

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH  
C.P.NO. 21/2016**

**DATED: WEDNESDAY THE 15<sup>th</sup> DAY OF MARCH 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 EPLAN SOFTWARE & SERVICES PRIVATE LIMITED  
C.P.NO. 21/2016**

1. Eplan Software & Services Private Limited  
NCC Urban Windsor, 3<sup>rd</sup> Floor,  
New Airport Road, Opposite Jakkur Aerodrome,  
Bangalore-560064.

**PETITIONER**

PARTIES PRESENT:-

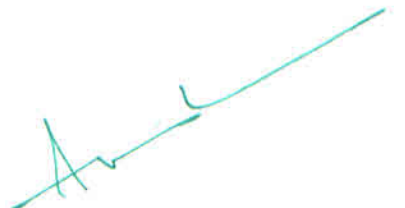
Mr. S. Manjunath, Advocate, # 9, "Manjushree"  
3<sup>rd</sup> Floor, West Link Road, Malleswaram,  
Bangalore-560003, Authorised representative for  
the Petitioner.

Heard on 28/02/2017.

**ORDER**

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 the financial year 1<sup>st</sup> January to 31<sup>st</sup> December as its financial year for the purpose of consolidation of its accounts with its Holding Company in line with global practice. The existing financial year of the Petitioner Company is from 1<sup>st</sup> January to 31<sup>st</sup> December.

The Petitioner Company is a Private Limited Company, incorporated under the Companies Act, 1956 on 4<sup>th</sup> May 2016 under the name and style of "Eplan Software & Services Private Limited" vide Corporate Identity No. U72900KA2016FTC092891. The Registered Office of the company is situated at NCC Urban Windsor, 3<sup>rd</sup> Floor, New Airport Road, Opposite Jakkur Aerodrome, Bangalore-560064.

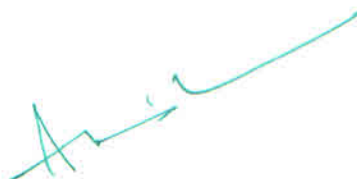

The main objects of the Company is to carry on all or any of the business of Designing, Developing and Selling of Software; to carry on the business of providing services in India and elsewhere the nature of consultancy, training, information processing and collection of data of every kind and description; to carry on the business of acquiring and investing in the whole or any part of the shares or other securities etc.,

The averments in the Company petition are briefly described hereunder:-

The Petitioner Company is a subsidiary of EPLAN BETEILIGUNGS GMBH, Germany which is incorporated and registered under the laws of Germany having its Registered office at Rudolf-Loh, Strasse 135708 Haiger, Germany. The financial year of the Holding Company i.e., EPLAN BETEILIGUNGS GMBH, Germany is from 1<sup>st</sup> January to 31<sup>st</sup> December.

The Petitioner Company is currently following the calendar year as financial year in line with its Holding Company which follows the calendar year from 1<sup>st</sup> January to 31<sup>st</sup> December as its financial year. The Petitioner Company is a subsidiary of Foreign Company and hence is required to follow uniform financial year for the purpose of consolidation of accounts.

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 EPLAN BETEILIGUNGS GMBH, Germany (Holding Company), exercises 75% voting rights in the Petitioner Company and since the holding company is required to present consolidated accounts in terms of the laws of Germany, therefore it is necessary for the Petitioner Company, to follow the period from 1<sup>st</sup> January to 31<sup>st</sup> December of a calendar year as its financial year since its incorporation. Hence this petition.





We have heard the Practicing Company Secretary for the petitioner company. He filed the latest financial statements of the Holding Company as at 31<sup>st</sup> December 2015. He has also filed certified true copy of the Resolution passed by the Board of Directors of the Petitioner Company dated 1<sup>st</sup> June 2016. He has also filed true copy of the consent letter dated 5<sup>th</sup> August 2016 given by the Holding Company to have its first financial year from 4<sup>th</sup> May 2016 to 31<sup>st</sup> December 2016 and subsequent financial years from 1<sup>st</sup> January to 31<sup>st</sup> December.

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 31<sup>st</sup> day of March every year, and where it has been incorporated on or after the 1<sup>st</sup> day of January of a year, the period ending on the 31<sup>st</sup> 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 seen the report of the Registrar of Companies, Karnataka, Bangalore vide letter No. ROCB/AHN/Sec.2(41)/EPLAN/2015 dated 16<sup>th</sup> December 2016 who reported that, the request of the petitioner company may be considered on merits..

We have also seen the Memorandum and Articles of Association of the Petitioner Company. Copy of the Financial Statement of the Holding Company and also the Board Resolution of the Petitioner Company marked as Annexure-4 and consent letter of the Holding Company.

After hearing the Counsel 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 have the period of calendar year commencing from 04/05/2016 and ending on 31<sup>st</sup> December 2016 as the first financial period / year of the company and thereafter every subsequent calendar year commencing from 1<sup>st</sup> January to 31<sup>st</sup> December.




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

In the result petition is allowed, Petitioner Company "**Eplan Software & Services Private Limited**" is permitted to follow its financial year as 1<sup>st</sup> January to 31<sup>st</sup> December to match with the financial year followed by the Holding Company.

  
(RATAKONDA MURALI)  
MEMBER, JUDICIAL

  
(ASHOK KUMAR MISHRA)  
MEMBER, TECHNICAL

DATED THIS THE 15<sup>th</sup> DAY OF MARCH 2017