

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

CP No. 408/14/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. Sulzer Pumps India Limited  
.....Petitioner/Applicant Company

Date of Hearing: 02.01.2018

Date of Order: 18.01.2018

**Coram :**

Hon'ble M. K. Shrawat (J)

Hon'ble Bhaskara Pantula Mohan (J)

**For the Petitioner :**

Mr. Satyam Israni, a/w M. Nimbalkar i/b S. D. Israni Law Chambers, Advocate,  
Authorised Representative for the Petitioner/Applicant.

*Per: Bhaskara Pantula Mohan, Member (J)*

ORDER

1. Petition under consideration was filed on 13<sup>th</sup> September, 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"

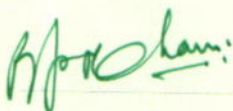
14. (1) Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a special resolution, alter its articles including alterations having the effect of conversion of—  
(a) a private company into a public company; or (b) a public company into a private 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"

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")



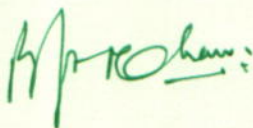


within the ambits of Section 14 of the Act. This Section prescribes that a company, either a Public Company or a Private Company, can alter its Article if such condition is contained in its Memorandum, but by a special resolution. Such alteration, for the purpose of this section, has the effect of conversion 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 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 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 Sulzer Pumps India Limited (Petitioner/Applicant) in their meeting held on 28<sup>th</sup> March, 2017 approved the proposal for alteration of Memorandum and Articles of Association of the Company and conversion of the Company into a Private Company i.e. from " Sulzer Pumps India Limited" to Private Limited Company by the name and style of " Sulzer Pumps India Private Limited". And at the Extraordinary General Meeting held on 28<sup>th</sup> April, 2017 at the Petitioner Company's registered office at 9 MIDC, Thane Belapur Road, Digha, Navi Mumbai - 400708, Maharashtra, India, a Special Resolution has been passed for conversion of the Petitioner/Applicant Company from Public Limited 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 is a Public Limited Company, limited by shares, registered under the provisions of the Companies Act, 1956, vide Certificate of Incorporation dated 19<sup>th</sup> June, 1974 issued by RoC, Mumbai, having its registered office at 9 MIDC, Thane Belapur Road, Digha, Navi Mumbai - 400708 with the name Sulzer Pumps India Limited.
- b) The Company is involved in the business of manufacturing, assembling, buying, selling, reselling, exchanging, altering, importing, exporting, distributing and dealing in all types of pumps, valves and all components, parts, spare parts and accessories for use in connection therewith.
- c) The representative of the Petitioner/Applicant Company further states that since it is a closely held company having paid-up share capital of Rs. 2.50 Crores held by 20 members as its shareholders, majority shares held by Sulzer AG, Switzerland, which is its Holding Company. For the purpose of facilitating and enabling doing of business with ease and availing statutory exemptions available to Private Company, the Board of Directors of the Applicant company were contemplating to convert the status of the Company from Public Limited to Private Limited. 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 28<sup>th</sup> March, 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 28<sup>th</sup> April, 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 ₹ 5,00,00,000/- (Rs. Five Crores only).
- ii. The paid-up Share Capital of the Company is Rs. 2,50,00,000/- (Rs. Two crores Fifty Lakhs only).





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. "Navshakti" and "The Free Press Journal" was published on 23<sup>rd</sup> November, 2017, relevant evidence is placed on record.

5. Requisite evidence is on record. Further it is stated that the Petitioner Company was incorporated on 19<sup>th</sup> June, 1974 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. 408/14/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: 18<sup>th</sup> January, 2018**

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