonam Chambers, Worli, 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.
- 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

- 4.1 The petition is for conversion of Public Company into Private Company under Section 14(1) of Companies Act.
- 4.2 The Board of Directors in their meeting held on 4th July, 2016 have decided to convert the Company Biostadt Mhseeds Limited to Biostadt Mhseeds Private Limited.
- 4.3 The Company is in process of merger with M/s. Nandi Seeds Private Limited wherein M/s. Nandi Seeds Private Limited is Transferor Company and Biostadt Mhseeds Limited is transferee Company.
- 4.4 The application for dispensation of meeting of shareholders and creditors u/s 391 to 394 under Companies Act 1956 has been filed with Bombay High Court on 26th July, 2016.
- 4.5 The Scheme of merger contains following clause –
- "Upon the Scheme becoming effective, the name of the Transferee Company shall stand changed to "Nandi Seeds Private Limited" subject to such approvals as may be necessary in that behalf and the name of the Transferee Company wherever it appears in Memorandum and Articles shall be accordingly changed."*
- 4.6 Hence to enable Biostadt Mhseeds Limited to get the name of the transferor Company, post-merger, it is proposed to convert the Company Biostadt Mhseeds Limited to Biostadt Mhseeds Private Limited.
- 4.7 The Company has passed a Special resolution for conversion at the extra ordinary general meeting held on 07th July 2016 at the registered office at Poonam Chambers 202a Dr Annie Besant Road Worli Mumbai City Maharashtra State 400018 India.
- 4.8 As on date of the petition the Company had one creditor. Company has obtained No objection Certificate from said creditor the same has been enclosed as Annexure A.
- 4.9 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 has also been enclosed as Annexure B.

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

"I. PARTICULARS OF COMPANY:

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- 1.3 The Authorized Share Capital of the Company is Rs.3,00,00,000/- (Rupees Three Crore only) divided into 3,00,00,000 Equity share of Rs.1 each.
- 1.4 The Paid up Capital of the Company is Rs.30,00,000 (Rupees Thirty Lacs Only) divided into 30,00,000 Equity Shares of Rs.1 each.

- d) The compilation consists Publication of Notification depicting intention of conversion in compliance of Rule 68 (5) of NCLT Rules, 2016.

7. 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. C.P. No.21/14(1)/NCLT/ MB/MAH/2016 is, therefore, allowed. No order as to cost.

Sd/-

Dated: 6th February, 2017

M.K. SHRAWAT
MEMBER (JUDICIAL)