

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

**C.P. NO. 72/u/s 14/NCLT/MB/MAH/2016**

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 **M/s. Diana Buildwell Limited**, having its Registered Office at Abil House, 2, Range Hill Corner, Ganeshkhind Road, Pune, Maharashtra 411 007.

**PRESENT FOR PETITIONER:**

Mr. Raju Ananthanarayan, Company Secretary in Practice for the Petitioner.

**Date of Hearing:** 17<sup>th</sup> February, 2017.

**ORDER**

**Reserved on: 17.02.2017**

**Pronounced on: 24.02.2017**

1. The Petitioner Company viz. M/s. Diana Buildwell Limited was originally incorporated on 20<sup>th</sup> July, 2006 with registrar of Companies, Delhi. Subsequently the Company was converted to Public Limited vide certificate dated 10<sup>th</sup> June, 2008. The registered office of the Company was shifted to the jurisdiction of Registrar of Companies, Pune vide Regional Director's Order dated 31<sup>st</sup> May, 2016. The Petitioner Company is an Unlisted Public Limited Company and not registered under Section 8 of the Companies Act, 1956.

2. Petition under consideration was filed on 9<sup>th</sup> December, 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"

3. 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, 5<sup>th</sup> 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 10<sup>th</sup> 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)"

4. 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.

5. 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 1<sup>st</sup> June,

2016 [S01934(E)] in exercise of the powers conferred the Central Government has appointed/ declared the date 1<sup>st</sup> 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.

6. 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.

7. 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 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. Diana Buildwell Limited (Petitioner) have approved in their meeting held on 26<sup>th</sup> August, 2016 to convert the Petitioner Company "M/s. Diana Buildwell Limited" to Private Limited Company by the name and style of "M/s. Diana Buildwell Private Limited". Thereafter, at the Annual General Meeting held

on 30<sup>th</sup> September, 2016 at the Petitioner Company's registered office at Abil House, 2, Range Hill Corner, Ganeshkhind Road, Pune, Maharashtra 411 007, 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:-

**"IX. Reasons for Conversion from Public limited into Private Limited:**

At present, the company is Public Limited Company. It was also observed that there are lesser compliances in case of Private Limited Company, which facilitates better management, quick decision making and is also economical in terms of various compliance related cost in long run. Considering the aforesaid, the Directors have unanimously approved to convert the Company into a Private Limited Entity at their meeting held on 26/08/2016, subject to the approval of the members and other statutory approvals from the regulatory bodies.

Moreover, the conversion into a Private Limited Company shall not affect any debits, liabilities, obligations or contracts incurred or entered into, by or on behalf of the company before conversion and such debts, liabilities, obligations and contracts may be enforced in the manner as if such conversion had not been done.

Therefore the Directors are of the opinion that it would be advantageous and economical to convert the status of the company from Public limited into Private Limited."

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

**"III. Capital structure of the company:**

The Authorized share capital of the Company is Rs.25,00,000 (Rupees Twenty Five Lakhs only) divided into 2,50,000 (Two lakhs fifty thousand) Equity shares of Rs.10/-

(Ten) each. The issued, subscribed and paid-up share capital of the Company is s.10,00,000 (Rupees Ten lakhs only) divided into 1,00,000 (One lakh) Equity Shares of rs.10/- (Ten) each.”

- d) 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 requisite alteration in its Articles which is hereby addressed and communicate the altered Articles within a period of 15 days to the Registrar of Companies, Pune.

9. C.P. No.72/14/NCLT/ MB/MAH/2016 is, therefore, allowed. No order as to cost and to be consigned to the Records.

Dated: 24<sup>th</sup> February, 2017

Sd/-

**M.K. SHRAWAT**  
**MEMBER (JUDICIAL)**