

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

CP No. 602/2(41)/NCLT/MB/MAH/2017

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

In the matter of

M/S. O.L.I.C. Engineering India Pvt. Ltd.
.....Petitioner

Heard on : 07.12.2017

Order delivered on: 19.12.2017

Coram :

Hon'ble M. K. Shrawat, Member (J)
Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

Mr. Sachin Dedhia, Practising Company Secretary.

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

1. The Petition under consideration is filed on 30th October, 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, Practising Company Secretary Mr. Sachin Dedhia 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 Pune under the provisions of the Companies Act, 1956 as a Private Limited Company vide Certificate of Incorporation dated 11th June, 2015 issued by the Registrar of Companies, Pune, Maharashtra, having CIN No. U29100PN2015FTC155379. The Registered office of the Company and the address for correspondence is situated at Office No. 14, Soham Complex, D.P. Road, Aundh, Pune - 411007, Maharashtra with the main object to carry on the business of conceptualization, designing, manufacturing, technical assistance, marketing, commercialization, sale, distribution, importing, exporting, improving, engineering, assembling, servicing, repairing and otherwise dealing in welding and assembly technology in its entire spectrum with its main utilization in all major subgroups constituting the bodies of automobile vehicles and railway and aerospace machines, aero planes and aquatic, sea based vehicles such as ships and vessels and to provide all forms of integrated technological solutions, services in the field of robotic systems, engineering activities from the process engineering through editing of customers technical specification, development of software and hardware with main emphasis in the robotic programming mainly used in



welding technology including 3D measurement systems and certification of the fixtures and mapping and reporting of issues and troubleshooting measures in India and abroad. To carry on the business of buying, selling, reselling, sub-contracting, agency, exchanging, hiring, altering, importing, exporting, improving, assembling, distributing, servicing, repairing and dealing in as original equipment manufacturers, jobbing industry basis, ancillary unit and in any other capacity, systems table top, roller hemming, and related equipment's in particular framing stations, geometric fixtures, roller tables, conveyors, scissor lift, jigs, pneumatic trunnions, geometric grippers, hemming fixtures, laser welding cells and every other related machineries, component parts, replacement parts, spare parts, accessories tools, implements and fittings.

- 3.1 In the Petition, it is stated that the Petitioner Company is the "Subsidiary Company" of a "Foreign Holding Company" namely O.L.C.I. Engineering S.R.L., Italy, a body incorporated outside India. The holding company is holding 60.26% shares of the company.
- 3.2 The Petitioner Company submits that presently it follows 1st April to 31st March as its Financial Year and the Holding Company follows 1st January to 31st December as its Financial Year. For ease of Consolidation of Accounts with its Holding Company, the Petitioner Company wants to follow 1st January to 31st December as its Financial Year, in line with its Holding Company. The Petitioner Company has closed its last Financial Year on 31st March, 2017. 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:

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 20th of October, 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)

Sd/-
M. K. Shrawat
Member (J)

Dated : 19th December, 2017

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