

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

NEW DELHI

CP No.62/14/ND/2017

SECTION: UNDER SECTION 14 Read with Rule 33 of the COMPANIES (INCORPORATION) RULES, 2014 AND RULE 68 OF THE NATIONAL COMPANY LAW TRIBUNAL RULES, 2016.

IN THE MATTER OF:

CERADECOR INDIA LIMITED

Having Registered Office at:

JA 419, 4th Floor, Plot No.10 DLF Tower A, Jasola

New Delhi-110025

.....Petitioner

V/s.

...Respondent

Coram:

R. VARADHARAJAN

Hon'ble Member (Judicial)

For the Petitioner : Juhi Kathuria,
Practicing Company Secretary for Petitioner



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Order pronounced on: 26.10.2017

ORDER

1. This petition which has been filed by the Petitioner Company seeking reliefs to the effect that the alteration of Memorandum of Association and Articles of Association of the Company sought to be effected by special resolution dated 31.07.2017 for conversion of its status from a public company to a private company i.e. "CERADECOR INDIA LIMITED" to "CERADECOR INDIA PRIVATE LIMITED " be confirmed, AND/OR Pass such other order(s) as this Hon'ble Bench of the Tribunal may deem fit and proper in the facts and circumstances of the present case.

2. It is seen that the petition has been filed under the provisions of Section 14(1) of the Companies Act, 2013. Perusal of the petition discloses the following facts in relation to compliance with the provisions of Companies Act, 2013 and Rule 68 of National Company Law Tribunal Rules, 2016(hereinafter referred as NCLT Rules):

a)	Date of the Board Meeting held for approval of conversion.	01.07.2017
b)	Date of the General Meeting held for approval of conversion	31.07.2017
c)	Registered Office Situated at	New Delhi
d)	No. of Members in the Company	7
	No. of Members who attended the meeting	7 Shareholders holding 13,15,000 Equity Shares
	No. of Members voted for and against	For – 100% Against - Nil



e)	Reason for conversion	In view of the fact that company is having only 7 shareholders of the company and is not interested in going public.
f)	Listed or unlisted public company	Unlisted Public Company.
g)	Nature of the Company	Limited by shares.
h)	Whether a company registered under Section 8 of the Act	Not Registered under Section 8

3. The petition was heard and orders were reserved on 05.10.2017. Upon perusal of the relevant provisions of section 14 being the substantial provision read with Rule 68 of National Company Law Tribunal Rules, 2016 delineating the procedural compliances reproduced hereunder for ready reference:

14. Alteration of articles.— (1) Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a special resolution, alter its articles including alterations having the effect of conversion of— (a) a private company into a public company; or (b) a public company into a private company:

Provided that where a company being a private company alters its articles in such a manner that they no longer include the restrictions and limitations which are required to be included in the articles of a private company under this Act, the company shall, as from the date of such alteration, cease to be a private company:

Provided further 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.

(2) Every alteration of the articles under this section and a copy of the order of the Tribunal approving the alteration as per sub-section (1) shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of fifteen days in such manner as may be prescribed, who shall register the same. (3) Any alteration of the articles registered



under sub-section (2) shall, subject to the provisions of this Act, be valid as if it were originally in the articles.

Rule 68-Petition under section 14.- (1) A petition under the second provision to sub-section (1) of section 14 of the Act for the conversion of a public company into a private company, shall, not less than three months from the date of passing of special resolution, be filed to the Tribunal in Form No. NCLT. 1 and shall be accompanied by such documents as are mentioned in Annexure B.

(2) Every petition filed under sub-rule (1) shall set out the following particulars: (a) the date of the Board meeting at which the proposal for alteration of Articles was approved; (b) the date of the general meeting at which the proposed alteration was approved; (c) State at which the registered office of the company was situated; (d) number of members in the company, number of members attended the meeting and number of members of voted for and against; (e) reason for conversion into a private company, effect of such conversion on shareholders, creditors, debenture holders and other related parties. (f) listed or unlisted public company; (g) the nature of the company, that is, a company limited by shares, a company limited by guarantee (having share capital or not having share capital) and unlimited company; (h) details as to whether a company registered under section 8 of the Act.

(3) There shall be attached to the application, a list of creditors and debenture holders, drawn up to the latest practicable date preceding the date of filing of petition by not more than two months, setting forth the following details, namely:- (a) the names and address of every creditor and debenture holder of the company; (b) the nature and respective amounts due to them in respect of debts, claims or liabilities; (c) in respect of any contingent or unascertained debt or any such claim admissible to proof in winding up of the company, the value, so far as can be justly estimated of such debt or claim: Provided that the petitioner company shall file an affidavit, signed by the company secretary of the company, if any, and not less than two directors of the company, one of whom shall be a



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, and that the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts of , or claims against, the company to their knowledge.

(4) A duly authenticated copy of the list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of the sum of rupees ten per page to the company.

(5) The company shall at least fourteen days before the date of hearing; - (a) advertise the petition in accordance with rule 35; (b) serve, by registered post with acknowledgement due, individual notice in Form NCLT. No. 3B to the effect set out in sub-rule (a) on each debenture-holder and creditor of the company; and (c) serve, by registered post with acknowledgement due, a notice together with the copy of the petition to the Central Government, Registrar of Companies and to the Securities and Exchange Board of India, in the case of listed companies and to the regulatory body, if the company is regulated under any other Act.

(6) Where any objection of any person whose interest is likely to be affected by the proposed petition has been received by the petitioner, it shall serve a copy thereof to the Registrar on or before the date of hearing.

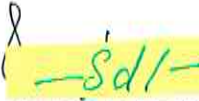
(7) While passing an order, the Tribunal may, if it is satisfied, having regard to all the circumstances of the case, that the conversion would not be in the interest of the company or is being made with a view to contravene or to avoid complying with the provisions of the Act, disallow the conversion with reasons to be recorded in writing.

4. Rule 68 as reproduced above detailing the procedure which is required to be followed for filing the petition before this Tribunal for seeking the approval of



the Tribunal for a conversion as contemplated under the provision of section 14 which has also been reproduced above. Rule 68(1) of the National Company law Tribunal Rules, 2016, specifically mandates that a petition under second proviso of sub-section (1) of section 14 of the Act for conversion of a public company into a private company, shall not less than three months from the date of passing of special resolution be filed to Tribunal in the form specified along with documents annexed. However, it is seen from the tabulation above given in paragraph 2, that the date of convening the EGM for seeking the approval of shareholders for conversion is stated to be 31.07.2017 which date is reinforced by form MGT-14 as filed with the ROC and annexed as Annexure 11 to the petition. However this petition as evident from the endorsement made by the Registry seems to have been filed on 10.08.2017 i.e. within the period of ^{three months.} ~~90 days~~, contrary to the Rules, namely, Rule 68 as extracted above.

5. Since the petition under section 14 for approval has been filed prematurely under rule 68 of National Company Law Tribunal Rules, 2016, this Tribunal is hence constrained to dismiss the petition, however without cost. However, the dismissal of the petition will not preclude the petitioner from filing a fresh petition after due compliances of all the provisions and rules for seeking the reliefs as prayed for herein, if so advised.


(R. VARADHARAJAN)
MEMBER (JUDICIAL)

U.D.Mehta