

In the National Company Law Tribunal
Allahabad Bench

CP. No- 28/ALD/2017
(Under Section 14(1) of the Companies Act, 2013)

IN THE MATTER OF

Goyal Edibles Limited

Public Limited Company having Registered

Office at Ismailpur, Gorakhpur, Uttar Pradesh-273005

Judgement/ Order delivered on 31.08.2017

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

For the petitioner: S.K Sahu, PCS

For the Central Government: M.K Bagri, OL

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

Order

1. The Present Company Petition bearing CP No 28/ALD/2017 (**Goyal Edibles Limited bearing CIN No- U15311UP1999PLC024330**) is filed under section 14(1) of the Companies Act, 2013 read with NCLT Rule, 68 and other applicable provision seeking for approval from this Tribunal on the conversion of the Company from Public Limited to Private Limited pursuant to a Board Resolution Dated, **2nd April, 2016** of the petitioner company's further ratified in its Extra Ordinary General Meeting (EOGM) held on **2nd May, 2016**.
2. The brief facts as per averments made in the present petition are stated as under.
 - a. The Petitioner Company is a closely held and unlisted, Public Limited Company having its Registered Office at **Ismailpur, Gorakhpur, Uttar Pradesh- 273005**.

b. The Authorized Share Capital of the Company is Rs.6,66,70,000/- (Rupee Six Crore Sixty-Six Lac Seventy Thousand Only) Divided into 66,67,000 (Sixty-Six Lac Sixty-Seven Thousand) Equity Shares of Rs.10/- (Rupee Ten Only) each. The Issued, Subscribed and Paid up Share Capital of the Company is Rs.5,06,87,000/- (Rupee Five Crore Six Lac Seven Thousand only) divided into 50,68,700 (Fifty Lac Sixty-Eight Thousand Seven Hundred Only) Equity shares of 10/- (Rupee Ten Only)

c. The petitioner Company has been incorporated for carrying on its Business set out in Paragraph (A) of Clause III of Memorandum of Association of the Company which reads as under:

i. "To carry on the business are manufactures, fabricators, processors, producers, growers, makers, importers, exporters, buyers, sellers, suppliers, stockists, agents, merchants, distributors and dealers in all and varieties of Wheat, Atta, Aaida, Suji, Bran, Animal food, Pulses, Seeds, Rice, Paddy, Grains, Oil, Refined Oil, Vegetable ghee and allied products.

ii. To carry on the business as manufacturers, fabricators, processors, producers, makers, importers, buyers, sellers, suppliers, agents, merchants, distributors of confectionery, biscuits, flakes, Dalia, bread and allied products.

d. The Petitioner Company is incorporated as Public Company limited by shares. Since the Company is having very small numbers of shareholders and it is in no need of more funding capital from the

public. Hence in the interest of shareholders and stakeholder it would be better to convert the petitioner company into a Private Limited Company so that it can work effectively as a private Limited company because its funds requirements seem to be low.

e. The accounts of the petitioner Company have been prepared and audited for the year ended 31st March, 2016.

3. Thus, for the aforesaid reasons the petitioner Company has Sought a prayer from this court to grant permission and to approve the special resolution of the company on its proposed conversion from Public to Private Limited and to grant further Permission to carry necessary amendment/changes in its article of association, in terms of section 14 and other applicable provision of Companies Act, 2013, read with Rule 33 of the Companies Incorporation Rules, 2014 and NCLT Rule, 2016. The applicant company has prayed for some other reliefs which this Tribunal may deem fit and proper.

4. The Petitioner Company in the present petition has made a submission stating such the members of the Company have already accorded their approval and passed a special resolution to this effect in their Extra Ordinary General Meeting (EOGM) held on **2nd May, 2016**.

5. The Applicant Company has further annexed a copy of the Statutory form no MGT-14 vide SRN no-G02621639 in respect of special resolution passed by the shareholders along with the proposed article of association of the company annexed as **Annexure-2**.

6. Petitioner company submits that although it is a Public company Limited by shares but at present is having very small number of shareholders,

thus It doesn't intend to increase in number of its member beyond 200 persons nor it intends to engage in any such activity which can't be done by a Private limited company, hence it would be -prudent to convert the petitioner company into Private Limited Company so as to work effectively and efficiently. The Petitioner company further clarify that it availed credits for a sum of Rs.9,09,89,581.50 from its Creditors as there are **11** unsecured creditors **5** Sundry Creditors but **NIL** secured Creditors. In support of its contention the petitioner company annexed with the present petition, a list of creditors and sundry creditors as **Annexure 4**. Such list of creditors is further supported by the affidavits of the key managerial person as well as the director of the company. Applicant company has also annexed its Auditors certificate verifying creditors of the company as **Annexure 5** to the company petition.

7. It is stated that the proposal for seeking conversion of the applicant company from Public to Private has been duly advertised (**in prescribed from NCLT 3A as per the Rule 5(68) (a) read with 35(1) of the NCLT Rules**) by prescribing minimum statutory period by inviting response/objection, if any, from public concern. However as reported there is no such kind of objection/comments received against the proposed conversion and special resolution passed by the Board of Directors is duly ratified by the Shareholders of the petitioner company. Hence, the applicant company prays for approval of its resolution on proposed conversion from Public to Private Limited Company.
8. During the course of hearing, of the present petition this Tribunal called for a report from the Registrar of the Companies on the proposed resolution of conversion. The same was received on 29.05.2017 wherein



the office of ROC Kanpur placed its comment about the status of the petitioner company by furnishing necessary particulars on Directors of the company, list of directors, the Authorised and paid up capital of the company, details of secured and unsecured creditors informing such the petitioner company is having **NIL** secured creditors and unsecured loan of Rs 8,89,40,000.00 from unsecured creditors and for Rs 20,49,582.50 from sundry creditors. The ROC in report has submitted a list of its shareholders of the petitioner company that ^{there are} 22 in number having paid up share capital of Rs 50,687,000 divided in to 5,068,700 equity shares of Rs 10/- each.

The ROC further in its report has stated that petitioner company has filed MGT-14 dated 05.05.2016 is within 30 days of passing of its Special Resolution with all relevant documents. Thus, the company has sought for approval from this Tribunal.

The ROC has stated that there is no report filed against company in violation of Section 383A/203 of the Act 1956/2013 nor any proceedings under section 235/210 to 251/227 of the Act 1956/2013 are reported pending against it. Thus the report of the ROC simpliciter neither in favour nor against the proposal of the company. It may be seen that no any kind of adverse comment is found in the report of ROC.

9. We heard the submission of learned PCS Shri S.K Sahu who contented such that there is no serious kind of objection in the report of the office ROC on the proposed reconversion nor any adverse comment is made in respect of the affairs of the company are stated in the report. He further reports that there is no kind of objection as received from public at large. He further contends that, if the proposed resolution of conversion from

Public to Private is not approved, by this tribunal then it would be detrimental to the interest of its shareholder as well as interest of public at large. If such resolution is approved, then the management and shareholders would be more law complaint under the provision of present Companies Act. They would be able to work smoothly. Hence such resolution needs approval from this tribunal.

In support of such contention the petitioner company has filed a supporting affidavit of facts and prayer seeking for the present relief. The company in support of its prayer dully annexed the extract of special resolution dated **2nd April, 2016** passed by its Board of Directors further dully ratified and approved by EOGM of the company dated **2nd May, 2016**. Seeking for change in the name of company by substituting world Limited with Private Limited and adoption of the new article.

10. We duly considered the above stated submission and the relief sought for in the present petition in the light of legal position of the present case as available on record. The special resolution dated 2nd May, 2016, seeking approval from this tribunal may be reproduced herein below: -

(a) "Resolved that pursuant to the provision of section 18 read with section 13 and section 14 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 "GOYAL EDIBLES LIMITED" to "GOYAL EDIBLES 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”.


11. We further considered the relevant provision of the section 14(1) of the Companies Act, 2013 which 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.



12. In addition to the above the guiding principle for converting a public into private company as narrated in, Ramaiya's commentary on companies Act may be reproduced here as under:

"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



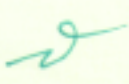
approval under the 1956 Act) should refuse to accord its approval to conversion on this ground, it will be improper and legally challengeable.

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 18th 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 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 judgement is reproduced herein 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.*

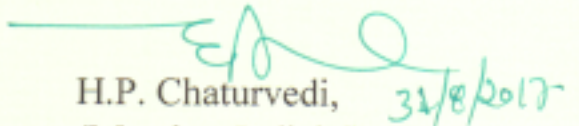
(vii) *When the validity of a resolution of shareholders is challenged, the onus of showing that the power has not been properly exercised is on the party complaining. The court will not presume fraud or oppression or other abuse of power. ... It cannot be the law that a resolution of shareholders is 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."



13. In the light of above mentioned facts of the case by placing reliance on the above referred judicial precedents, nothing adverse is found against the company seeking for the present relief. Hence we are of view the present petition deserved to be allowed hence is allowed in terms of its prayer clause.
14. In the result, the above stated resolution dated **2nd April, 2016** and EOGM dated **2nd May, 2016** of the petitioner company is hereby approved. The Petitioner Company is further directed to take follow up action in compliance of the Section 14(1) read with other applicable provision of the Act and to file certified copy of this order along with above stated resolution with the ROC, Kanpur.
- Parties may act as per the Authentic Copy of this Order. No order as to cost.
15. The present petition stands finally disposed off.

Dated- 31/08/2017


H.P. Chaturvedi,
(Member Judicial)

Typed by:
Aman Kumar Dwivedi,
Law Clerk cum Research Assistant