

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

CP No. 656/2(41)/NCLT/MB/MAH/2017
Under Section 2(41) of the Companies Act,
2013

In the matter of

M/S. Peter-Lacke India Pvt. Ltd.

.....Petitioner

Heard on : 08.12.2017

Order delivered on: 19.12.2017

Coram :

Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

Adv. Ajit Singh Tawar, Advocate for the Petitioner.

Per: *Bhaskara Pantula Mohan, Member (J)*

1. The Petition under consideration is filed on 10th November, 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. 1st January, 2018.
2. From the side of the Petitioner, Advocate Mr. Ajit Singh Tawar 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 Navi-Mumbai under the provisions of the Companies Act, 1956 as a Private Limited Company vide Certificate of Incorporation dated 5th December, 2007 issued by the Registrar of Companies, Mumbai, Maharashtra, having CIN No. U24220MH2007FTC176494. The Registered office of the Company and the address for correspondence is situated at D-369, ITC Industrial Area, Village Kushet, Navi Mumbai - 400706, Maharashtra with the main object to carry on the business as buyers, sellers, manufacturers, processors, importers, exporters, distributors, agents, dealers of all kind of industrial paints, lacquers, pigment dyes, thinners, varnish, enamels, solvents, adhesives and all kinds of finishing coal and industrial finishing materials.
 - 3.1 In the Petition, it is stated that, the Petitioner Company is the "Subsidiary Company" of a "Foreign Holding Company" namely Peter-Lacke Holding GMBH (Germany), a body incorporated outside India. The holding company is holding 99.94% shares of the company.
 - 3.2 The Petitioner Company submits that, as it is a subsidiary of a Germany based Company and has been maintaining its Financial Year ending on 31st March every year in line with the requirements of the Companies Act, 2013

M. Pantula Mohan:

- 3.3 The Petitioner further states that, the Holding Company of the Petitioner is following Financial Year ending on 31st December every year and requires global consolidation of financials of all its subsidiaries to comply with certain norms and audit requirements and therefore due to change in financial Years the Petitioner Company is facing problem as the consolidation of its Financial Statements with that of the Holding Company. As a consequence, now the applicant company has moved this application to align its accounting period accordingly.
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 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."

- 4.1 As per this definition, every Indian Company should adopt Financial Year as its accounting period ending on 31st 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 1st day of April and ending on 31st 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 1st April and ending on 31st 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:

Approved:

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 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. For due compliance the Petitioner has demonstrated that a resolution has been passed on 6th of July, 2017 giving consent to adopt the accounting period from January to December so as to match with the holding company.
7. In the light of the factual matrix and legal positon, it is hereby held as under:-

ORDER

The Petitioner Company being a subsidiary of Foreign Holding Company which is maintaining its account from January to December 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 (From 1st January to 31st December) as the accounting period.

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

Sd/-

Bhaskara Pantula Mohan
Member (J)

Dated : 19th December, 2017

yogini