

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
C.P.NO. 13/2016

*PRESENT: SHRI RATAKONDA MURALI, MEMBER JUDICIAL
SHRI. ASHOK KUMAR MISHRA, MEMBER TECHNICAL*

IN THE MATTER OF COMPANIES ACT, 2013,
UNDER SECTION 2(41) OF THE COMPANIES ACT, 2013

AND

IN THE MATTER OF M/s MALA PLAST INDIA PRIVATE LIMITED

1. M/s Mala Plast India Private Limited,
G-4, Oasis Springs Apartments,
3rd Main Samrat Layout, Arekere,
Bannerghatta Road,
Bangalore 560 037

- Petitioner

PARTIES PRESENTED: Sri B Ullas Kiran Pai,
Practicing Company Secretary
CNU & Associates, Level 6, Basappa Complex,
Lavelle Road, Bengaluru -1

Heard on 7.12.2016 & 9.12.2016

ORDER

The Petition is filed by M/S MALA PLAST INDIA PRIVATE LIMITED, through its Director Mr. Madan Vishwanath Bagare, under section 2(41) of the Companies Act, 2013 to allow the period of calendar year of the Petitioner Company the financial year of 12 months commencing from 1st January and ending with 31st December of that year and permit to do the same from 2015 calendar year and onwards. It is also stated in the Petition that the Petitioner Company is a subsidiary of the Holding Company incorporated outside India, a company incorporated under the laws of Thailand. The Holding Company is required to consolidate the accounts of its subsidiaries and the financial year of the Holding Company is commencing from 1st January and ending with 31st December.

The averment made in company petition are briefly stated hereunder:

- 1) The Petitioner is a Company which was incorporated under the Companies Act, 1956 on **29.1.2009** under the name and style of **MALA PLAST INDIA PRIVATE LIMITED** vide Corporate Identity No. **U25209KA2009PTC048988** and its Holding Company name is **"MALAPLAST CO., LTD"**, bearing registration No. **010505522006306** and having registered office at 370, Buddharaksa Road, Samutprakarn 10280, Thailand. The Registered Office of the Petitioner Company is situated at G-4, Oasis Springs Apartments, 3rd Main Samrat Layout, Arekere, Bannerghatta Road, Bangalore 560 037.
- 2) The main object of the company is to carry on in India the business of rendering services relating to product design and plastic mold design along with consultancy services for such designs for the plastic molding industries.
- 3) The Authorized Share Capital of the Company is Rs 7,00,00,000/- divided into 70,000 equity shares of Rs.1000/- each and the paid up capital of the Company is Rs 65,450,000/- divided into 65,450 equity shares of Rs. 1000/- each.

Details of the main object of the Company are stated in the Petition.

- 4) Malaplast Co. Ltd (hereinafter mentioned as "the Holding Company") bearing registration No. 0105522006306 and having its registered office situated at 370 Buddaraksa Road, Samutprakarn 10280, Thailand holds 69298 (Sixty nine thousand two hundred and ninety eight) equity shares having a face value of Rs. 1000/- (Rupees One thousand only) each equivalent to 99.99% of the paid up share capital of the Company. The company is one of the subsidiaries of the Holding Company and the

holding company, inter alia, controls the composition of the board of the company.

- 5) The current financial year of the company is the period of 12 months commencing from 1st January every year and ending on 31st December of that year.
- 6) The proposed financial year is the calendar year commencing from 1st January to 31st December of that year which is congruent with the existing financial year of the company since its incorporation.
- 7) As per the statutory requirements applicable to companies incorporated in Thailand, the Holding company is required to consolidate their accounts with all its subsidiaries on annual basis.
- 8) The petitioner company submitted that the company, a subsidiary of the holding company has been following similar financial year to that of the holding company from the date of its incorporation, so as to enable the holding company to consolidate the accounts as statutory required under its applicable law.
- 9) The Board of directors of petitioner company in its meeting held on February 25, 2016 has resolved that approval of the Board be and is hereby accorded to seek permission from the National Company Law Tribunal, Bengaluru Bench to continue the Financial year of company from January to December instead of April to March as mandated and required under the provisions of the Companies Act, 2013.

The Practicing Company Secretary representing the company has also confirmed that the petitioner company is following 1st January to 31st December as its financial year since incorporation and has also informed that its holding company Malaplast Company Limited bearing registration No. 01055220066306 situated (i.e. holding 99.99% of its paid up share capital has consented for maintaining the same financial

year 1st January to 31st December in order to consolidate their accounts with all its subsidiaries on annual basis.

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

“ “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”

9. On a query for non-submission within a period of two years from the commencement of Companies Act, 2013, Director Mr. Madan Vishwanath Bagare has submitted affidavit as stated below:

- (i) The company had passed the Board Resolution for alignment of financial year vide the Board meeting dated February 25, 2016, well within the timeline contemplated under Sec., 2(41) of the Companies Act, 2013.

- (ii) The company was ready with all the requisite documents for filing within March 31, 2016 but the same could not be filed due to non-availability of electronic form GNL-1, online for the filing. The form GNL-1 was belatedly filed with the Ministry of Corporate Affairs, as soon as it became available vide SRN G03612744 dated May 19.2016.

10. We have gone through the submission made and related papers

The Registrar of Companies, Karnataka, Bengaluru also vide its Report No. ROCB/PS.SEC 2(41)/2016 dated 13.6.2016 has confirmed that the company has filed upto date Balance sheet and Annual Returns.

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

The Petitioner Company “ **MALA PLAST INDIA PRIVATE LIMITED**” is permitted to adopt the period of calendar year of 2015 commencing from 1st January and ending with 31st December as financial year and thereafter every subsequent calendar year commencing from 1st January and ending with 31st December to match with the financial year of the Holding Company.


22/12/16
(RATAKONDA MURALI)
MEMBER, JUDICIAL


22/12/16
(ASHOK KUMAR MISHRA)
MEMBER , TECHNICAL

DATED THIS THE 22nd DAY OF DECEMBER, 2016