



Inside this edition

- Issuance of Rupee Bonds to Overseas Investors by Indian Companies
- Companies (Share Capital and Debentures) Fourth Amendment Rules, 2016
- Fees for Inspection (Rules 51 of NCLT Rules, 2016)
- Relaxation of additional fees and extension of last date of filing e-forms for Annual Compliances under the Companies Act, 2013
- National Company Law Tribunal allows companies to align its financial year with holding company for facilitating reporting symmetry

ISSUANCE OF RUPEE BONDS TO OVERSEAS INVESTORS BY INDIAN COMPANIES

Ministry of Corporate Affairs, vide general circular no: 09/2016 dated 3rd August, 2016, has issued clarification regarding applicability of provisions of Chapter III of the Companies Act, 2013 and Rule 18 of Companies (Share Capital and Debentures) Rules, 2014 to issue of rupees bonds by Indian Companies exclusively to persons resident outside India in accordance with applicable sectoral regulatory provisions.

It has been clarified that unless otherwise provided in the circular/directions/ regulations issued by Reserve Bank of India provisions of Chapter III of the Act and rule 18 of Companies (Share Capital and Debenture) Rule 2014 would not apply to issue of rupee denominated bonds made exclusively to persons resident outside India in accordance with applicable sectoral regulatory provisions as stated above. Necessary changes in Companies (Share Capital and Debenture) Rules, 2014 in this, regard are being made.



COMPANIES (SHARE CAPITAL AND DEBENTURES) FOURTH AMENDMENT RULES, 2016

In exercise of the powers conferred by sub-sections (1) and (2) of

section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Share Capital and Debentures) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Share Capital and Debentures) Fourth Amendment Rules, 2016.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Share Capital and Debentures) Rules, 2014, in rule 18, after Sub-rule (10), the following sub-rule shall be inserted, namely:-

“(11) Nothing contained in this rule shall apply to rupee denominated bonds issued exclusively to overseas investors in terms of A.P. (DIR Series) Circular No. 17 dated September 29, 2015 of the Reserve Bank of India.”



FEES FOR INSPECTION (RULE 51 OF NCLT RULES, 2016)

National Company Law Tribunal vide its order no. 25/02/2016- NCLT dated 2nd August, 2016 by Rule 51 of NCLT Rules, 2016, has provided that parties to any case or their authorized representative may be allowed to inspect the records of the case by making an application in writing to the Registrar and by paying fee of Rs. 200/- for the records as provided under rule 114 of the NCLT Rules, 2016.

RELAXATION OF ADDITIONAL FEES AND EXTENSION OF LAST DATE OF FILING E-FORMS FOR ANNUAL COMPLIANCES UNDER THE COMPANIES ACT, 2013

Ministry of Corporate Affairs, vide general circular no: 08/2016 dated 29.07.2016 August, 2016, has allowed companies to file financial statements and Annual Returns on or before 29.10.2016 where the due date for holding of the Annual General Meeting is on or after 01.04.2016, without payment of additional fee.

NATIONAL COMPANY LAW TRIBUNAL ALLOWS COMPANIES TO ALIGN ITS FINANCIAL YEAR WITH HOLDING COMPANY FOR FACILITATING REPORTING SYMMETRY

M/s Advance Business & Health Care Solutions India Private Limited - Applicant

Judgement date: 3rd August, 2016

M/s Advanced Business and Healthcare Solutions India Pvt Ltd incorporated in India and having its registered office presently situated at No. 46, Byrasandra Main Road 1st Block East, Jayanagar, Bangalore.

The petitioner company is a subsidiary of Advanced Computer Software Group Limited a foreign holding company incorporated outside India having registered office at Munro House



Portsmouth Road, Surrey KT11TF.

M/s Advanced Business and Healthcare Solutions India Pvt Ltd was following the financial year pattern from 1st March to 28th February since date of its inception. The Company carries on business as set out in the Memorandum of Association. The holding company is also following the financial year from 1st March to 28th February. As per provisions of Sec (41) of the Companies Act, 2013, the company was required to follow the financial year pattern 1st April to 31st March.

The application filed by Advanced Business and Healthcare Solutions India Pvt Ltd under Section 2(41) of Companies Act, 2013 with prayer to allow the petitioner company to continue the period of 12 months i.e from 1st March to 28th February as its financial year for the purpose of consolidation of its accounts with its holding company.



It is stated in the petition at the instance of the holding company for continuing the current financial year pattern i.e from 1st March to 28th February for facilitating reporting symmetry and compliance of internationally accepted accounting practices it was thought fit and appropriate to make a petition seeking specific permission to this effect as permitted by the Companies Act 2013 for consolidation of accounts outside India.

It is stated in the petition that Board of directors of petitioner company passed resolution dated 16.10.2015 to apply to the tribunal for permission to continue the current financial year pattern from 1st March to 28th February. Thus Advanced Business and Healthcare Solutions India Pvt Ltd filed petition to grant permission to continue its financial year from 1st March to 28th February in alignment with financial year of the holding company.

In support of the contention, the petitioner company has filed certified copy of Memorandum and Articles of Association of the petitioner. The petitioner company also filed certified copy of the latest Balance sheet of the Holding Company M/s Advanced Computer Software Group Limited, the petitioner company filled copy of Memorandum and Articles of the holding company. The petitioner also filed copy of the Board resolution. After going through the certified copy of the Incorporation, Memorandum and Articles of Association of the holding company and the letter from holding company giving consent to follow its financial year. Holding company addressed letter to the Board of directors of the subsidiary company to follow the same financial year ending February. The petitioner company also filed copy of Board resolution with a direction to file a petition before the tribunal to continue its financial year from 1st March to 28th February to align with the financial year of holding company.

As per Sec 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 of the same year within a period of two years from the date of commencement. The petitioner company being a subsidiary company cannot align its financial year as required under the Act since, holding company was following a different financial year.

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.

The petitioner company has been following financial year commencing from 1st March and ending on 28th February on par with financial year adopted by the Holding Company. The petition being 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.

Report received from Registrar of Companies, Karnataka 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 March and ending by 28th February 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 March and ending on 28th February for purpose of consolidation of statements.

ORDER OF THE BENCH

The petition is allowed granting permission to the petitioner company to follow the same financial year commencing from 1st March and ending on 28th February in alignment with financial year of the holding company for Consolidation of Accounts.



VERENDRA KALRA & CO

CHARTERED ACCOUNTANTS

CONTACT DETAILS:

Head Office

75/7 Rajpur Road, Dehradun

T +91.135.2743283, 2747084, 2742026

F +91.135.2740186

E info@vkalra.com

W www.vkalra.com

Branch Office

80/28 Malviya Nagar, New Delhi

E info@vkalra.com

W www.vkalra.com



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