

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH, MUMBAI**

**C.P. NO. 30/14(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. Rumeet Hotels Limited**, having its Registered Office at C/002, Rishikesh Building, Lokhandwala Complex, Mumbai 400 0004, Maharashtra, India.

**PRESENT FOR PETITIONER:**

Ms. Chandanbala Mehta, Practising Company Secretary for the Petitioner.

**Date of Hearing:** 31<sup>st</sup> January, 2017.

**ORDER**

**Reserved on: 31.01.2017**

**Pronounced on: 17.02.2017**

1. Petition under consideration was filed on 19<sup>th</sup> October, 2016 under the provisions of Section 14(1)(b) of the 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, it is pertinent to mention here that a Notification dated 11<sup>th</sup> June, 2014 was issued by the Ministry of Corporate Affairs, Government of India, which is reproduced verbatim 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"

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

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 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. Rumeet Hotels Limited (Petitioner) have decided in their meeting held on 16<sup>th</sup> September, 2016 to convert the Petitioner Company "M/s. Rumeet Hotels Limited" to Private Limited Company by the name and style of "M/s. Rumeet Hotels Private Limited". At the Extraordinary General Meeting held on 16<sup>th</sup> September, 2016 at the Petitioner Company's registered office at C/002, Rishikesh Building, Lokhandwala Complex, Mumbai 400 004, 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:**

a. The Company is a closely held public limited company managed by its Board of Directors comprising of 3 (Three) Directors. There are 7 (Seven) Equity Shareholders in the Company. Statements showing the list of such Directors and Shareholders are annexed hereto and marked as Annexure "A3(i)" and "A3(ii)".

b. The Board of Directors Company in its **meeting held on August 09, 2016 unanimously 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.

c. By **Special Resolutions** duly **passed by the Members** of the Company held on **September 16, 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 and marked as **Annexure "A4"**, it was resolved as follows:

**1. SPECIAL 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 provision of Section 14 of the Companies Act, 2013 and any other applicable provisions, if any, and subject to the approval of the Central Government (Tribunal) and/or any other prescribed authority, the consent of the members of the Company be and is hereby accorded for conversion of Company into a Private Company and all provisions inconsistent with the

Articles of a Private company be deleted and thereby substituted by the relevant provisions.

RESOLVED FURTHER THAT the company is a private company within the meaning of Section 2(68) of the Companies Act, 2013 with a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and accordingly: -

- (i) restricts the right to transfer its shares;
- (ii) Except in case of One Person Company, limits the number of its members to two hundred;

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that-

- (A) persons who are in the employment of the company; and
- (B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and
- (iii) Prohibits any invitation to the public to subscribe for any securities of the company.

RESOLVED FURTHER THAT anyone Director of the Company be and is hereby authorized to file all the requisite forms with the Registrar of Companies, Mumbai, for conversion of the status of the Company from Public Limited to Private Limited Company and for alteration of the Articles of Association of the Company."

**2. SPECIAL RESOLUTION FOR CONVERSION OF PUBLIC COMPANY TO PRIVATE COMPANY AS PER SECTION 13 AND 14 OF THE ACT**

'RESOLVED THAT pursuant to Section 13 and 14 of the Companies Act, 2013, the name of the company be changed from "RUMEET HOTELS LIMITED" to "RUMEET HOTELS PRIVATE LIMITED" consequent upon the conversion of the Company from Public

Limited and the name clause in the Memorandum and Articles of Association of the company be and is hereby altered and word "Private" will be inserted in the name of the Company wherever appearing.

RESOLVED FURTHER THAT any one Director of the Company be and is hereby authorized to file all the requisite forms with the Registrar of Companies, Mumbai, for conversion of the status of the Company from Public Limited Company to Private Limited Company and for alteration of the Articles of Association of the Company."

**3. SPECIAL RESOLUTION FOR ADOPTION OF FRESH MEMORANUM OF ASSOCIATION IN COMPLIANCE WITH THE PROVISIONS OF THE COMPANIES ACT, 2013**

"RESOLVED THAT the Company be and is hereby adopts Fresh Memorandum of Association in compliance with the provisions of the Companies Act, 2013."

RESOLVED FURTHER THAT Board of Directors be and are hereby authorised to do all such acts, deeds, matters and things as may be considered necessary, desirable or expedient for giving effect to this Resolution and/or otherwise considered by them in the best interest of the company.

RESOLVED FURTHER THAT anyone Director of the Company be and is hereby authorized to file all the requisite forms with the Registrar of Companies, Mumbai."

**7 (Seven) members were personally present at the Extraordinary General Meeting and the above mentioned resolutions and minutes of the said meeting are annexed hereto and marked as Annexure "A5" & "A6" respectively.**

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.

**"d. The reasons / justification for the proposed conversion are as under:**

1. The Company was incorporated as a Private Limited Company with the name of SNEHA HOTELS & DEVELOPERS PRIVATE LIMITED on 10.08.1987 and later on the Company was converted into Public Limited Company on 08.08.1988 with a view of expansion and development of the business of the Company by passing a special resolution by the Members in their General Meeting held on 30.07.1988. On 17.02.2004, the name of the company was changed from "SNEHA HOTELS & DEVELOPERS LIMITED" to "RUMEET HOTELS LIMITED". Since then, the Company has achieved considerable degree of excellence in developing the business. After the implementation of Companies Act, 2013, Public limited Companies are required to do manifold compliance as compared to private company and also Rumeet Hotels Limited is not getting additional benefits of being a Public Limited Company.
  2. Keeping all this in view, it has been considered 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.
  - e. 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.
  - f. 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. The Petitioner Company has also placed on record an Affidavit dated 16<sup>th</sup> January, 2017 affirmed by Mr. Praveen Kumar Arora, Director of the Petitioner Company, affirming that in pursuance of Rule 35 of NCLT Rules, 2016 a General Notice has been published in "Mumbai Lakshadeep" a Marathi daily newspaper and in "Business Standard" an English daily newspaper both published from Mumbai and both dated 10<sup>th</sup> January, 2017.



9. 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. Hence, 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. Thereafter communicate the altered Articles within a period of 15 days to the Registrar.

10. C.P. No.30/14(1)/NCLT/MB/MAH/2016 is, therefore, allowed. No order as to cost.

Sd/-

Dated: 17<sup>th</sup> February, 2017

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