

**IN THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”**

CP NO. 141/Chd/Hry/2017

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

In the matter of :

Daffodil Software Limited having its registered
office at 15th Floor, Tower A-3, DLF Silokhera
SEZ, Sector 30, Gurgaon-122001.

...Petitioner.

Judgement delivered on: 03.10.2017

Coram: Hon'ble Mr. Justice R.P. Nagrath, Member (Judicial)

For the petitioner : Ms. Shivangi Singh, Practising Company
Secretary.

For the Register of : Dr. Raj Singh, Register of Companies,
Companies, NCT of Punjab & Chandigarh and Himachal
Delhi & Haryana Pradesh.

JUDGEMENT (Oral)

This petition is filed under Section 14 of the Companies Act, 2013 (for short, to be referred hereinafter as the 'Rules') for alteration of Articles of Associations of the petitioner-company for converting the petitioner from a public limited company to a private limited company. The application has been filed in Form NCLT 1 as required by sub-rule (1) of Rule 68 of the National Company Law Tribunal Rules, 2016 (for brevity, the 'Rules').

2. The petitioner-company was incorporated on 16.09.1999 as a private limited company and got converted into a public company on 21.06.2002. The registered office of the company is situated at Gurgaon

(Gurugram) and, therefore, the matter falls within the territorial jurisdiction of this Tribunal.

3. The authorised share capital of the company is ₹ 5 crores divided into 50 lacs equity shares of face value of ₹ 10/- each, with issued subscribed and paid up capital of ₹2,35,69,000/- equity shares of ₹10/- each. The main object of the company is to carry on the business of manufacturer, producers, traders and exporters, wholesalers, retailer dealer of software of all kinds and nature and description and to carry on the business of dealing in all type of computers and its allied products etc.

4. The petitioner-company resolved in the Extraordinary General Meeting (EOGM) held on 14.12.2016 to convert the petitioner-company from a public limited company to a private limited company and for adoption of new set of Memorandum and Articles of Association pursuant to the conversion. Copy of the resolution is at Annexure 5 (a) and copy of minutes of EOGM dated 14.12.2016 is Annexure 5(b). Copy of this resolution was also sent to the Registrar of Companies, NCT of Delhi and Haryana in Form MGT-14 which is at Annexure 5 (c).

5. The matter was placed before the shareholders in the EOGM meeting of the Board of Directors of the petitioner company even held on 19.11.2016. Minutes of the Board meeting are at Annexure-6 and it was resolved as under:-

“Resolved that pursuant to the provisions of Section 13,14 and any other applicable provisions of the Companies Act, 2013, if any, Companies (Incorporation) Rules, 2014 (including any statutory modifications or re-

enactment(s) thereof for the time being in force) and in pursuance of General Circular No. 18/2014 dated June 11, 2014 and subject to such approval, permission or sanction of the Registrar of Companies, Ministry of Corporate Affairs and such other appropriate authorities, as may be required, the consent of the Members be and is hereby accorded to convert the company from 'Public Limited' to 'Private Limited and consequently the name of the company be changed from 'DAFFODIL SOFTWARE LIMITED to 'DAFFODIL SOFTWARE PRIVATE LIMITED' by inserting the word 'PRIVATE' before the word 'LIMITED'."

6. The reason for such a conversion were also explained in the Board meeting as under:-

"That the company was incorporated on 16.09.1999 as a Private Limited Company. Later on 21.06.2002, company was converted to a Public Limited company by passing a Special Resolution. It was thought this would help the company to increase its business. However, after carrying on the business as Public Limited Company for about 14 years, it is now felt that the being Private or Public Limited Company have no bearing on the business of the company unless fund from public through IPO or any other means is solicited. Promoters of the company are in the opinion that there is no plan to bring fund from public in near future. Further, conversion from Public Limited to Private Limited will also reduce the burden of compliance(s)."

Notice of EOGM schedule for 14.12.2016 with the explanatory note is at Annexure-4. The notice is dated 21.11.2016.

7. Annexure-9 is the list of shareholders of the company who attended the meeting and their names are also recorded. The minutes of the meeting of EOGM dated 14.12.2016 are at Annexure 5 (b). List of

creditors as on 16.02.2017 is Annexure-8 (b). These are five shareholders who attended the Extraordinary General Meeting. There is the list of the shareholders of the company at page-81 of the Paper Book who attended the meeting. Yogesh Aggarwal and Sachin Garg, Directors of the Company have filed their respective affidavit dated 31.07.2017 that there are in all 15 shareholders of the company and notice of EOGM scheduled for 14.12.2016 and copy of the said e-mail is attached at pages 21/24 of the documents filed on 31.07.2017. At page No. 81 (a) of the Paper Book, list of shareholders is given whereas at page No. 95, list of 15 shareholders is attached. Therefore, an affidavit dated 31.07.2017 was filed by the Directors of the company stating that notice of EGM was sent to all the 15 shareholders.

8. The list of creditors of the company which is required to be drawn up to the latest practicable date preceding the date of filing the petition by not more than two months as required under sub-rule (3) of Rule 68 of the Rules, is at Annexure 8 (b). The petition was filed on 28.03.2017 and, therefore, this list has been filed in accordance with the requirement of the Rules. The list contains the names and addresses of each of the creditor and amount due to them in respect of the debt claim or the liabilities. A reference is also made to affidavit dated 31.07.2017 sworn in by Mr. Sachin Garg who has stated that the company has not issued any debentures nor there are any deposit holders.

9. The petition was listed for hearing on 29.05.2017 and the petitioner advertised the petition in accordance with Rule 35 of the Rules

in 'Awame Hind' (Hindi) and 'Indian Horizon' (English) both on 15.05.2017 and copies of newspaper clippings were filed.

10. When the matter was listed on 07.07.2017, the following order was passed:-

"The learned counsel for the petitioner submits that the petitioner sent notice for the date of hearing for 29.05.2017 to the creditors, Registrar of Companies and Ministry of Corporate Affairs by registered post and also advertised date of hearing in 'Awame Hind' (Hindi) and 'India Horizon' (English) both dated 15.5.2017. However, affidavit has not been filed nor the Track Reports for delivery of postal articles to the creditors, have been filed. The affidavits of authorised representative and the petitioner-company along with the Track Report of Postal Department be filed by the petitioner.

In Annexure A-9 (page 81 of the Paper Book), it is certified by the two Directors of the company that there are five shareholders in the company and all attended the Extraordinary General Meeting whereas the learned counsel contended that as per the list at page 81-A, there are 15 shareholders. Mr. Yogesh Aggarwal and Mr. Sachin Garg, Directors of the company shall explain the aforesaid discrepancy as to how they issued the above certificate. The aforesaid explanation be furnished by filing their respective affidavits at least three days before the next date. The affidavit shall also contain the statement as to whether the company has accepted any deposits and further if the petitioner-company has any debenture holders.

It is further directed that the proof of service of notice to all the 15 shareholders of the EOGM shall be filed by way of affidavits of the aforesaid two Directors along with

the documents indicating that the notices were duly delivered to all the 15 shareholders.

As per proviso to sub-section 3 of Rule 68 of the N.C.L.T. Rules, 2016, the affidavit of the Company Secretary, if any, and not less than two Directors, one of them has to be Managing Director, where there is one, to the effect that they have made a full enquiry into the affairs of the company and, having done so, have formed an opinion that the list of creditors is correct as mentioned in the provisions. Though the affidavits of two of the Directors have been filed but the perusal of the same would show that these have not been furnished in the general format of the affidavit in form No. NCLT-6 as to which of the paragraphs have been verified on the basis of information derived from record and which paragraphs on the basis of knowledge and belief of the deponent. It is directed that fresh affidavit in support of the petition in the prescribed format be filed. The affidavit should further state that there was no Company Secretary employed by the petitioner-company and whether any of the aforesaid Directors is the Managing Director of the petitioner-company.

The matter be now listed for hearing on 01.08.2017 and the affidavits/documents/compliances as detailed in this order be filed at least three days before the date fixed.”

11. The affidavit of service along with track reports were filed but some of the track reports suggest that a few of the creditors were served after the date of hearing . On 01.08.2017, the matter was adjourned for 01.09.2017 and the petitioner was directed to send notices to all the creditors of the company in Form NCLT No. 3B by e-mail and to the creditors whose e-mail addresses are not available, by Speed Post. Notices were also directed to be sent to the Central Government through

the Regional Director, Northern Region and also to the Registrar of Companies, NCT of Delhi and Haryana by Speed Post.

12. Compliance of the aforesaid directions was made but it was noticed that the attachments sent along with e-mail to all the creditors, were not filed. As per office report, however, the copies of notices sent to all the creditors and also to the statutory authorities have been filed. The Registry has reported that no 'objections' have been received to the prayer made in the instant petition.

13. The Registrar of Companies, Punjab & Chandigarh and Himachal Pradesh representing the Registrar of Companies, NCT of Delhi and Haryana has filed report from the Assistant Registrar of Companies, NCT of Delhi and Haryana. As per this report, there does not seem to be any objection to the prayer made in the instant petition. It is also reported that there is no complaint pending against the company and the petitioner has filed balance sheet up to the year ending 31.03.2016.

14. When the matter was listed on 21.09.2017, following order was passed:-

"It was specifically pointed out in the order dated 07.07.2017 that affidavit of two directors in terms of sub-rule (3) of Rule 68 of the National Company Law Tribunal Rules, 2016 was not properly verified and fresh affidavits were directed to be filed. Though the fresh affidavits dated 31.07.2017 duly attested have been filed but these affidavits do not contain the statement of two Directors as per proviso to sub-rule (3) of Rule, 68 of the NCLT Rules, 2016. The petitioner is directed to comply with the aforesaid requirement of

filing affidavits of two Directors of the company at least a day before the date fixed. The affidavits dated 31.07.2017, however, contain the statement that the company has not employed any Company Secretary.

The Registrar of Companies, Punjab and Chandigarh representing the Registrar of Companies, NCT of Delhi and Haryana has forwarded the response received from the Assistant Registrar of Companies, NCT of Delhi and Haryana.

List the matter on 03.10.2017.”

15. The Registry has reported that the compliance affidavits have been filed. There are the affidavits dated 26.09.2017 sworn in by Yogesh Aggarwal and Sachin Garg, two of the Directors of the company. It is stated by Yogesh Aggarwal as under:-

“I am the Managing Director of the Company, I hereby declare that I have made a full enquiry into the affairs of the company and having done so, I have formed an opinion that list of creditors is correct, and that the estimated value as given in the list of debts and claims payable on a contingency or not ascertained are proper estimated of values of such debts and claims and that there are no other debts of, or claims against, the company to my knowledge.

I further clarified that the company had not employed any company secretary.”

Similar are the contents of affidavit of Mr. Sachin Garg.

16. I have heard the Authorised Representative of the petitioner-company and the Registrar of Companies and having discussed the facts and the compliances, there being no objections from any creditor or the statutory authority, there is no impediment in permitting the prayer made

by the petitioner as all the compliances as required by Rule 68 of the rules have been made.

17. In view of the above, the application is allowed and the special resolution of the petitioner-company dated 14.12.2016 resolving to alter the Articles of Association of the company to convert it from Public Company into a Private Company is approved.

18. Copy of this order be filed with the Registrar of Companies, NCT of Delhi and Haryana together with a printed altered Articles of Association within a period of fifteen days of receipt of certified copy of this order.

Sd/-
(Justice R.P. Nagrath)
Member (Judicial)

October 03, 2017
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