

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
DB, CHENNAI

Arguments heard on 30.01.2017

Order passed on 03-02.2017

T.C.A. No.41/2016

(CA No.122/2016)

Under Sec.2(41) of the Companies Act, 2013

Applicant : M/s. HABASIT IAKOKA PVT. LTD.,

Represented by : Dr. K.S. Ravichandran, PCS

CORUM

ANANTHA PADMANABHA SWAMY & CH MOHD SHARIEF TARIQ,
MEMBERS (JUDICIAL)

ORDER

CH MOHD SHARIEF TARIQ, MEMBER (JUDICIAL) :- (ORAL)

1. Under adjudication is an application filed before CLB under Section 2(41) of the Companies Act, 2013, which was numbered as CA/122/2016, then came to be transferred to NCLT and re-numbered as TCA/41/2016. This application has been filed on behalf of M/s. HABASIT IAKOKA PVT. LTD. which has been incorporated under the Companies Act, 1956 on 15th October 1992 under the name and style of 'IAKOKA BELTRANS PRIVATE LIMITED'. The name of the company subsequently changed as 'HABASIT IAKOKA PRIVATE LIMITED' with Registration No.U05110TZ1992PTC004072. The Certificate of Incorporation, Memorandum and Articles of Association is also placed on record. The Registered Office of the Company is at PB No.3215, Goldwins, Civil Aerodrome Post,

Coimbatore, Tamil Nadu. The authorised capital of the Company is Rs,1,00,00,000/- (Rupees One Crore Only) divided into 10,00,000 (Ten Lakhs) equity shares of Rs.10/- each. The issued, subscribed and paid up equity share capital is Rs.60,37,040/- (Rupees Six Lakhs Thirty Seven Thousand and Forty only) divided into 6,03,704(Six Lakhs Three Thousand Seven Hundred and Four) equity shares of Rs.10/-(Rupees Ten only) each. The Company is carrying on business of manufacture, fabricate, assemble, design, develop, improve, produce, import, export and distribute as wholesale and retail dealers, merchants, commission agents, brokers of all types of Transmission Systems and Transmission belts made of Synthetic and/or natural Rubber and Chemicals. The company is a subsidiary to a foreign company, the name of which is M/s. HABASIT HOLDING Ag. Switzerland. The documents pertaining to the Registration Certificate, Constitution documents of the said Company are also placed on record. The Petitioner Company is a Member of the Habasit Group of Companies (Habasit Group) and its entire paid-up share capital is owned by two Bodies Corporate situated in Switzerland. Habasit Group has subsidiaries in over 70 countries across the globe. The holding Company is following the financial year commencing from January 1st ending December 31st every year to maintain uniformity for the purpose of consolidation of its accounts, all over the world. This is being followed in order to maintain symmetry in financial reporting of all affiliates in the Habasit Group and thereby enabling consolidation, reviewing and controlling the financial results of various entities across the globe by the Holding Companies. Therefore, in order to serve the said purpose, the Applicant Company is essentially required to retain the financial year commencing from January 1st ending

December 31st every year, so as to align the financial year with its Holding Group of Companies that have been incorporated outside India. In this connection, an approval seems to have been granted by the Holding Company on 15th December 2015 to the Subsidiary Company, i.e. Applicant company, for following the calendar year starting January 1st ending December 31st every year, as financial year for statutory purposes.

2. The Applicant company has also placed on record true copy of the Resolution adopted on 8th December 2015 wherein its Board of Directors has approved for filing application/petition before the Company Law Board for retention of the existing financial year of the Company from January 1st ending December 31st every year, by giving the authority to Mr.Ashok Malhotra, Managing Director, to sign and execute the application. Besides this, the current Balance Sheet placed on record goes to show that the Company has been following the financial year starting January 1st ending December 31st every year for consolidating its accounts with the Holding Company.

3. In the light of the above, this Bench is satisfied that the prayer of the Applicant Company is genuine and in exercise of the powers conferred under First Proviso to Sec.2(41) of the Companies Act, 2013, do hereby allow the Applicant company to retain and follow the financial year starting January 1st ending December 31st every year, for consolidation of its accounts with its holding company registered outside India.

4. However, before parting with the application, it is pertinent to mention that the Applicant company has been following the financial year starting January 1st ending December 31st every year, but could not align its finance as per the Second Proviso to Sec. 2(41) of the Companies Act, 2013, on or before 31st March 2016. The recession

period that has been provided under Second Proviso to Sec.2(41) of the Companies Act, 2013 was available to the Applicant Company till 31st March 2016. The Company filed the application on 13.02.2016 well in time, for grant of permission for following the financial year starting January 1st ending December 31st every year. Therefore, by this order, we allow the applicant company to retain the financial year starting January 1st ending December 31st for the year 2016, because the application for such permission has been *sub judice* before the CLB/NCLT, during the said period of time. Accordingly, the Registrar of Companies concerned, shall allow the Applicant Company for filing the Balance Sheet for the financial year starting January 1st ending December 31st for 2016. The Applicant Company shall send a copy of this order to ROC concerned for their information and record, as per the procedure prescribed. Accordingly, the application is disposed of.



(K.ANANTHA PADMANABHA SWAMY)
MEMBER (JUDICIAL)



(CH. MOHD. SHARIEF TARIQ)
MEMBER (JUDICIAL)