NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

T.P. No. 200/2(41)/NCLT/AHM/2016 (New)
C.A. No. 1/2(41)/CLB/MB/2016 (Old)

Coram : 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 28.11.2016

Name of the Company: Aerzen Machines (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.	DEVESH A. PATHAK	PCS & POA	Applicant	
2.				

ORDER

1. From the side of the Applicant, the Authorised Representative Learned PCS Mr. Devesh Pathak is present. By placing reliance on the documents, Ld. Representative has pleaded that under the latest provisions of Section 2(41) of the Companies' Act, 2013, this Application was submitted on 20.6.2016, seeking direction to grant permission for adopting Calendar year as Financial year so that the accounts of the Applicant company should be consolidated with the accounts of the Holding company situated in Germany.

2. After perusing the documents on record and considering the provisions of the Act *prima facie* the Application appears to be correct. Hence, the permission is granted. Detailed order shall follow.

3. Therefore, the Petition is admitted, heard, disposed of and allowed.

(SHRI M.K. SHRAWAT)
MEMBER JUDICIAL

Dated this the 28th day of November, 2016.

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

TP 200/2(41)/NCLT/AHM/2016 (CA 01/2(41)/CLB/MB/2016)

Order under Section 2(41) of the Companies Act, 2013
In the matter of: Aerzen Machines (India) Private Limited
Present: Mr. Devesh Pathak, Practising Company Secretary, for the Applicant

ORDER

Reserved on: 28.11.2016

Pronounced on: 28.11.2016

1. The Application under consideration is filed on 20.6.2016 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 Applicant, Practising Company Secretary Mr. Devesh Pathak appeared and explained facts as also the law applicable for disposal of this Application.

3. Facts of the case are within the narrow compass that the Applicant Company was originally incorporated as Rapp + Parekh Enterprises Private Limited in India on 9th March, 2005. Later on, on 19th September, 2006, the name was changed as Aerzen Machines (India) Private Limited, having its Registered Office at E-115/116 GIDC, Manjusar, Taluka Savli, Savli-391775 with the main object to carry on the business of manufacturing, buying, selling, exporting, developing etc. of plastic engineering items, cartridges, mechanical appliances, etc.

3.1 In the Application, it is stated that the Applicant Company is the "Subsidiary Company" of a "Foreign Holding Company" namely Aerzen International Sales GmbH, Germany, a body incorporated outside India.

The list of shareholders and shareholding pattern is as under: -

Name of Share-Holder	No. of Eq. Shares	% Holding (Eq. Shares)	No. of Pref. Shares	% Holding (Pref. Shares)
Aerzen International Sales GmbH	2,24,892	100.000%		

4. In the backdrop of the brief facts, a question had cropped up that what was the legal necessity to file this Application? The explanation offered was that on incorporation of the Companies Act, 2013, a Section i.e. Section 2(41) was introduced under the head

MKS

"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: -

> "***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 Applicant by filing the Application under consideration, seeking approval of NCLT for adopting or to continue to follow Calendar Year as the Financial Year i.e., an accounting year other than the Financial Year. This departure from the main rule is permissible

MKS

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 Applicant has demonstrated that a resolution has been passed on 16th March, 2016 by the Directors of the Applicant Company that pursuant to the provisions of Section 2(41) approval for adoption of Financial Year being calendar year commencing from 1st day of January and ending on 31st day of December is to be obtained.

   6.1 Compilation filed by the Applicant consists a Resolution dated 4th April, 2016 of the foreign Holding Company for consolidation of accounts so as to coincide its accounts having Financial Year as "Calendar Year" is placed on record. To demonstrate the accounting period of the Holding Company, the Financial Statements are also annexed demonstrating the accounting period as Calendar Year ending on 31st December.

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

ORDER

The Applicant Company being a subsidiary of Foreign Holding Company which is maintaining its account on Calendar Year basis required to consolidate the accounts of the Applicant 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 (1st January to 31st December) as the Financial Year/ Accounting Period.

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

M K Shrawat
28/11

(SHRI M.K. SHRAWAT)
MEMBER JUDICIAL

Dated this the 28th day of November, 2016.