

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

Company Petition No. 48/KB/2017

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

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

And

In the matter of :

Novoflex Cable Care Systems Limited, a Company
incorporated under the Companies Act, 1956 and having its
registered office at 52, Weston Street, Kolkata-700012.

.....Petitioner.

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

Judgment delivered on: 01-2-2018

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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 05.09.2016, for the change of status of the Company from "Public Limited Company" to " Private Limited Company".

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 incorporated as a Company limited by shares on 05.11.1993 under the provisions of the Companies Act, 1956 under the name and style of Novoflex Cable Care Systems Private Limited. The name of the Company was changed to "Novoflex Cable Care Systems Limited" on 05.09.2002. The authorised share capital of the Company is Rs.4,24,00,000/- and the issued subscribed and

paid-up capital of the Company is Rs.73,73,400/-. The Board of Directors of the Company comprises of 3(Three) Directors and there are 6 (six) shareholders holding 2,49,140 equity shares of Rs.10/- and 2 (Two) shareholders holding 48,820 shares of Rs.100/- each. The company is stated to have engaged in the business of trading. The Board of Directors of the petitioner Company has passed a resolution at the meeting of the Board on 08.08.2016, 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 05.09.2016 to obtain consent on this line. After due notice to the members, EOGM has been called and held on 05.09.2016. 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 "Novoflex Cable Care Systems Limited" to "Novoflex Cable Care Systems 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 the Company has no plan to bring in any new partner or public at large as the stakeholder and it was considered that for that purpose the Company needs to be converted into a private limited company for the operational ease and other advantages that are available to

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private companies as in comparison to a public limited company. Although the Company is a limited one, but its shares are held closely. The Company has neither issued shares to public nor has any intention in future also to offer shares to the public. The conversion of the petitioner company into a private company shall not affect any debts, liabilities, obligation or contracts incurred or entered into, by or on behalf of the company before conversion and such debts, liabilities, obligations and contracts may be enforced in the manner as if such conversion had not been done. Formalities that are to be complied with by Public Limited Companies on legal angle are much greater than the formalities to be complied with by Private Limited Companies. Directors of the Company find that no purpose would be served by retaining the Public Limited character of the Company. This conversion from public limited company to private limited company is aimed at to carry on the business of the petitioner Company more economically & efficiently, conveniently, better management and smooth functioning of various operations of the Company.

4. As per direction of this Tribunal passed on 15.02.2017, the Company has filed its Affidavit dated 02.03.2017 stating that the advertisement has been published once in English in "Business Standard" on 24.02.2017 and once in Bengali "Aajkal" on 24.02.2017 as also served notices to the Regional Director, Eastern Region, as well as Registrar of Registrar of Companies, West Bengal on 21.02.2017. Further affidavit dated 29.03.2017 has also been filed stating that

the Company has not received any reference in response to the public advertisement.

5. The Petitioner Company also filed an affidavit dated 29.01.2018, enclosing a copy of communication dated 19.12.2017 from Asstt. Manager, RBI, DNBS, Kolkata, conveying its 'No objection' for the change of status of the company from Public Limited to Private Limited.

6. The Registrar of Companies, West Bengal (RoC,WB) has submitted his report dated 06.11.2013 with his observations which are as under :

- a) The company is an active and unlisted public company. Its authorized share capital is Rs.4,24,00,000/- and paid-up share capital is Rs.24,91,400/-. It has 3 (three) Directors.
- b) Financial Statement and Annual Return for the financial year ended on 31.03.2016 have been filed by the company.
- c) 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 05.09.2016 and relevant e-form of MGT-14 has been filed with his office.
- d) There is no investor complaint made to his office against the Company for the last two years and there is no prosecution proceeding pending in relation to the Petitioner Company. No Technical Scrutiny / Inspection /

Investigation process is initiated against the Company for the last three years.

e) The Company has reported loss of Rs.4,73,421.40 and Rs.88,133.40 during the financial year 2014-15 and 2015-16 respectively. The Company has an open charge of Rs.10,00,00,000/- which was created on 30.12.2016.

7. As per direction of this Tribunal passed on 04.12.2017, the Petitioner Company has filed an affidavit dated 29.01.2018 in response to the report of the Registrar of Companies, West Bengal. The Company has stated in its affidavit that:

- (a) the Company has not taken any loan from Aditya Birla Finance Limited, but the Company is the third party pledgor and not the borrower and the Company pledges their securities to secure the repayment of all the monies due and payable by M/s. Sincere Securities Private Limited ("borrower") to Aditya Birla Finance Limited.
- (b) the loan was taken by M/s. Sincere Securities Private Limited and the borrower has duly filed necessary form with the Registrar of Companies, West Bengal.
- (c) the interest of M/s. Aditya Birla Finance Limited will not be affected after approval of the change of the status of the Company from public limited to private limited.

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8. The matter was finally heard on 29.01.2018 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 does not have any creditor or debenture holder as on 31.12.2016; supported by an affidavit affirmed by two Directors on 21.01.2017; the company has not received any objection either from any member or creditor of the company in response to public notice; the Board of Directors and all the shareholders of the company have unanimously approved the proposed conversion of company to Private Limited Company; the Company is a NBFC within the meaning of the Reserve Bank of India Act, 1934 and is not registered under section 8 of the Companies Act, 2013; the Reserve Bank of India, Deptt. of Non-Banking Supervision, Kolkata vide its communication dated 19.12.2017 has conveyed its 'No objection' for change of status of the Company from Public Limited to Private Limited 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 05.09.2016.

9. 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,

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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) came into force w.e.f. 01.06.2016.

10 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 08.08.2016 and thereafter, at the EOGM held on 05.09.2016, 8 (eight) members of the company had attended and unanimously approved the conversion resolution. The Special Resolution passed at the EOGM held on 05.09.2016 has been filed by the company on 03.12.2016 through e-form MGT-14, which was approved by the RoC,WB. The Company is stated to be an unlisted public company and is not registered under section 8 of the Act, 2013.

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Neither the Registrar of Companies, West Bengal nor the RBI, DNBS has raised any objection to the proposed conversion of status of the Company. Rather, the Reserve Bank of India, DNBS, Kolkata has conveyed its 'No objection' vide its communication dated 19.12.2017.

11. 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 24.02.2017, indicating the intention of conversion from Public to Private status; the company does not have any creditors as on 31.12.2016 and a list of Nil Creditors as on 31.12.2016 has been filed along with the affidavit affirmed by two Directors of the company on 21.01.2017; the notice has been issued to the Regional Director, Eastern Region as also to the Registrar of Companies, West Bengal; 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 all the 08 (eight) members of the company attended the EOGM on 05.09.2016 and approved the Special Resolution passed at the said meeting.

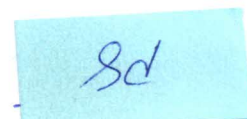
12. Having regard to the facts and circumstances of the above case and since all the requisite statutory compliances have been fulfilled, the conversion of the status of the company from "Public Limited" to "Private Limited" as per Special Resolution passed at the EOGM on 05.09.2016 is hereby approved 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. 48/KB/2017** is accordingly disposed of.

13. 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

14. No order as to costs.

15. 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 *1st* day of *February* January, 2018.