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THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 22.01.2016

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CO.APPL.(M) 12/2016

IN THE MATTER OF

HCL TECHNOLOGIES LIMITED,

... Transferor Company/ Applicant Company-I

AND

HCL COMNET LIMITED

.... Transferee Company/ Applicant Company-II

ADVOCATES WHO APPEARED IN THIS CASE:

For the Applicants: Mr N.P. S. Chawla, Advocate

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

CA No. 211/2016 (Exemption)

1. This is an application filed by the applicant company seeking exemption to file the entire list of equity shareholders holding less than 1,000 equity shares of the Applicant Company, as on October 31, 2015. It is stated that if the said record is filed, the record would then become voluminous and cumbersome.

2. For the reasons given therein, the exemption is allowed. The application is, accordingly, disposed.

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3. This is a (first motion) joint application filed under Section 391 and 394 of the Companies Act, 1956 (in short the 1956 Act) read with Rules 67

to 87 of the Companies (Court) Rules, 1959 (in short the 1959 Rules) and provisions of Companies Act, 2013 (in short the 2013 Act), to the extent they are in force, for the purposes of seeking dispensation from convening the meeting of the equity shareholders of transferee/ applicant no.2 company, as also to seek directions for convening meetings of equity shareholders of the transferor/ applicant no.1 company and the secured and unsecured creditors of both the companies.

3.1 For the purposes of this order, I will be referring to the transferor and the transferee companies, collectively, as the applicants.

4. The registered office of the applicants are located within the territorial jurisdiction of this court. The transferor company was incorporated on 12.11.1991 under the name and style: HCL Overseas Ltd., in consonance with the provisions of the 1956 Act. Thereupon, in 1994, the name of the transferor company was changed to HCL Consulting Ltd. There was a further change of name brought out of the transferor company, in 1999, when, its name was changed to its present name i.e. HCL Technologies Ltd. Accordingly, a fresh certification of incorporation was issued by the Registrar of Companies (ROC), NCT of Delhi and Haryana, on 06.10.1999.

5. In so far as the transferee company is concerned, it was incorporated on 08.08.2001, under the provisions of the 1956 Act. Apparently, the transferee company is a wholly owned subsidiary of the transferor company.

6. The authorised, issued, subscribed and paid-up capital of the transferor company as on 30.06.2015, is as follows:

Authorized Capital	As at June 30, 2015 (Rs.)
1,50,00,00,000 Equity Shares of Rs. 2/- each	3,00,00,00,000

Total	3,00,00,00,000
Issued, Subscribed and Paid-Up Capital	
1,40,59,78,418 Equity Shares of Rs. 2/- each fully paid-up	2,81,19,56,836
Total	2,81,19,56,836

6.1 It is averred in the captioned application that the capital structure, i.e. issued, subscribed and paid-up capital of the transferor company underwent a change after the date of approval of the proposed scheme by the Board of Directors (BOD) of the transferor company on account of allotment of 3,42,280 equity shares of Rs. 2 each against employees' stock option plan. Therefore, as on 19.10.2015, while the authorised capital of the transferor company remained as noted above, the issued, subscribed and paid-up capital got altered to the extent indicated below:

Issued, Subscribed and Paid-Up Capital	
1,40,63,20,698 Equity Shares of Rs. 2/- each fully paid-up	2,81,26,41,396
Total	2,81,26,41,396

7. The copies of the memorandum and articles of association of both the transferor company as well as the transferee company have been placed on record. Similarly, audited balance sheets as on 30.06.2015, qua both the transferor company and the transferee company, along with the auditor's report, have been appended to the captioned application.

8. The proposed scheme has been placed on record along with the captioned application. The benefits of the scheme are elaborated with greater detail in paragraph 16 of the affidavit filed in support of the summons for directions. It is the stand of the BOD of the applicants that the

proposed transfer and listing of the India System Integration Business or ISIB undertaking (which is more precisely defined in the scheme), owned by the transferor company into the transferee company as a going concern should, inter alia, have the following benefits:

- “..... a) simplified and transparent business structure of the Transferor Company and the Transferee Company;
- b) more focused management of the Transferor Company and the Transferee Company;
- c) greater visibility in the performance of the individual businesses;
- d) higher degree of independence as well as accountability with autonomy for each of the business segment;
- e) will thrive in achieving and sustaining competitiveness and development of long-term internal and core competencies;
- f) will also provide for independent collaboration and expansion without committing the existing organization in its entirety; and
- g) will create a platform to enhance financial flexibility to pursue the next stage of growth.....”

8.1 Similarly, the salient features of the scheme have been set out in paragraph 17 of the very same affidavit filed in support of the summons for direction. For the sake of brevity, the same are not replicated in the instant order. Suffice it to say that in consideration of transfer and vesting of the ISIB undertaking on a going concern basis, by the transferor company to the transferee company, on the terms set out in the scheme, the transferee company is required to pay a consideration of Rs. 132 crores, as indicated in paragraph 7.1 of the proposed scheme. The consideration is to be paid in cash unless otherwise agreed to be discharged via any other mode or, combination of one or more modes by the BOD of the applicants. This aspect has been adverted to in paragraph 7.2 of the proposed scheme.

8.2 Apart from the above, upon the scheme becoming effective, all staff, workmen, employees engaged by ISIB business of the transferor company, on the effective date, shall be deemed to become staff, workmen, employee of the transferee company w.e.f. the appointed date as indicated in the scheme without any break to their service and on the basis of their continuity of service, and the terms and conditions of their employment with the transferee company shall not be less favourable than those applicable to them in the transferor company on the effective date.

8.3 Furthermore, the scheme provides that the transferee company agrees that the services of the employees with the transferor company, up to the effective date, shall be taken into account for the purposes of confirmation of retiral benefits to which they may be eligible in the transferor company on the effective date.

8.4 It is explicitly provided in the scheme that all employees so transferred, pursuant to the scheme becoming effective and upon whom employees' stock option pertaining to equity shares of the transferor company have been vested, they shall continue to be eligible to exercise rights vested with them in respect of those shares.

8.5 It has also been provided that on the scheme becoming effective, all employees of the transferor company, who have been transferred along with ISIB business, to the transferee company, will contribute to the provident fund or any other staff fund or trust created or existing for the benefit of the staff, workmen of the transferee company. It is thus provided that all existing amounts, whether paid or outstanding under the provident fund or any other special fund or trust created or existing for the benefit of the staff, workmen of the transferor company pertaining to the employees of the ISIB business shall, at the appropriate stage, will be transferred to the relevant funds of the transferee company subject to the required approval/ intimation

to the provident fund authorities and/or other appropriate authorities, and that, until such time they shall be maintained separately by the transferor company. In this behalf, it is provided that the BOD of the transferee company and the trustees of the respective trusts of the transferee company, shall be entitled to take all steps as may be necessary to implement the said provision in the scheme.

8.6 In so far as the accounting treatment of the transaction in issue is concerned, a provision is made in paragraph 12 of the proposed scheme both with regard to the transferor company and the transferee company. The relevant observations are as follows:

“..... 12. ACCOUNTING TREATMENT

Accounting treatment in the books of the Transferor Company:

Upon the Scheme becoming effective, the Transferor Company shall account for the Scheme and its effects in its books of account with effect from the Appointed Date as under:

- a) The assets and liabilities of the Transferor Company shall stand reduced to the extent of value of the ISIB Undertaking transferred to the Transferee Company.
- b) The Transferor Company shall record the amount of Consideration as "Receivable from the Transferee Company" in its books of accounts. On receipt of Consideration from the Transferee Company, either by way of cash or in any other mode as the Board of the Companies mutually agree, the Consideration so received shall be appropriately recorded in the books of account of the Transferor Company as per the prevalent accounting standards as applicable to the Transferor Company.

12.2. Accounting treatment in the books of the Transferee Company:

Upon the scheme becoming effective the Transferee company shall account for the scheme and its effects in its

books of account with effect from the Appointed Date as under:

a) All the assets and liabilities related to the ISIB Undertaking as appearing in the books of accounts of the Transferor Company as on the Appointed Date shall stand transferred to and vested in the Transferee Company pursuant to the Scheme and shall be recorded by the Transferee Company, as per the applicable accounting standards and as determined by the Board;

b) The excess or deficit in the value of assets so recorded, if any, by the Transferee Company over: (a) the liabilities of the ISIB Undertaking so recorded by the Transferee Company or vice versa and (b) the consideration as detailed in Clause 7.1 of this Scheme paid by the Transferee Company to the Transferor Company shall be appropriated in the books of the Transferee Company either as capital reserve or goodwill, if required....”

9. To be noted, the remaining business and other assets, liabilities and obligations will continue to belong and to be vested in and the managed by the transferor company. In so far as the liability with regard to the remaining business of the transferor company is concerned, the following is provided in paragraph 14.2, 14.3 & 14.4 of the proposed scheme:

“..... 14.2. All legal, taxation or other proceedings whether civil or criminal by or against the Transferor Company under any statute or Applicable Law, whether pending on the Appointed Date or which may be instituted at any time thereafter, and in each case relating to the Remaining Business (*including those relating to any property, right, power, liability, obligation or duties of the Transferor Company in respect of the Remaining Business*) shall be continued and enforced by or against the Transferor Company after the Effective Date. The Transferee Company shall not in any event be responsible or liable in relation to any such legal, taxation or other proceeding against the Transferor Company, which may relate to the Remaining Business.

14.3 If proceedings are taken against the Transferee company in respect of the matters referred to under clause 14.2 above, it shall defend the same in accordance with the advice of the Transferor Company and at the cost of the Transferor Company, and the latter shall reimburse and indemnify the Transferee Company against all liabilities and obligations incurred by the Transferee Company in respect thereof.

14.4. With effect from the Appointed Date and up to and including the Effective Date:

a) the Transferor Company shall carry on and shall be deemed to have been carrying on all business and activities relating to the Remaining Business for and on its own behalf;

b) all profits accruing to the Transferor Company thereon or losses arising or incurred by it (*including the effect of taxes, if any, thereon*) relating to the Remaining Business shall, for all purposes, be treated as the profits or losses, as the case may be, of the Transferor company; and

c) All assets and properties acquired by the Transferor Company in relation to the Remaining Business on and after the Appointed Date shall belong to and continue to remain vested in the Transferor Company.....”

10. The transferor company, along with the application has filed a list of all equity shareholders, who hold 1000 or more equity shares as on 31.10.2015. List of equity shareholders of the transferor company, who hold less than 1000 equity shares, has not been filed, and in this behalf exemption was sought on account of the fact that the record would then become voluminous and cumbersome. This exemption has been granted by me today by an order passed above in CA No. 211/2016.

10.1 Apart from the above, the transferor company has two secured creditors. The secured debt owed by the transferor company to them, as on 31.10.2015, amounts to a sum of Rs. 40,70,78,401/-. A certificate of the Chartered Accountant (CA), certifying the said figure has been annexed

with the application. A prayer has been made by the applicants to convene their meeting.

10.2 In addition to the above, the transferor company has 1112 unsecured creditors. The unsecured debt owed to them by the transferor company is a sum of Rs. 2,68,79,34,512/-, as on 31.10.2015. This figure has been certified by the CA and the requisite certificate as in the case of the unsecured creditors is appended to the application. The applicants pray that the meeting be convened.

10.3 In so far as the transferee company is concerned, it has 7 equity shareholders. The said equity shareholders have given their consent to the proposed scheme.

10.4 As regards the secured creditors, the transferee company avers that it has 2 secured creditors which represent a debt owed to them amounting to Rs. 50,50,899/- by the transferee company as on 31.10.2015. A certificate of the CA to that effect has been appended to the application. Accordingly, applicants pray that their meeting be convened.

10.4 There are, in so far as the transferee company is concerned, 255 unsecured creditors. The debt owed by the transferee company to these unsecured creditors amounts to Rs. 36,03,51,330/-, as on 31.10.2015. Once again, a certificate of the CA to that effect has been appended to the application. In this case as well, a prayer is made that a meeting be convened.

10.5 It is averred that the BOD of the transferor company approved the proposed scheme at their meeting held on 16th, 17th and 19th October, 2015, while the BOD of the transferee company approved the scheme at the meeting held on 29.09.2015. The extract of the resolutions passed by the BODs of the applicants has been appended to the application.

10.6 It is stated that the scheme does not intend to grant any material benefit to any of the directors or managing directors or managers of the applicants.

11. It is further stated that there are no proceedings pending against the applicants under Sections 237, 243, 247 (to the extent not repealed), 248, 249, 250 and 251 of the Act, and Sections 210, 214, 215, 216 (to the extent applicable), 217, 219, 220, 223, 224 (to the extent applicable), 225 and Section 228 of the 2013 Act.

12. It is further averred that all equity shares of the transferor company are listed with the National Stock Exchange (in short NSE) and Bombay Stock Exchange (In short BSE). It is stated that vide their letters dated 29.12.2015 and 30.12.2015, the NSE and the BSE, respectively, have given their no-objection to the proposed scheme. The said letters have been appended to the proposed scheme.

13. In these circumstances, in so far as the equity shareholders of the transferee company are concerned, the requirement to convene their meeting is dispensed with having regard to the fact that all seven (7) shareholders have given their consent to the proposed scheme.

14. In so far as the equity shareholders of the transferor company are concerned, their meeting shall be convened on 05.03.2016 at 11.00 a.m. at Sri Sathya Sai International Centre, Lodhi Road, Bhishma Pitamah Marg, New Delhi – 110 003. Ms Tamali Wad, Advocate (Mb No.9810025306) is appointed as Chairperson, while Mr Shekhar Kumar, Advocate (Mb. 9871008884) is appointed as an alternate chairperson to conduct the said meetings. The quorum of the meeting of equity shareholders will be 14609 in number and more than 25% in value of the total equity share capital. The Chairperson and/or alternate Chairperson will determine the number and value of shares of each equity shareholder in accordance with the record and

register maintained by the transferor company as on 22.01.2016. The Chairperson and /or alternate Chairperson will have the liberty to adjudicate upon any dispute arising in this behalf.

14.1 The transferor company will also, therefore, make arrangements for casting votes by its equity shareholders by remote e-voting process. In this behalf, the transferor company shall follow the procedure prescribed in Rule 20 of the Companies (Management and Administration) Rules, 2014, as applicable to the convened meeting for the consideration of the proposed scheme.

14.2 The applicants have indicated that they will use the services of the National Securities Depository Ltd. (NSDL) The name, designation and address of the officer, provided to the court is as follows :-

“..Mr. Amit Vishal, Senior Manager, National Securities Depository Limited, “A” Wing, 4th Floor, Trade World, SB Marg, Lower Parel, Mumbai-400 013, Email Id: amitv@nsdl.co.in, phone number: +91 9920264780, 022 24994360..”

14.3 Suggestions of the applicants in this regard is accepted. It is made clear that those shareholders, who cast their vote via remote e-voting process, shall not be allowed to cast their vote at the meeting to be convened on 05.03.2016.

15. In so far as the meeting of the unsecured and secured creditors of the transferor company are concerned, they shall be held on 05.03.2016 from 1.00 p.m. and 3.00 p.m. onwards respectively at the same venue i.e. Sri Sathya Sai International Centre, Lodhi Road, Bhishma Pitamah marg, New Delhi – 110 003.

15.1 Mr. Manish Bishnoi, Advocate (Mb No. 9811548007) is appointed as a Chairperson and Mr. Ashish Garg, Advocate (Mb 9810602838) is appointed as an Alternate Chairperson to convene the meeting of the secured

creditors of the transferor company. Furthermore, Mr. Sanjay Katyal, Advocate (Mb. No. 9350023553) is appointed as a Chairperson and Mr. Rajat Malhotra, Advocate (Mb No. 9910054623) is appointed as an Alternate Chairperson to convene the meeting of the unsecured creditors of the transferor company.

15.2 In so far as the meeting of the unsecured and secured creditors of the transferee company are concerned, they shall be held on 05.03.2016 from 2.00 p.m. and 3.30 p.m. onwards respectively at the same venue i.e. Sri Sathya Sai International Centre, Lodhi Road, Bhishma Pitamah marg, New Delhi – 110 003.

15.3 Ms Ruchi Sindhwani, Advocate (Mb No. 9811533510) is appointed as a Chairperson and Mr. Kunal Sharma, Advocate (Mb 9910200911) is appointed as an Alternate Chairperson to convene the meeting of the unsecured creditors of the transferee company. Furthermore, Mr Rajiv Behl, Advocate (Mb. 9899000888) is appointed as a Chairperson and Mr. S.C. Sharma, Advocate (Mb. 99213160499) is appointed as an Alternate Chairperson to convene the meeting of the secured creditors of the transferee company.

15.2 The quorum with respect to those meetings will be as follows:

Secured creditors: Transferor company Transferee company

Quorum in number:	1	1
quorum in value:	25%	25%

Unsecured creditors: Transferor company Transferee company

Quorum in number:	111	26
quorum in value:	25%	25%

15.3 In case the quorum, as mentioned above, with respect to the meetings of the equity shareholders and the secured and unsecured creditors of the applicants is not in place, at the designated time when the meeting is called to order, then, the meeting shall be adjourned by half-hour, and thereafter, the persons present for voting shall be deemed to constitute the quorum. For the purposes of computing the quorum, any valid instrument of proxy filed shall be considered, if filed in the prescribed format, and is, duly signed by the person entitled to attend the meeting and furthermore is deposited with the registered office of the applicant companies, at least 48 hours before the meeting so convened. The Chairperson and/or alternate Chairperson, so appointed, shall ensure that proxy registers are properly maintained.

16. The Chairperson and/or alternate chairperson shall also ensure that notices for convening the aforementioned meetings of the equity shareholders of the transferor company and secured and unsecured creditors of the applicants, along with the proposed scheme, and a statement as required under Section 393 of the 1956 Act is sent to them by ordinary post and at their registered or last known address at least 21 days before the date appointed for the said meetings, in their presence or in the presence of their authorised representative. The notice with respect to each of the meetings referred to above, shall be separately published in the Financial Express (English), Delhi edition and in the Jansatta (Hindi), Delhi edition in terms of the 1959 Rules, at least 21 days before the date appointed for the said meetings.

17. The Chairperson and/or alternate Chairperson shall be entitled to issue suitable directions to the management of the applicants so as to ensure that the aforementioned meetings are conducted in a just, free and fair manner. For their efforts, the Chairperson and the alternate Chairperson for each of the meeting will be paid a fee of Rs. 50,000/- each. This will be in addition

to reimbursement of any out of pocket expenses incurred by them. The reimbursement will be on actual basis. The Chairpersons of the respective meetings will file their reports within two weeks of holding the aforesaid meetings.

18. The joint application stands allowed in the aforesaid terms.

19. Dasti under the signatures of the Court Master.

RAJIV SHAKDHER

JANUARY 22, 2016

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