

**In the National Company Law Tribunal**

**New Delhi Bench**

**C.P No- 119/2(41)/ND/2018**

**In the Matter of**  
**Sections 2(41) provision of Companies Act**

**TUMLARE SOFTWARE SERVICES Pvt. Ltd.**

Having Registered office at

Plot No. 8, GARG PLAZA ROAD NO.44,

PITAMPURA,

New Delhi- 110034, India

....Petitioner

**CORAM:** Mr. R. VARADHARAJAN (JUDICIAL)

Dr. V.K. SUBBURAJ, MEMBER (TECHNICAL)

**Counsel for Petitioner-** **Mr. Sanjay Grover & Ms. Priyanka, CS**

**Counsel for ROC -** **Mr. Manish Raj, Company Prosecutor for ROC**

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## **ORDER**

Order Delivered on - 29.8.2018

1. The Petitioner Company was incorporated on 01.01.1999 and has its Registered office at Plot No. 8 Garg Plaza Road No. 44, Pitampura, New Dehi-110034. The applicant is a subsidiary of one "Tumlare Corporation A/s, registered in Denmark having office at Vesterbrogade 6D- 1620 Copenhagen V Denmark.
2. The financial year followed by the principal holding company based in USA is stated to be as per the calendar year, i.e. from 1<sup>st</sup> January to 31<sup>st</sup> December. Vide the present petition, the applicant prays for permission to follow the same financial year i.e. from 1<sup>st</sup> January to 31<sup>st</sup> December as that of its holding company. This it is averred would be in keeping with the financial year adopted by its Holding Company "Tumlare Corporation" having office at Vesterbrogade 6D DK-1620 Copenhagen V Denmark. The aligning of the applicant's financial year with the Holding company would it is stated streamline and facilitate the preparation of the consolidated financial Statements.
3. The Parent Company has passed a Board Resolution dated 6<sup>th</sup> November 2017, consenting to the change of the Financial Year. This was followed by a resolution by the Indian arm of the company adopting the said decision. The prayer of the petitioner, (being a subsidiary of a company incorporated outside India), for adopting a different financial year vis-à-vis as mandated under Section 2(41) of the Companies Act, 2013(Act)

according to the submission made by Ld. AR for petitioner merits consideration and is permissible under the proviso of the aforesaid section in the circumstances as stated above.

4. The Registrar of Companies, NCT of Delhi & Haryana within whose jurisdiction the registered office of the petitioner is situated was asked to submit a report and the ROC has submitted a report with the following observations

a. As per section 2(41) of Companies Act, 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. However, the company has filed petition to change its financial year after expiry of said period.

The above factual report prepared on the basis of records maintained and documents filed by the petitioner company. The Hon'ble National Company Law Tribunal may consider the matter as it may deem fit and proper in this regard.

5. We have considered the plea of both the Petitioner as well as considered the report of ROC as extracted above and before proceeding further it will be required to look into the provisions of 2(41) of the Act.

Sec 2 (41) states that

*(41) "financial year", in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period*



*ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up:*

***Provided*** that on an application made by a company or body corporate, which is a 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;

6. While the petitioner from the petition it is seen places reliance on 1<sup>st</sup> proviso for the maintainability of the petition, on the other hand it is the contention of the ROC as evident from the report that under 2<sup>nd</sup> proviso the petitioner should have come before this Tribunal within a period of 2 years from the commencement of the provision, namely Section 2(41) of the Act.
7. The provision namely Section 2(41) of the Act seemed to have been notified on and from 01.04.2014. From the initial paragraph of this order it is seen that the Petitioner Company was incorporated on 01.01.1999, much prior to coming into force of Section 2(41) of the Act. On perusal of the relevant provision Sec 2(41) when it is read as whole, it is seen that the petitioner has come beyond the limitation as prescribed under the statute. It is not the case of the petitioner company that it was incorporated under the 2013 Act. On the other hand it is evident that the company was incorporated in the year 1999 itself. It is also not the case of the petitioner company that only after coming into force of the Act of 2013, the petitioner company became a subsidiary of the foreign

company or that the said foreign holding company had changed its accounting period mid-stream after coming into force of section 2(41) of the Companies Act,2013.

8. Further even before notifying the provisions of Companies act 2013, the petitioner had the remedy before the Company Law Board under the 1956 Act. However, the petitioner has chosen not to avail the remedy as given under the then existing law and they have not submitted any valid explanations for exceeding the prescribed limitation of 2 years in filing this Petition other than merely stating that they were awaiting the formation of this Tribunal and that from the constitution of this Tribunal they have filed the petition.

9. As stated earlier, from the pleadings it is also evident that the company had also not filed financial statements for the year ending 2016 and 2017 and has been curiously, it is stated waiting for NCLT to be notified which we find strange. In relation to time periods which have been specified in the Act, this tribunal does not have power to enlarge or abridge and in the circumstances this Tribunal is not in a position to condone the delay of almost 2 years on the part of the Applicant company in approaching this tribunal. The provisions of Section 2(41) cannot be used as a ruse in not complying with the annual closing of accounts and of filing of financial statements with the concerned Roc.



10. In the circumstances we do not find any merit in this petition and this petition stands dismissed however, without costs.

Sd-  
29/08/18

**(Dr. V.K. SUBBURAJ)**  
Member (TECHNICAL)

Sd-  
29/08/18

**(R.VARADHARAJAN)**  
MEMBER ( JUDICIAL)



U.D. Mehta/D