

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP No. 238/2(41)/NCLT/MB/MAH/2017

Under Section 2(41) of the Companies Act,
2013

In the matter of

M/s. M/S. Infovista India Software Pvt. Ltd.
....Petitioner (Company)

Heard on : 28.09.2017

Order delivered on: 04.10.2017

Coram :

Hon'ble M. K. Shrawat, Member (J)

Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

Mr. Mahesh Darji, Practising Company Secretary.

Per: M. K. Shrawat, Member (J)

1. The Petition under consideration is filed on 14th June 2017 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 January, 2016.
2. From the side of the Petitioner, Practising Company Secretary Mr. Mahesh Darji 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 originally incorporated under the provisions of the Companies Act, 1956 as a Private Limited Company vide Certificate of Incorporation No. U64110MH2009FTC194254 dated 21st July, 2009 issued by the Registrar of Companies, Maharashtra, Mumbai. The Registered office of the Company and the address for correspondence is situated at 1302, Tower 3, India bulls

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Finance Center, Senapati Bapat Marg, Elphinstone(West), Mumbai 400013, Maharashtra with the main object to carry on the business of sales and delivery/distribution of hardware/software based solutions for Network Testing, including sales and delivery of customer support and other product related services.

- 3.1 In the Petition, it is stated that the Petitioner Company is the "Subsidiary Company" of a "Foreign Holding Company" namely Infovista (Sweden) Holding AB, a body incorporated outside India. The holding company is having 100% equity share capital of the subsidiary company.
- 3.2 The Holding Company was acquired by Infovista SAS, (the Parent Company of the Holding Company). The Parent Company follows 'July to June' as a financial year whereas the Holding Company followed the calendar year as 'January to December' as its financial year. Therefore, in order to coincide with the financial year of the Parent Company, and to enable consolidation of the accounts, the Holding Company had recently made application for change in the financial year as 'July to June' with statutory authorities in Sweden, wherein the first year of the change would be January, 2016 to June, 2017. The Statutory authorities approved the same as per the new Certificate of Registration. Accordingly, in order to align the financial year with Parent Company, the Holding Company will be preparing the first financial statement after the aforesaid change for a period of 18 months i.e. 1st January, 2016 to 30th June, 2017 and thereafter the financial year for the Holding Company will be from 1st July to 30th June. As a consequence now the applicant company has moved this application to align its accounting period accordingly.
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

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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. The 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 recognize 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 Petitioner by filing the Petition under consideration, seeking approval of NCLT for adopting an accounting year other than the Financial Year. This departure from the main rule is permissible under one 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, the for consolidation of account with the accounts outside India, an approval from the Tribunal is a legal requirement and, if satisfied, pass an Order to this effect.
6. For due compliance the Petitioner has demonstrated that a resolution has been passed on 15th of February 2017 giving consent to adopt the accounting period from July to June so as to match with the holding company.
7. In the light of the factual matrix and legal positon, it is hereby held as under:-

ORDER

The Petitioner Company being a subsidiary of Foreign Holding Company which is maintaining its account from July to June 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 Calendar Year (From 1st July to 30th June) as the accounting period.

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

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Dated : 04.10.2017

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