

In the National Company Law Tribunal
Mumbai Bench.

MA 468 in **CP No.278/241-242/NCLT/MB/MAH/2017**
Under Section 241-242 of Companies Act, 2013 &
CP 372/14(1)/NCLT/MB/MAH/2017
Under Section 14(1) of Companies Act, 2013.

In the matter of

Andre De Menezes : Petitioner

V/s

Menezes Remedies Limited & Ors. : Respondent

Order delivered on: 01-02-2018

Coram:

Hon'ble Shri M.K. Shrawat, Member (Judicial)
Hon'ble Shri Bhaskara Pantula Mohan (Judicial)

For the Petitioner(s): : 1. Mr. Ankit Lohiya,
2. Mr. Varun Nathani,
3. Mr. Abhishek Pai, Advocates.

For the Respondent(s): : 1. Mr. Joseph Kodianthara,
2. Mr. Nishit Dhruva,
3. Mr. Prakash Shinde,
4. Mr. Chirag Bhavsar, Advocates (for
Respondents 2 to 5.)

Per M.K. Shrawat, Member (Judicial).

ORDER

1. To deal with this Miscellaneous Application it is necessary to place on record certain related facts that a Petition u/s 241 and u/s 242 was filed on 14.07.2017 by Mr. Andre De Menezes (Petitioner) wherein one of the Prayers is that the Resolution passed in EOGM of 20.05.2017 be held as illegal. One of the Resolutions of the EOGM was Conversion of the Company into Private Limited Company. On mentioning of the Petition it is Prayed that the said Resolution be held as not as per Law. Further, a Praecipe has also been moved dated 14.07.2017 to seek an Order that the Resolution passed in EOGM dated 20.05.2017 for Conversion from Public Limited to Private Limited be nullified. On hearing both the sides on the said Application and considering the facts of the Petition an Interim Order was passed on 25.07.2017 as under :-

- " 1. Learned Representative present from both the sides.
2. Having heard submission from both the sides and in the light of the undertaking by the Learned Counsel of the Respondent, the Respondent shall not take any further steps in respect of AGM Resolution dated 20.05.2017 with a liberty that if deem fit the Respondent can file a fresh Petition as prescribed u/s 14 of the Companies Act.
3. Meanwhile, the pleadings being not yet complete, to be submitted by the respective sides.
4. The Petition is now listed for hearing on **04.09.2017**."
2. On account of an observation that the Respondent can file a Petition u/s. 14 if claiming Conversion from Public to Private, the Company has filed a Petition u/s. 14 on 18.08.2017 with a Prayer to approve the Conversion of the Petitioner Company into a Private Limited Company by adopting new set of Article of Association.
3. Due to this complex situation that on one hand a Petition is filed by Mr. Andre De Menezes (CP 278/2017) seeking cancellation of the said Resolution dated 20.05.2017 through which it was resolved for the said Conversion, on the other hand, the Company has filed a Petition (CP 372 of 2017) u/s 14(1) seeking permission for the said Conversion.
4. With this background we have heard the present Miscellaneous Application through which the Petitioner in CP 278 is seeking permission for the Amendments as per Schedule 'A'. On hearing both the sides the Amendment as suggested are allowed to be carried out by filing Amended Copy of the Petition, also to be served upon the other side, **barring** Para 15 of Schedule 'A' wherein referred Clause "7 A) to declare that the Petitioner is entitled to act and appoint himself or his nominee to the extent of 25.25% of the strength of Board of Directors of the Respondent No.1 Company at any point of time and direct the Respondent No.1 to 6 to amend, alter the Articles of Association in order to effectuate the same" and "7B) To pass an order re-instating the Petitioner in the Board of Directors of the Respondent no. 1 company." Except these two amendments, rest can be incorporated, nevertheless to be decided on merits on hearing the objections of the Respondent. For the sake of clarity, it is hereby informed to both the sides that merely granting amendment in the Petition

must not be pre-judged as an Order accepting the claim. Rather, it is further clarified that on receiving the amended Petition the Respondent is at liberty to file a reply to the amended Petition within a reasonable time.

5. One more issue is pleaded that the said Special Resolution must not be approved because the Petitioner Mr. Menezes held 25.25% shareholding and for special Resolution the requisite percentage of Voting was not available on the said date therefore, the conversion be not approved. In this regard, as mentioned above, a Petition u/s 14(1) is pending for disposal. Since the Resolution dated 20.05.2017 itself is a subject matter of controversy through which a Resolution was passed to convert the Company in to a Private Limited Company, hence both the Petitions i.e. CP 278/2017 and CP 372/2017 are required to be clubbed together and to be decided by a common Order. Till that decision, the requisite Order u/s 14(1) is hereby deferred.
6. Both the Petitions are directed to be listed for hearing on **26.03.2018**.

Sd/-

BHASKARA PANTULA MOHAN

Member (Judicial)

Date : 01-02-2018

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Sd/-

M.K. SHRAWAT

Member (Judicial)