

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH, MUMBAI**  
**Company Petition No.156/2(41)/NCLT/MB/MAH/2017**  
**CORAM : Shri M.K. Shrawat, Member (Judicial)**

**Order Under Section 2(41) of the Companies Act, 2013**

**In the matter of : M/s. Atos Global IT Solutions and Services Pvt. Ltd.**

**Present : Ms. Neha Karekar, Practising Company Secretary for the Applicant.**

**ORDER**

**Reserved on : 13-06-2017** *mm*

**Pronounced on : 13-06-2017**

1. The Petition under consideration is filed on **21<sup>st</sup> April 2017** u/s 2(41) of the Companies Act (hereinafter referred as 'The Act') seeking approval to adopt an accounting period other than the "Financial Year" as prescribed vide this Section enforced w.e.f. 1<sup>st</sup> April, 2014.
2. From the side of the Petitioner, Practising Company Secretary Ms. Neha Karekar appeared and explained facts as also the law applicable for disposal of this Petition.
3. Facts of the Case are within the narrow compass that the Petitioner Company was originally incorporated in India on **07<sup>th</sup> March, 2017** (after changing name), having its Registered Office at **Godrej & Boyce Complex, Plant 6, Pirojshanagar, LBS Marg, Vikhroli (W), Mumbai, Mumbai City MH 400079** with the main object to carry on the business of consulting services in Information Technology, BPO etc.
- 3.1 In the Petition, it is stated that the Petitioner Company is the "Subsidiary Company" of a "Foreign Holding Company" namely **Atos International B.V. (Netherlands)**, a body incorporated outside India. The holding company is having 99.99% shares of the subsidiary company.
4. In the backdrop of the brief facts, a question had cropped up that what was the legal necessity to file this Petition? The explanation offered was that on incorporation of the Companies Act, 2013, a Section i.e. Section 2(41) was introduced under the head "Definitions", wherein the term "Financial Year" has been defined; reproduced below for ready reference :-

*"Section 2(41)*

*"Financial year", in relation to any company or body corporate means the period ending on the 31<sup>st</sup> day of March every year, and*

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*(Contd....2.)*

*where it has been incorporated on or after the 1<sup>st</sup> day of January of a year, the period ending on the 31<sup>st</sup> day of March of the following year, in respect whereof financial statement of the company or body corporate is made up."*

4.1 As per this definition, every Indian Company should adopt Financial Year as its accounting period ending on 31<sup>st</sup> day of March every year. As per this "Definition Section", an Indian Company is under statutory obligation to formulate its accounts by adopting accounting period of one Financial Year starting from 1<sup>st</sup> day of April and ending on 31<sup>st</sup> day of March each year. The basic purpose of legislation of this "Definition" in this newly enacted Act seems to be to make a law to adopt a uniform system of accounting for all Indian Companies. Hence, an unambiguous law has been made according to which every Indian Company is legally required to uniformly have one pattern of accounting year. i.e. Financial Year, commencing from 1<sup>st</sup> April and ending on 31<sup>st</sup> March every year. It may not be out of place to mention that the other Acts such as Income Tax Act also recognize Financial Year as the accepted accounting period for a corporate body. As a result, by this legislation a uniformity is laid down among several such Acts. So, the rule is framed that every corporate entity shall adopt its accounting year only on Financial Year basis.

4.2 However, an exception to this general rule has been carved out by inserting First Proviso to Sub-section (41) to Section 2, which reads as under :-

**"Provided** that on an application made by a company or body corporate, which is holding company or a subsidiary of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Tribunal may, if it is satisfied, allow any period as its financial year, whether or not that period is a year:

**Provided further** that a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause."

5. Keeping in mind the above requirement of law, a compliance has been made by the Petitioner by filing the Petition under consideration, seeking approval of NCLT for adopting an accounting year other than the Financial Year. This departure from the main rule is permissible under one circumstance. It is prescribed that in a situation when either a holding or a subsidiary Company is

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incorporated outside India and that Foreign Company is following a different accounting year, other than the Financial Year, the for consolidation of account with the accounts outside India, an approval from the Tribunal is a legal requirement and, if satisfied, pass an Order to this effect.

6. Petitioner has placed an order of CLB, Principal Bench New Delhi dated 10-12-2015 passed in the case of M/s. Atos India Pvt. Ltd. (CP No.125/2(41)/MB/2015 wherein it was held as under :-

"ORDER

*This is an application filed by a subsidiary company namely M/s. Atos India Pvt. Ltd., Mumbai for permission to follow the financial year from 1<sup>st</sup> January to 31<sup>st</sup> December which is permissible by virtue of Proviso to Section 2(41) of the Companies Act, 2013. The holding company namely M/s. Atos International B.V. is incorporated in Netherlands which also follows the financial year from January to December. For the sake of convenience and to maintain the same financial year in both the companies, permission has been sought.*

*The Registrar of Companies, Mumbai has sent a report. It has verified the facts with regard to the status of the Petitioner company and that of its holding company. It has also been stated that the Registrar of Companies would have no objection if the prayer made by the Petitioner is accepted. Keeping in view the fact that holding company follows calendar year as financial year from January to December I deem it just and proper to grant the prayer made by the petitioner because it would bring co-ordination of account between the two companies. Accordingly the petition succeeds and the prayer for treating financial year from January to December is accepted.*

*Petition stands disposed of."*

6.1 The above order thus made it clear that identically in one of the subsidiary viz. M/s. Atos India Pvt. Ltd. of the holding company viz. M/s. Atos International B. V. Netherlands, the issue of change of accounting period has been allowed and held that keeping in view the fact that the holding company follows calendar year as a financial year from January to December, therefore, proper to grant the Petitioner (subsidiary company viz. M/s. Atos India Pvt. Ltd.) to follow calendar year as the accounting period so that the accounts of the said two companies would bring "coordination of account". In the said case the prayer for treating financial year from January to December was accepted.

*WWS*

(Contd.....4.)

7. For due compliance the Petitioner has demonstrated that a resolution has been passed on 20<sup>th</sup> of March 2017 giving consent to adopt the accounting period from January to December so as to match with the holding company.

8. In the light of the factual matrix and legal position, it is hereby held as under:-

ORDER

The Petitioner Company being a subsidiary of Foreign Holding Company which is maintaining its account on Calendar Year basis required to consolidate the accounts of the Petitioner Company; hence it is hereby ordered by exercising the powers enshrined u/s 2(41) of the Companies Act that the accounting period shall be aligned by adopting Calendar Year (1<sup>st</sup> January to 31<sup>st</sup> December) as the accounting period.

9. The Company Petition is allowed. Copy of the Order to the Petitioner for requisite compliance. No Order as to cost.

Date : 13-06-2017.

Sd/-  
(M.K. SHRAWAT)  
Member (Judicial)