

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

IN

T.P.NO. 110/2016

*PRESENT: SHRI RATAKONDA MURALI, MEMBER JUDICIAL
SHRI. ASHOK KUMAR MISHRA, MEMBER TECHNICAL*

IN THE MATTER OF SECTION 2(41) OF THE COMPANIES ACT, 2013

AND

IN THE MATTER OF M/s ASM ASSEMBLY SYSTEMS INDIA
PRIVATE LIMITED

T.P.NO. 110/2016

1. M/S ASM Assembly Systems India Private Limited
202, II Floor,
Gold Tower,
No.50 (Old No.98)
Residency Road,
Bangalore-560025

- APPLICANT

PARTIES PRESENTED: - Mr. Chandan Kini, M/s Krishnamurthy And
Co., 4th Floor, Prestige Takt No.23, Kasturba
Road Cross, Bangalore-560001 Advocate and
Authorised representative for the Applicant

Heard on 19/09/2016, 22/09/2016 and 29/09/2016

ORDER

The Petition is filed by the Applicant under Section 2(41) of the Companies Act 2013. Consequent upon the establishment of National Company Law Tribunal Bench at Bengaluru, the said case was transferred to this Tribunal on abolition of Company Law Board, Southern Region, Chennai Bench and numbered as T.P No. 110/2016.

This petition is filed by the Petitioner under section 2(41) of the Companies Act, 2013 with a prayer to permit the company which is a subsidiary of body corporate registered outside India to follow calendar year (1st January to 31st December) as its financial year for the purpose of consolidation of its accounts with its holding company.

The averments made in the application are briefly stated hereunder:

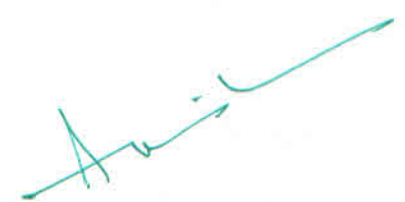
The Applicant Company is a Private Limited Company, incorporated under the Companies Act, 1956 on 17/01/2012 under the name and style of "ASM Assembly Systems India Private Limited" vide Corporate Identity No. U29200KA2012PTC062105. The Registered Office of the company is situated at #202, II Floor, Gold Tower, No.50 (Old No.98) Residency Road, Bangalore-560025.

The main objects of the Company is to carry on in India or elsewhere the business of designing, researching, developing, manufacturing, assembling, importing, buying, procuring software and other related products and services on own account or on account of others; to buy or acquire, sell, lease, sub-lease or deal in any other manner in freehold or leasehold land; to act as shipping agents etc., details of the objects are mentioned in the Memorandum of Association of the Applicant Company.

The Applicant Company is a subsidiary of ASM Assembly Systems Pte.Ltd., Singapore a body corporate incorporated under the laws of Singapore, having the registration No. 201015400C. The financial year of M/s ASM Assembly Systems Pte. Ltd., Holding company is from 1st January to 31st December.

The Petitioner Company is currently following the calendar year as required, since the Holding Company follows the calendar year from 1st January to 31st December, the Company has realized that it has to align with the consolidation of accounts outside India in accordance with the requirements of the Holding Company.

As per section 2(41) of the Companies Act, 2013 which reads as follows:



“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.”

The Board of Directors of the Petitioner Company at the meeting held on 15/10/2015 passed a resolution for adoption of calendar year, i.e., 1st January to 31st December as the financial year of the Applicant Company. The Resolution of Board of Directors is enclosed with Petition. The Holding Company has also given consent to adopt the calendar year as financial year to the Petitioner Company.

We have seen the documents along with petition and also the report of the Registrar of Companies, Karnataka, Bengaluru who recommended the application may be considered on merits. Certified copy of latest Balance sheet of the Holding Company is enclosed with Petition. We have seen the Board Resolution of the Petitioner Company. Mr. Damodaran Periaswamy, Director of the Petitioner Company has filed Affidavit dated 26/09/2016 stating that:-

- 1) Petitioner is a wholly owned subsidiary of M/s ASM Assembly Systems Pte. Ltd., (herein after referred to as ‘holding company’ or ‘Singapore Company’) in Singapore, which in turn is a subsidiary of M/s ASM Pacific Technology Limited (herein after referred to as ‘ultimate holding company’) located in Cayman Islands.

- 2) In accordance and furtherance of the point No. 7 and 8 of the principal petition, I hereby submit that the laws governing the holding company do not require consolidation of its financial statements with its Indian Subsidiary. But, the ultimate holding company requires consolidation of its financials with subsidiaries worldwide. In this regard, the financials of the petitioner company has to be consolidated with holding company, whose financials will be further consolidated with the ultimate holding company.
- 3) I hereby state that in the petition, it was inadvertently stated that the financials of the petitioner was required to be consolidated with the holding company whereas the consolidation of financials is required to be undertaken by the ultimate holding company which requires the petitioner to follow the financial year as stated in the petition.

Registrar of Companies, Karnataka, Bengaluru letter dated 05/02/2016 has also forwarded to consider the case on merit. So there are grounds to permit the Petitioner Company to retain its calendar year as financial year of Holding Company for the purpose of consolidation of accounts.

Accordingly, the following order is passed under section 420 read with section 2 (41) of the Companies Act, 2013.

The Petitioner Company "ASM ASSEMBLY SYSTEMS INDIA PRIVATE LIMITED" is permitted to adopt its financial year as 1st January to 31st December to match with the financial year of the Holding Company.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 6th DAY OF OCTOBER, 2016