

In the National company Law Tribunal
Allahabad Bench

CP. No- 74/ALD/2017
(Under Section 14(1) of the Companies Act, 2013)

IN THE MATTER OF

HMA NATURAL FOODS LIMITED

(Public Limited Company having Registered
Office at. LIG 15, Ganaga Vihar, Kranti Nagar
Chauraha K.D.A Colony, Jajmau Kanpur-208010)

Judgement/ Order delivered on 25.09.2017

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

For the petitioner: Shri Shahid Kazmi, Adv.

For the Respondent: -----

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

Order

1. The Petitioner (M/s **HMA NATURAL FOODS LIMITED** bearing **CIN No- U01403UP2011PLC047316**) files the Present Petition under section 14(1) of Companies Act, 2013 read with NCLT Rule, 68 and other applicable provision seeking approval from this Tribunal for its conversion from Public Limited into a Private Limited Company pursuant to a Board Resolution Dated, **20th February, 2017** which has been dully ratified by the Extra Ordinary General Meeting of the petitioner company held on **21st March, 2017**.

2. The brief fact raising to 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 (LIG 15, Ganaga**



Vihar, Kranti Nagar Churaha K.D.A Colony, Jajmau, Kanpur, Uttar Pradesh-208010).

- b. The Company was originally incorporated under Companies Act, 1956 at Registrar of Companies, Kanpur, Uttar Pradesh on **8th November, 2011** as a Limited Company with the name of **“HMA NATURAL FOODS LIMITED”**
- c. The Company is having an authorized share capital of Rs.5,00,00,000/- (Five Crore Only) Divided into 50,00,000/-(Fifty Lakh Only) equity shares of Rs10/- and paid up share capital of the Company is Rs.2,49,00,050/-(Rupee Two Crores Forty-Nine Lakh Fifty Only) and unclassified shares of 24,90,005 (Twenty-Four Lakh Ninety thousand and Five Only) of Rs.10/- each.
- d. The main objects of the Company have been specified in Clause “A” of the Memorandum of Association of the Company which reads as under:
- (i) To carry on the business of slaughtering, processing & rendering of meat of meat & meat products, bone, tallow, tallow products, food offals, raw hides, and to deal with as wholesalers or retailers or as exporters or importers or as principal or agents in all kind of livestock products. To carry on the business of meat & meat
 - (ii) products (fish, sheep, goat, buffalo) and meat products, bone tallow & tallow products, poultry foods, offal's, foods, flour mills, food grains, mineral water, beverages an all types of foods and eatables and to manufacture, buy & sell, import, export, and deal in livestock such as



processed food, deep frozen foods, deep frozen vegetables.

- (iii) To carry on the business of developing land for and planting, growing, cultivating, producing and raising plantation of various forest species, of proven utility and maintaining, conserving, preserving, tending, exploiting and managing all respects, crops and trees manufacturing & trading of organic manures, composite, fertilizers raised or come up naturally, or other agricultural plantation and horticultural crops, medicinal and aromatic plants and to buy shell,

- e. The company as being a closely held public company is having only **7 shareholders**. Hence, the company's management as well as all its shareholders felt 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 Present petition the company has proposed for its conversion from Public Limited to a Private Limited Company.

3. For the aforesaid reasons the Petitioner Company has made such prayer from this Tribunal to grant permission and to approve the Special Resolution passed by the Company on its Proposed conversion from Public to Private Limited and to grant permission to carry necessary amendments/ make changes in its Article of Association, in terms of section 14 and other applicable provision of the Companies Act, 2013 read with Rule 33 of the Companies Incorporation Rules, 2014 and NCLT Rule, 2016. The applicant



[Handwritten signature]

Company has prayed for some other relief which this Tribunal may deem fit and proper.

4. 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.
5. The Petitioner Company through its Extra Ordinary General Meeting held on 21st March, 2017, has got 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 EOGM 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.
6. In this Regard, all the requisite documents were filed before the Registrar of Companies, Kanpur including MGT-14 vide SRN NO-G39591243 on 30/03/2017. Further Shri Wajid Ahmed and Shri Mohammad Ashiq Qureshi being Directors of the Company have filed their Affidavit affirming the correctness of these documents.
7. It is submitted that the petitioner company although a Public Limited Company yet has not been listed in any Stock Exchange nor registered under section 8 of the Companies Act, 2013 for charitable purposes. Therefore, the petitioner company seeks approval from this Tribunal of its above sated resolution for proposed alteration in its Article of Association, having effect of its conversion from 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 petitioner company seeks for the following relief in terms of its prayer clause which are reproduced herein below: -

(a) ***“To confirm the conversion of the Petitioner Company from “PUBLIC LIMITED” to “PRIVATE LIMITED” and the consequential alteration in the Article of Association of the Petitioner Company.***

8. We also heard the submission of the Learned Petitioner Counsel Shri Shahid Kazmi, such that there is no any kind of objection received from public concern and the proposed resolution of conversion from Public to Private if is approved, by this tribunal is not going to be detrimental to the interest of Public at large. Moreover, the management and shareholders would be more law complaint under present Companies Act. They would be able to work smoothly therefore Company's such proposal needs approval from this Tribunal.

In support of such contention the company has filed its affidavit of its Directors, Shri Wazid Ahmed and Shri Mohammed Ashiq Qureshi. The company in support of its prayer has further annexed the extract of special resolution dated 20th Febuary,2017 of the Board of Directors, further dully ratified and approved by the Shareholders of the Company in its EOGM dated 21st March,2017. Seeking for change in the name of company by substituting world Limited with Private Limited and for



adoption of the new Articles of Association and Memorandum of Association of the Company.

9. We dully considered the relief sought for in by the Petitioner. In the light of above stated legal position and factual aspect of case as placed before us and made available in the record. The special resolution dated 21st March,2017, 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 other applicable provisions and relevant rules framed there under(including any statutory modification(s) or re-enactment thereof,for the time being in force)and the enabling provisions in the Memorandum of Association and articles of Association of the Company , and other applicable laws, rules and regulation and guidelines and subject to the approval of the Hon'ble National Company Law Tribunal , the consent of the members by way of special resolution at the general meeting be and is hereby accorded to convert the company from " PUBLIC LIMITED" TO "PRIVATE LIMITED" and consequently the name of company be changed from "HMA NATURAL FOODS LIMITED" to "HMA NATURAL FOODS PRIVATE LIMITED" by addition of the word "PRIVATE" before the word "LIMITED".

(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".



10. 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.

In addition to the above, the guiding principle for conversion of a Public Limited into private company have been described in, Ramaiya's commentary on companies act which may be 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 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 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) By following the above referred Judicial Precedents and considering the Factual and legal position of the present case we find nothing adverse against the company's special resolution. Seeking the Present relief sought for. Hence the present petition deserves to be allowed hence is allowed in terms of its prayer clause.

(11) Accordingly, the above stated Special resolution 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 as to cost.

(13) Accordingly, the present petition stands finally disposed of.



Date- 25/09/2017

— Sd —

**H.P Chaturvedi
(Member Judicial)**

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