

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH
AT HYDERABAD**

CA.No.830/2(41)/HDB/2018

Under Section 2(41) of the Companies Act, 2016

In the matter of

Refratechnik (India) Private Limited
Having its registered office at
Door No.7-8-10,
Second Floor (South Wing) in ATR Towers,
Harbour Park Road,
Visakhapatnam – 530 003.
Andhra Pradesh

..... Applicant Company

and

The Registrar of Companies, Hyderabad
For Andhra Pradesh and Telangana,
2nd Floor, Corporate Bahwan,
Bandla Guda, Nagole, Hyderabad – 500 068.

.... Respondent

Order Delivered on: 28.09.2018

Counsel for the Petitioner : Mr. D.V.K. Phanindra, Practicing
Company Secretary and authorized
Representative.

Counsel for ROC : Shri T. Sujana Kumar Reddy, CGSC

Counsel Income Tax Department : Shri K. Raji Reddy, Senior CGSC

Per: **K. Anantha Padmanabha Swamy, Member (Judicial)**

ORDER

1. The Company Application bearing CA.No.830/2(41)/HDB/2018 was filed by Refratechnik (India) Pvt. Ltd., (hereinafter referred to as 'the Applicant Company') under Section 2(41) of the Companies Act, 2013, by praying this Tribunal to allow the Applicant Company to follow a different financial year i.e. a period of 12 months starting from 1st January to 31st December each

year, as its financial year in terms of the provisions of Section 2(41) of the Companies Act, 2013 and the previous year financial year of the Company be deemed to be from 10th July, 2017 to 31st December, 2017.

2. Brief facts of case, which are relevant to the issue in question, are submitted by the Learned PCS as under:

a) Applicant Company was incorporated as a Private Limited Company on 10.07.2017 under the Companies Act, 2013. The Corporate Identity Number (CIN) U27320AP2017FTC106247. The Registered Office of the Company is situated at Door No.7-8-10, Second Floor (South Wing) in ATR Towers, Harbour Park Road, Visakhapatnam, Andhra Pradesh – 530003. The main objects of the Applicant Company as set out in sub-clause (A) of Clause III of Memorandum of Association are to carry on business of Trading of Refractory products, import and export of refractory products, manufacturing of refractory products through franchises (other manufacturer in India), manufacturing of refractory products by establishing own facilities (Factory) in India, to handle the job work through various contractor/agent for application of refractory product in various plant like Steel Plant, Cement Plant, Foundries, Power Plant, Aluminum Plant etc. in India, to handle the job work through various contractor/agents towards export and import consignment, to established godown in India to keep stock of Refractory and sale in India and export to overseas customer, to handle the transporting job through various transporter etc.

b) The Applicant Company is a wholly owned subsidiary of Refratechnik Steel GmbH, (“Holding Company”) incorporated under the Laws of Germany having its registered office at Knobelstr, 36, 80538 Munich. The Holding Company holds 100% equity shares of the Applicant



Company and predominantly controls the management the management of the Applicant Company. The Holding Company follows the financial year from 1st January to 31st December every year and accordingly, consolidated accounts are required to be prepared for the period from 1st January to 31st December every year.

- c) Since, the Holding Company is following 1st January to 31st December as their financial year and the Applicant Company is required to maintain accounts and close its financials as on 31st December every year in order to streamline the preparation of the consolidated financial and maintain uniformity in preparation of accounts and consolidate the accounts with the Holding Company. Therefore, the Board of Directors of the Applicant Company passed a resolution in their meeting held on 08.03.2018 (**Annexure-6 - Page No.93 to the Application**) to file an application before this Bench seeking approval to follow financial year that end on 31st December every year.
3. The Registrar of Companies, Hyderabad vide its Report dated 25.09.2018 reiterated the averments made in the Petition and opined that the first proviso to Section 2(41) of the Companies Act, 2013, permit the Applicant Company to follow different financial year for consolidation of accounts outside India and any period may be allowed as its financial year provided the Bench is satisfied.
4. The Income Tax Department filed counter stating that for the purpose of computation of income under Income Tax Act the petitioner has to necessarily follow the financial year of twelve months starting from 1st April and to finalize the accounts and draw the financial statement viz. P & L Account, Balance Sheet etc., as at the end of the financial year i.e. 31st March. It is further submitted that is no provision under Income Tax Act, 1961 for change in financial year or previous year and therefore the Applicant

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Company's request for change of financial year to calendar year i.e. 1st January to 31st December is untenable as far as Income Tax Act is concerned. It is also submitted that however, if the request of the petitioner is eligible to be allowed under the Companies Act, 2013, it is submitted that the Hon'ble Tribunal may kindly approve the change, subject to the compliance of the condition (i) that the Applicant shall prepare books of account and financial statement for the purpose of Income Tax with financial year starting from 1st April to 31st March and audited according as prescribed under Income Tax Act and file return of income within the time limits prescribed under Section 139; and (ii) the change in financial year, under any circumstance, as solicited by the Applicant should not be detrimental to the interests of Revenue as per the provisions of Income Tax Act, 1961 or should not be a Tax planning measure.

5. Heard, Shri D.V.K. Phanindra, PCS and representative for the Applicant Company, carefully perused the material papers placed on record; Report of the ROC, Hyderabad and Counter filed by Income Tax Department. It is submitted that the Applicant Company being a subsidiary of the Holding Company, has to mandatorily adopt the financial year from 1st January to 31st December to align its financial statements with that of its Holding Company which is incorporated outside India. Thus to comply with the aforesaid requirement, the Holding Company has been consolidating its financial statements with its subsidiaries every year to present true and fir financial state of affairs to the shareholders of the company and also to the statutory authorities. Also as per the Balance Sheet and Financial Statement of Holding Company, it is evident that the Holding Company is financial year from 1st January and ending 31st December every year.
6. In the light of the above observations, this Bench is satisfied that it is just and reasonable to permit the Applicant Company to follow the financial year commencing from 1st January to 31st December each year, for consolidation

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of its accounts in line with the accounts of its Holding Company which is registered outside India. Thus in exercise of the powers conferred under 1st proviso to Section 2(41) of the Companies Act, 2013, this Company Application is allowed.

7. For the purpose of Income Tax, the Applicant Company shall prepare books of accounts and financial statements with financial year starting from 1st April to 31st March and get the books of accounts audited accordingly as prescribed under Income Tax Act and file the return of income within the time limits prescribed under Section 139 of the Income Tax Act.
8. The Applicant Company is directed to furnish a copy of this order to the Registrar of Companies, Hyderabad Andhra Pradesh and Telangana, as per the procedure prescribed for the purpose of information and record.



K. ANANTHA PADMANABHA SWAMY
MEMBER (J)