

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Through Physical Hearing/VC Mode (Hybrid))

C.P No.122/BB/2022

U/s. Section 131 and other applicable provisions
of the Companies act, 2013 r/w Rule 77
of the National Company Law Tribunal Rule 2016

IN THE MATTER OF:

CROPIN TECHNOLOGY SOLUTIONS PRIVATE LIMITED,

3rd Floor, 1021, 16th Main,
BTM 1st Stage, Bengaluru - 560029

...

Petitioner No.1

And

The Registrar of Company, Karnataka

'E' Wing, 2nd Floor, Kendriya Sadana,
Koramangala,
Bengaluru - 560 034

...

Respondent

Order delivered on:19/04/2024

- Coram:**
1. Hon'ble Shri K. Biswal, Member (Judicial)
 2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Present:

For the Petitioner : Shri Rafeeulla Shariff, PCS

ORDER

Per: K. BISWAL, Member (Judicial)

1. The present petition has been filed on 08.09.2022 by the Petitioner **CROPIN TECHNOLOGY SOLUTIONS PRIVATE LIMITED** (hereinafter referred to as Petitioner), interalia seeking to approve the revisions of Financial Statements for the Financial Year 2019-20 and to direct the Registrar of Companies, Bengaluru Karnataka to register revised standalone financials for the Financial year 2019-2020 in their records and mark defective the already filed form AOC-4 Standalone vide SRN: R99766412 dated 13.02.2021.
2. Brief facts of the case which are relevant to the issue in question, are as follows:

- i. **Cropin Technology Solutions Private Limited** (hereinafter referred to as a Company/Petitioner) was incorporated on 26.08.2010 with Registrar of Companies Bengaluru under the provision of the companies Act, 1956 with CIN No.U72200KA2010PTC054971.The Registered office of the Company is 3rd Floor, 1021, 16th Main, BTM 1st Stage, Bengaluru - 560029.
- ii. The authorised and paid-up capital of the company as of date of the petition as under:

Sl. No.	Type of Security	Number of Shares	Face Value	Amount
1.	Equity shares	3,61,000	1	3,61,000
2.	Preference shares	2,13,900	10	21,39,000
Total				25,00,000

Paid-up Share capital:

Sl. No.	Type of Security	Number of Shares	Face Value	Amount
1.	Equity share	1,07,500	1	1,07,500
2.	0.01% Redeemable Optionally Convertible Cumulative Preference shares	16,800	10	1,68,000
3.	0.01% Series C1 Compulsorily convertible Cumulative Preference Shares	97,100,	10	9,71,000
4.	0.01% Series C2 Compulsorily Convertible Preference Share (Partly Paid-up)	1,700	10	17
5.	Series C2 Compulsorily Convertible preference shares	2,220	10	2,220
				12,48,737

- iii. The promoters of the Company have incorporated a wholly owned Subsidiary Company in the name of Cropin Technology Solutions B.V (hereinafter referred to as “Subsidiary company”) in February 2020 in the Netherlands without making any financial investment for the financial year 2019-20. The Petitioner herein however exercise complete control over the Board composition and the managements of the Company.
- iv. The Company had not incorporated the subsidiary details in the standalone financial statements and did not prepare consolidated Financial Statements for the Financial Year 2019-20 assuming that since there were no financial investments made in monetary format, for the said financial year, the consolidation of the financial statements was not required. Hence, the company has not filed AOC-4 CFS with the Registrar of Company (ROC) and the Company has filed only Form AOC-4 on a standalone basis for the Financial year 2019-20 vide SRN : R99766412 dated 13.02.2021 with the Registrar of Companies and the same was approved and registered. Further, the Board of Directors of the Company after considering the provisions of the companies act, 2013 and rules made thereunder in detail adopted the audited consolidated financial statements and auditors report for the financial year 2019-20 at their Board meeting held on 12.11.2021.
- v. However, after considering the provisions of the Companies Act, 2013 and rules made thereunder in detail, the company has prepared Consolidated Financial statement for the Financial Year ended 2019-20 and the Company required to file fresh Form AOC-4 CFS for the said financial year but since AOC 4 Standalone was filed without considering the consolidation details, the company was not able to file the same. Thereafter the company applied to the Registrar of Companies Karnataka in form GNL-1 dated 03.03.2022 vide SRN T84103555 for cancellation of form AOC-4 standalone for the Financial Year 2019-20 vide SRN R99766412 for marking the same as defective. However, the Registrar of

Companies Karnataka has rejected the application and directed the Company to approach NCLT for revision of standalone financial statements for the Financial Year 2019-20. Therefore the company wants to revise the standalone financial statements of Financial Year 2019-20 by incorporation the subsidiary details. Accordingly, the present petition is filed requesting to permit the Petitioner to proceed with the revision of standalone financial statements for the Financial Year 2019-2020/.

3. The Registrar of Companies, has filed an Affidavit dated 14.08.2023 by inter alia stating as follows:

- i. The Company stated that it had not prepared consolidated Financial Statements for the FY 2019-2020 assuming that since there were no financial investments made in monetary form for the said financial year, the consolidation of the financial statements was not required.
- ii. **Para 4:** It is submitted that the present application is made for revision of the financial statements for the financial years 2019-20 which was filed vide E-form AOC-4 standalone vide SRN R99766412 dated 13.02.2021 for the respective years and taken on record. The company has passed a Board Resolution on 25.08.2022 approving the matter to make application under Section 131 of the Companies Act, 2013 before the Hon'ble NCLT, Bengaluru Bench.
- iii. **Para 5:** It is stated by the applicant company that the company had incorporated a wholly owned subsidiary company in the name and style of "Cropin Technology Solutions B.V." (hereinafter referred to "Subsidiary Company") on 11th February 2020 in the Netherlands without making any financial investment for the financial year 2019-20. The applicant company has stated that however it exercises complete control over the Board composition and the management of the company. The copy of incorporation Certificate of the foreign

entity is enclosed as Annexure-4. The company has stated that it had not prepared consolidated financial statements for the financial year 2019-20 assuming that since there were no financial investments made in monetary format, for the said financial year, the consolidation of the financial statements was not required. A copy of the standalone financial statements for the financial year 2019-20 is enclosed as Annexure-5. The company has stated that however, after considering the provisions of the Companies Act, 2013 and rules made thereunder in detail, the company has prepared consolidated financial statement for the financial year ended 2019-20 and the same was approved by the Board in their meeting held on 12th November 2021. The company shall be required to file fresh Form AOC-4 CFS for the said Financial year but since AOC-4 standalone was filed without considering the consolidated details, the company is not able to file the same. Thereafter, the company has applied to this office in form GNL-1 dated 3rd March 2022 vide SRN SRN No. T841035555 for cancellation of form AOC-4 standalone for the Financial Year 2019-20 (Annexure-7). However, this office has rejected the application and directed the company to approach NCLT for revision of standalone financial statement for the Financial Year 2019-20.

- iv. **Para 6:** The Company has furnished copy of Board Resolution (Page 239) passed on 25th August 2022, for filing an application under Section 131 of the Companies Act, 2013 before the Hon'ble NCLT, Bengaluru Bench. The company has also submitted the draft revised Board Report for the Financial Year 2019-20 to this office.
- v. **Para 7:** The Company has stated that it had not made any monetary form of investment in the Subsidiary Company. But in the draft revised Board/Director's report submitted to his office, the Company has stated that Cropin Technology Solutions B.V is a wholly owned subsidiary incorporated in

Netherlands. Further, in Form AOC-1 attached as Annexure-1 to the revised Board report, the company has stated that the share capital was Rs.100 for the wholly owned subsidiary. But the Company in its revised financial statement has not shown commensurate increase in its investment after acquiring the wholly owned subsidiary. The Company has failed to explain how Cropin Technology Solutions B.V incorporated in Netherlands is its Wholly Owned Subsidiary as per Section 2(87) of the Companies Act, 2013. Though the Company has shared the incorporation certificate, it has not shared the details of composition of Board and shareholding pattern of the wholly owned Subsidiary Cropin Technology Solutions B.V incorporated in Netherlands. If the company had not made any monetary investment for the Financial year 2019-20, the Company at least could have disclosed the existence of subsidiary as stated it by now, which was incorporated on 11th February 2020. Instead the Company in its Board report (Annexure-C) filed for the Financial Year 2019-20 in the Form AOC-4 vide SRN: R99766412 dated 13.02.2021 with RoC, Karnataka, had mentioned in Point 28 that the Company does not have any subsidiary/joint venture/Associate Company, thus failed to disclose the existence of a subsidiary, and misled this authority by filing false Board Report. Similarly, the auditor's report for the FY 2019-20 in form AOC-4 vide SRN: R99766412 dated 13/02/2021 with ROC, Karnataka too does not mention the existence of subsidiary. There is no related party disclosure regarding the subsidiary in Point 27 of the Auditor' report.

- vi. **Para 8:** It is stated that the Applicant in its petition had stated that it had complete and absolute control of the said subsidiary company. Also it has been mentioned that the management of the subsidiary company was under the influence of the Applicant Company and its promoter. But as per Rule 9 of the Companies Rules 2014 the company has not confirmed whether

its directors viz., Krishna Kumar and M.r Kunal Prasad have duly disclosed the interest in subsidiary as per provisions.

- vii. **Para 9:** Further, in the draft revised Board/Director's Report, the Company has introduced new paragraphs, which are completely unrelated to the purpose of revision. Part of Point 26 of the draft revised Board Report is reproduced here:

"The Company has the Scheme of Management shares. The Promoters' right to subscribe to the Management Shares may be exercised at any time prior to the occurrence of a liquidation event in one or more trances. Mr. Krishna Kumar (Director) shall be entitled to subscribe to 5,823 Management shares and Mr. Kunal Prasad (Director) shall be entitled to subscribe to 4,550 Management shares".

It would be observed that the Company is trying to change shareholder composition through revision of Board Report by bringing new entitlement clauses in Employee Stock Option Plan. As is apparent, it intends to revise, for the reason of not submitting consolidated financial statement along with making changes to the Board Report and therefore the explanation of the Company before the Hon'ble Tribunal is misleading.

- viii. **Para 10:** As per Rule 35 of the NCLT Rules 2016 "the Company has to advertise the petition in form NCLT-3A at least 14 days before the hearing". The Petitioner has not confirmed that the matter has been duly advertised as per the requirements.
- ix. **Para 11:** The Company has incorporated the subsidiary in Netherlands, and it has failed to show in its financial statement the shares it is holding in the subsidiary company for the financial year 2019-2020. The justification provided by the Company to revise the financial statement is therefore not logical and the Company is using this revision beyond the stated purpose and not fulfilling the stated purpose clearly. The present is an after thought to avoid legal complication and compliances required under various laws of the land like

companies act, 2013 and rules made thereunder, FEMA regulations, RBI regulation etc.,

- x. It is respectfully submitted that in view of the discrepancies in the petition, and it suffers lack of clarity which needs to be addressed by the Petitioner.

4. The Petitioner, has filed an Reply vide Diary No. 4430 dated 28/08/2023 by inter alia stating as follows:

- i. In reply to the Para No.1 to 06, it is stated that the averments made by that ROC are basic and general facts in relation to the Application filed thereof. Hence there is no specific reply being given by the Petitioner.
- ii. **In reply to Para 7**, it is submitted that the Company has stated the share capital of Rs 100/- for the wholly owned subsidiary for the purpose of recording in the Books of accounts only. However, the Company has not made any monetary investments in the wholly owned subsidiary, hence there is no commensurate increase in its investment after acquiring the wholly owned subsidiary. It is humbly submitted that the entity is a “Bestolen Vennotschap” (BV) entity, otherwise referred to as a Private Limited Company, whereby there is minimum capital requirement of 1 Euro i.e INR 100/-, as per the law in force in Netherlands. The existing Dutch regulation does not madata a fixed level of BV registered equity. Further, as per the exiting law in Netherlands, there is no requirement that the amount has to be brought in as Cash investment. “The same can be in both cash as well as kind.” The Indian entity and its promoters are contributing to the management of the Netherlands entity and hence have not made any monetary investment in the Netherlands entity.

Further in reply to observation 7(b), it is submitted that the founders of the Applicant/Petitioner Companies have established an entity in Netherlands in order to expand its business. The control of the composition of the Board of the

Company is in the hands of the Directors of the Applicant/Petitioner Company. Thereby the Board Composition is under the control of the Applicant/Petitioner Company. It is also submitted that the Company had missed to mention the details of subsidiary in the financial statements earlier and to make it correct the company has filed this application.

- iii. **In reply to Para 8**, the Company has given the disclosure of interest in form MBP-1 in accordance with provisions of the Companies Act, 2013 and Rules made thereunder. The declarations received from the promoters of the Company have been annexed for perusal.
- iv. **In reply to Para 9**, the new paragraphs inserted in the Board report have been added as additional information and does not have any material impact. The Applicant/ Petitioner had made necessary changes as material impact thereof. The applicant has already made necessary changes required for revision financial statement w.r.t to Section 131 of the Companies Act, 2013. The same is evident from the Para No.25 of the Draft Report wherein “Details of significant and material orders passed by the Regulators, Courts and Tribunals.” The reason for revision of financials has been clearly stated thereof, in satisfaction with the provisions of Section 131 of the Companies Act, 2013.
- v. **In reply to Para 10** of the ROC, the Hon’ble NCLT in the hearing held on 18th November 2022 had directed the company to issue the advertisement in English and Vernacular Language. Further the next hearing was posted to 17th January 2023. In accordance with the directions of this Hon’ble Tribunal, the Applicant/petitioner company has made the advertisement on 6th December 2022 both in vernacular language as well as in English, which is well within the frame as stated above i.e., at least 14 days before the hearing. The gap between the date of issuance of the advertisement i.e., 6th

December, 2022 and date of hearing i.e., 17th January, 2023 was 42 days and thereby it is proven that the advertisement was given well in advance.

It is further submitted that an affidavit was filed before this Hon'ble Tribunal explaining the facts as to service of notice on the statutory authorities in compliance with the directions of this Hon'ble Tribunal and as to issuance of newspaper advertisement.

- vi. **In reply to Para 11**, the Applicant/Petitioner Company had not prepared consolidated financial statements/not incorporated subsidiary details in the standalone financial statements for the Financial Year 2019-2020; assuming that since there were no financial investments made in monetary format, for the said financial year, the consolidated financial statement was not required. The applicant/petitioner had accepted the omission and had decided to do the necessary revision thereof. The applicant/petitioner had approached the ROC for cancellation of AOC-4 so filed for the Financial Year 2019-2020 and the ROC had suggested approaching this Hon'ble Tribunal, which is also clear from the averment made in Para No.5 (Page No.4) of the Common Report submitted by the ROC. Hence, it is evident that the Applicant/Petitioner acted in accordance with the directions/suggestions of the ROC.

It is further submitted that the Applicant/Petitioner had acted in accordance with the provisions of Section 131 of the Companies Act, 2013 and Rules thereunder and also had always acted in accordance with the directions of this Hon'ble Tribunal.

5. The IT Department has filed its report vide Diary No. 6063 dated 04/12/2023 and the same is taken on record.
6. We have considered the submissions of the Petitioner and the material available on record. As stated supra, the instant company petition is filed by interalia seeking the Tribunal to approve the financial

statements for the F.Y 2019-20 and to direct the ROC to register revised standalone financials for the F.Y 2019-20 in their records and mark defective the already filed AOC-4. The reasons furnished are that the Company had not prepared Consolidated Financial Statements for the F.Y 2019-20 assuming that since there were no financial investments made in monetary format, for the said financial year, the consolidation of the financial statements was not required. Section 131 of the Companies Act, 2013, empowers the Company to seek to revise financial statement or to revise report in respect of the any of the 3 preceding financial years after obtaining the approval of the Tribunal by filing appropriate application in the prescribed form. Therefore the issue is only to seek approval of the Tribunal to revise financial statements and not for seeking any compounding of offence as contended.

7. On a perusal of the observation of the ROC, it is observed that in spite of the reply to the ROC's observations filed by the Petitioner, the following points raised by the ROC need proper clarification by the Petitioner :

- i. *The Company in its revised financial statement has not shown commensurate increase in its investment after acquiring the wholly owned subsidiary.*
- ii. *The Company has failed to explain how Cropin Technology Solutions BV is the Wholly Owned Subsidiary as per Section 2(87) of the Companies Act, 2013*
- iii. *The Company has not shared the details of composition of Board and shareholding pattern of wholly owned Subsidiary of the Cropin Technology Solutions BV incorporated in Netherlands.*
- iv. *Even if the Company has failed to make monetary investment in F.Y 2019-20, the company has failed to disclose the existence of Subsidiary. Instead, the Company in its Board Report filed for FY.2019-20, in Point 28 mentions that the Company does not have any subsidiary. Similarly, the auditor's report for the Financial Year 2019-20 in the Form AOC-4 vide SRN: R99799412*

dated 13/02/2021 with ROC, too does not mention the existence of subsidiary.

- v. *There is no related party disclosure regarding the subsidiary in Point No.27 of the Auditor's Report.*
- vi. *In the draft revised Board/Director's Report, the Company has introduced new paragraphs, which are completely unrelated to the purpose of revision. Part of Point 26 of the draft revised Board Report is reproduced here: "The Company has the Scheme of Management shares. The Promoters' right to subscribe to the Management Shares may be exercised at any time prior to the occurrence of a liquidation event in one or more trances. Mr. Krishna Kumar (Director) shall be entitled to subscribe to 5,823 Management shares and Mr. Kunal Prasad (Director) shall be entitled to subscribe to 4,550 Management shares". It would be observed that the Company is trying to change shareholder composition through revision of Board Report by bringing new entitlement clauses in Employee Stock Option Plan. As is apparent, it intends to revise, for the reason of not submitting consolidated financial statement along with making changes to the Board Report and therefore the explanation of the Company before the Hon'ble Tribunal is misleading*
8. In view of the above, as an interim Order, we direct the Petitioner Company to file proper explanation and undertaking to the above points with the ROC along with adjudication application if required, and a compliance affidavit incorporating the explanations and undertaking maybe filed with registry within a period of 30 days from date of this Order. The ROC is directed to file a supplementary report in this Tribunal within 10 days from filing of the above compliance by the Petitioner Company.
9. List the CP for further consideration on 19/06/2024.

Sd/-

**(MANOJ KUMAR DUBEY)
MEMBER, TECHNICAL**

Sd/-

**(K. BISWAL)
MEMBER, JUDICIAL**