

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH**

**CP(AA) Merger & Amalgamation/12/2021  
Connected with CA(CAA) No.2/230/HDB/2021**

Petition under Sections 230 to 232 of the Companies Act, 2013

**In the matter of**

**XENOSOFT TECHNOLOGIES (INDIA) PRIVATE LIMITED**

having its registered office situated at  
Ramky Selenium, P.No.31 Part & 32, Tower A,  
3<sup>rd</sup> Floor, Financial District, Nanakramguda,  
Serilingampally, Hyderabad - 500032  
Telangana.

.... 1<sup>st</sup> Petitioner/Transferor Company

**XTGLOBAL INFOTECH LIMITED**

having its registered office situated at  
Ramky Selenium, P.No.31 Part & 32, Tower A,  
3<sup>rd</sup> Floor, Financial District, Nanakramguda,  
Serilingampally, Hyderabad - 500032  
Telangana.

.... 2<sup>nd</sup> Petitioner/Transferee Company

**Date of Order: 14.10.2021**

**Coram: Madan B. Gosavi, Member Judicial.  
Dr. Binod Kumar Sinha, Member Technical**

**Parties/Counsel(s) Presents:**

For the Petitioners: Mr. V. Venkata Rami Reddy, Counsel  
For the RD: Mr. K. Harish Reddy, CGSC

**Per : Bench**

**ORDER**

1. The present Company Petition under Section 230 to 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 is filed seeking sanction of the proposed Scheme



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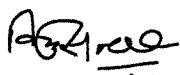
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of Amalgamation ('the Scheme') between the Petitioner Companies and their respective shareholders and creditors.

2. The Registered Offices of the Petitioner Companies are situated in the State of Telangana and therefore, they are within the jurisdiction of this Tribunal.
3. The Petitioner Companies had filed CA(CAA)No.2/230/HDB/2021 before this Bench seeking dispensation of convening meetings of the Equity Shareholders, Secured and Unsecured Creditors of both the Petitioner Companies. The Tribunal vide its order dated 12.02.2021 dispensed with convening the meetings of the Equity Shareholders, Secured and Unsecured Creditors of both the Petitioner Companies.
4. The Petitioner Companies then filed the present Petition before this Tribunal seeking sanction of the Scheme with appointed date as 01.04.2020. This Tribunal vide its order dated 25.03.2021 ordered notice of hearing of the Petition to be advertised in Daily Newspapers i.e. Business Standard (English) and Nava Telangana (Telugu). Accordingly, the Petitioner Companies published notice of hearing of the Petition in English Newspaper i.e. Business Standard and Telugu Newspaper i.e. Nava Telangana on 09.04.2021. The notice of hearing of the Petition was served on the Regional Director (South East Region), Ministry of Corporate Affairs, Hyderabad, Registrar of Companies, Hyderabad and Official Liquidator by hand on 15.04.2021. Notice of hearing was sent to IT Department by Speed Post on 15.04.2021.

According to the Petitioner Companies, the proposed Scheme was approved by the Boards of Directors of the Petitioner Companies with the following objectives:

- a) The Petitioner Companies are engaged in the same line of business activity of Information Technology and Information Technology Enabled







Services. The Transferor Company is wholly owned subsidiary of Transferee Company. The Scheme results to bring synergy of operations which aims to cut down the high overhead cost, reducing the cost of capital and optimum utilization of resources, technology and manpower etc., and to have optimum utilization of resources thereby fulfilling the objectives and business strategies. Consolidation of business into one corporate entity which would result in operational synergies for the group and also for simplification of corporate structure and reduction of legal entities which will result into overall reduction in administrative, managerial and other expenditure and optimum utilization of various resources.

- b) The Scheme will enable the Transferee Company to diversify into high growth and profitable areas of business without any gestation. It enables to improve steadiness of cash flows and to participate more vigorously and profitably in an increasingly competitive and liberalized market. The Scheme would also result in optimizing and leveraging existing resources and infrastructure of the Transferee Company. The combined entity would result in improved cash flows, increased net worth, better credit rating, and thereby strengthening the value of all the stakeholders of the Company.

6. Heard the Counsels appearing for the Petitioner Companies, Regional Director and Official Liquidator.



Official Liquidator vide his Report dated 23.07.2021 while reiterating the observations made in the Petition made the observations in Para 23, and the Petitioner Companies filed their reply affidavit dated 17.08.2021 as detailed below:-

Agreed

Sl.No.	Observations of Official Liquidator	Reply by Petitioner Companies
1	The Scheme proposes re-classification of nominal value of the Authorized Share Capital. The Petitioner Companies may be directed to comply with the provisions of Companies Act, 2013 in this regard.	The reclassification of nominal value of the Authorized Share Capital will be placed before the ROC and being the Regulatory/Statutory Authority having jurisdiction to effect the said reclassification, before approving the Form INC-28 to effect the order of this Hon'ble Tribunal approving the proposed Scheme, the ROC will invariably ensure the said reclassification and hence the Regulations prescribed under the Companies Act, 2013 are being complied with at the appropriate event and hence this Affidavit.
2	The Transferor Company is the wholly owned subsidiary of the Transferee Company	It is fact that the Transferor Company is the wholly owned subsidiary of the Transferee Company and hence no comments.
3	There are no proceedings pending under Section 235 and 251 of the Companies Act, 1956 or under Section 206 and 228 of the Companies Act, 2013 against the Petitioner Companies as per the information provided by the petitioner companies vide letter dated 26.04.2021.	It is fact that no proceedings pending under Section 235 and 251 of the Companies Act, 1956 or under Section 206 and 228 of the Companies Act, 2013 against the Petitioner Companies and hence no comments.
4	Clause 9 of the Scheme is silent on any specific accounting treatment for the merger of assets and Liabilities of Transferor Company.	The Clause 9.2 of the Scheme envisages as under:- 9.2 The Transferee Company shall record the assets and liabilities of the Transferor Company transferred to the Transferee Company pursuant to this Scheme and account for the amalgamation of the Transferor Company pursuant to this Scheme in accordance with Accounting Standard-14 as notified by the Companies (Accounting Standards) Rules, 2006, as amended from time to time. The Certificate dated 28.11.2020 issued by M/s Niranjana and Narayan, Chartered Accountants has been enclosed as Annexure-L to the petition at page No.192 which disclose the due compliance with the Accounting Standard-14 and Indian Accounting Standard-103 notified by the Central Government and Section 133 of the Companies Act, 2013.



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8. The Official Liquidator filed further report dated 31.08.2021 reiterated the averments made by the Petitioner Companies in reply to the observations made by the OL and requested this Bench to decide the petition on merits.
9. The Regional Director (South East Region), Ministry of Corporate Affairs vide his representation dated 04.08.2021 while reiterating the averments made in the Petition submitted that a notice has been issued to the Income Tax Department on 11.05.2021 calling for comments/observations giving 15 days' time. Further, a notice has been issued to the Securities Exchange Board of India, Hyderabad on 11.05.2021 calling for comments/observations giving 15 days' time. However, till date no report in the matter has been received from Income Tax Department and SEBI. The RD also made specific representation with regard to the following and the Petitioner Companies filed a reply affidavit to the RD, answered the same as below:-

S. No.	RD's Observations	Reply of the Petitioner Companies by way of Affidavit filed on 24.08.2021
1	<p>The Directorate has received letter dated 16.07.2021 from the ROC, Telangana pointed out certain observations as under:-</p> <p>a) Transferee Company is a listed Company and Transferor Company is a Private Limited Company. As per Clause II of the Scheme, this being an amalgamation of wholly owned subsidiary with its holding company, no formal approval is required from SEBI and Stock Exchanges for the proposed Scheme. Hon'ble Tribunal may be pleased to direct the petitioner Transferee Company to furnish an affidavit that all SEBI Regulations are complied with.</p>	<p>The Transferor Company is a wholly owned subsidiary of the Transferee Company and in compliance with the Regulation 37 of the Securities Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, the Transferee Company has submitted the Draft Scheme of Amalgamation to the BSE Limited vide letter dated 16.09.2020. Moreover, the Transferor Company is a wholly owned subsidiary of the Transferee Company. Therefore, as per the said Regulation, the Transferee Company need not obtain No Objection Letter from the Stock Exchange. Hence, the information furnished to the Stock Exchange by</p>



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		<p>filing the draft scheme itself is enough for the purpose of disclosures. A copy of the extract of the Regulation 37 of SEBI (LODR) Regulations, 2015 and a copy of the acknowledgement with regard to filing of the Draft Scheme of Amalgamation with BSE were enclosed with the Petition as Annexure-K1 and K2 respectively, However, as desired by the ROC and RD, it is firmly stated by the Transferee Company that all the SEBI Regulations are complied with.</p>
	<p>b) As per Balance Sheet as at 31.03.2020 of the Transferee Company, there are two issues of equity shares of the Company for consideration other than cash resulting increase in shareholding of main promoter from 47.41% as on 31.03.2019 to 63.57% as on 31.03.2020 which require open offer requirements of SEBI. Hon'ble Tribunal may be pleased to direct the Transferee Company to furnish an affidavit that they have complied with the same.</p>	<p>The Transferee Company has issued and allotted Equity Shares on 22.04.2019 through Preferential Allotment for Cash consideration in which 1,95,00,000 Equity Shares were allotted to the main promoter which resulted in an increase of promoter shareholding from 47.41% to 50.04% which was not attracted any Open Offer provisions under SEBI (SAST) Regulation. Thereafter, a second Preferential Allotment was executed by the Company on 18.11.2019 in which 3,40,90,545 Equity Shares were allotted to the main Promoter for consideration other than cash. In this Issue, Open Offer was triggered. Promoter of the Transferee Company has given open offer to the shareholders of the Transferee Company on 06.11.2019 in the Financial Year 2019-20. The open offer requirements of the SEBI has been complied with by the promoter of the Transferee Company for an increase in promoter shareholding from 50.04% to 62.76%. The Open Offer Documents are enclosed to the reply. One more Preferential Allotment was executed by the Transferee Company for consideration other than cash on 12.03.2020 in which 1,71,53,886 Equity Shares were allotted to the Promoter. By this allotment shareholding of main Promoter was increased from 62.76% to 63.97% during the Financial Year 2019-20.</p>



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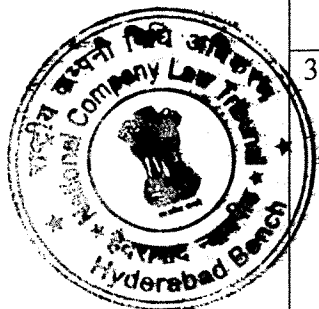
		Provisions of Open Offer were not attracted in this allotment.
	<p>c) Transferor Company has an account of Rs.7 Crores which requires to be credited to the account of Transferee Company upon amalgamation. Hon'ble Tribunal may be pleased to direct the Transferor Company to furnish an affidavit that Transferor Company will pay the differential fees and stamp duty for the increase in account after deducting the fees and stamp duty already paid by the Transferee Company.</p>	<p>Clause 7.3 of the Scheme connotes that upon the sanction of Scheme, the Authorised Capital of the Transferor Company to be merged with that of the Transferee Company and differential fee to be paid by the Transferee Company pursuant to the provisions of Section 233(11) of the Companies Act, 2013. For clarity, the said para is reproduced hereunder:-</p> <p><i>7.3 Upon the sanction of Scheme of Amalgamation, with effect from Appointed Date, the Authorized Share Capital of the Transferor Company shall be merged with Authorized Capital of the Transferee Company and consequently, the Authorized Share Capital of the Transferee Company shall become Rs.25,00,00,000/- (Rupees Twenty Five Crore only) divided into 25,00,00,000 (Twenty Five Crore) equity shares of Rs.1/- each. The transferee Company will file an application with the Registrar of Companies, Hyderabad upon scheme being registered, indicating the revised authorized capital and will pay the prescribed fees due on revised capital pursuant to the provisions of Section 233(11) of the Companies Act, 2013. However, that the fee, if any, paid by the transferor company on its authorized capital prior to its merger or amalgamation with the transferee company shall be set-off against the fees payable by the transferee company on its authorized capital enhanced by the merger or amalgamation.</i></p>
	<p>d) Requested that the Hon'ble Tribunal may be pleased to direct the Petitioner Companies to preserve its books of accounts and papers and records and shall not be disposed of without the prior permission of the Central Government in terms of</p>	<p>The Petitioner Companies undertakes to preserve the books of accounts and papers and records and the same shall not be disposed of without the prior permission of the Central Governments in terms of Section 239 of the Companies Act, 2013.</p>



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	Provisions of Section 239 of the Act, 2013.									
	e) Requested that the Hon'ble Tribunal may be pleased to direct the Petitioner Companies to ensure statutory compliance of all applicable laws and also on sanctioning of the present scheme the applicant company shall not be absolved for any of its statutory liability in any manner.	The Petitioner Companies have submitted a joint affidavit ensuring statutory compliance of all applicable laws and also on sanctioning of the present scheme the applicant/petitioner companies shall not be absolved for any of its statutory liability in any manner.								
	f) Requested that the Hon'ble Tribunal may be pleased to direct the Petitioner Companies, to comply with Rule 17(2) of the Companies (Compromise, Arrangement and Amalgamation) Rules, 2013 with respect to filing of order for confirmation of scheme to be filed in Form No. INC-28 with the concerned office of Registrar of Companies.	The Petitioner Companies undertakes to file Form No. INC-28 with the Registrar of Companies.								
2	Transferee Company being a listed company and furnished the shareholding pattern at the time of approval of the scheme having 11,99,67,627 shareholders (having Indian promoter shareholders holding 8,23,24,950 shares, Public Shareholding, Non-Institutions including NRIs, foreign Nationals, Trusts, foreign bodies of 3,76,42,677 shareholders). Hon'ble Tribunal may be pleased to direct the Transferee Company to furnish the compliance of RBI/FEMA guidelines/regulations etc., if any.	The Transferee Company has complied with FEMA Regulations for allotment of shares to NRIs and Foreign Nationals by filing Form FC-GPRs to the RBI. The Form FC-GPRs are enclosed with the Reply.								
3	As per Company Master Data there are two open charges each in the Transferor Company and Transferee Company. Hon'ble Tribunal may be pleased to direct the Petitioner Companies to furnish the present status/NOCs from the said Creditors, before the Scheme is allowed.	The Transferee Company has the following open charges in the Master Data maintained by the MCA website as observed by the RD:- <table border="1" data-bbox="868 1822 1356 2037"> <thead> <tr> <th>S. No.</th> <th>SRN/Charge ID/Date of creation</th> <th>Charge Holder Name</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Y10226234/90133429/</td> <td>SCL Finance</td> <td>75,900</td> </tr> </tbody> </table>	S. No.	SRN/Charge ID/Date of creation	Charge Holder Name	Amount	1	Y10226234/90133429/	SCL Finance	75,900
S. No.	SRN/Charge ID/Date of creation	Charge Holder Name	Amount							
1	Y10226234/90133429/	SCL Finance	75,900							



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		24.02.1988	Limited	
2	Y10226218/ 90133413/ 26.08.1987		DCL Finance Limited	45,280

The above loans were repaid to the creditors in the previous years before the creditor was referred to the Official Liquidator. In spite of several requests made to the creditor in the earlier years, there was no response from the said creditor. However, the Transferee Company has neither received any notice nor objection of any kind from the office of the OL. Therefore, though the loan was repaid in both the charges registered, if any clarification needs to be furnished or any compliance to be made in future, the Transferee Company hereby undertakes to do so as permitted by law.

In view of the above reply the Petitioner Companies prayed this Tribunal to sanction the Scheme.

10. On 24.09.2021, the Tribunal has directed the Petitioner Companies to correlate the Appointed Date at Clause A(iii) and Effective Date at Clause A(v) of the Part-I of the Scheme of Amalgamation as defined in Section 232(6) of the Companies Act, 2013. In reply the Petitioner Companies filed a copy of the amended Scheme of Amalgamation by way of a Memo dated 30.09.2021. The copy of the same was also served on the RD, RoC and OL.



11. The Petitioner Companies enclosed a Certificate dated 28.11.2020 issued by Auditor namely Mr. M. Niranjana of M/s Niranjana and Narayan, Chartered Accountants, stating that the Accounting Treatment proposed in the proposed Scheme is in conformity with Accounting Standard specified under Section 133 of the Companies Act, 2013.

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12. Considering the facts and circumstances of the case and on perusal of the Scheme, the documents produced on record and the undertakings given by the Petitioner Companies by way of affidavits, the Scheme of Amalgamation appears to be fair and reasonable and is not contrary to public policy and not violative of any provisions of law. All the statutory compliances have been made under Sections 230 to 232 of the Companies Act, 2013. Hence ordered.

### ORDER

The Petition be and the same is allowed with the following directions:-

- a) The Scheme of Amalgamation (Annexed to the Memo dated 30.09.2021 i.e. Page No. 1 to 17) with appointed date as 01.04.2020 is hereby sanctioned. The same shall be binding on the Petitioners and their respective Shareholders, Secured Creditors, Unsecured Creditors/Trade Creditors, Employees and all concerned.
- b) The Petitioner Companies shall make provision for reclassification of existing nominal value of each share in the authorized capital of Transferor Company from Rs.10/- each to Rs.1/- each before merging the authorized share capital of both the Companies having different nominal values as observed by the Official Liquidator.
- c) This order shall not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges and fees if payable, or from any applicable permissions that may have to be obtained or compliances that may have to be made under law.



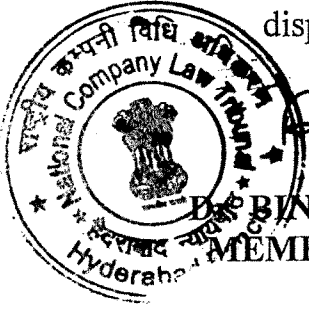
All concerned shall act on a copy of this order along with the Scheme duly authenticated by the Registrar of this Tribunal. The Registrar of this Tribunal shall issue the certified copy of this order along with the Scheme forthwith.

*Agreed*

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- e) The Petitioner Companies are directed to take appropriate steps to submit the said Scheme to Registrar of Companies within 30 days from the date of receipt of copy of this order.
- f) The Petitioner Companies are directed to issue newspaper publication with respect to approval of Scheme of Amalgamation, in the same newspapers in which previous publications were issued.
- g) The Petitioner Companies are further directed to take all consequential and statutory steps required in pursuance of the approved Scheme of Amalgamation under the provisions of the Companies Act, 2013 and submit necessary compliance and undertaking relating to the objections raised by the Regional Director (SER), MCA, GoI, Hyderabad.

13. With the above directions, the CP(AA) Merger & Amalgamation/12/2021 is disposed of.



  
**BINOD KUMAR SINHA**  
MEMBER TECHNICAL

  
**MADAN BHALCHANDRA GOSAVI**  
MEMBER JUDICIAL

  
Deputy Registrar / Assistant Registrar / Court Officer  
National Company Law Tribunal, Hyderabad

प्रमाणित प्रति  
CERTIFIED TRUE COPY  
केस संख्या (CP(AA) No. 12/230/HDB/2021  
निर्णय का तारीख  
DATE OF JUDGEMENT 14/10/2021  
प्रति तैयार किया गया तारीख  
COPY MADE READY ON 22/12/2021