

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI

C.P. No.145 of 2017

Under Section 2(41) of the Companies Act, 2013

In the matter of

M/s. XM Software Solutions Private Limited

Order delivered on 30th of November, 2017

CORAM

CH. MOHD SHARIEF TARIQ, MEMBER (J)
S.VIJAYARAGHAVAN, MEMBER (T)

For Applicant : Mr. Srikant Mohan

ORDER

Per: CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL) :

1. Under adjudication is an Application No C.A.145 of 2017 that came to be filed on 08.05.2017 under Section 2(41) of the Companies Act, 2013.

2. The Applicant Company was incorporated in the name and style M/s. XM Software Solutions Private

Limited on 25.08.2006, under the Companies Act, 1956. The registered office of the Applicant Company is at Door No.65/619, the New Indian Express Building Kaloor, Kochi, Ernakulam- 682 017 having its CIN :U72200KL2006PTC019774.

3. The main business of the Applicant Company is to act as consultants, advisors and/or developers in computer programming, system development, system architecture, system implementation, information security management, data compilation and to import, export, sell, purchase, distribute computer software packages or take up information technology related assignment and to undertake all kinds of IT enabled services including but not limited to Business Process Outsourcing, both voice and non-voice, Knowledge Process Outsourcing, Call Centre Management, Data Processing, Back Office Processing, Data Warehousing, Database Management, Data Entry Work, providing consultancy or support services in all above mentioned area.

4. The authorised share capital of the Applicant Company is Rs.7,50,00,000/- divided into 75,00,000 equity shares of Rs.10/- each. The issued subscribed and paid-up capital of the Applicant Company is Rs.7,04,88,570/- divided into 70,48,857 equity shares of Rs.10/- each.

5. The Applicant Company is a subsidiary of a company incorporated outside India. The holding company is M/s. Xpress Consulting Services Limited, Hong Kong which is incorporated under Companies Ordinance (Chapter 32) on 5th of November, 2008 with the Registrar of Companies, Hong Kong. The Applicant Company is required to follow the financial year aligning with its holding company. Currently, the Applicant Company has been following the financial year commencing from 1st April and ending on 31st March of every year. The holding company follows its financial year commencing from 1st January and ending on 31st December every year.

6. The Applicant Company has placed on record the Memorandum of Association and Articles of Association in Annexure A1; certified true copy of Board Resolution passed by the Applicant Company on 05.01.2017 in Annexure A2 ; copy of the financial statements of the Applicant Company for the financial year ending 31.03.2016 issued by the independent Auditor, in Annexure A3; copy of notes to financial statements for the year ending 31.03.2016 showing that the holding company holds 99.99% shares in the Applicant Company in Annexure A4; copy of approval from Reserve Bank of India based on which shares were transferred to the holding company in Annexure A5 and copy of consent letter from the holding company for the change in Financial Year of its subsidiary is in Annexure A6. These documents together stand evident that both the holding company and its subsidiary Applicant Company are following different financial years.

7. The Registrar of Companies, Kerala and Lakshadweep, vide its report dated 21.09.2017, opined that the first proviso to Section 2(41) of the Companies Act 2013 permits the Applicant Company to follow different financial year for consolidation of accounts outside India and any period may be allowed as its financial year if the Bench is satisfied.

8. In the light of the above, this Bench is satisfied that in terms of the above mentioned provision in the Companies Act, the Applicant Company is allowed to adopt the Financial Year commencing from 1st January and ending on 31st December of the same year, for consolidation of its accounts outside India with that of the holding company. Thus, in exercise of the powers conferred under the first proviso to Section 2(41) of the Companies Act, 2013, the Application is allowed. The Applicant Company is directed to send a copy of this Order to the RoC concerned, as per the procedure prescribed, for the purpose of information and record.

S. Vijayaraghavan .

S. VIJAYARAGHAVAN
MEMBER (Technical)
PAM

CH. MOHD SHARIEF TARIQ
CH. MOHD SHARIEF TARIQ
MEMBER (Judicial)