

**IN THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(through web-based video conferencing platform)**

CA (CAA) No. 03/Chd/Hry/2021

(First Motion)

**Under Sections 230, 232 & 234 of the
Companies Act, 2013**

IN THE MATTER OF SCHEME OF AMALGAMATION BETWEEN:

Xangbo Trading (India) Pvt Ltd

having its registered office at
Level 12, One Horizon Centre
Golf Course Road
DLF Phase-5, Sector-43
Gurgaon-122 002, Haryana
CIN: U51909HR2009FTC047640

....Applicant Company/Transferee Company

AND

Pinecorp Trading Ltd

having its registered office at
Suite 701, 7/F
The L Plaza, 367-375 Queens' Road Central
Hong Kong
Registration No.: 2106827

....Non-Applicant Company/Transferor Company

Order delivered on: 29.09.2022

**CORAM: Hon'ble Mr Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr Subrata Kumar Dash, Member (Technical)**

Present through Video Conferencing:

For the Applicant Company : Mr Kartikeya Goel, Advocate

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

ORDER

This is a first motion Application filed by the Applicant Company
namely **Xangbo Trading (India) Pvt Ltd** (Transferee Company/Applicant
Company) under sections 230 & 232 read with section 234 of the Companies

Act, 2013 (the Act), the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and other applicable provisions in relation to the Scheme of Amalgamation of **Pinecorp Trading Ltd.** (Non-Applicant Company/Transferor Company) with **Xangbo Trading (India) Pvt Ltd** (Transferee Company/Applicant Company). The said Scheme is attached as Annexure-A-3 of the Application.

2. The Applicant Company has prayed for dispensation of the requirement of convening meetings of its Shareholders, Secured and Unsecured Creditors.

3. The Applicant Company is presently engaged in the business of import, export, wholesale trading and B2B trading of bulk agriculture commodities, bulk chemical and fertilizers and merchant trading of international commodities and other related activities.

4. The Applicant Company/Transferee Company has its registered office in the State of Haryana and Pinecorp Trading Ltd (Non-Applicant Company/Transferor Company) is a foreign company having its registered office in Hong Kong Special Administrative Region of the People's Republic of China (HKSAR). Hence, the territorial jurisdiction of Applicant Company falls with this Bench.

5. The rationale of the Scheme is given below:

- a. The Transferor Company is a wholly-owned subsidiary of the Transferee Company. The proposed amalgamation of the Transferor Company with the Transferee Company would result in business synergy, consolidation of these Companies and pooling of their resources into a single entity.

- b.** The proposed Amalgamation would result in cost savings in terms of economies of scale, more focused operational efforts, rationalisation, standardization, organizational efficiency and simplification of business processes and productivity improvements.
- c.** The proposed amalgamation will result in greater size, scale, integration and greater financial strength and flexibility for the restructured entity.
- d.** The Scheme will result in strengthening of the combined entity in terms of the asset base and revenues.
- e.** The consolidated entity will benefit from improved organizational capability and leadership, arising from the combination of people who have the diverse skills, talent and vast experience to compete successfully in increasingly competitive industries.
- f.** The proposed amalgamation will result in reducing administrative cost. It will achieve better operational and management efficiency; and
- g.** The proposed Scheme of Amalgamation will have a beneficial impact on the Transferor and the Transferee Companies, their shareholders, employees and other stakeholders and all concerned.

6. It is stated that the Board of Directors of the Applicant Company/Transferee Company and Non-Applicant Company/Transferor Company in their respective meetings held on 03.11.2020, considered and unanimously approved the proposed Scheme of Amalgamation subject to sanctioning of the same by this Tribunal. The copies of the board resolution of the Applicant Company/Transferee Company and the Non-Applicant

Company/Transferor Company are attached as Annexure A-1/6 & A-2/5, respectively, of the application.

7. The appointed date of the Scheme is 31.12.2020 as mentioned in Part A Para 1.2 of Scheme of Amalgamation which is attached as Annexure-A-3 of the application.

8. It is stated that the Applicant Company/Transferee Company has filed its audited financial statements as on 31.03.2019, as Annexures A-1/2 with the Application. The Applicant Company has also filed its Unaudited provisional financial statements for the year ended 31.03.2020 and for the period ended 30.09.2020, which are attached as Annexure - A-1/3 and A-1/4 respectively, of the application. Subsequently, the Applicant Company/Transferee Company has filed the audited financial statements as on 31.03.2020 and Unaudited Financial Statements for the year ended 31.03.2021 and for the period ended 30.09.2021 which is attached as Annexure-1 & 2 of Diary no. 00293/1 dated 07.03.2022.

9. It is submitted that in terms of the provisions of Section 230(7) and Section 232(3) of the Act, the Applicant Company/Transferee Company and the Non-Applicant Company/Transferor Company have filed Certificates dated 30.12.2020 and 25.01.2021, respectively, issued by their respective Statutory Auditors, certifying that the Scheme is in compliance with the Accounting Standards prescribed under Section 133 of the Act and the same are attached as Annexure A-4 of the application.

10. It is further submitted that the Non-Applicant Company/Transferor Company is a wholly-owned subsidiary of the Applicant Company/Transferee Company. Since, it is an amalgamation of a Wholly Owned Subsidiary with its Holding Company, no new share will be issued pursuant to the Scheme of

Amalgamation. Hence, no Valuation of Shares or Share Exchange Ratio is required/obtained for the proposed Scheme of Amalgamation.

11. It is further submitted that the proposed scheme of amalgamation does not envisage any buyback of shares. There is no proposal for reduction of share capital except to the cancellation of cross-holding of shares between the Transferor Company and Transferee Company.

12. It is submitted that the Scheme [Annexure A-3 of the Application] also takes care of the interests of the workmen and staff (employees) of the Companies, by virtue of Clause 11 of the Scheme.

13. It is deposed by the Applicant Company/Transferee Company that there is no sectoral regulator in the Applicant Company/Transferee Company whose approval may be required for the sanction of the Scheme of Amalgamation except the statutory authorities i.e. (a) the Central Government through the office of the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi; (b) the Registrar of Companies, Delhi and Haryana, New Delhi; and (d) the Income Tax Department. It is also deposed that the scheme does not attract provisions of Reserve Bank of India (RBI), The Securities Exchange Board of India (SEBI), the Competition Commission of India (CCI) or any other sectoral regulator or regulatory authority.

14. It is submitted that no proceedings for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under the provisions of the Companies Act, 1956, prosecution, or litigation pending against the Applicant Company/Transferee Company.

15. The Applicant Company has submitted that in terms of the provisions of Rule 9(1) of the Foreign Exchange Management (Cross Border Merger) Regulations, 2018, the present Scheme shall be deemed to have prior

approval of the RBI as required under Rule 25A of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. As required under Regulation 9(2), the requisite certificates from the Director and the Company Secretary of the Transferee Company have been filed as Annexure A-5 of the application.

16. The applicant companies have furnished the following documents:-
- i. Proposed Scheme of Amalgamation (Annexure A-3 of the application)
 - ii. Memorandum and Articles of Association of the Applicant Company (Annexure A-1/1 of the application).
 - iii. List of Shareholders of the Applicant Company as on 30.09.2020 along with consent given by way of affidavits. (Annexure A-1/7 of the application)
 - iv. List of Secured Creditors of the Applicant Company duly certified by Nayyar Maniar Sharma & Associates LLP as on 30.09.2020 (Annexure A-1/8 of the application).
 - v. List of Unsecured Creditors of the Applicant Company duly certified by Nayyar Maniar Sharma & Associates LLP as on 30.09.2020 along with consent given by way of affidavits. (Annexure A-1/9 of the application).
 - vi. Audited Financial Statement as on 31.03.2019 and Provisional Balance Sheets as on 31.03.2020 and 30.09.2020 of the Applicant Company (Annexure A-1/2, A-1/3 and A-1/4 of the application).
 - vii. Audited Financial Statement as on 31.03.2020 and Provisional Balance Sheets as on 31.03.2021 and 30.09.2021 of Applicant Company (Annexure- 1 & 2 respectively of Diary No. 00293/01 dated 07.03.2022).
 - viii. Certificate from Whole Time Director and Company Secretary of the Transferee Company/Applicant Company stating that the Scheme of

Amalgamation is in compliance with the Foreign Exchange Management (Cross Border Merger) Regulations, 2018 (Annexure A-5 of the application).

17. The Applicant Company/Transferee Company i.e. Xangbo Trading (India) Pvt Ltd, CIN: U51909HR2009FTC047640 is a private limited company incorporated under the Companies Act, 1956 on 07.08.2009. Pinecorp Trading Ltd (Non-Applicant Company/Transferor Company) is a foreign company having its registered office in Hong Kong Special Administrative Region of the People's Republic of China (HKSAR).

18. The Applicant Company/Transferee Company has furnished the details of the Equity Shareholders, Secured Creditors and Unsecured Creditors along with consent on affidavits which are as follow:

Company	No. of Share Holders	Consent Given	No. of Secured Creditors	Consent Given	No. of Un-secured Creditors	Consent Given
Transferee Company	3	All	Nil	N.A.	20	2 (99.80% of total value)

19. Accordingly, the directions of this Bench in the present case in relation to the Applicant Company/Transferee Company are as under :

- a. The meeting of the Shareholders of Applicant Company/Transferee Company is dispensed herewith, keeping in view the shareholding pattern, financial structure of the company and the fact that the consent of all the Equity Shareholders has been received by way of affidavits.

- b. Since there are no Secured Creditors in Applicant Company/Transferee Company. Therefore, there is no scope for any meeting;
- c. The meeting of Unsecured Creditors of Applicant Company/Transferee Company is dispensed herewith, keeping in view that Unsecured Creditors constituting 99.80% of the total value have given their consent by way of affidavits.

20. In view of the above, the First Motion Application stands allowed and disposed of by giving liberty to the Applicant Company to file the Second Motion Petition with a direction that the Applicant Company shall make specific prayer for sending notices to the (a) Central Government through Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, (b) concerned Registrar of Companies and (c) Income Tax Authorities by disclosing the PAN numbers of all the Applicant Companies in the title of the Second Motion Petition. The applicant company shall also file latest financial statements upto 31.03.2022 or on subsequent date with second motion petition.

-sd-
(Subrata Kumar Dash)
Member (Technical)

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(Harnam Singh Thakur)
Member (Judicial)

September 29, 2022

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