

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH

CP. No- 80/ALD/2017
(Under Section 14(1) of the Companies Act, 2013)

IN THE MATTER OF

Amrit Banaspati Company Limited
Public Limited Company having Registered
Office at A-95, Sector-65, Noida-201 309 (U.P)

Judgment/Order delivered on 16.10.2017

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 80/ALD/2017 (M/s Amrit Banaspati Company Limited bearing CIN No-U51909UP1985PLC056366)** is filed under section 14(1) of Companies Act, 2013 seeking approval from this Tribunal for conversion of the Petitioner Company from Public Limited to Private Limited pursuant to a Board Resolution Dated, **3rd February, 2017** further duly ratified by the Extra-Ordinary General Meeting(EOGM) of the company held on **14th March, 2017**.

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

a. The Petitioner Company is a closely held Company and is reported presently to be an unlisted Public Limited Company (As per the material placed before us the petitioner company was once listed in



the stock Exchange in Bombay & Delhi in the year 2012) having Registered Office at A-95, Sector-65, Noida-201 309.

The Petitioner Company was engaged in the manufacturing and distribution of edible oil business having manufacturing unit in the State of Punjab hence was got listed on Bombay and Delhi Stock During the year 2012. Thereafter the Company is reported having sold/transferred its edible oils business along with its manufacturing undertaking on a slump sale basis as a going concern to M/s Bunge India Private Limited. Consequent thereto, the Company was no longer engaged in the edible oils business, which was its sole business at that time for listing with the stock exchanges. Therefore, the Company's Promoter offered for buying back of its share as possessed by the public shareholders under **SEBI (Delisting of Equity Shares) Regulations, 2009**. Consequent to such buying back of the shares from public shareholders, the Company was got delisted from the stock exchange and thus become an unlisted public Company in the year 2013.

- b. The Company was initially incorporated under Companies Act, 1956 under the name and style of **Amrit Enterprises Limited** with the Registrar of Companies, Punjab, H.P. & Haryana (at Jalandhar) on **28.03.1985** as a Limited Company. Later on the name of Company was changed from **Amrit Enterprises Limited** to **Amrit Banaspati Company Limited** vide fresh incorporation certificate dated 2nd August 2007, issued by the Registrar of Companies, Punjab, H.P. & Haryana at Jalandhar.



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As per the record of the case, the Registered office of the Petitioner Company was further shifted to A-95, Sector-65, Noida in the State of Uttar Pradesh pursuant to an order dated **5th April, 2013** passed by the Regional Director (NR), Ministry of Corporate Affairs, New Delhi.

c. As per the averment, made in the Present Petition the Company is having an authorized share capital of Rs.22,52,00,000/- (Twenty-Two Crore Fifty-Two Lakhs Only) Divided into Rs.2,25,20,000/- (Two Crore Twenty-Five Lakh Twenty Thousand Only/-) equity shares of Rs.101/- each and paid up share capital of the Company is Rs.9,55,16,870/- (Nine Crore Fifty-Five Lakhs Sixteen Thousand Eight Hundred Seventy Only) divided into Rs.95,51,687/- (Ninety-Five Lakh Fifty-One Thousand Six Hundred Eighty-Seven Only) Equity shares of Rs.101/- each.

d. The main objects of the Company are described in Clause "A" of its Memorandum of Association which reads as under:

- i. *To carry on the Business of and dealers in chemicals, fertilisers, pesticides, heavy chemicals, alkalies, acids, assances, pharmaceutical, medicine, chemicals, industrial alcohols, acetones, and other organic compounds of carbon and hydrogen (Hydro Carbons), dyes and dye intermediates, drugs and drug intermediates, cosmetic products, non-edible oil products, mineral andothe waters, organic or mineral intermediates for paints and colour grinders, makers of and dealers in salts and marine minerals and their derivatives, hocculants and polymers of*



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all kinds and description and/or their compounds and derivatives of all kinds and description.

- ii. *To manufacture, refine, prepare, treat, purchase, sell, import, export, store, distribute or otherwise deal in either as principals or as agents or in collaboration with others all or any of followings, viz. rice bran, oils, cakes and sees, nuts, soya bean and its products, soaps, deoiled brans and cakes.*
- iii. *To carry on the business of manufacturers, importers, exporters and dealers in all kinds and classes of paper, board, Husk board, corrugating medium and pulp including writing paper, printing, absorbent tissue, newsprint paper, wrapping paper, tissue paper, cover paper, blotting paper, fitter paper, antique paper, ivory finish paper, coated paper, art paper, bank and bond paper, badami, brown or buff paper, bible paper, cartridge paper, cloth lined paper, azurelaid and wove paper, cream laid and wave paper, grease proof paper, gummed paper, handmade paper, parchment paper, drawing paper, kraft paper, manila paper, envelope paper, sensitised paper, chemically treated paper, paste board, duplex and triplex board, hard board, ply wood board, post cards, visiting cards, soda pulp, sulphite pulp, semi-chemical pup and all kinds of articles in the manufacture of which in any form paper, board or pulp is used and also to deal in or manufacture any other articles or things of a character similar or analogous to the*



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foregoing or any of them or connected therewith and to purchase or otherwise acquire, settle, or improve and cultivate, forests, lands and properties of any tenure whatsoever with a view to producing, cultivating, growing timber, bamboo and other wood.

- iv. *To carry on business of civil, mechanical, electrical and consulting engineers, agricultural engineers, aeronautical engineers, aviation engineers, construction engineers and engineers in all branches of work whatsoever known to engineering, erectors, mechanics, manufacturers of agricultural implements and any other kind of machinery which is used for the purpose of agriculture or for any other purpose whatsoever and/or any part thereof or accessories thereto; founder; manufacturers of welding appliances and of all or any parts thereof or accessories thereto/ boiler makers; millwrights; wire drawers, tube makers, iron and steel converters; smiths, whellwrights, wood workers, metallurgists, galvanizers, japanners, enamellers, electroplaters, silver-platers, nickelplaters, varnishers, vulcanisers: water supply and hydraulic engineers, marine engineers, motor engineers, painters and packing case makers: manufacturers of all other instruments uses in or in connection with any of the above business; and of motors, machinery and scientific appliances, apparatus and devices of every description whatsoever: rolling stock,*



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timber goods, iron, steel and other metal implements, tools, utensils.

3. In addition to the above. The Petitioner Company has given reason for Proposed Conversion of the Company which is described in its explanatory statement of the EOGM of the Company which for the sake of *convenience may be reproduced here under:*

(a) It is stated that the company as being a closely held public company is having only 20 shareholders and there is no involvement of Public in the shareholding or Management of the Company. 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.

(b) It is stated that the proposed conversion of the Applicant Company from Public Limited to Private Limited Company 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.



(c) The Petitioner Company through its EOGM held on 14th March, 2017 has sought an approval from its shareholders to convert its status from Public Limited to Private Limited. Further shareholders/ members of the Company in the above stated EOGM dated 14th March, 2017 have given their unanimous consent for proposed conversion of the Company. As all of them have voted in favour of the proposed resolution of conversion of the Company.

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

Hence aforesaid reason the present petition is before us for seeking relief in terms of its prayer clause which is sated as under:

Prayer-

(“To confirm the conversion of the Petitioner Company into a Private Limited Company and alteration in the Memorandum & Article of Association of the Company and consequent thereto change the name of the Company from “AMRIT BANASPATI COMPANY LIMITED” to “AMRIT BANASPATI COMPANY PRIVATE LIMITED”).



4. We examined the above stated contents of the Present Petition. During the course of hearing a report from the Registrar of the companies was called for. The ROC, Kanpur has submitted its report before this tribunal on 10.08.2017. As per his report ^{as well as Record of the case} the main objective of company is of Trading in commodities and holding investment in the Group companies. Further the company has also filed its Form **MGT-14** on **17.04.2017** in response to the special resolution dated **14.03.2016**. The ROC in its report also has given some particulars about secured and unsecured loan that is Rs.53,40,48,167/- and Rs.65,00,000/-
5. It is also reported that Petitioner Company is regular in filing its statutory return. No violation under section 383A/203 of the Companies act 1956/2013 is seen 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 Report) The present petition can be decided on its merit.
6. We heard the submission of learned PCS Shri Anil Kumar who submitted that there is 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 states that if the proposed resolution of conversion from Public to Private is approved, by this tribunal is not going to be detrimental to any Public interest at large. Moreover, the management and shareholders would be more law compliant under present Companies Act. They would be able to work smoothly therefore its such proposal needs to be approved by this Tribunal.



In support of such contention the company further filed its affidavit of Service/ Compliance of the order dated 11th July 2017 and 12th July, 2017 thus prayed for the present relief. The Company in support of the relief sought for has further annexed the extract of special resolution dated **03rd February, 2017** of its Board of Directors. Which is further ratified and approved by the Company in its **AGM dated 14th March, 2017**. Seeking for change of the name of company by substituting the word "**Limited**" with "**Private Limited**" and by adopting the new article.

7. We carefully examined the relief sought for in the present petition in light of above stated factual aspect of the case as available in the record. Including the special resolution dated **14th March, 2017**, seeking approval from this tribunal which 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 "Amrit Banaspati Company Limited" to "Amrit Banaspati Company 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”.

8. We have also gone through 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.



We also considered The guiding principle of converting the public limited Company into private Company which are described well in, Ramaiya's commentary on companies act and for the sake of convenience the same 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 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*



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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) Relying on the above stated Principle and considering the factual and legal aspects of the present Company Petition proposing its conversion from Public to a Private Limited Company. We find nothing adverse against such special resolution of the Petitioner Company dated **14/03/2017** seeking for



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our approval. The present petition deserved to be allowed. Hence is allowed in terms of its prayer clause.

(11) Consequently the special resolution dated **14/03/2017** of the petitioner is confirmed and approved as per Section 14(1)(2) of the Companies Act, 2013 but subject to compliance of other statutory provisions and procedure.

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

Parties concern 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- 16/10/2017


H.P. Chaturvedi
(Member Judicial)

Typed by:

Aman Kumar Dwivedi

Law Clerk cum Research Assistant