

**IN THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"**

**CA Nos. 344 & 345 of 2018
With
CP No.122/Chd/Hry/2018**

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

In the matter of:

**Ericsson Telephone Corporation
India Aktiebolag (AB), India
Branch Office, Ericsson Forum,
DLF Cyber City, Sector 25-A,
Gurgaon-122002, Haryana, India
PAN No. AAACE2393M**

.....Petitioner

Judgement delivered on: 30.08.2018

**Coram: Hon'ble Mr.Justice R.P.Nagrath, Member (Judicial)
Hon'ble Mr.Pradeep R. Sethi, Member (Technical)**

For the petitioner : Mr. Arjun Sheoran, Advocate.

Per: R.P. Nagrath, Member(Judicial)

JUDGEMENT (Oral)

The petitioner which is a 'body corporate' has filed this petition in terms of Section 2(41) of the Companies Act, 2013 (for brevity, the Act) for adopting of the financial year to make it in conformity with the accounting year of its holding company Ericsson Telephone Corporation India Aktiebolag (AB) having its registered office outside India under the laws of Sweden, referred to as the 'Foreign Company'. The petitioner is registered as Branch Office of the 'Foreign Company' as per the Certificate of Establishment of Business in India issued by the Registrar of Companies NCT of Delhi and Haryana (Annexure P-

1). In tune with the accounting year of the 'Foreign Company', branch office of the 'Foreign Company' had adopted the calendar year from 1st January to 31st December every year.

2. Notice of this petition to the Registrar of Companies, NCT of Delhi and Haryana. Mr. M.S. Pachouri, Registrar of Companies, Punjab, Chandigarh & Himachal Pradesh is present and accepts notice on behalf of the Registrar of Companies, NCT of Delhi and Haryana. It is submitted that the report of the Registrar of Companies, NCT of Delhi and Haryana has already been filed.

3. We have heard the learned counsel for the petitioner, the Registrar of Companies, Punjab, Chandigarh & Himachal Pradesh representing the Registrar of Companies, NCT of Delhi and Haryana and also perused the records carefully.

4. The learned counsel for the petitioner referred to the certificate of registration of the 'Foreign Company' which is at Annexure P-2 (colly) showing that the 'Foreign Company' was registered in Sweden in the year 1984. Along with the certificate of registration, copy of Memorandum and Articles of Association have also been annexed. Registration Certificate of the 'Foreign Company' also shows that the financial year is the calendar year for the purpose of accounting. The petitioner, therefore, comes within the definition of term 'body corporate' as defined in sub-section (11) of Section 2 of the Act which is an inclusive definition.

5. The Branch Office which filed the instant petition is situated at Gurugram in the State of Haryana and therefore, the matter falls within the territorial jurisdiction of this Tribunal.

6. The resolution of shareholders of 'Foreign Company', Annexure P-5 (colly) is dated 11.09.2017 authorising the filing of a petition for retaining the calendar year as the financial year for synchronizing with financial year and to facilitate consolidation of its accounts with the 'Foreign Company'. In this regard, there is also a letter of consent issued by the authorised representative of the Indian Branch of the Company. Vide resolution dated 11.09.2017 of the 'Foreign Company', all the Directors of the company/authorised representatives of the Branch Office have been severally authorised to sign the application, execute the documents and to do all the necessary acts in the progress of the case. Reliance is also placed on Power of Attorney (Annexure P-4) at page 41 of the paper book wherein the powers have been granted to Ms. Poonam Bhaskar and others to act as authorised representative of the company. The instant petition has been filed through Ms. Poonam Bhaskar who has filed affidavit in support of the contents of the petition. Annexure P-3 dated 16.01.1995 is the approval granted by Reserve Bank of India in favour of the 'Foreign Company' for operating a branch office in India.

7. This petition has been filed under Section 2(41) of the Act for retaining the calendar year as the accounting year for the Branch Office. Second proviso to Section 2(41) says that a company or 'body corporate' existing on the commencement of the Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of clause (41) of Section 2 of the Act. Normally the company should have adopted the financial year from 1st of April to 31st March by 01.04.2016 because the provision came into force from 01.04.2014 and the petition has not been filed within two years of the commencement thereof. Otherwise, the learned counsel for the petitioner

submits that the company is adopting calendar year as the account year since beginning.

8. As the instant petition has been filed beyond two years, the company has filed CA No. 344/2018 for seeking condonation of delay in filing the petition. The notice of this application to the Registrar of Companies, Punjab, Chandigarh and Himachal Pradesh representing the Registrar of Companies, NCT of Delhi and Haryana. The Registrar of Companies does not wish to file reply to this application. The ground taken in the application is that there is in fact no business operation being run by the Branch Office and filing of the instant petition on time was due to inadvertence. Having heard both the parties and for the reasons stated in the application, the prayer made in the application is allowed and the delay in filing the petition is condoned subject to payment of costs of ₹25,000/- with the Pay and Accounts Officer, Ministry of Corporate Affairs in respect of Registrar of Companies, NCT of Delhi and Haryana within one month of receipt of certified copy of this order. CA No. 344/2018, therefore, stands disposed of.

9. Along with the petition, the petitioner also filed copy of the audited financial statements for the year ending 31.12.2016 (Annexure P-8). When the matter was listed on 24.07.2018, the learned counsel for the petitioner sought time to file financial statements of the petitioner i.e. Branch Office of the petitioner company for the period of two years prior to the financial year under consideration. The petitioner has filed financial statements of the petitioner/Branch Office for the years ending on 31.12.2014 and 31.12.2015 (Annexure P-10) with the compliance affidavit filed vide Diary No. 3119 dated 23.08.2018. The same be taken on record.

10. The learned counsel for the petitioner also submits that after filing of this petition, GNL-1 form was also filed with the Registrar of Companies and CA No. 345/2018 has been filed for placing on record GNL-1 Form along with receipt, challan and acknowledgement, copy of which is at Annexure P-11 (colly). The same be taken on record. Therefore, CA No. 345/2018 also stands disposed of.

11. The Registrar of Companies, NCT of Delhi and Haryana has not raised any objection to the prayer made by the petitioner in the report dated 01.08. 2018. It is stated that there is no prosecution filed against the company nor any complaint is pending. It is also stated that the company has filed its balance sheet and the Annual Return for the financial year ending on 31.12.2017.

12. The learned counsel for the petitioner further contends that the requirement of filing the documents as per Annexure-B as referred to in Rule 67 of the National Company Law Tribunal Rules, 2016 have been fully complied with.

13. In view of the aforesaid discussion, we find that the petition deserves to be allowed and the prayer of the petitioner, which is a 'body corporate', to continue to retain calendar year as the financial year for the purpose of accounting from 1st January to 31st December to keep it in tune with the accounting year of the 'Foreign Company', is accepted. The petitioner shall file a certified copy of this order with the Registrar of Companies, NCT of Delhi and Haryana within the period stipulated under the Act.

Copy of this order be communicated to the learned counsel for the

petitioner and the Registrar of Companies, NCT of Delhi and Haryana.

Sd/-
(Pradeep R. Sethi)
Member (Technical)

Sd/-
(Justice R.P. Nagrath)
Member (Judicial)

August 30, 2018
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