

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CP No.28 of 2016 (O&M)
Date of Decision: 03.05.2016

IN THE MATTER OF :

Company Petition under Sections 391 & 394 of the Companies Act,
1956.

AND

IN THE MATTER OF:

THE SCHEME OF ARRANGEMENT OF:

Quatrrro Legal Solutions Private Limited

. . . . Petitioner Company No.1

AND

Quatrrro Global Services Private Limited

. . . . Petitioner Company No.II

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN.

Present: - Ms.Munisha Gandhi, Sr. Advocate, with
Mr.Deepak Suri, Advocate, for the petitioners.

Mr.Deepak Aggarwal, Advocate, with
Mr.D.K. Singh, Official Liquidator.

RAKESH KUMAR JAIN, J.

This petition is filed under Sections 391 & 394 of the Companies Act, 1956 [for short 'the Act'], duly supported by affidavit of the Petitioner-Companies, seeking sanction of the Scheme of Arrangement [for short 'the Scheme] vide which "Intellectual and Patents Analytics Business" of Quatrrro Legal Solutions Private Limited (Petitioner Company No.1) shall demerge into Quatrrro Global Services Private Limited (Petitioner Company No.II).

The main objects of the Quatrrro Legal Solutions Private Limited (Petitioner Company No.1) and Quatrrro Global Services Private Limited (Petitioner Company No.II) are detailed in their

respective Memorandum and Articles of Association, which are annexed with the petition as Annexures P-3 and P-6, respectively.

The registered office of the Quattro Legal Solutions Private Limited (Petitioner Company No.1) and Quattro Global Services Private Limited (Petitioner Company No.II) is at Gurgaon.

The Board of Directors of Quattro Legal Solutions Private Limited (Petitioner Company No.1) and Quattro Global Services Private Limited (Petitioner Company No.II) have approved the Scheme in their respective meetings held on 01.12.2015. Their resolutions are annexed with the petition at Annexures P-2.

Earlier the Petitioner-Companies had approached this Court by way of CP No.221 of 2015 in which, vide order dated 08.12.2015 convening of meetings of the Secured and Unsecured Creditors of Quattro Global Services Private Limited (Petitioner Company No.II) and Equity Shareholders of Quattro Legal Solutions Private Limited (Petitioner Company No.1) were dispensed with. However, meeting of Equity Shareholder of the Quattro Global Services Private Limited (Petitioner Company No.II) was directed to be held on 23.1.2016, for which, the Chairman and Co-chairman were appointed. The Chairman of the said meeting has submitted his report on the basis of which CP No.221 of 2015 was disposed of on 01.02.2016.

On presentation of this petition, notice was issued on 05.02.2016 to the Regional Director, Ministry of Corporate Affairs, New Delhi. It was also ordered that a notice be published in the newspapers, namely, "Financial Express" (English) and "Jansatta" (Hindi) both Delhi/NCR Edition and in the Official Gazette of Government of Haryana besides it being uploaded on the official

website of the Official Liquidator. Pursuant thereto, an affidavit of publication dated 09.3.2016 has been filed.

The Official Liquidator has filed the representation/affidavit dated 13/18.4.2016 of A.K. Chaturvedi, Regional Director in which following observations have been made: -

“8.4 That the Deponent states that the Petitioner-Companies have vide para No.34 of the reply stated that AS-14 is not applicable on demerger of Intellectual and Patents Analytics Business from Quattro Legal Solutions P. Ltd. into Quattro Global Services P. Ltd. Hence the Accounting Treatment in the books of Quattro Global Services P. Ltd. is as per clause 10 of part B of the scheme. However, the Petitioner Companies have not furnished certificate from the statutory auditors of Transferee Company that the Accounting Treatment proposed is not in violation of AS issued by the Central Government.

9. That the Deponent states that the Registrar of Companies vide para 31 of the report has stated that:

(i) Paragraph 1.5 of the Scheme states that “the Demerged Undertaking” shall mean the Intellectual and Patents Analytics Business excluding the Accounting Services Division of QLS India. It is to be noted that there is no Valuation Report along with the Scheme which has assessed the value of the said Business, states the corresponding Assets and Liabilities which shall stand transferred and enumerates the accounting treatment of the same.

(ii) As per the indicative financial statements pre and post arrangement enclosed as Annexure A to the Scheme, Net worth, i.e. Total Assets less Total liabilities

(Rs.1,00,94,263 – Rs.7,58,611) of Rs.93,35,652/- is being transferred to the Resulting Company. The Demerged Company has adjusted the difference of excess of Assets transferred over Liabilities with Reserves and Surplus instead of treating it as Goodwill according to Accounting Standard – 14. The Petitioner may be directed to comply with Accounting Standard – 14.

- (iii) Explanation to Paragraph 1.5 of the Scheme states that whether any particular asset or liability pertains or does not pertain to the Demerged Undertaking or whether it arises out of the activities or operations of the Demerged Undertaking shall be decided by mutual agreement between the Board of Directors of QLS India (Demerged Company) and QGS India (Resulting Company.)

As this does not specify Assets and Liabilities of the Demerged Company which shall be transferred upon sanction of the scheme, the Petitioner may be directed to delete the same from the Scheme and clearly state the Assets and Liabilities being transferred in accordance with a valuation done by an Independent Valuer in this regard.

- (iv) Paragraph 4.12 of the Scheme states that Statutory benefits including in respect of Income-tax (including and not limited to advance income tax and tax deducted at source), excise (including Modvat/Cenvat). Customs, VAT, sales tax etc. relating to the FPO Business to which QBSS India is entitled to shall be available to vest in QGS India.

In the scheme the extent of such statutory liabilities relating to the QGS FPO Business

is not specified. Comments regarding the same may be called for from the respective Regulatory Authorities, viz, Income Tax, Service Tax, Customs Authorities, etc.”

In response to the observations made by the Regional Director, an affidavit dated 23.4.2016 by Amitabh Johri, authorised signatory of both the Petitioner-companies as mentioned in their respective Board Resolutions, has been filed in which following explanations/averments have been made:

“2. *That as far as the observations raised in Para 8.4 of the Affidavit of the Regional Director is concerned, it is submitted that:*

*The Petitioner Company has obtained a certificate from the Statutory Auditors which states that the accounting treatment provided in the clause 10 of the Scheme is outside the purview of the Accounting Standards as specified under section 133 of the Companies Act, 2013, read with rule 7 of the Companies (Accounts) Rules, 2014 and the accounting treatment as provided in the Scheme is in conformity with the Generally Accepted Accounting Principles. The certificate from the statutory auditors is attached herewith as **Annexure “1”**.*

3. *That as far as the observations raised in Para 9 of the Affidavit of the Regional Director read with Clause 31 of the report of the Registrar of Companies is concerned, it is submitted that:*

3.1 *The observation of Regional Director in Para (i) is as under:*

(i) “Paragraph 1.5 of the Scheme states that "the Demerged Undertaking" shall mean the Intellectual and Patents Analytics Business excluding the Accounting Services Division of QLS India. It is to be noted that there is no Valuation Report along with the Scheme which has assessed the value of the said Business, states the corresponding Assets and liabilities which shall stand transferred and enumerates the accounting treatment of the same.

That as far as the observations raised in Para 9 of the Affidavit of the Regional Director read with Para 1 to clause 31 of the report of the Registrar of Companies is concerned, it is submitted that:

(a) The Scheme provides for demerger of Intellectual and Patents Analytics Business of QLS India into QGS India. The remaining business with QLS India would be Accounting Service Division.

(b) The Shareholding pattern of the QLS India is as under:

Sr. No.	Name of Shareholder	Number of Shares Held	% of Shares Held
1	Quatrrro Global Services Pvt. Ltd. (QGS India)	131,000,001	99.92
2	Quatrrro LPO Solutions Pte Ltd., Singapore (A wholly owned subsidiary for QGS India)	99,999	0.08
	Total	131,100,000	100

(c) The rationale for the Scheme is as under:

“ a) Entire shareholding of QLS India is held directly or indirectly by

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QGS India. Hence, QGS India is envisaging a consolidation.

b) The proposed restructuring would result in the following benefits:

- Simplification of the group structure;*
- Greater administrative efficiency; and*
- Operational rationalization, organizational efficiency and optimal utilization of various resources.”*

d) The entire share capital of QLS India is directly or indirectly held by QGS India. The shareholders of QGS India hold business of QLS India via QGS India or Quattrro LPO Solutions Pte Ltd., Singapore (a wholly owned subsidiary of QGS India). Thus, the restructuring is within the subsidiary (QLS India) and the holding company (QGS India).

e) Since the entire share capital in QLS India is held by QGS India and through its wholly owned subsidiary, Quattrro LPO Solutions Pte Ltd, Singapore and in order to be compliant with Section 19(1) and Section 67(1) of Companies Act, 2013 and Section 2(19AA) of The Income-tax Act, 1961, no shares would be issued by QGS India on demerger of Intellectual and Patents Analytics Business from QLS India into QGS India.

f) Further, as provided in clause 1.5 and clause 10 of the Scheme, QLS India shall transfer the assets

and liabilities of the Intellectual and Patents Analytics Business undertaking to QGS India at their respective book values. The indicative list of assets and liabilities related to Intellectual and Patents Analytics Business of QLS India transferred to QGS India is also provided in the Scheme as Annexure A. The list of assets and liabilities being transferred are as under:

Particular	Rs.
Book value of total Assets to be transferred	9,094,264
Book value of total Liabilities to be transferred	753,112
Excess of Assets transferred over Liabilities	8,341,152

g) Thus as stated above, since the restructuring is within the subsidiary and the holding company no shares would be issued by QGS India pursuant to demerger of undertaking. Consequently, the Petitioner Companies are not required to obtain valuation report. Further, the Scheme has been approved by the Board of Directors of both the Petitioner Companies vide the Board Resolution dated December 1, 2015. Further, the creditors and members of both the Petitioner Companies involved in the Scheme have given their consent to the scheme. The clause 9, 10 and 11 of the RoC report also acknowledges the fact that the

consent of the creditors and members of the Demerged Company and the Resulting Company were obtained.

3.2 The observation of Regional Director in Para (ii) is as under:

- (ii) “As per the indicative financial statements pre and post arrangement enclosed as Annexure A to the Scheme, Net worth, i.e. Total Assets less Total Liabilities (Rs. 10,094,263 - Rs. 7,58,611,) of Rs.93,35,652 is being transferred to the Resulting Company. The Demerged Company has adjusted the difference of excess of Assets transferred over Liabilities with reserves and Surplus instead of treating it as Goodwill according to Accounting Standard - 14. The Petitioner may be directed to comply with Accounting Standard – 14”

That as far as the observations raised in Para 9 of the Affidavit of the Regional Director read with the observations raised in Para 2 of clause 31 of the report of the Registrar of Companies is concerned, it is submitted that:

- a) The Registrar of Companies have directed the Petitioner Company to comply with Accounting Standard-14. With respect to this observation, we respectfully submit that, Accounting Standard-14 ‘Accounting for Amalgamations’ issued by the Institute of Chartered Accountants

of India is applicable only in case of Amalgamations.

*b) The paragraph of the Accounting Standard -14 starts with the introductory clause (attached as **Annexure 1**) as under:*

- 1. This standard deals with accounting for amalgamations and the treatment of any resultant goodwill or reserves. This Standard is directed principally to companies although some of its requirements also apply to financial statements of other enterprises.*
- 2. This standard does not deal with cases of acquisitions which arise when there is a purchase by one company (referred to as the acquiring company) of the whole or part of the shares, or the whole or part of the assets, of another company (referred to as the acquired company) in consideration for payment in cash or by issue of shares or other securities in the acquiring company or partly in one form and partly in the other. The distinguishing feature of an acquisition is that the acquired company is not dissolved and its separate entity continues to exist.*

c) Thus it evident from above, that Accounting Standard-14 provides for method of accounting only in

case of Amalgamations on and not in case of Demerger.

d) The above view has been upheld by Gujarat High Court in the case of 2010 1 CLJ 0351 GUJ tiled Gallops Realty P. Ltd, Allahabad High Court in the case of Jagran TV P. Ltd, [2009] 90 SCL 138(ALL) and Delhi High Court in the case of Sony India Private Limited (Company Petition No.137/2012).

e) Further, as stated above, QLS India, i.e. the petitioner company has obtained certificate from the statutory auditors which states that Accounting Standard- 14 is not applicable to demerger and the accounting treatment provided in the paragraph 10 of the Scheme is in conformity with the Generally Accepted Accounting Principles.

f) Secondly, the Registrar of Companies have mentioned that "The Demerged Company has adjusted the difference of excess of Assets transferred over Liabilities with Reserves and Surplus instead of treating it as Goodwill according to Accounting Standard – 14."

g) It is hereby submitted that Goodwill cannot be created in the company which is transferring the assets and liabilities. Goodwill is created when the transferee pays consideration in excess of value of the net assets acquired from the

transferor company and will be recognized in the transferee company's financial statements and not in transferor company's financial statements.

h) Accordingly, the petitioner companies undertake to comply with the accounting treatment as mentioned in the paragraph 10 of the Scheme in conformity with Generally Accepted Accounting Principles.

3.3 The observation of Regional Director in Para (iii) is as under:

(iii) "Explanation to Paragraph 1.5 of the Scheme states that whether any particular asset or liability pertains or does not pertain to the Demerged Undertaking or whether it arises out of the activities or operations of the Demerged Undertaking shall be decided by mutual agreement between the Board of Directors of QLS India (Demerged Company) and QGS India (Resulting Company).

As this does not specify Assets and Liabilities of the Demerged Company which shall be transferred upon sanction of the scheme, the Petitioner may be directed to delete the same from the Scheme and clearly state the Assets and Liabilities being transferred in accordance with a valuation done by an Independent Valuer in this regard."

That as far as the observations raised in Para 9 of the Affidavit of the Regional Director read with the

observations raised in Para 3 of clause 31 of the report of the Registrar of Companies is concerned, it is submitted that:

- a) The Scheme provides for demerger of Intellectual and Patents Analytics Business of QLS India into QGS India, which includes all assets and liabilities of Intellectual and Patents Analytics Business.
- b) The clause 1.5 of the Scheme read as under:

“1.5 “the Demerged Undertaking” shall mean the Intellectual and Patents Analytics Business excluding the Accounting Services Division of QLS India, which includes providing of following Patent Analysis Services:

- a) Patent Search i.e. a systematic evaluation of patent data to ensure appropriate protection of intellectual property based on technology and commercial trends. Some specific kinds of patent searches include search for prior art, novelty, patent infringement, freedom-to-operate etc.
- b) Landscape Analysis i.e. the process of identifying and positioning patented technologies with a view to understanding the entire technological domain, white spaces, key players and trends, so as to enhance focus on research & development and

bring about efficient utilization of the patent portfolio.

c) Licensee Identification Analysis i.e. a process undertaken to identify potential in/ cross/ out licensing opportunities for effective utilization of intangible assets - patents, and also to enable ease of access to enhanced technologies to assist in efficient product research and development.

d) Competitor Analysis, which analysis, in patent and technology, is an assessment of the strengths and weaknesses of current and potential competitors. This analysis provides both an offensive and defensive strategic context to identify opportunities and threats.

e) Technology Watch i.e. tracking and informing the clients, whenever new or changed information appears. Patent professionals will be in the regular task of checking the technological developments that happen in the field of patents. Technology Watch provides the latest information only as and when changes or new developments occur.

as a going concern along with all properties, rights and powers and all debts, liabilities, duties and

obligations comprised in and/ or pertaining to the Demerged Undertaking, including:

- a) all properties and assets (including investments), movable and immovable, freehold and leasehold, real and personal, tangible and intangible, corporeal and incorporeal, in possession, or in reversion, present and contingent of whatsoever nature, where so ever situated, as on the Demerger Appointed Date relating to the Demerged Undertaking, including electrical installations, vehicles, equipments, furnitures, investments, sundry debtors, inventories, other current assets, cash and bank balances, deposits, loans and advances and other assets as appearing in the books of account of QLS India in relation to the Demerged Undertaking;*
- b) all debts, liabilities, duties and obligations of the QLS India in relation to the Demerged Undertaking, including liabilities on account of loans, sundry creditors, bonus, gratuity and other taxation and contingent liabilities of the QLS India pertaining to or relatable to the Demerged Undertaking;*
- c) the specific loans and borrowings raised, incurred and utilized solely for the activities or operations of or pertaining to the Demerged Undertaking;*

d) liabilities, other than those referred to in sub-clauses (b) and (c) above, being the amounts of general or multipurpose borrowings of Demerged Company 1, allocated to the Demerged Undertaking in the same proportion in which the value of the assets (ignoring the revalued amount) transferred in the demerger under this Scheme bear to the total value of the assets of QLS India immediately before giving effect to this Scheme; (the liabilities in (b), (c) and (d) above are collectively referred to as the “Assumed Liabilities”) any and all intellectual property rights, know-how and confidential information pertaining to or used in connection with the Intellectual and Patents Analytics Business which is owned by or licensed to QLS India, including but not limited to, patent, designs, trademarks, service marks, trade dress, copyrights, moral rights, brands and domain names, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection, which subsist or will subsist now or in the future in any part of the world;

e) any and all permits, rights, entitlements, allotments, approvals, consents, concessions, exemptions, liberties, advantages, no-objection

certificates, certifications, registrations, trade names, trademarks, service marks, copyrights, domain names, easements, goodwill, licences, tenancies, offices, sales tax credits, income tax credits, privileges and benefits of all contracts, agreements, and all other rights including lease rights, licences, powers and facilities of every kind and description whatsoever pertaining to the said Demerged Undertaking;

f) any and all earnest monies and/or security deposits, payment against warrants or other entitlements in connection with or relating to the said Demerged Undertaking;

g) all employees employed by QLS India pertaining to the Demerged Undertaking as on the Effective Date;

h) any and all debts, borrowings, guarantees, assurances, commitments, obligations and liabilities, whether fixed, contingent or absolute, asserted or unasserted, present or future, whether secured or unsecured, pertaining to the said Demerged Undertaking;

i) all books, records, files, papers, computer software along with their licenses, manuals and backup copies, drawings, data catalogues, and other data and records, whether in physical or electronic

form, directly or indirectly in connection with or relating to the Demerged Undertaking;

- j) any other asset/ liability which is deemed to be pertaining to the Demerged Undertaking by the Board of the Demerged Company but excluding any of the foregoing relating to the Remaining Business of the Demerged Company*

Explanation: *Whether any particular asset or liability, pertains or does not pertain to the Demerged Undertaking or whether it arises out of the activities or operations of the Demerged Undertaking shall be decided by mutual agreement between the Board of Directors of QLS India and QGS India.”*

- c) It is evident from above that all assets and liabilities related to the undertaking shall be transferred to QGS India pursuant to Scheme. The explanation to clause 1.5 of the Scheme enables the Board of Directors of the demerged company (QLS India) and resulting company (QGS India) to decide on whether a particular asset or liability needs to be transferred or retained. For eg: There could be intra group transactions between the demerged undertaking and resulting company which are required to be cancelled pursuant to demerger. The indicative list of assets and liabilities related to Intellectual and Patents Analytics*

Business Undertaking being transferred to QGS India are already provided in Annexure A to the Scheme.

- d) *Accordingly, we humbly submit before the Honorable High Court that the observations raised by the Regional Director/ Registrar of Companies are unsustainable as the Scheme is between the entities of the same group and it does not result into any value loss to any of the petitioner companies and/or its shareholders and hence, the explanation to clause 1.5 to the Scheme should be retained.*

3.4 *The observation of Regional Director in Para (iv) is as under:*

- (iv) *“Paragraph 4. 12 of the Scheme states that statutory benefits including in respect of income-tax (including and not limited to advance income tax and tax deducted at source), excise (including Modvat / Cenvat). Customs, VAT, sales tax etc. relating to the FPO Business to which QBSS India is entitled to shall be available to and vest in QGS India.*

In the scheme the extent of such statutory liabilities relating to the QGS FPO Business is not specified. Comments regarding the same may be called for from the respective Regulatory Authorities, viz, Income Tax, Service Tax, Customs Authorities, etc.”

That as far as the observations raised in Para 9 of the Affidavit of the Regional Director read with the Para 4 of clause 31 of the report of the Registrar of Companies is concerned, it is submitted that:

- a) The scheme does not provide for demerger of FPO Business of QBSS India as mentioned in the observations of the Registrar of Companies/ Regional Director but the Scheme provides for demerger of Intellectual and Patents Analytics Business from QLS India to QGS India.*
- b) Without prejudice to above, we submit that, the Scheme provides for transfer of all the Assets and liabilities of the Intellectual and Patents Analytics Business undertaking from QLS India to QGS India not limiting the same to the statutory benefits but also the liabilities related to Intellectual and Patents Analytics Business.*
- c) The clause 4.12 of the Scheme read as under:*

“4.12. Upon the coming into effect of this Scheme and with effect from the Demerger Appointed Date, all existing and future incentives, un-availed credits and exemptions, benefit of carried forward losses and other statutory benefits, including in respect of income tax (including and not limited to

advance income tax and taxes deducted at source), excise (including Modvat / Cenvat), customs, VAT, sales tax, service tax etc relating to the Intellectual and Patents Analytics Business to which QLS India is entitled to shall be available to and vest in QGS India. QLS India and QGS India shall be entitled, wherever necessary, to revise their returns filed under various laws, as may be applicable, including returns filed under the Income Tax, Wealth Tax, Commercial Tax/ Trade Tax/ Sales Tax/ VAT, Entry Tax, Central Excise laws, and also, without limitation, the TDS/TCS certificates.”

d) Currently based on the General Circular No.1/2014,F.No.2/2014 dated 15th January, 2014 issued by Ministry of Corporate Affairs, Government of India, the Regional Director is required to send notices only to the Income tax Department. There is currently no provision under the law to send notices to other authorities such as Customs, Service Tax Authorities, etc.

e) Further, the office of the Regional Director till date of the affidavit has not received any observation/ comments from the Income Tax Authorities.

f) Further, the Demerged Company (QLS India) and Resulting Company (QGS India) undertakes

to transfer all such statutory benefits / payments / liabilities related to the Intellectual and Patents Analytics Business undertaking subject to the provisions of the respective statutes and also undertakes to discharge all the statutory liabilities as and when they become due in the normal course of business viz, Income Tax, Service Tax, Custom Authorities, etc. Further, the petitioner companies wish to submit that there are no overdue payments to any of the authorities as of date.”

The above-stated explanations submitted by Amitabh Johri, authorised signatory of both the Petitioner-Companies, meets the queries/observations raised by the Regional Director.

It is further submitted by counsel for the Petitioner-Companies that no investigation proceedings are pending against the Petitioner-Companies under Sections 235 to 251 of the Act.

For the reasons mentioned hereinabove, on the consideration of all the relevant facts, the procedural requirements contemplated under Sections 391 & 394 of the Act, the relevant Rules and on due consideration of the report of the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, the Scheme of Arrangement is hereby sanctioned and as a result thereof, the assets and liabilities of the “Intellectual and Patents Analytics Business” of Quatrro Legal Solutions Private Limited (Petitioner Company No.1) shall stand vested in the Quatrro Global Services Private Limited (Petitioner Company No.II).

The Scheme shall be binding on the Quattrro Legal Solutions Private Limited (Petitioner Company No.1), Quattrro Global Services Private Limited (Petitioner Company No.II) and their respective Equity Shareholders, Creditors and all concerned.

Let formal order of sanction of the Scheme be drawn in accordance with law and its certified copy be filed with the Registrar of Companies within 30 days from the date of receipt of the same.

A notice of the order be published in the newspapers, namely, "Financial Express" (English), "Jansatta" (Hindi) both Delhi/NCR Edition and in the Official Gazette of Government of Haryana.

Any person interested shall be at liberty to apply to the Court for any direction(s) as per law.

Disposed of accordingly.

03.05.2016

Vivek

**(RAKESH KUMAR JAIN)
JUDGE**