

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,**NEW DELHI****Company Appeal (AT) No.394 of 2018**

(Arising out of Order dated 28.08.2018 passed by the (National Company Law Tribunal, New Delhi Bench in C.P No -80/14/ND/18)

IN THE MATTER OF:

**M/s. Medeor Hospitals Limited
(Formerly Known as Rockland Hospitals Limited)
B-33-34, Qutab Institutions Area,
New Delhi – 110 016**

...Appellant**Vs****Registrar of Companies, Delhi****...Respondent****Present:**

For the Appellant: Mr Pankaj Yadav with Ms Varsha Yadav, Mr Sameer Yadav, Ms Priya Ranjan Dubey, Advocates.

For the Respondent : Mr PS Singh, Sr Panel counsel with Ms Annu Singh and Mr Vibhav Singh, Advocates.

J U D G M E N T

(29th January, 2020)

Justice Jarat Kumar Jain, Member (Judicial).

1. The Appeal is preferred by M/s. Medeor Hospitals Limited against the order passed by the National Company Law Tribunal ('for short NCLT') New Delhi on 28.08.2018 in C.P No. 80/14/ND/2018 by which NCLT rejected the Application of the Appellant Company for conversion of Public Limited Company to a Private Limited Company.
2. NCLT passed the impugned order on 28.08.2018. Thereafter vide order dated 05.10.2018 the name of the company has been changed from Rockland Hospitals Ltd to M/s Medeor Hospitals Ltd. Hence this appeal is filed in the name of Medeor Hospitals Ltd.

3. The Appellant i.e. M/s. Medeor Hospitals Limited formerly known as Rockland Hospitals Ltd was incorporated on 4.8.2004 under the Companies Act, 1956 as a public limited company having its registered office at B-33-34, Qutub Institutional Area, New Delhi-110 016. The appellant company is the wholly owned subsidiary company of VPS Healthcare Private Limited, which is having its registered office at Royal Towers, Door No.-41/113 E, Marottichuvadu Road, Edapally, Kochi Ernakulam Kerala 682 024. The Appellant Company has a total of 8 equity shareholders. While the holding Company M/s. VPS Health Care Private Limited is holding almost 100 % of the issued share capital, 7 other shareholders are holding one share each on behalf of M/s. VPS Health Care Private Limited. The Management of the company is of the view that it can effectively carry out its business as a private limited entity without impacting or affecting debts, liabilities, obligations, or contracts incurred or entered into by or on behalf of the company. Its funds requirements are primarily met by its shareholders and it does not intend to raise any funds from the public. Under such circumstances with a view to do away with the numerous compliances required for a public limited company, a decision was taken by the Board of Directors at their Meeting held on 14.8.2017 at 11 AM and has resolved to convert the company from public limited to private limited company subject to approval of members at a General Meeting of the Company and subject to approval of NCLT. On the same day for holding Extra Ordinary

General Meeting (for short EOGM) at 12 Noon, notices were issued to shareholders. Shareholders have given their consent for holding EOGM at a shorter notice. Hence EOGM held at 14.8.2017 at 12 Noon and concluded at 1 PM. In the Meeting the members of the appellant company have accorded their unanimous consent for conversion of company from public to private limited company. On 25.8.2017 in the prescribed form the intimation has been sent to the Registrar of Companies. Thereafter on 30.10.2017 the appellant company filed petition under Section 14(1) of Companies Act, 2013 before NCLT which was registered as CP No.71/14/ND/2017 (referred to as first petition). First petition was filed within three months from the date of passing of special resolution dated 14.8.2017. However, it was withdrawn when the NCLT on 6.12.2017 indicated that the petition for conversion can be filed only after expiry of three months from the date of passing of special resolution. Therefore, on 6.12.2017 the appellant withdrew the first petition and on 19.12.2017 appellant company filed second petition before NCLT which is registered as CP No.80/14/ND/2018.

4. The Petition is annexed with the certified copy of the Resolution passed in the EGM dated 14.08.2017, compliance of filing MGT – 14 with the office of the ROC. Form NCLT No. - 3B was issued to the creditors on 16.01.2018. Copies of letters conveying their no objections received from 35 Creditors including Secured Creditor who constitute 87% of the total debt have been filed. However, the Creditors who are holding only 0.05% of the total debt of the

Appellant Company plus contingent debt of 1.39 (total 1.44%) have raised objection to the present Petition. The Appellant Company has taken extension for conducting the AGM for 2016-2017. Therefore, the latest audited financial statement of the Company is of 31.03.2016 was annexed with the present Petition. As per the prescribed procedure on 16.1.2018 in regard to conversion of appellant company public notice was published in English and Hindi newspaper i.e. Indian Express and Jansatta.

5. On 29.1.2018 Shri Prabhat Kumar Srivastava and Shri Rishi Kumar Srivastava filed objections before the NCLT.
6. The NCLT after elaborate discussion found that the petition was delayed as filed after three months from the date of passing of special resolution. In the notice for EOGM no reasons have been assigned for giving shorter notice and Board resolution of the holding company has not been filed. It is also seen by the NCLT that on 17.10.2016 statutory auditor has resigned and on same date new auditor M/s Dayanand Yadav & Co was appointed and the new auditor signed the balance sheet on the same date, it raises a doubt as to how in one day new auditor can conduct the audit. Two independent directors resigned after passing of resolution for conversion, this fact is not mentioned in the petition. It is also found that the claims of two objectors namely Mr. Prabhat Kumar Srivastava and Mr. Rishi Kumar Srivastava and M/s Ernest and Young LLP are pending before Arbitral Tribunal. During such pendency it would not be appropriate to permit conversion of the

company from public to private limited. In view of these shortcomings the NCLT has rejected the petition.

7. Being aggrieved with the impugned order the appellant company filed this appeal.
8. Learned counsel for the appellant submits that the appellant company filed the first petition under Section 14(1) before the NCLT on 30.10.2017 within three months from the date of passing of special resolution dated 14.8.2017. The Tribunal on 6.12.2017 indicated that such petition can be filed only after expiry of the three months times from the date of passing of special resolution as per Rule 68(1) of NCLT Rules, 2016. Therefore the appellant withdrew the first petition on 6.12.2017 and filed 2nd petition on 19.12.2017. Thus the petition is well within limitation.
9. Learned counsel for the appellant further submits that the EOGM dated 14.8.2017 was convened by giving a shorter notice to all the shareholders and they have given their written consent which is annexed with the petition. The holding company i.e. VPS Healthcare Pvt Ltd vide Board Resolution dated 17.6.2017, Dr Shamsheer V.P., Managing Director and Mr. Hafiz Ali, Director of the company were severally authorized to act as representatives of the company to attend and vote in the Meeting of the appellant company. Such resolution has already been filed with the petition.
10. Learned counsel for the appellant also submits that NCLT has not considered that statutory auditors M/s Delloit Hasken and Sells resigned on 17.10.2016. However, new auditor M/s Dayanand

Yadav & Co was appointed as Tax Auditors on 2.9.2016 and statutory auditors on 17.10.2016. Hence, the new auditor M/s Daya Nand Yadav & Co was working on the tax audit of the appellant company since 2.9.2016 and prepared the form ADT-I and Balance Sheets. In such circumstances new auditor signed the documents as previous auditor has resigned. Therefore, there is no question of doubt so far as Aditya Kumar Bhandari's complaint to the Institute of Chartered Accountants of India against M/s Daya Nand Yadav & Co. is concerned the same is disposed of by ICAI holding that the auditor is not guilty. Copy of such order filed alongwith written submission.

11. It is also submitted that appellant company is a unlisted Public company of which almost 100% shareholding by VPS Healthcare Pvt Ltd. Hence sub-rule (1) of Rule 4 of Companies (Appointment and Qualifications of Directors) Rules 2014 would not be applicable to the appellant company. Thus appellant company is not required to appoint independent directors. It is true that during the pendency of these proceedings two independent directors of the company have resigned and one new director has been appointed. This fact does not affect the proceedings in any manner.
12. It is also submitted that the appellant company has settled the claims with all the objectors and filed their no dues certificates. So far as the objection of Ernest and Young is concerned the conversion of the appellant company shall not affect the responsibility and liabilities of either of the party as per the agreement. In such

circumstances the impugned order be set aside and appellant company be permitted for conversion of public limited company to private limited company.

13. Registrar of Companies, New Delhi has been impleaded as Respondent in this appeal. However, they have not raised any objection in allowing the appeal.
14. Having considered the oral and written submissions, we have perused the record.
15. Firstly we have considered the issue of limitation For this purpose it is useful to refer Rule 68(1) of NCLT Rules 2016 which reads as under:

“68.Petition under Section 14- (1) A petition under the second provision of 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.”

16. Rule 68(1) of NCLT Rules 2016 provides that a petition under section 14(1) of Companies Act, 2013 for conversion of a public company into private company shall, not less than three months from the date of the passing of special resolution, be filed to the Tribunal in Form No.NCLT-1. It means such petition shall be filed after three months from the date of passing of special resolution. The appellant company has passed the resolution on 14.8.2017. 1st petition was

filed on 30.10.2017 which was pre-matured. Therefore, and it was withdrawn on 6.12.2017 and Second petition was filed on 19.12.2017 i.e. after three months from the date of passing of special resolution. Thus the petition is well within limitation

17. As per record on 14.8.2017 Board Meeting was held at 11 AM and immediately thereafter for holding of EOGM a shorter notice was issued. All 8 shareholders have given their written consent for a shorter notice (See Page 80 to 86 of additional paper book) Then EOGM was held on the same day between 12 AM to 1 PM. In the EOGM resolution for conversion of appellant company from a public company to a private company was passed.
18. At the relevant date i.e. on 14.8.2017 the Section 101 of the Companies Act 2013 reads as under:-

*“**101-Notice of Meeting** –(1) A general meeting of a company may be called by giving not less than clear twenty-one days’ notice either in writing or through electronic mode in such manner as may be prescribed:*

Provided that a general meeting may be called after giving a shorter notice if consent is given in writing or by electronic mode by not less than ninety-five per cent of the members entitled to vote at such meeting.”

19. As discussed above in this case all the shareholders have given their written consent for calling EOGM after giving shorter notice.

20. The VPS Hospital is holding company of almost 100% of shares of appellant company. The holding company vide Board Resolution dated 17.6.2017 severally authorized Dr. Shamsheer V.P., Managing Director and Mr Hafiz Ali, Director of the company to act as representatives of the company to attend and vote at any Meeting of the Members for an on behalf of the company (See Board Resolution at Page 1019 Vol 7 of Paper Book). Thus Dr. Shamsheer, Managing Director being a representative of holding company attended the EOGM dated 14.8.2017 of the appellant company.
21. We have gone through the Board Resolution of holding company dated 17.6.2017, written consent of share holders for shorter notice and the resolution dated 14.8.2017. We find no illegality or irregularity in passing resolution dated 14.8.2017.
22. Appellant company vide appointment letters dated 2.9.2016 (See page 1128 of Vol.7) appointed M/s Dayanand Yadav & Co Tax Auditor and after appointment M/s Daya Nand Yadav & Co had reviewed and signed the financial statements for the FY 2015-16. In such circumstances the explanation given by the appellant company is satisfactory as to how M/s Daya Nand Yadav & Co has signed the financial statements for the year 2015-2016.
23. Mr. Aditya Kumar Bhandari erstwhile director of the appellant company has lodged a complaint to the Institute of Chartered Accountants against M/s Daya Nand Yadav & Co. In this regard the appellant has placed before this Tribunal a letter dated 14.1.2019 of ICAI addressed to Mr. Daya Nand Yadav. The ICAI exonerated Mr.

Daya Nand Yadav from professional misconduct falling within the meaning of Clause (8) of Part I of the First Schedule, Clause (2) of Part IV of the First Schedule and Clauses (4)(5)(6)(7) & (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act. Accordingly the complaint against M/s Dayanand Yadav & Co made by MR. Aditya Kumar Bhandari has been closed by ICAI.

24. NCLT observed that after EOGM dated 14.8.2017 two independent directors of the company have resigned and this fact is not disclosed in the petition but confirmed latter only when objection was raised. In this regard we have considered the submission of learned counsel for appellant and we are in agreement that the appellant company is wholly owned subsidiary and unlisted public company. Therefore, in view of sub-rule (2) of Rule 4 of the Companies (Appointment & Qualification of Directors) Rule 2014 appointment of at least two independent directors is not necessary. Hence non-disclosures of resignation of two independent directors will not affect the merit of the petition in any manner.
25. Learned counsel for the appellant has placed on record the No dues certificates obtained from Paul's Pure Pharmacy dated 1.5.2018, Medex India dated 17.8.2018, Rishi Kumar Srivastava dated 10.8.2016, Mr. Prabhat Kumar Srivastava dated 10.8.2016, Mala Srivastava for her husband Rajesh Kumar dated 10.8.2016, Aditya Kumar Bhandari dated 10.8.2016 (See at Page 1021 to 1027 of Vol 7).

26. The dispute between Ernest and Young and appellant company is pending before the Arbitral Tribunal hence the conversion of appellant company shall not affect the responsibility and liabilities of the appellant company.
27. With the above discussions we are of the view that the appellant company has fulfilled the conditions for conversion and shortcomings pointed out by the NCLT are inconsequential. Therefore, we set aside the impugned order and approve the special resolution dated 14.08.2017 for conversion of appellant company from public company to private company. No order as to costs.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

(Dr. Ashok Kumar Mishra)
Member (Technical)

New Delhi

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