NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

C.P. No. 18/2(41)/NCLT/AHM/2016

Coram: **Present: Hon'ble Mr. M.K. SHRAWAT**
MEMBER (JUDICIAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 08.12.2016

Name of the Company: Acteon India Pvt. Ltd.

Section of the Companies Act: Section 2(41) of the Companies Act, 2013;

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Ashish. C. Joshi	Practt. co. secretary	petitioner	
2.				

order

Petition heard, allowed, Reasoned order shall follow. Approved.

M.K. Shrawat
(M.K. SHRAWAT)
Member (Judicial)

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
CORAM: SRI M.K. SHRAWAT, MEMBER (JUDICIAL)

C.P. No. 18/2(41)/CLB/MB/2016)

Order under Section 2(41) of the Companies Act, 2013

In the matter of: Acteon India Industries Private Limited

Present: Mr. Ashish C. Doshi, Practising Company Secretary, for the Petitioner

ORDER
Pronounced on: 08.12.2016

1. The Petition under consideration is filed on 28.11.2016 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 April, 2014.

2. From the side of the Petitioner, Practising Company Secretary Mr. Ashish C. Doshi 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 incorporated in India on 08th January, 1999, having its Registered Office at B-94, GIDC Electronic Estate, Sector 25, Gandhinagar with the main object to carry on the business of manufacturing of medical and surgical equipment.

   3.1 A Report of the ROC dated 1st December, 2016 is on record wherein it is mentioned that the Petitioner company is a subsidiary company of Satelec S.A.S (France), a company incorporated under the laws of France. The Financial Year of the Holding Company so far was Calendar Year i.e. 1st January to 31st December each year. Vide a Resolution, the holding

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company has now adopted its accounting year from 1st July to 30th June each year. However, for the fiscal year which has ended on 31st December 2015, a Resolution has been passed to adopt the accounting period from 1st January 2016 to 30th June 2016 and thereafter from 1st July 2016 to 30th June 2017, so and so forth.

The list of Directors is as under: -

Name	Designation	Residential Address
Marie Laure Pochon	Director	4, Avenue Theodore Rousseau, Paris, 75016, France
Vianey Ruellan	Director	28, Rue De La Tour D' Auvergne, Bordeaux, 33200, France
Ajay Sadana	Managing Director	2-A, DDA Flats (MIG), Rajouri Garden, New Delhi 110027

3.2 It is clarified by Ld. Representative Mr. Ashish C. Doshi that the Petitioner company has also passed a Resolution on 5th September 2016 to align its accounts with the accounts of the holding company. however, the Indian company has proposed to adopt this financial year as 1st January 2016 to 30th June 2017, i.e., for eighteen months but later on revised and now proposing that for the interregnum period the account shall be from 1st January 2016 to 30th June 2016 and thereafter from 1st July to 30th June each year. In this regard, an amended submission duly signed by the authorised person is also placed on record.

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. This 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 recognise 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: - MKS

"***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 and continue to follow the period from July to June as the Financial Year i.e., an accounting year other than the Financial Year. This departure from the main rule is permissible under the 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, then for consolidation of accounts with the accounts outside India, an approval from the Tribunal is a legal requirement and, if satisfied, the Tribunal may pass an Order to this effect.

6. For due compliance, the Petitioner has demonstrated that a resolution has been passed on 5th September, 2016 by the Directors of the Petitioner Company that pursuant to the provisions of Section 2(41) approval for adoption of Financial Year commencing from 1st July to 30th June shall be adopted each year.

6.1 Compilation filed by the Petitioner consists a letter dated 6th October, 2016 and a Resolution dated 08th June 2016 of the foreign Holding Company for consolidation of accounts so as to coincide its accounts having Financial Year as "July to June" is placed on record. To demonstrate the accounting period of the Holding Company, the Financial Statements are also annexed.

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7. In the light of the factual matrix, legal position and the report of the ROC dated 01.12.2016, it is hereby held as under: -

ORDER

The Petitioner Company being a subsidiary of Foreign Holding Company which hitherto was maintaining its account on Calendar Year 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 the period from 1st January 2016 to 30th June 2016 for the current year and subsequently from 1st July to 30th June each year as the Financial Year/Accounting Period.

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

8/12/16

(SHRI M.K. SHRAWAT)
MEMBER JUDICIAL

Dated this the 08th day of December, 2016.