

**In the National company Law Tribunal**  
**Allahabad Bench**

**CP. No- 84/ (14) (1)/ALD/2016**

*(Under Section 14(1) of the Companies Act, 2013)*

IN THE MATTER OF

**Saru Aikoh Chemicals Limited**

Public Limited Company having Registered

Office at A-2, Industrial Estate,

Partapur, Meerut, U.P – 250002

**Judgement/ Order delivered on 28.07.2017**

**Coram:** Hon'ble Shri H.P Chaturvedi, Member J

**For the petitioner:** Shri Anil Kumar PCS

**For the Respondent:** None

**As per:** Hon'ble H.P Chaturvedi, Member Judicial

**Order**


1. The Present Company Petition **CP No 84/14(1)/ALD/2016 (M/s Saru Aikoh Chemicals Limited bearing CIN No- U24119UP1937PLC00369)** is filed under section 14(1) of Companies Act, 2013 seeking approval of this Tribunal for conversion of the Company from Public Limited to Private Limited pursuant to a Board Resolution Dated, 1<sup>st</sup> August, 2016 which has been further ratified by the Annual General Meeting (AGM) of the petitioner company held on 26<sup>th</sup> August, 2016.

2. The brief fact raising to and as per averment made in the petition are stated as under.

- a. The Petitioner Company is a closely held and unlisted, Public Limited Company having Registered Office at A-2, Industrial Estate, Partapur, Meerut, U.P – 250002.





- b. The Company was originally incorporated under Companies Act, 1956 at Registrar of Companies, Kanpur, Uttar Pradesh on 4<sup>th</sup> April as a Limited Company with the name of **Saru Aikoh Fluxes Limited**, the name of which was changed from **Saru Aikoh Fluxes Limited** to **Saru Aikoh Chemicals Limited** on 25<sup>th</sup> April 1975, by the Registrar of Companies, Kanpur, Uttar Pradesh.
- c. The company as being a closely held public company is having only 18 shareholders. The shareholdings of the company are held by the family members and close friends. Hence, the company's management as well as all its shareholders are of the view that the company should become Private Limited Company in order to work smoothly and efficiently under the new Companies Act 2013, and to be more law complaint. Therefore, by this petition the company has now proposed for its conversion from Public Limited Company to Private Limited Company.
- d. In the Present Petition the Company has stated that its conversion from Public Limited to Private Limited shall not affect any secured creditors, unsecured creditor loan, debts, liabilities, obligations or contracts incurred or enter into, by or on behalf of it before conversion and such Secured Loan, Unsecured Loan, debts, liabilities and contracts may be enforced in the manner as they were enjoying the status before the conversion.
- e. The Petitioner Company through its Annual General Meeting held on 26<sup>th</sup> August, 2016, dully sought the approval from its shareholders to convert the Company's status from Public Limited to Private Limited. The shareholders/ members unanimously in the above stated AGM dated 26<sup>th</sup> August, 2016 have given their consent
- 



for conversion of the Company. All of them have voted in favour of the resolution of proposed conversion from Public Limited into a Private Limited Company.

- f. It is submitted that the petitioner company is although a Public Limited Company yet not listed in any Stock Exchange and nor registered as section 8 Company. Therefore, the petitioner company seeks approval from this Tribunal in respect of its above stated resolution for proposed alteration in its Article of Association, having effect of conversion of a public limited company into private limited as per section 14 (1) (b) of the Companies Act, 2013.

Hence on the above stated reason the present petition is filed seeking the following relief in terms of its prayer clause which are reproduced herein below: -

***“The Public Limited Company request’s the authority to grant the status of a Private Limited Company”.***

3. A perusal of the previous proceeding goes to show that the division bench of this tribunal on a previous occasion observed that the present petition was filed in this tribunal before completing the minimum waiting period from date of its resolution and the same was not in conformity with Rule 68 of NCLT, Rule 2016. Pursuant there to the petitioner company moved a memo before this tribunal seeking prayer for condonation/regularisation of its premature filing and requested such the date of hearing of present company petition be fixed after statutory period is over from the date of resolution.
4. A Perusal of record goes to shows that petitioner company passed special resolution in respect of its proposed conversion on 26<sup>th</sup> August, 2016 in



its AGM however it filed the present petition on 21<sup>st</sup> October, 2016 which is less than 3 months. In view of the above, the division bench of this Tribunal fixed the hearing date beyond the statutory period was over eg. on 21<sup>st</sup> January, 2017.

In view of the above the Pre-filing of the Present Petition deemed to be regularised. Hence the same is regularised and company's memo filed in this respect stands allowed. Thus this court can now proceed with the merits of case for its disposal.

5. It is matter of record that during course of hearing a report from the Registrar of the companies was called for. The ROC, Kanpur duly filed its report before this tribunal on 15<sup>th</sup> May, 2017. The office of the ROC in its report pointed out certain facts about the company stating that the main objective of company is of manufacturing and processing of chemicals and its products, pharmaceuticals, medicinal, chemical and botanical products. Further company has filed Form MGT-14 on 19.04.2017 in response to the special resolution dated 26.08.2016. The ROC in its report has also furnished some particulars about secured and secured loan that is Rs 34,171,445.44 as secured loan and Rs. 18,215,271 as unsecured loan.
6. The ROC in its report has further reported that Petitioner Company is regular in filing its statutory return. No violation under section 383A/203 of the Companies act 1956/2013 is reported nor there is any proceeding pending against the company under section 235/210 to 251/277 of the Companies, act 1956/2013. Hence, (as per the ROC) The present petition may be decided on its merit.





7. We also heard the submission of learned PCS Shri Anil Kumar reporting that no serious objection either from the office of RD(NR) or ROC is received in respect of the proposed conversion nor any kind of adverse comments against the company are found in the report. He further clarifies that there is no kind of objection received from public at large moreover all the directors of company come from same family and if the proposed resolution of conversion from Public to Private is approved, by this tribunal it is not going to be detrimental to the Public interest at large. Moreover, the management and shareholders would be more law complaint under present Companies Act. They would be able to work smoothly therefore its such proposal needs approval from this Tribunal.

In support of such contention the company filed its affidavit of facts and prayer for the present relief. The company in support of its prayer has further annexed the extract of special resolution dated 1<sup>st</sup> August, 2016 of its Board of Directors. Which has further been ratified and approved in its AGM dated 26<sup>th</sup> August, 2016. Seeking for change of the name of company by substituting world Limited with Private Limited and adoption of the new article.

8. We dully considered the relief sought for in the present petition in light of above stated legal position and factual aspect of the case made available in the record. The special resolution dated 26<sup>th</sup> August 2016, seeking approval from this tribunal reads as under: -

*(a) "Resolved that pursuant to the provision of section 18 read with section 13 and section of the Companies Act, 2013, and subject to approval of the Central Government and the members by way of Special Resolution at the General Meeting of the Company, the*



*Company be converted into the Private Limited Company and the name of the Company be changed from “Saru Aikoh Chemicals Limited” to “Saru Aikoh Chemicals Private Limited” by addition of the word “Private” before the “Limited” and the name clause in the Memorandum and Article of Association of the company be also accordingly altered.”*

*(b) “Further resolved that a new set of Article of Association as applicable to the private Company as placed before this meeting be approved and adopted as the new set of Article of Association of the Company”.*

9. A perusal of the relevant provision of the section 14(1) of the Companies Act, 2013 reads as under

*(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 where a company being a private company alters its articles in such a manner that they no longer include the restrictions and limitations which are required to be included in the articles of a private company under this Act, the company shall, as from the date of such alteration, cease to be a private company:*

*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.*

Besides the above The guiding principles for converting public into private company are narrated in, Ramaiya's commentary on companies act which may are reproduced here in below:

*"In considering application for conversion, the guiding criterion is whether a proposal would be in best interests of the company itself and that there is a large measure of agreement among the shareholders to the proposed conversion. In particular, an attempt is made to ascertain if the proposal is prompted merely by a desire to overcome the restriction imposed by some of the provision of the Companies Act, which apply only to public companies e.g., u/ss 295,372, etc., or if the conversion is generally needed for carrying on the business of the company more efficiently. A company having more than 25 shareholders is advised to obtain written consent of all the shareholders who had not voted for the conversion before Government's approval is considered. To protect the interest of unsecured creditors, the Department has also been insisting on companies obtaining the consent to conversion of every creditor to whom the company owes substantial amount."*

*In almost all the cases where a public company is converted into a private company, one of the motives which prompts such conversion is to avoid the restriction imposed on the public companies and enjoy the special privileges and exemption available to the private companies under the act. If the Central Government (as the authority for such approval under the 1956 Act) should refuse to accord its*






*approval to conversion on this ground, it will be improper and legally challengeable.*

*After a public is converted into private company, it is important that a copy of special resolution authorising the conversion and altering the Articles so as to comply with S.40 of the 1956 Act (Now s.15 of the 2013 Act) should be included in every copy of the articles issued thereafter. The company must be in a position to give the certificate required by s.161(2) (b) of the 1956 Act (now s. 92 of the 2013 Act). (A Ramaiya Guide to the Companies Act 18<sup>th</sup> Edition Volume – I p.604,605)*

In addition to the above the Hon'ble High court of Kerala in its matter *Mathurabhumi Printing and Publishing Co. Ltd. Vardhaman Publishers Ltd., (1992)* has observed that the power is conferred on the company under the Act to alter the article by special resolution, however such power shall not be abused by the majority of shareholders so as to oppress the minority.

The relevant portion of the above judgement may be reproduced here in below:

*(a) It is too late in the day to contend that a company has no authority to alter the articles. A company has the power to alter its articles by special resolution passed at a general meeting. Such alterations will be valid provided they are not inconsistent with the provisions of the Companies Act and the memorandum of association (see para 4 to 7 of Gore-Broume on Companies, volume 1, 44th edition). A reference in this connection to Sections 31 and 38 of the Act also is profitable.*

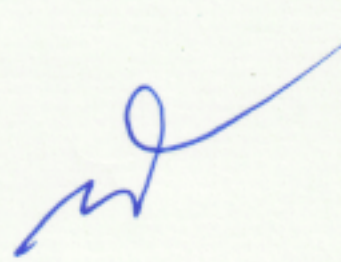




(b) *With respect we agree with the view expressed by the Madras High Court. It is pertinent to note in this connection that counsel representing both the appellant and the transferees have very fairly conceded that the amended article has no retrospective operation. An incidental question, however, would arise immediately and it is this: Whether the altered article would interfere with the transfer of shares effected by the shareholder prior to the resolution amending the articles. We are of the view that the transferor remains subject to the altered article if it is shown that he continues to be a shareholder of the company. We are fortified in this view by the decision in Pepe's case [1893] 2 Ch 311, where after considering an amendment to the rule divesting a member of the society of his vested right to withdraw his shares, passed after the issue of the notice in writing expressing his desire to withdraw the shares, was held binding on the member because at the time of altering the article he continued to be a member of the society. We shall in this connection reproduce relevant parts of the ruling in Pepe's case [1893] 2 Ch 311, 313.*

*"It has been settled by a series of authorities that a person in such a position is still a member of the society, and it follows that, under his contract with a society which has power to alter its rules, he remains subject to the rules when duly altered."*

(c) *The High Court of Australia, after reviewing the decisions in Pepe [1893] 2 Ch 311 and Sidebottom [1920] 1 Ch 154, have held in Peters' American Delicacy Company Ltd. v. Heath (61 CLR 457) thus:*






*"(i) Section 20 (corresponding to Section 31 of the Act) empowers-a company to alter its articles only subject to the conditions contained in the memorandum of association.*

*(ii) An alteration in a particular case may constitute a breach of contract with a shareholder, but such a breach of contract does not invalidate the resolution to alter the articles (see Allen's case [1900] 1 Ch 656 at p. 672).*

*(iii) The fact that an alteration prejudices or diminishes some of the rights of the shareholders is not in itself a ground for attacking the validity of an alteration (see Sidebottom [1920] 1 Ch 154, Shuttleworth [1927] 2 KB 9 and Allen's [1900] 1 Ch 656 cases). Any other view would, in effect, make unalterable and permanent any articles of association which conferred rights upon a class of shareholders, or possibly upon any shareholder, if they or he desired that those rights should continue to exist unchanged. It is plainly not the law that the fact that an alteration of articles alters the rights or prejudices the rights of some shareholders is sufficient to prevent the alteration from being validly made.*

*(iv) The power to alter articles must be exercised bona fide. It is generally said that the power must be exercised bona fide for the benefit of the company as a whole, and all the recent authorities refer to the statement by Lindley M. R. in Allen's case [1900] 1 Ch 656. ... It must be exercised, not only in the manner required by law, but also bona fide for the benefit of the company as a whole, and it must not be exceeded.*

*(v) It is not for the court to impose upon a company the ideas of the court as to what is for the benefit of the company. It is for the*





*shareholders to determine whether an alteration of the articles is or is not for the benefit of the company, subject to the proviso that the decision is not such as no reasonable man could have reached.*

*(vi) An alteration which is made bona fide and for the benefit of the company, if otherwise within the power, will be good, but it is not the case that it is necessary that shareholders should always have only the benefit of the company in view .... But though a shareholder may vote in his own interests the power of shareholders to alter articles is limited by the rule that the power must not be exercised fraudulently or for the purpose of oppressing a minority.*

*(vii) When the validity of a resolution of shareholders is challenged, the onus of showing that the power has not been properly exercised is on the party complaining. The court will not presume fraud or oppression or other abuse of power. ... It cannot be the law that a resolution of shareholders is to be presumed to be invalid until the defendants in an action positively establish that it is valid.*

*If, however, the resolution was passed fraudulently or oppressively or was so extravagant that no reasonable person could believe that it was for the benefit of the company, it should be held to be invalid."*

10. In the light of above mentioned rulings and considering the factual and legal position of the present case we find nothing adverse against the company seeking for such relief. Hence we are of the view that present petition deserved to be allowed. Hence, it is allowed in terms of its prayer clause.

11. Accordingly, the above stated resolution of the applicant company is hereby approved.



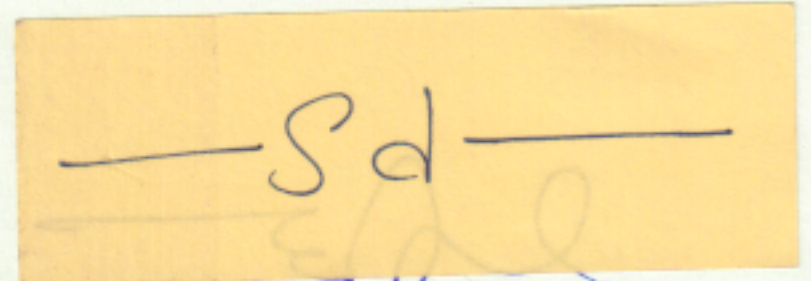
The Petitioner Company is directed to take follow up action in compliance of the Section 14(1) read with other applicable provision of the Act.

Parties may act as per the Authentic Copy of this Order.

12.No order is to cost.

13.Accordingly, the present petition stands finally disposed.

Date- 28/07/2017



H.P. Chaturvedi,  
(Member Judicial)



Typed by:  
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