

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
C.P.NO. 23/2017**

DATED: TUESDAY THE 13TH DAY OF JUNE 2017

***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
ICT SERVICE MANAGEMENT SOLUTIONS
(INDIA) PRIVATE LIMITED**

C.P.NO. 23/2017

**ICT Service Management Solutions (India) Private Limited
92, Industrial Suburb,
Stage-II, Yeshwanthpur,
Bangalore-560022.**

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PETITIONER

PARTIES PRESENTED:

Mr. N.J Suresh, 48, 1st Floor, Ashok Plaza, Gandhi
Bazaar Main Road, Basavangudi, Bangalore-
560004 Practicing Chartered Accountant
and Authorised representative for the Applicant.

Heard on: 08/06/2017

ORDER

This petition is filed by the Petitioner Company 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 aligning of its accounts with its Holding Company in line with global practice.

The averments made in the Company Application are briefed hereunder:-

The Petitioner Company is a Private Limited Company, incorporated under the Companies Act, 1956 on 26th September 2008 under the name and style of “ICT Service Management Solutions (India) Private Limited” vide Corporate Identification No. **U72200KA2008FTC047881**. The Registered Office of the company is situated at # 92, Industrial Suburb, Stage-II, Yeshwanthpur, Bangalore-560022.




The main objects of the Company is to engage in providing Customer Service including repair, maintenance, warehousing; to engage in the business of Development, sales, installation and maintenance of Software Products; to provide Technology and Consulting service for Hardware, IT systems and business operation solutions etc., Details of the objects of the Company are mentioned in the Memorandum and Articles of Association of the Petitioner Company.

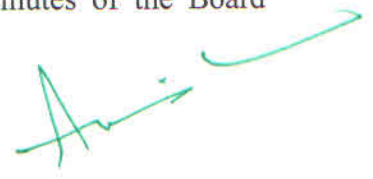

It is further averred that, the Petitioner Company is a subsidiary company of SMS Infocomm (Singapore) Pte. Ltd. incorporated under laws of Singapore. The financial year of Holding Company i.e., SMS Infocomm (Singapore) Pte. Ltd. is from 1st January to 31st December.

It is further averred that, the Petitioner Company being a subsidiary of a Company incorporated outside India is required to follow 1st January to 31st December as financial year in line with its Holding Company which follows the calendar year from 1st January to 31st December as financial year in order to align the financial year of the Holding Company for the purpose of consolidation of accounts.

The copy of the latest audited financial accounts of the Petitioner Company and the Holding Company are enclosed with the Petition.

As per provision of section 2(41) of the Companies Act, 2013, every company is required to have its financial year from April to March and any company which is the subsidiary company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India has to make an application to the Tribunal for obtaining the prior approval. As the Petitioner Company being the Subsidiary Company of a body corporate incorporated under the laws of Singapore which follow the calendar year i.e., from 1st January to 31st December as its financial year pattern. Hence this petition.

We have heard the Practicing Chartered Accountant for the Petitioner Company. He filed the latest financial Accounts as at 31st December 2015 of the Petitioner Company and Holding Company. He has also filed certified true copy of the Resolution passed by the Board of Directors of the Petitioner Company dated 10th December 2016. He has also filed extract of the Minutes of the Board



Resolution dated 1st December 2016 of the Holding Company and also filed true copy of the consent given by the Holding Company for following the calendar year as its financial year i.e., from 1st January to 31st December every year. The Practicing Chartered Accountant for the Petitioner Company further stated that, the Application was filed after two years of the commencement of section 2 (41) of the Companies Act, 2013 and hence requested to condone delay in filing Application. The Registrar of Companies, Karnataka, Bangalore has not commented on the delay. Hence, we condone the delay.

We have also seen the Memorandum and Articles of Association, copy of the Financial Statement of the Holding Company and also the Board Resolution of the Petitioner Company. We have seen the financial statement and consent given by the Holding Company.

Section 2(41) of the Companies Act, 2013 enforced with effect from 1st April 2014 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.”

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;”

We have perused the report of the Registrar of Companies, Karnataka, Bangalore vide letter No. ROCB/PS/SEC 2(41)/2017 dated 5th May 2017, who reported that request of the petitioner company for following the financial year from 1st January to 31st December may be considered and made an observation that the case may be decided on merits.

After hearing the Practicing Chartered Accountant for the Petitioner Company and after going through the documents filed and the report of the Registrar of Companies, Karnataka, Bangalore, we are of the opinion that, the Petitioner Company can be permitted to follow its financial year from 1st January to 31st December.

In the result petition is allowed, Petitioner Company **"ICT Service Management Solutions (India) Private Limited"** is permitted to follow its financial year as 1st January to 31st December to match with the financial year adopted by the Holding Company.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 13th DAY OF JUNE 2017.