

**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH**

**CP No.89/Chd/HR/2017
Date of Order : 02.05.2017**

**Coram: HON'BLE MR. JUSTICE R.P.NAGRATH,
MEMBER (JUDICIAL).**

In the matter of:

Shreeom infrastructure & Projects Ltd.Petitioner/Applicant

**Present: Mr.Jai Prakash Jagdev, Fellow/Practicing Company Secretary
for the Applicant/Petitioner.**

O R D E R

R.P.Nagrath, J. Member (Judicial) (ORAL)

This is an application filed under Section 14(1) of the Companies Act, 2013 (for short to be called here-in-after as 'the Act') for amendment of the Articles of Association of the Company for converting the Public Company into a Private Company. The Company passed unanimous Special Resolution as at page 45 of the paper book, in the Extra Ordinary General Meeting (EOGM) held on 13.02.2017 according approval to the aforesaid conversion. By this resolution, authorisation was given to any one of the Directors of the Company to do all the acts and deeds in filing application, engaging counsel, to appoint power of attorney etc in this regard. At page 46 of the paper book is the notice of EOGM for passing the Special Resolution. This resolution was also filed in Form MGT-14 with the Registrar of Companies and copy of the same is attested by the Director of the Company as at Annexure-2.

2. Rule 68 of NCLT Rules, 2016 (for brevity 'the Rules') prescribe the procedure for filing petition under Section 14 of the Act. The application is required to be filed in Form NCLT-I, which has been complied.

3. It is stated by the Fellow/Practicing Company Secretary representing the Company that the Applicant-Company was incorporated on 13.05.2005 as a 'Public Limited Company'. Certificate of Incorporation is at Annexure-1, with which the Memorandum of Association and Articles of Association are annexed. The company has its Registered Office in District Ambala (Haryana) and therefore, the matter falls within the territorial jurisdiction of this Tribunal. It is represented that as per the Memorandum of Association of the Company, the main objects of the company are to carry on the business of developing, implementing, undertaking of infrastructures and projects of buildings, roads, bridges, flyovers, highways, docks, ports, wharves, airports, reservoirs etc, to build, purchase or dispose of the same on instalment basis, rent, sale, or by outright sale or in exchange or in any other lawful manner any area, land, buildings, apartments, etc.

4. The list of the Directors of the company as on 13.02.2017 with their distinct DIN number is at Annexure-8 and there are in all 6 Directors of the Company. Mr.Sanjay Goel, one of the Directors of the Company, through whom the instant application was filed has furnished his own affidavit in support of the statement made in the application.

5. The Fellow/Practicing Company Secretary would further represent that the list of Shareholders of the Company is on page 155 at Annexure-7 of the paper book and there are in all 19 shareholders of the Company. It is contended that the Company consists of family members and friends. It is further contended that the EOGM resolution, on the basis of which the instant

(R. Singh)

application is filed was attended by 9 shareholders out of 19 and that was a unanimous resolution to convert the Public Company into a Private Company.

6. Having regard to the procedure prescribed under rule 68 of the 'Rules', the following order was passed on 17.03.2017 for the petitioner to make compliances:

"..... it is directed that petitioner would advertise the petition in accordance with Rule 35 of NCLT Rules, 2016 at least 14 days before the date of hearing, one in vernacular newspaper 'Dainik Bhaskar (Hindi)' and the other in 'The Tribune' (English). The petitioner is also directed to send the notices of the next date of hearing to the Central Government through Secretary, Ministry of Corporate Affairs, Regional Director and the Registrar of Companies (Haryana), in Form-3B by registered post with acknowledgement due.

The authorised representative of the petitioner has stated that an affidavit has already been filed that there is no debenture holder or secured creditor of the company. However, there are many unsecured creditors of the company, list of which is Annexure-3 at page 62 of the paper book, to whom the individual notices are required to be sent as per Rule 68 (5) (b) of the Rules. List of unsecured creditors is Annexure-3 at page 62 of the paper book.

It is pointed out that the debt of Rohit Kumar sundry creditor has been cleared for which there is an affidavit at page 65 (i) and (ii) of the paper book, but notices to rest of the creditors from Sr.No.1 to 11 have not been sent. It is directed that the notice be also issued in Form 3-B of NCLT to the creditors of the company, whether secured or unsecured creditors by registered post with acknowledgement due immediately. It is further directed that the petitioner would file an affidavit stating the above compliances along with the postal receipts of the dispatch of the notices and regarding rest of compliances as observed above, at least one week before the date fixed. The matter is adjourned for hearing to 02.05.2017."

7. The authorised representative submits that the necessary compliances have been made and affidavit of Mr.Sanjay Goel in support of compliance was filed in the Registry on 21.04.2017. The notice was published in the Daily 'Dainik Bhaskar' (Hindi) on 24.03.2017 and 'The Tribune' (English) on 25.03.2017 which is stated to have wide circulation in the District of Ambala

and the notice was published in Form NCLT-3A. The newspapers in which the publications were made are also attached with the application supported by affidavit.

8. It is further stated by the Fellow/Practicing Company Secretary that notices in Form 3-B were sent to all the authorities mentioned in the order passed by the Tribunal on 17.03.2017 and also to the 11 unsecured creditors at Sr.No.1 to 11 as per the list Annexure-3. Copies of the notices sent to all the aforesaid persons including the creditors have been attached with this application supported by the affidavit. The postal receipts in proof of despatch of notice would show that these notices were also sent to Registrar of Companies, NCLT Delhi & Haryana, Regional Director, Northern Region, Joint Secretary and Secretary to the Ministry of Corporate Affairs. The Fellow/Practicing Company Secretary also filed today, during the hearing, 'Acknowledgement Dues' in token of delivery of notices to 11 unsecured creditors to whom notices were sent, but no acknowledgement is stated to have been received from the statutory authorities.

9. I have heard the Fellow/Practicing Company Secretary of the applicant company and gone through the records.

10. It is stated in the application that the Applicant Company is registered as Public Limited Company, limited by shares and is not registered under Section 8 of the Companies Act. It is further stated that shareholders, creditors, debenture holders and other related Partys' interests shall not be prejudiced by the proposed conversion of the Company from Public Company into Private Company and it is further stated that there is no public shareholder or debenture is involved, and 100% of shareholding is held by the Directors and their relatives and is a closely held Unlisted Public Company.

11. The applicant has also attached the Auditor's Report for the year ending 31.3.2016 which is accompanied by the Balance Sheet and the necessary financial statements for the year 2015-16 along with report of the Board of Directors of the Company for the said year. Net profit of the Applicant-Company as on 31.3.2016 is stated to be ₹4,57,643.08 (Pg 82) apart from the other income. It is represented that there is no secured creditor of the applicant-company.

12. In view of the above and there being no objection from those concerned, the application is allowed and the company is allowed to be converted from Public Limited to Private Limited Company. Copy of this order approving the conversion shall be filed with the Registrar of Companies together with a printed copy of the altered articles within the period of fifteen days in the manner prescribed.



(Justice R.P.Nagrath)
Member (Judicial)

May 02, 2017
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