NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

T.P. No. 201/2(41)/NCLT/AHM/2016 (New)
C.A. No. 164/2(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: Time Mauser Industries 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 SHAH	PRACTICING COMPANY SECRETARY		
2.				

ORDER

1. From the side of the Applicant, Learned PCS Mr. Ashish Shah 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 9.6.2016, 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 201/2(41)/NCLT/AHM/2016 (CA 164/2(41)/CLB/MB/2016)

Order under Section 2(41) of the Companies Act, 2013
In the matter of: M/s Time Mauser Industries Private Limited
Present: Mr. Ashish Shah, 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 9.6.2016 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. Ashish Shah 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 incorporated in India on 14th August, 2003, having its Registered Office at 205, Sabari Apartment Second Floor, Building No. 1, Survey No. 387, Kachigam, Daman, Daman and Diu, with the main object to carry on the business of manufacturers, producers, assemblers, designers, formulators, converters, importers, exporters, agents, dealers, distributors, etc. in all kinds of drums, barrels, cans, intermediate bulk containers, containers, decorative cans, etc.

3.1 A Report of the ROC dated 30th May, 2016 is on record wherein it is mentioned that the Applicant company is a subsidiary company of Mauser Holding International GmbH, Germany, a foreign body Corporate having its registered office at Schildgesstrasse 71-163, D-50321 Bruhl, Germany. The Financial Year of the Holding Company is 1st January to 31st December.

The Applicant company has stated that the holding Company is required to follow/continue its Financial Year as Calendar Year for consolidation of its accounts outside India, similarly, the Financial Year of the Applicant Company needs to change to Calendar Year.

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

Name of Share-Holder	As at 31st December 2014	
	No. of Shares held	% of Holding
a) Mauser Holding International GmbH	8,743,950	51.00%
b) Time Technoplast Ltd.	8,401,050	49.00%

3.2 It is clarified by Ld. Representative that Time Mauser Industries Private Limited ("TMIPL") is a joint venture company with Time Technoplast Limited wherein company holds 51% of its Share Capital and Voting Rights.

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 "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 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 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 24th December, 2015 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 5th 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.

(SHRI M.K. SHRAWAT)
MEMBER JUDICIAL

Dated this the 28th day of November, 2016.