

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP No. 364/14(1)/NCLT/MB/MAH/2017

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

M/s. Computer Business Management (India)
Limited

.....Petitioner/Applicant Company

Date of Hearing: 22.12.2017

Date of Order: 10.01.2018

Coram :

Hon'ble M. K. Shrawat (J)

Hon'ble Bhaskara Pantula Mohan (J)

For the Petitioner :

Ritika Agrawal, Practising Company Secretary, Authorised Representative for the
Petitioner/Applicant.

Per: M. K. Shrawat, Member (J)

ORDER

1. Petition under consideration was filed on 21st August, 2017 under the provisions of Sec. 14 (1) 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 subsection (2) shall, subject to the provisions of this Act, be valid as if it were originally in the articles"

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2. 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 subsection 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 sub 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 clauses of an Article.

3. 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 NCI-T 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 Computer Business Management (India) Limited (Petitioner/Applicant) in their meeting held on 22nd May, 2017 passed the resolution subject to Conversion of Company from Public Limited to Private Limited Company; and Alteration of Name Clause contained in the Memorandum of Association; and also Adoption of New Set of Articles of Association of the Company pursuant to the Companies Act, 2013 and conversion to a Private Limited Company. The conversion from Public Limited to private Limited i.e. from "Computer Business Management (India) Limited" to Private Limited Company by the name and style of "Computer Business Management (India) Private Limited". And at the Extraordinary General Meeting held on 21st June, 2017 at the Petitioner Company's registered office at Office No. 69A, 6th Floor, Market Tower, 'F' wing, 56, Maker Arcade, Cuffe Parade, Mumbai - 400005, Maharashtra, India, a Special Resolution has been passed for conversion of the Petitioner/Applicant Company from Public Limited

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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 Company was incorporated on 19th July, 1995 as a Public Limited Company under the provisions of the Companies Act, 1956 vide CIN : U72200MH1995PLC090786, having its registered office at Office No. 69A, 6th Floor, Market Tower, 'F' wing, 56, Maker Arcade, Cuffe Parade, Mumbai - 400005, Maharashtra, India with the name Computer Business Management (India) Limited.
- b) The main object of the Company is to establish & run data processing and act as Registrars and share transfer agents, computer centres and to offer consultancy, training and other services that are normally offered by data processing/computer centres to impart training on electronic data processing, computer software & hardware. To carry on business as publishers and printers and book sellers in India and such other countries or places as may be thought fit.
- c) The representative of the Petitioner/Applicant Company further states that, the company desires to utilize the benefits and exemptions as available to a Private Limited Company under the Companies Act, 2013 and will reduce the paper work as involved in the compliances as required to be done by a Public Company. Upon conversion of status to Private Limited Company, the Board of the Petitioner Company will be able to save cost, time and efforts in compliance of some stringent provisions of the Companies Act, 2013 and can continue to focus more on business and expansion. Such change in status of the Petitioner Company to Private Limited Company is bona fide and not prejudicial to interest of any one and may not affect any rights and interest of any of its Directors, shareholders, employees, workers, vendors, suppliers, banks, creditors or customers of the Petitioner Company or any other stakeholders. Considering the aforesaid, the Board of Directors and shareholders have approved to convert the Company into a Private Limited. The current status of the Company is "Unlisted Public Company".
- d) On 22nd May, 2017 the Board approved the conversion of the Company into Private Company and for alteration of Articles of the Company.
- e) The members approved the proposed alteration in the Extra Ordinary General Meeting held on 21st June, 2017.

- f) To give effect of the proposed conversion, Memorandum of Association (MOA) and Articles of Association (AOA) of the Company shall undergo a change.

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

1. PARTICULARS OF COMPANY:

- i. The Authorized Share Capital of the Company is ₹ 10,00,000/- (Rs. Ten Lakhs only) divided into 1,00,000 Equity Shares of Rs. 10/- each.
- ii. The paid-up Share Capital of the Company is Rs. 5,00,000/- (Rs. Five Lakhs only) divided into 50,000 Equity Shares of Rs. 10/- each.
- iii. The compilation consists Publication of Notification depicting intention of conversion in compliance of Rule 68 (5) of NCLT Rules, 2016.

4. Public Notice by advertising in Newspapers viz. "Dainik Mumbai Lakshdeep" and "The Free Press Journal" was published on 6th December, 2017, relevant evidence is placed on record.

5. Requisite evidence is on record. Further it is stated that the Petitioner Company was incorporated on 19th July, 1995 under the Companies Act, 1956. Petition consists the list of Shareholders/Members and Creditors. The Company has so far not received any "Objection" for the said conversion. Further an "Undertaking" is given that no prejudice shall be caused to the Shareholders, Creditors or any other related party if the proposed conversion is permitted.

6. 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. 364/14/NCLT/MB/MAH/2017 is, therefore, allowed. No order as to cost.

Sd/-

Bhaskara Pantula Mohan
Member (J)

Sd/-

M. K. Shrawat
Member (J)

Dated: 10th January, 2018