

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

COMPANY APPLICATION NO.132/2(41)/CB/2016

T.P.NO. 104/2016

(Connected to CA 132/16 of C.L.B. Regional Bench, Chennai.

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

IN THE MATTER OF COMPANIES ACT, 2013 (18 OF 2013)
SECTION 2(41)

AND

IN THE MATTER OF M/S MAPEI CONSTRUCTION PRODUCTS INDIA
PRIVATE LIMITED

M/s Mapei Construction Products India Pvt Ltd
" TheTuddor Court, No. S-402, 3rd floor,
Municipal No. 40 (Old No 19C), Lavelle Road,
Bangalore 560 001

..... Applicant

Parties present: Mr. ThirupalGorige, PCS an authorised representative for
the Applicant company

ORDER

This application is filed on behalf of petitioner company under Section 2(41) of the Companies Act, 2013 with a prayer to allow the petitioner company to follow financial year starting from 1st January and ending on 31st December every year other than the financial year prescribed under section 2(41) of Companies Act, 2013.

The averments in the application in brief that petitioner company is incorporated in India under the name and style Mapie Constructions Products India Pvt Ltd. The objects of the company is to meet the needs of home market for admixtures for concrete, materials for underground constructions etc. The authroised share capital of the company is Rs. 50 crores divided into 5 crores equity shares of Rs. 10/- each and paid up share capital of the company is Rs. 43 crores. The petitioner company is following financial year from 1st January to 31st December. The main business of the company is manufacture of products for ceramics and stone materials etc., The Registered office of the company is situated at " The Tuddor Court, No. S-402, 3rd floor, Municipal No. 40 (Old No 19C), Lavelle Road, Bangalore 560 001.



The petitioner company is a subsidiary company of MapieS.p.A Italy a foreign holding company incorporated outside India having registered office at Milano (MI) via Cafiero, Carlo 22, CAP 20158, Milano, Italy. The petitioner company is presently following financial year starting from 1st January and ending on 31st December every year for preparation of financial statements in coincidence with financial year of holding company. Accordingly Petitioner Company provides its financial statements to the holding company for consolidation purpose.

The petitioner company for purpose of consolidation of accounts with the accounts of holding company propose to continue to follow its current financial year starting from 1st January and ending on 31st December of every year. The holding company is required to consider financial statement of its subsidiaries for consolidation of accounts including Petitioner Company every year.

In order to facilitate the holding company for consolidation of financial statements, the petitioner being a subsidiary company has been adopting calendar year starting from 1st January and ending on 31st December every year as its financial year.

As per section 2(41) of Companies Act, 2013 existing company having different financial year is required to align its financial year starting from 1st April to 31st March year within a period of 2 years from the commencement of the Companies Act, 2013. The petitioner company cannot align its financial year as required under the Act as the holding company was following different financial year. Therefore, this petition is filed to permit the petitioner company to continue different financial year starting from 1st January and ending on 31st December every year. Thus, Petitioner Company is under obligation to continue to follow with current financial year starting from 1st January ending 31st December to facilitate holding company to prepare consolidation of financial statement of its subsidiaries every year.

We have heard the practicing company secretary appearing for the petitioner. In support of the contention, the petitioner company has filed Board resolution copy of holding company directing the petitioner company to adopt financial year starting from 1st January each year and end on 31st December of the same year.

The petitioner company also filed the extract of resolution passed by the board of directors dated 15.12.2015 to the effect that the company to follow the financial year starting from 1st January and ending on 31st December of the same year. The petitioner company also filed statutory audit report for the year ended 31.12.2014.



[Handwritten signature]

Mr. AbhitjiDutt S/o Mr. Gour Kishore Dutta, the director of the company has filed affidavit confirming that since inception of the petitioner company it has been following financial year starting from 1st January and ending on 31st December every year. The Director also confirmed that they have filed Balance sheet and Annual return upto December 2014 to show that the petitioner company is adopting the financial year commencing from 1st January and ending by 31st December.

Proviso to Sec. 2(41) empowers the Tribunal to allow any period as its financial year where an application is made by a company which is a holding company or a subsidiary company where it is required to follow a different financial year for consolidation of its accounts outside India.

It is the contention of the petitioner company that it has been following financial year commencing from 1st January and ending on 31st December on par with financial year adopted by the holding company. Now the petition is filed with a prayer to allow the petitioner company to follow the same financial year to align with the financial year of the holding company. *Anil*

Report from Registrar of Companies, Karnataka is received. It is stated that the petition may be considered on merits by the Tribunal. After going through the documents filed by the petitioner company it is very clear Petitioner Company has been following financial year commencing from 1st January and ending by 31st December on par with the financial year of its holding company. Therefore, there are grounds to allow the petitioner company to follow the same financial year commencing from 1st January and ending on 31st December for purpose of consolidation of statements.



THIS BENCH DOTH ORDER

In the result, petition is allowed granting permission to the petitioner company to follow the same financial year commencing from 1st January and ending on 31st December in alignment with financial year of holding company for Consolidation of Accounts. A copy of the order be issued to (a) the Applicant company and (b) the Registrar of Companies, Bangalore for the state of Karnataka. With the above directions the application stands disposed of.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 3rd DAY OF AUGUST, 2016

