

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA.**

Company Petition No. 392/KB/2017

In the matter of Section 14 of the Companies Act, 2013

And

In the matter of :

Multi Serve Rolls Limited, a Company incorporated under the
Companies Act, 1956 and having its registered office at
77/1A Park Street, 2nd Floor, Room No. 7, Kolkata-700016.

.....Petitioner.

Judgment delivered on: 20/2/18

CORAM: Shri Jinan K.R., Hon'ble Member (J)

Shri Patita Paban Bishwal, Advocate.: for the Petitioner.

ORDER

This Company Petition is filed under sub section (1) of Section 14 of the Companies Act, 2013 (Act, 2013), seeking approval of this Tribunal to the conversion by altering the Articles of Association, as sought to be effected by a Special Resolution passed at the Extra-Ordinary General Meeting (EOGM) held on 30.12.2016, for the change of status of the Company from "Public Limited Company" to " Private Limited Company". M/s.Multi Serve Rolls Limited (the company) having its registered office at 77/1A, Park Street, 2nd Floor, Room No.7, Kolkata – 700016 has filed the Company Petition.

2. Rule 68 of the NCLT Rules, 2016 stipulates filing of a petition under sub-section (1) of section 14 of the Companies Act, 2013 for the conversion of a public company into a private company, in the prescribed format and the manner accompanied by such documents/information and requisite filing fee as mentioned in the said Rule. The instant Company Petition has been filed in terms of the said Rule.

3. The brief facts that emerged from the petition are that the Company was originally incorporated as a Private Company limited by shares on 03.04.1986 with 03 members; but in course of time, the total numbers of members, exceeded

the statutory limit of 50, and the company was changed to deemed public limited company under section 43A of the Companies Act, 1956 and accordingly, the name of the company was changed to Multi Serve Rolls Limited on 31.03.1997.. The authorised share capital of the Company is Rs.4,50,00,000/- and the issued subscribed and paid-up capital of the Company is Rs.4,50,00,000/-. The Board of Directors of the Company comprises 01 Managing Director and of 03 Directors and there are 41 (Forty-one) shareholders holding 45,00,000 shares of Rs.100/- each. The company is an unlisted public company and engaged in the business of manufacturing rolls and allied products. The Board of Directors of the petitioner Company has passed a resolution at the meeting of the Board on 09.12.2016, approving the proposed alteration of the Articles of Association of the Company and decided to call an EOGM of the Members of the Company on 30.12.2016 to obtain consent on this line. After due notice to the members, EOGM has been called and held on 30.12.2016 A Special Resolution has been passed at the said EOGM pursuant to the section 13 & 14 of the Companies Act, 2013 and other applicable provisions and rules made thereunder, for conversion of the Company into a "Private Limited Company" and name of the Company be changed from "Multi Serve Rolls Limited" to "Multi Serve Rolls Private Limited" by addition of the word "Private" before the word 'Limited'. A new set of Articles of Association, as applicable to the Private Limited Company, has also been approved by 35 (Thirty-five) members out of total 41 (Forty-one) members and adopted the new set of Articles of Association of the Company. The reason for

conversion into Private Limited Company, as claimed in the petition, is that the company has been in operation for quite some time and there has not been any involvement of public in the shareholding and / or management of the company. Accordingly, it was thought appropriate to convert the company into a Private Limited Company to avoid tedious compliances and to obtain privileges which are available to the public limited company under the Companies Act, 2013 which would help the management to carry out its affairs efficiently and economically. The conversion of the petitioner company into a private company will not have any adverse effect on any of the shareholder, creditor or any other stakeholders of the company

4. As per direction of this Tribunal passed on 24.08.2017, the Company has filed its Affidavit dated 06.11.2017 stating that the advertisement has been published in English Newspaper "Business Standard" and in Bengali Newspaper "Aajka" on 27.09.2017 as also served notice to the Regional Director, Eastern Region on 16.10.2017 and served individual notices to the creditors of the company by speed post on 13.10.2017 Notice has earlier been served upon the Registrar of Companies, West Bengal on 12.05.2017. Further affidavits dated 06.11.2017 and 12.12.2017 have also been filed stating that the Company has not received any petition / application, reference in response to the public advertisement and any objection from any person regarding conversion from public to private company.

5. The Registrar of Companies, West Bengal (RoC,WB) has submitted his report dated 09.10.2017 with his observations which are as under :

- a) The company is an active and unlisted public company. Its authorized share capital is Rs.4,50,00,000/- and paid-up share capital is Rs.4,50,00,400/-. It has 4 (Four) Directors.
- b) Financial Statement and Annual Return for the financial year ended on 31.03.2016.
- c) The company has filed the proposed conversion and the altered Articles of Association were approved by the members of the Company by a special resolution passed in the Extra-Ordinary General Meeting held on 30.12.2016 and relevant e-form of MGT-14 has been filed with his office.
- d) There is no objection from any member or creditor of the company or any other regulators / Government agencies. There is no investor complaint made to his office against the Company.
- e) The prosecution has been launched against the company and its officers in default vide case No. C/4597/13 under section 166 read with section 168 of the Companies Act,1956 and the case is pending.
- f) No Technical Scrutiny / Inspection / Investigation process has been initiated against the Company for the last three years.
- g) The Company has reported net profit of Rs 38,34,748.70 and Rs.51,79,318.87 during the financial year 2014-15 and 2015-16

respectively.

However, the RoC,W.B. in his report has not raised any objection to the proposed conversion of the status of the company from public to private.

6. The matter was finally heard on 13.02.2018 when Shri P.P. Bishwal, Ld. Advocate, appearing for and on behalf of the Petitioner Company has submitted that the required mandate under Rule 68 of the National Company Law Tribunal Rules, 2016 has been complied with; the company has filed a list of 104 creditors as on 30.03.2017, supported by an affidavit affirmed by two Directors on 04.05.2017; the company has not received any objection either from any member or creditor of the company in response to public notice and individual notices to creditors; the Board of Directors and 35 shareholders, out of 41 shareholders, who have attended the EOGM, have unanimously approved the proposed conversion of company to Private Limited Company; the Company is not registered under section 8 of the Companies Act, 2013; and hence, the prayer for approval of the proposed conversion of the said company from Public Limited Company to Private Limited Company may be accorded, as sought to be effected by the Special Resolution passed at the EOGM held on 30.12.2016.

7. Section 14 of the Companies Act, 2013 prescribes that a Company either a Public Limited Company or a Private Limited Company may, by a Special

Resolution, alter its articles including alterations having the effect of conversion, if such conditions contained in its memorandum and subject to the provisions of the Act. Such alteration, for the purpose of the said section, has the effect of conversion of a public company into a private company. Second proviso to sub section (1) of section 14 provided 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. Rule 68 of the NCLT Rules, 2016 has laid down a procedure for the filing of a petition before the Tribunal for approval to conversion of a status of the Company from Public to Private and vice versa. A company desirous of converting its status is, therefore, required to comply with and follow the requirements as framed under Rule 68 of the NCLT Rules, 2016. Second proviso to Sub-Section (1) and Sub-Section (2) came into force w.e.f. 01.06.2016.

8 Heard Ld. Advocate appearing for the Petitioner Company and perused the case record and also the report of RoC,WB. It transpires from records that the Special Resolution for conversion was passed by the Board of Directors of the company on 09.12.2016 and thereafter, at the EOGM held on 30.12.2016, 35 (Thirty-five) members of the company had attended and unanimously approved the conversion resolution. The Special Resolution passed at the EOGM held on 30.12.2016 has been filed by the company on 14.02.2017 through e-form MGT-14, which has been approved. The Company is stated to be an unlisted

public company and is not registered under section 8 of the Act, 2013. Neither the Registrar of Companies, West Bengal nor any member or creditor has raised any objection to the proposed conversion of status of the Company.

9. As regards compliance of the required Rule 68 of NCLT Rules, 2016, it may be noted that the company has published notice of the petition both in English and Bengali newspapers on 27.09.2017, indicating the intention of conversion from Public to Private status; the notice has been issued to the Regional Director, Eastern Region as also to the Registrar of Companies, West Bengal; in spite of public notice and individual notices to 104 creditors as on 30.03.2017, the company has not received any objection either from its members, creditors or from any persons with regard to the proposed status of the company; and that out of 41 (Forty-one) members, 35 (Thirty-five) members of the company, who attended the EOGM on 30.12.2016 and approved the Special Resolution passed at the said meeting.

10. Having regard to the facts and circumstances of the above case and since all the requisite statutory compliances have been fulfilled, the conversion of the status of the company from "Public Limited" to "Private Limited" as per Special Resolution passed at the EOGM on 30.12.2016 is hereby approved in the interest of the company and such change of status of the company shall not cause any prejudice either to the members or the creditors of the petitioner

company. The Petitioner shall, however, remain bound to comply with the statutory requirements in accordance with law. **Company Petition No. 392/KB/2017** is accordingly disposed of.

11. The Petitioner is hereby directed to file with the Registrar of Companies, West Bengal, a certified copy of the order of this Tribunal in the prescribed e-form together with a printed copy of the altered Articles of Association as also with requisite fee within a period of 15 days in terms of the provision of section (2) of section 14 of the Companies Act, 2013 read with Rule 161 of NCLT Rules, 2016

12. No order as to costs.

13. Urgent certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

Sd

(Jinan K.R.)
Member(J)

Signed on this 20th day of February 2018.