

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH, MUMBAI**  
**Company Petition No. 106/2(41)/NCLT/MAH/2016**  
**Coram: Shri M.K. Shrawat, Member (Judicial)**

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

In the matter of: M/s Shipco IT Private Limited

Present: Ms. Anuradha Bisani, Practising Company Secretary, for the Applicant

**ORDER**

**Reserved on: 21.10.2016**

**Pronounced on: 24.10.2016**

1. The Petition under consideration is filed on 28<sup>th</sup> January, 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. 1<sup>st</sup> April, 2014.
  2. From the side of the Petitioner, Practising Company Secretary Ms. Anuradha Bisani 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 8<sup>th</sup> July, 2013 having its Registered Office at Unit 1, 7<sup>th</sup> Floor, A Wing, Times Square Building, Andheri Kurla Road, Andheri East, Mumbai, with the main object to carry on the business of producing, modifying, conceiving software of all descriptions, application and specification useful in any type of field for type of person and to provide information technology enabled services as per the Clause III of the Memorandum of Association of the Company.
- 3.1 In the Petition, it is stated that the Petitioner Company is the "Subsidiary Company" of a "Foreign Holding Company" namely M/s Shipco Transport Holding A/S, a body incorporated outside India having its office at Copenhagen, Denmark. The list of shareholders and shareholding pattern is as under :-

Sl. No.	Name of Shareholder	No. of equity shares held of INR 10 each	Shareholding in %	Amount paid up
1.	Shipco Transport Holding A/S, Denmark	362,999	99.99	3,629,990
2.	M/s Shipco IT Pvt. Ltd.	1 (One)	0.03	
<b>Grand Total</b>		363,000	100	3,630,000

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The Indian Company / Petitioner is managed by the following Directors – one Indian and the others are foreign nationals – details are as under:-

**LIST OF DIRECTORS**

Sr. No.	Name	Nationality	DIN	Address	Designation
A.	Mr Klaus Henry	American	02435537	35, Baileys Mill Road, P.O. Box No. 231. New Vernon, New Jersey, 07976, United States of America	Director
B.	Mr. Sune Simonsen	Singapore	03631255	House 7, Holt Road #12-02, Singapore, 249445	Director
C.	Mr. Lim Peng Yew	Singapore	06635049	House 81, Carlisle Road, #16-03, Mera Springs, Singapore, 219647, Singapore	Director
D.	Mr. Manoj Khemchand Gopalani	Indian	06804558	F 301, Castle Rock, Hari Om Nagar, B/H Eastern Express Highway Cheknaka, Mulund East, Mumbai, 400081, Maharashtra, India	Whole- Time 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 31<sup>st</sup> day of March every year, and where it has been incorporated on or after the 1<sup>st</sup> day of January of a year, the period ending on the 31<sup>st</sup> 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 31<sup>st</sup> 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 1<sup>st</sup> day of April and ending on 31<sup>st</sup> day of March each year. The basic purpose of legislation of this

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“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 1<sup>st</sup> April and ending on 31<sup>st</sup> 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 15<sup>th</sup> December, 2015 by the Directors of Indian Company (the Petitioner) that pursuant to the provisions of Section 2(41) approval for adoption of Financial Year being calendar year commencing from 1<sup>st</sup> day of January and ending on 31<sup>st</sup> day of December is to be obtained.
- 6.1 Compilation filed by the Petitioner consists a consent letter dated 15<sup>th</sup> December, 2015 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

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demonstrate the accounting period of the Holding Company, the Financial Statements are also annexed demonstrating the accounting period as Calendar Year ending on 31<sup>st</sup> 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 (1<sup>st</sup> January to 31<sup>st</sup> December) as the accounting period.

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

sd/-

Dated: 24.10.2016

**Shri M.K. Shrawat**  
Member (Judicial)