

## **O-108-17**

### **ORDER under the Companies Act 2006**

**In the matter of application No. 1245**

**By Capita PLC**

**for a change of company name of registration**

**No. 10069228**

### **DECISION**

The company name PLUS CAPITA LIMITED has been registered since 17 March 2016.

By an application filed on 19 August 2016, Capita PLC applied for a change of name of this registration under the provisions of section 69(1) of the Companies Act 2006 (the Act).

A copy of the application was sent to the primary respondent's registered office on 31 August 2016, in accordance with rule 3(2) of the Company Names Adjudicator Rules 2008. The copy of the application was sent by Royal Mail special delivery. This letter was signed for at 11.11am on 1 September 2016; the signature is said to represent the name "GARY. On the same date the tribunal wrote to Madhu Sharma and Plus Capital Ltd (the latter at an address in Dubai) to inform them that the applicant had requested that they be joined to the proceedings.

As no comments were received in relation to the request to join Madhu Sharma and Plus Capital Ltd to the proceedings, in an official letter dated 13 October 2016, they were joined as co-respondents; they were granted a period of 14 days to request a hearing in relation to this matter; the letter sent to Plus Capital Ltd was returned to the tribunal marked "Incomplete Address".

In letters dated 13 October 2016, the primary respondent and applicant were advised that no defence had been received to the application and so the adjudicator may treat the application as not being opposed. The parties were granted a period of 14 days to request a hearing in relation to this matter. Although stamped 18 October 2016, the letter sent to the primary respondent was returned to, but not received by the tribunal, until January 2017.

On 24 October 2016, the letters of 31 August 2016 sent to the primary respondent and Madhu Sharma were returned to the tribunal. On 24 November 2016, the tribunal wrote to the parties. It stated:

"As there has been no response from [the primary respondent] to the official letters of 31 August 2016 or 13 October 2016, the adjudicator will shortly be issuing a change of name order. However, before doing so, he needs to be satisfied that both co-respondents have been given the opportunity to comment on them being joined to the proceedings."

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The parties were allowed a final period of 14 days for this purpose; the letter sent to Plus Capital Ltd was sent to its new address in the Marshall Islands. Insofar as it was practical, these letters were sent by both Royal Mail special delivery and ordinary post. The letters sent to the primary respondent and Madhu Sharma were returned to the tribunal by the Royal Mail; the letter sent to Plus Capital Ltd has not been returned to the tribunal.

### **Summary of the correspondence sent to the primary respondent and co-respondents**

Given the erratic timing of the return of correspondence to the tribunal, an overview of the position will, I hope, prove useful.

The letter of 31 August 2016 which served the form CNA1 on the primary respondent was sent to the address of the primary respondent's registered office as shown on the Companies House ("CH") database. It was signed for on 1 September 2016 but subsequently returned to the tribunal on 24 October 2016. The letters of 31 August 2016 sent to Madhu Sharma and Plus Capital Ltd (also sent to the addresses held on the CH database) sought their views on the applicant's request to join them to the proceedings. The letter sent to Madhu Sharma was returned to the tribunal on 24 October 2016; the letter sent to Plus Capital Ltd was not returned.

On 13 October 2016, Madhu Sharma and Plus Capital Ltd were joined to the proceedings as co-respondents; they were allowed 14 days in which to request a hearing in relation to this matter. The letter sent to Madhu Sharma was not returned to the tribunal. The letter sent to Plus Capital Ltd was sent to an address in Dubai; as the address of Plus Capital Ltd changed on 6 September 2016 to an address in the Marshall Islands, this was an error on the part of the tribunal. This letter was returned to the tribunal marked "incomplete address."

Also on 13 October 2016, the tribunal wrote to the primary respondent and applicant to advise them that as no CNA2 had been filed, the application may be treated as unopposed; the parties were allowed 14 days to request a hearing. Once again the letter sent to the primary respondent was sent to the address held by CH. The letter sent to the primary respondent was returned to the tribunal in January 2017.

On 24 November 2016, the tribunal wrote to the co-respondents to give them a final opportunity to comment upon the decision to join them to the proceedings; these letters were also sent to the primary respondent and applicant; the letters sent to the primary respondent and Madhu Sharma were returned to the tribunal; the letter sent to Plus Capital Ltd has not been returned.

In summary, all of the letters sent to the primary respondent have been sent to the correct address and despite the first letter being signed for, all have been returned to the tribunal. The letters sent to Madhu Sharma have all been sent to the correct address (i.e. the same address as the primary respondent) and have, with the exception of the letter of 13 October 2016, also been returned.

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Although the letter of 13 October 2016 sent to Plus Capital Ltd bore an incorrect address and was returned to the tribunal, the letters of 31 August and 24 November 2016 have not been returned to the tribunal.

The above chronology demonstrates that the tribunal has, with one exception, sent all of its letters to the correct addresses. Although the vast majority of these letters have been returned to the tribunal, in the circumstances described, the tribunal can do no more. The tribunal has, in my view, given the primary respondent and co-respondents every opportunity to either defend its company name or to comment upon their being joined to the proceedings.

The primary respondent did not file a defence within the one month period specified by the adjudicator under rule 3(3). Rule 3(4) states:

“The primary respondent, before the end of that period, shall file a counter-statement on the appropriate form, otherwise the adjudicator may treat it as not opposing the application and may make an order under section 73(1).”

Under the provisions of this rule, the adjudicator may exercise discretion so as to treat the respondent as opposing the application. In this case I can see no reason to exercise such discretion and, therefore, decline to do so.

As the primary respondent has not responded to the allegations made, it is treated as not opposing the application. Therefore, in accordance with section 73(1) of the Act I make the following order:

- (a) PLUS CAPITA LIMITED shall change its name **within one month** of the date of this order to one that is not an offending name<sup>i</sup>;
- (b) PLUS CAPITA LIMITED, Madhu Sharma and Plus Capital Ltd shall:
  - (i) take such steps as are within their power to make, or facilitate the making, of that change;
  - (ii) not cause or permit any steps to be taken calculated to result in another company being registered with a name that is an offending name.

In accordance with s.73(3) of the Act, this order may be enforced in the same way as an order of the High Court or, in Scotland, the Court of Session.

In any event, if no such change is made within one month of the date of this order, I will determine a new company name as per section 73(4) of the Act and will give notice of that change under section 73(5) of the Act.

All respondents, including individual co-respondents, have a legal duty under Section 73(1)(b)(ii) of the Companies Act 2006 not to cause or permit any steps to be taken calculated to result in another company being registered with an offending name; this includes the current company. *Non-compliance may result*

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*in an action being brought for contempt of court and may result in a custodial sentence.*

Capita PLC having been successful is entitled to a contribution towards its costs. I order PLUS CAPITA LIMITED, Madhu Sharma and Plus Capital Ltd being jointly and severally liable, to pay Capita PLC costs on the following basis:

Fee for application:	£400
Statement of case:	£400
Total:	£800

This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Any notice of appeal against this decision to order a change of name must be given within one month of the date of this order. Appeal is to the High Court in England, Wales and Northern Ireland and to the Court of Session in Scotland.

The company adjudicator must be advised if an appeal is lodged, so that implementation of the order is suspended.

Dated this 9th day of March 2017

Christopher Bowen  
Company Names Adjudicator

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<sup>i</sup>An “offending name” means a name that, by reason of its similarity to the name associated with the applicant in which he claims goodwill, would be likely— to be the subject of a direction under section 67 (power of Secretary of State to direct change of name), or to give rise to a further application under section 69.