

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

**CA (CAA) No.2/230/HDB/2021  
Under Sections 230 to 232 of the Companies Act, 2013**

In the matter of :

M/s. XENOSOFT TECHNOLOGIES (INDIA) PRIVATE LIMITED  
Having its Registered Office at:  
Ramky Selenium, P.No.31 Part & 32, Tower A,  
3<sup>rd</sup> Floor, Financial District, Nanakramguda,  
Serilingampally, Hyderabad, Telangana – 500032.  
(Rep. by its Director, Mr. Sri Rama Rudra Prasad Vuppuluri)  
**... Transferor Company**

M/s. XTGLOBAL INFOTECH LIMITED  
Having its Registered Office at:  
Plot No.31 P&32, 3<sup>rd</sup> Floor, Tower A,  
Ramky Selenium, financial District,  
Nanakramguda, Hyderabad, Telangana - 500032.  
(Rep. by its Director, Mrs. Vuppuluri Sreedevi)  
**...Transferee Company**

**Date of Order: 12.02.2021**

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

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

For the Applicant : Mr. Venkata Rami Reddy, counsel

**[Per Bench]**

1. The present Joint Company Application bearing CA(CAA)No.2/230/HDB/2021 is filed by M/s. XENOSOFT TECHNOLOGIES (INDIA) PRIVATE LIMITED (Transferor Company) and M/s. XTGLOBAL INFOTECH LIMITED (Transferee Company) under section 230 to 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.

2. The present Company Application is filed, inter-alia, seeking the following prayers:-
- i. Dispense with convening the meeting of the Shareholders of the Transferor Company for the purpose of considering the proposed Scheme of Amalgamation between XENOSOFT TECHNOLOGIES (INDIA) PRIVATE LIMITED (Transferor Company) with XTGLOBAL INFOTECH LIMITED (Transferee Company); and
  - ii. Dispense with the convening meeting of the Secured Creditors of the Transferor Company for the purpose of considering the proposed Scheme of Amalgamation between XENOSOFT TECHNOLOGIES (INDIA) PRIVATE LIMITED (Transferor Company) with XTGLOBAL INFOTECH LIMITED (Transferee Company)
  - iii. Dispense with the convening meeting of the Unsecured Creditors of the Transferor Company for the purpose of considering the proposed Scheme of Amalgamation between XENOSOFT TECHNOLOGIES (INDIA) PRIVATE LIMITED (Transferor Company) with XTGLOBAL INFOTECH LIMITED (Transferee Company)
  - iv. Declare that the Transferee Company is not required to obtain the consent of its shareholders and creditors.
  - v. Pass such other order or orders as this Hon'ble Tribunal deems fit and proper in the interest of justice.
3. The Registered Offices of the Applicant Companies are situated in the State of Telangana and therefore, they are within the jurisdiction of this Tribunal.
4. Brief facts leading to the filing of the instant application are as follows:

**I) In respect of Transferor Company:**

The present Authorised Share Capital of the Transferor Company is Rs.7,00,00,000/- divided into 70,00,000 Equity Shares of Rs.10/- each. The present Issued, Subscribed and Paid-up Capital is Rs.6,18,55,000/- divided into 61,85,500 fully paid up Equity Shares of Rs.10/- each.

The main objects of the Transferor Company are to carry on the business of and to establish an offshore software development centre to execute projects, development work, support for their US based clients in Oracle applications, SAP, client server applications and to carry out their Business process outsourcing plan for their USA office and also for their clients in USA etc.

**II) In respect of Transferee Company:**

The present Authorized Share Capital of the Transferee Company is Rs.18,00,00,000/- divided into 18,00,00,000 equity shares of Re.1/-. The present Issued, Subscribed and Paid-up capital is Rs.11,99,67,627/- divided into 11,99,67,627 equity shares of Re.1/-

The main objects of the Transferee Company are to design, develop, use, implement, lease, purchase, sell maintain and import, export, distribute, support various kinds of software for any information processing Application etc.

5. It is further stated that the Board of Directors of the Applicant Companies in their respective Board Meetings held on 04.09.2020 and 05.09.2020 have approved the Scheme of Amalgamation

between Transferor Company and Transferee Company subject to the approval of their Shareholders and Creditors.

6. It is stated that no proceedings/Investigation are pending against any of the Applicant Companies.
7. The Applicant Companies submit that the Transferor Company is wholly owned subsidiary company of the Transferee Company and the financial position of the Transferee Company is highly positive and the proposed Scheme of Amalgamation does not affect the rights of the Transferee Company's shareholders or creditors. Hence there is no requirement of Transferee Company obtaining the approval of the Scheme from its Shareholders and Creditors.
8. To substantiate this, they relied on the following orders passed by Hon'ble National Company Law Tribunal:
  - i. Company Scheme Application No.243 of 2017 in the matter of Housing Development Finance Corporation Limited and others (Hon'ble NCLT, Mumbai Bench)
  - ii. TSCA No.472 of 2017 in the matter of BKT Exim Limited (Hon'ble NCLT, Mumbai Bench)
  - iii. Company Scheme Petition No.23 of 2017 in the matter of Happy High Rises Limited(Hon'ble NCLT, Mumbai Bench).
  - iv. CSA No.899 (MAH) of 2017 in the matter of Mahindra Gears and Transmissions Private Limited and others (Hon'ble NCLT, Mumbai Bench).
  - v. CA(CAA)No.671/230/HDB/2018 in the matter of Farm Picks Private Limited and other (Hon'ble NCLT, Hyderabad Bench).
9. In the decisions cited, the principle laid down is when the Transferor Company being a wholly owned subsidiary of

Transferee Company, is being merged with the Transferee Company, there is no need to conduct meetings of members or the creditors. In the present case also the Transferor Company is a wholly owned subsidiary of Transferee Company and therefore there is no need for the Transferee Company to conduct meetings of its members or its creditors for getting approval of proposed scheme.

10. The Transferor Company has filed certificate of Chartered Accountant stating that as on 28.11.2020 there are 2 Equity Shareholders in the Transferor Company and both the Equity Shareholders have given their respective consent affidavits agreeing to the proposed Scheme. (Placed at Page No. 282 – 288)
11. The Transferor Company has filed certificate of Chartered Accountant stating that as on 23.11.2020 there is one Secured Creditor to the tune of Rs. 22,95,05,845.66/- and the sole Secured Creditor have given its consent affidavit agreeing to the proposed Scheme. (Placed at Page No. 289 & 291).
12. The Transferor Company has filed certificate of Chartered Accountant stating that as on 23.11.2020 there are three Unsecured Creditors to the tune of Rs. 64,77,994/- and all the three Unsecured Creditors have given their consent affidavits agreeing to the proposed Scheme. (Placed at Page No. 290 & 292 - 298).
13. The Transferee Company has filed certificate of Chartered Accountant stating that as on 23.11.2020 there are no Secured Creditors in the Transferee Company. (Page No.299)

14. The Transferee Company has filed certificate of Chartered Accountant stating that as on 23.11.2020 there are no Unsecured Creditors in the Transferee Company. (Page No. 300).
15. The Applicants have filed a copy of the extract of Regulation 37 of SEBI (LODR Regulation, 2015) and copy of the intimation letter filed with Bombay Stock Exchange (BSE) under Regulation 37 of SEBI (LODR Regulation 2015), where the shares of transferee Company are listed. Regulation 37 of SEBI (LODR Regulations 2015) directs the listed entity desirous of undertaking the scheme of arrangement shall file draft scheme of Arrangement, proposed to be filed before any Court or Tribunal, under the relevant provisions of the Companies Act, 2013 with stock exchange(s) for obtaining Observation Letter or No-objection Letter before filing of such scheme with any Court of Tribunal. However, Sub-Regulation 37(6) provides that anything contained in the Regulations shall not apply to draft scheme which solely provides for merger of Subsidiary with its Holding Company, provided such draft scheme shall be filed with the Stock Exchange for purpose of disclosures. It appears from the Intimation Letter dated 16.09.2020 (Annexure M2) filed with the instant Application that the following documents have been submitted with BSE Ltd for the purpose of disclosure and dissemination to the website:-

- i. Certified true copy of Board of Director's resolution approving the draft scheme of amalgamation of Xenosoft Technologies (India) Private Limited with their holding company i.e., XTGlobal Infotech Limited.

- ii. Certified true copy of scheme of amalgamation of Xenosoft Technologies (India) Private Limited with their holding company i.e., XTGlobal Infotech Limited.
16. Heard the submissions made in this regard by Learned Counsel for the Applicant Companies and perused record.
  17. It is noted that both the Equity Shareholders in the Transferor Company have given their respective consent affidavits agreeing to the proposed Scheme and hence the meeting of the Shareholders of the Transferor Company is dispensed with.
  18. It is noted that the sole Secured Creditor in the Transferor Company have given his consent affidavit agreeing to the proposed Scheme and hence the meeting of the Secured Creditor of the Transferor Company is dispensed with.
  19. It is noted that all the three Unsecured Creditors in the Transferor Company has given their respective consent affidavits agreeing to the proposed Scheme and hence the meeting of the Unsecured Creditors of the Transferor Company are dispensed with.
  20. It is noted that there are no Secured and Unsecured Creditors in the Transferee Company and hence no need to direct the Transferee Company to hold meetings of the Secured and Unsecured Creditors.
  21. It is noted that the Transferor Company is Wholly Owned Subsidiary Company of the Transferee Company and the financial position of the Transferee Company is highly positive and the proposed Scheme of Amalgamation does not affect the rights of the Transferee Company's shareholders and creditors. In light of the above Judgements relied on by the Petitioner, since there is not going to be any adverse impact of the proposed scheme of

arrangement on the rights of the shareholders and creditors of the Transferee Company, there is no requirement of Transferee Company obtaining the approval of the Scheme from its Shareholders and Creditors.

22. The Applicant company shall send a copy of the Company Petition along with copy of this order to (a) the Central Government through the Regional Director, South Eastern region; (b) the Registrar of Companies, Telangana (c) the Income Tax Authorities and (d) the Official Liquidator. The said copies be sent either by Registered Post or by Speed Post or by Hand Delivery at the Offices of the authorities. The aforesaid authorities, who desire to make any representation shall send the same to this Tribunal within a period of 30 (thirty) days from the date of receipt of such notice, failing which it shall be deemed that they have no representation to make on the proposed Scheme.
23. The Applicant Company is directed to publish an advertisement about dispensation of the meetings in Business Standard (in English) and in Nava Telangana (in Telugu).
24. The Company Application i.e. CA(CAA)No.2/230/HDB/2021 is disposed of accordingly.

**DR. BINOD KUMAR SINHA**  
**MEMBER TECHNICAL**

**MADAN B. GOSAVI**  
**MEMBER JUDICIAL**