

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

Company Petition No. 17/2(41)/NCLT/MB/MAH/2017

Coram: Shri M.K. Shrawat, Member (Judicial)

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

In the matter of: M/s. Frischmann Prabhu (India) Private Limited

Present: Mr. Jigarkumar Gandhi, Practising Company Secretary, for the Petitioner

ORDER

Reserved on: 24.03.2017

Pronounced on: 30.03.2017

1. The Petition under consideration is filed on 31st January, 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 April, 2014.
2. From the side of the Petitioner Mr. Jigarkumar Gandhi 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 incorporated in India on 13th February, 1995, having its Registered Office at Prabhadevi, Mumbai, with the main object "to offer multidisciplinary consultancy services including planning and designing, architecture, engineering services, quality surveying and project management; as also to design and management of water treatment and supply project sewerage treatment and disposal projects, facilities management conducting transportation and feasibility studies, highway and bridge design, traffic planning and control, airport engineering, environmental engineering, infrastructure design and supervision."
 - 3.1 As per the Petition, the petitioner company was acquired by M/s PELL Frischmann S1 Limited, UK (Body corporate Incorporated Outside India). Through

said acquisition the petitioner company became Subsidiary of a body corporate incorporated outside India. Details of shares held by each shareholder holding more than 5% shares as at 31st March, 2015

S. No.	Name of Shareholder	No. of shares held	Shareholding in %
1.	PELL Frischmann Group	1,41,075	59.99%
2	Mr. Sudhakar Prabhu	94,088	40.01%

3.2 The Indian Company / Petitioner is managed by Four Directors, details are as under: -

LIST OF DIRECTORS

Sr. No.	Name	DIN	Designation
1.	Mr. Purshottam Venkatesh Kamat	01412512	Director
2.	Mr. Tushar Sudhakar Prabhu	02275724	Director
3.	Mr Ashutosh Harshwardhan Sudhakar Prabhu	02278299	Director

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 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 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 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, then for consolidation of accounts 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 19th September, 2016 at registered office by the Directors of Petitioner Company that pursuant to the provisions of Section 2(41) approval to close its financial year on 31st December 2016 and thereafter 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 Petitioner consists a consent letter 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 Petitioner Company being a subsidiary of Foreign Holding Company which is maintaining its account on Calendar Year 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 (1st January to 31st March) as the accounting period, and also allow to close its financial year on 31st December 2016.

8. The Company Petition is allowed. Copy of the Order to the Petitioner for requisite compliance. No Order as to cost. To be Consigned to Records.

Dated: 30.03.2017 *ms*

Sd/-

Shri M.K. Shrawat
Member (Judicial)