

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

**Company Petition No. 582/KB/2017**

In the matter of Section 14(1) of the Companies Act, 2013

And

In the matter of:

Puja Food Products Limited, a company incorporated under the provisions of the Companies Act, 1956 having its registered office at Digha Ghat, P.S. – Digha, Patna – 800011, Bihar. ....Petitioner.

Judgment delivered on: 20/02/2018

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

Shri Siddhartha Murarka, Pr. C.S.: for the Petitioner.

Sd

## 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 of the Company, as sought to be effected by a Special Resolution passed at the Extra-Ordinary General Meeting (EOGM) held on 05.05.2017, for the change of status of the Company from "Public Limited Company" to " Private Limited Company". M/s Puja Food Products Limited having its registered office at Digha Ghat, P.S. Digha, Patna-800011, Bihar has filed the petition under Sub-Section (1) of Section 14 of the Act, 2013.

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 23.12.1986 under the provisions of the Companies Act, 1956 under the name and style of

"Puja Food Products Private Limited". The name of the Company was changed to "Puja Food Products Limited" on 29.01.1998 as a deemed Public Company under Section 43A (2) of the Companies Act, 1956. Subsequently, the Company was converted to Public Limited Company on 17.05.2002. The Company is an unlisted Public Company and is not registered under Section 8 of the Companies Act, 2013. The authorized share capital of the Company is Rs.1,00,00,000/- and the issued subscribed and paid-up capital of the Company is Rs.85,30,000/-. The Board of Directors of the Company comprises of 3(Three) Directors and there are 15 (Fifteen) shareholders holding 85,300 equity shares of Rs.100/- each. The company is stated to have engaged in the business of manufacturing and trading in wheat products. The Board of Directors of the Petitioner Company has passed a resolution at the meeting of the Board on 07.04.2017, 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 05.05.2017 to obtain consent on this line. After due notice to the members, EOGM has been called and held on 05.05.2017. A Special Resolution has been passed at the said EOGM pursuant to 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 the name of the Company be changed from "Puja Food Products Limited" to "Puja Food Products 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 the 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 since there is no involvement of public in the shareholding or management of the company and to avoid unnecessary formalities stipulated for Public Limited Company and to utilize the privileges which are available to a Private Limited Company under the provisions of the Companies Act, 2013, it would be appropriate to convert the Company into a Private Limited Company. The proposed change of status would help the management to carry out its affairs more smoothly and efficiently. It is further stated that the proposed conversion will not have any adverse effect on any of the shareholders, creditors or any other related parties.

4. As per direction of this Tribunal passed on 20.11.2017, the Company has filed its Affidavits dated 14.12.2017 stating that the advertisement has been published once in English in "Telegraph" on 06.12.2017 and once in Hindi "Aaj" on 07.12.2017 and also served notice to the Regional Director, Eastern Region, on 29.11.2017 and Registrar of Companies, Bihar on 30.11.2017 and individual notices to Creditors by speed post on 06.12.2017.

5. The Registrar of Companies, Bihar (RoC, Bihar) has submitted his affidavit dated 09.01.2018 with his observations which are as under :

a) The Company has filed its Annual Return and Balance Sheet for the

financial year ended on 31.03.2017.

- b) The Company has filed e-form MGT-14 vide SRN G43831056 dated 17.05.2017 for Special Resolution passed on 05.05.2017 relating to conversion of the Company from Public to Private and the same has been approved.
- c) There is no complaint received in his office either from the stakeholder, shareholder, creditor, or any other Government Authorities against the Petitioner Company.
- d) The prosecution under Section 209 (3) (b), 211 (1) (7), 211 (2) (7) and 211 (3A) / 7 of the Companies Act, 1956 vide case no. 93 (c) to 96 (c) of 2009 arising out of technical scrutiny is pending against the Director of the Company.
- e) The Company has not been served with any objection of any person whose interest is likely to be affected by the proposed conversion.

However, the ROC, Bihar in his report, has not raised any objection to the proposed conversion of the status of the Company from Public to Private.

6. As regards pending prosecution as reported by the ROC, Bihar in his report mentioned (supra), Ld. Pr. C.S. submitted that the erstwhile Company Law Board, Kolkata Bench vide its order dated 01.07.2009 in C.P. Nos. 345-349 (621A)/KB/2009, compounded the offences as mentioned by ROC, Bihar and

also submitted a copy of the said order dated 01.07.2009 which is placed on record. It is noted that the offences stand compounded under Section 621A of the Companies Act, 1956 vide order dated 01.07.2009 passed by erstwhile CLB in respect of the cases as mentioned by ROC, Bihar in his report dated 09.01.2018.

7. The matter was finally heard on 07.02.2018 when Ld. Pr. C.S., 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 15 creditors as on 30.06.2017, supported by an affidavit affirmed by two Directors on 25.07.2017; the company has not received any objection either from any member or creditor of the company in response to public notice on 06.12.2017 and 07.12.2017 and individual notices sent to creditors by speed post on 06.12.2017; the Board of Directors and 14 shareholders of the company out of total 15 shareholders, 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 05.05.2017.

8. 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 also 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) of Section 14 of the Companies Act, 2013 came into force w.e.f. 01.06.2016.

9. Heard Ld. Pr. C.S. appearing for the Petitioner Company and perused the case record and also the report of RoC, Bihar. It transpires from records that the Board of Directors of the Company has passed a resolution in the meeting held on 07.04.2017 approving the conversion to Private Limited Company. A Special Resolution has also been passed on 05.05.2017 with the unanimous approval of 14 shareholders out of 15 shareholders of the Petitioner Company. The said

Special Resolution passed at the EOGM on 05.05.2017, has been filed by the company on 17.05.2017 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 ROC, Bihar nor any member or creditor of the Company has any objection to the proposed conversion from Public Limited to Private Limited.

10. 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 Hindi Newspapers on 06.12.2017 and 07.12.2017 respectively indicating the intention of conversion from Public to Private status; in spite of public notice and individual notices to Creditors as on 30.06.2017, the company has not received any objection either from its members, creditors or any persons with regard to the proposed conversion of status of the company; and out of the total 15 members 14 (fourteen) members of the company attended the EOGM on 05.05.2017 and approved the Special Resolution passed at the said meeting.

11. 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 05.05.2017 is hereby approved in the interest of the company and such change of status of the company shall not

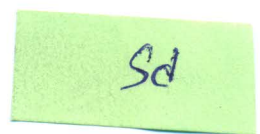


cause any prejudice either to the members or the creditors or any other related party of the petitioner company. The Petitioner shall, however, remain bound to comply with the statutory requirements in accordance with law. **Company Petition No. 582/KB/2017** is accordingly disposed of.

12. The Petitioner is hereby directed to file with the Registrar of Companies, Bihar, 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

13. No order as to costs.

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



(Jinan K.R.)  
Member(J)

Signed on this *20th* day of February, 2018.