

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 110 of 2019

IN THE MATTER OF:

Vikas Strips Ltd.

...Appellant

Present: For Appellant: - Mr. Rakesh Kumar, Mr. Anjaneya Mishra, Mr. Sahil, Advocates.

O R D E R

13.05.2019— 'Vikas Strips Limited'- (Appellant/ Petitioner) filed application under Section 14 read with Rule 33 of the Companies (Incorporation) Rules, 2014 seeking following relief:

“1) This petition has been filed on 13.02.2018 by the petitioner Company seeking grant for the following reliefs:

- a) For directing the Company to advertise the Petition in terms of Rule 68(5) (a) of the National Company Law Tribunal Rules, 2016/*
- b) For approval of this Hon'ble Tribunal to the conversion of the Company form being a public limited company into a private limited company and also confirm the special resolution dated November 01st, 2017 passed by the members*

Contd/-.....

of the Company for the said purpose.

- c) *For passing a direction for filing of the order of this Hon'ble Tribunal for approving the said conversion with the Registrar of Companies, NCT of Delhi and Haryana.*
- d) *AND/OR Pass such 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. The National Company Law Tribunal ("Tribunal" for short), New Delhi Bench-III, on hearing the petition by initial order dated 26th July, 2018, allowed the prayer with following observations:

"9) Considering all the above, this Tribunal is of the view that there is no impediment in allowing the petition as prayed for. A copy of this order shall be duly filed with the Registrar of Companies, NCT, Delhi and Haryana within the period as specified under the provisions of Companies Act, 2013 read with NCLT Rules, 2016 framed there under.

The petition/ application is disposed off accordingly on above terms."

3. Due to inadvertence of Appellant/ Petitioner and it is accepted by learned counsel for the Appellant/ Petitioner, certain mistakes crept in the order dated 26th July, 2018. In paragraph 6, it was mentioned that *“there are no creditors of the company as on the date of filing of this petition”*.

4. It was also brought to the notice that by mistake in the petition, in place of six shareholders voted in their favour, it was wrongly typed as nine shareholders voted, therefore, by application necessary correction was sought for by the Appellant/ Petitioner at two places:

(i) One in the order dated 26th July, 2018 wherein at paragraph 6, the Tribunal recorded that *“there are no creditors of the company as on the date of filing of this petition”* and;

(ii) The other correction in the petition filed by the Appellant/ Petitioner wherein in place of six shareholders voted, it was wrongly typed as nine shareholders voted in favour of the conversion.

5. We have taken on record the Interlocutory Application No. 1598 of 2019 by which the copy of application filed on behalf of the Appellant/ Petitioner has been enclosed and heard learned counsel for the Appellant/ Petitioner.

6. On perusal of the petition, *prima facie* it appears that there is genuine mistake on the part of the Advocate of the Appellant/ Petitioner who could not bring to the notice of the Tribunal that there are 72 creditors, of which details have been shown at Pages 82-85 (Annexure-H) to the petition.

7. The other typographical error in the petition appears to be inadvertently made as from the impugned order and chart shown at Page 3 of the order dated 26th July, 2018, it has been clearly stated that six number of members are present in the meeting having 51.44% shares out of total shareholdings and nine number of members absent from the meeting having 48.56% shares out of total shareholdings.

8. In fact, in the affidavit there was no pleading that there were no creditors which may have been inadvertently argued by the counsel for the Appellant/ Petitioner and, therefore, we are of the view that it was a fit case for the Tribunal to make necessary correction.

9. So far as necessary corrections in the petition is concerned, the Appellant/ Petitioner to make necessary correction in the petition with regard to number of members present and number of members absent and the Tribunal may make necessary correction at paragraph 6 of the order dated 27th July, 2018.

10. For the said reasons, we set aside the impugned order dated 13th February, 2019 whereby the Tribunal refused to make necessary corrections and remit the matter to the Tribunal to allow the Appellant to make necessary corrections in the petition and the Tribunal also may correct the mistake as occurred in paragraph 6 of the order dated 26th July, 2018, which was due to wrong assistance of the counsel for the Appellant/ Petitioner.

11. The appeal is allowed with aforesaid observations. No costs.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice A.I.S. Cheema)
Member(Judicial)

(Kanthi Narahari)
Member(Technical)

Ar/g