

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 100/2016

Reserved on 19th July, 2016
Date of pronouncement: 3rd August, 2016

In the matter of

The Companies Act, 1956 & the Companies Act, 2013 (to the extent applicable):

And

**Application under Sections 391 to 394 of the
Companies Act, 1956 read with Rules 6 & 9 of
the Companies (Court) Rules, 1959**

Scheme of Arrangement and Amalgamation between:

Geometric Limited

Non-Applicant/Demerged/Transferor Company

AND

HCL Technologies Limited

Applicant/Transferee Company No. 1

3D PLM Software Solutions Limited

Non-Applicant/Transferee Company No. 2

**Through Mr. Gyanendra Kumar,
Ms. Shikha Tandon and Ms. Samapika
Biswal, Advocates for the applicant**

SUDERSHAN KUMAR MISRA, J.

1. This application has been filed under Sections 391 to 394 of the Companies Act, 1956 read with Rules 6 & 9 of the Companies (Court) Rules, 1959 by the applicant/transferee company no. 1 seeking directions of this court to dispense with the requirement of convening the meeting of its secured creditors and for convening separate meetings of its equity shareholders and unsecured creditors to consider and approve, with or without modification, the proposed Scheme of Arrangement and

Amalgamation between Geometric Limited (hereinafter referred to as the demerged/transferor company); HCL Technologies Limited (hereinafter referred to as the applicant/transferee company no. 1) and 3D PLM Software Solutions Limited (hereinafter referred to as the transferee company no. 2).

2. The registered office of the applicant/transferee company no. 1 is situated at New Delhi, within the jurisdiction of this Court. However, the registered offices of the demerged/transferor company and transferee company no. 2 are situated at Mumbai, outside the jurisdiction of this Court. Learned counsel for the applicant submits that separate applications have been filed by the demerged/transferor company and the transferee company no. 2 in the court of competent jurisdiction seeking sanction of the Scheme of Arrangement and Amalgamation.

3. The applicant/transferee company no. 1 was originally incorporated under the Companies Act, 1956 on 12th November, 1991 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of HCL Overseas Limited. The company changed its name to HCL Consulting Limited and obtained the fresh certificate of incorporation on 14th July, 1994. The company finally changed its name to HCL Technologies Limited and obtained the fresh certificate of incorporation on 6th October, 1999.

4. The present authorized share capital of the applicant/transferee company no.1 is Rs.3,00,00,00,000/- divided into 1,50,00,00,000 equity shares of Rs.2/- each. The issued, subscribed and paid-up share capital of the company is Rs.2,82,07,62,628/- divided into 1,41,03,81,314 equity shares of Rs.2/- each.

5. A copy of the Memorandum and Articles of Association of the applicant/transferee company no. 1 has been filed on record. The audited balance sheets, as on 30th June, 2015 and 31st March, 2016, of the applicant/transferee company no. 1, along with the report of the auditors, have also been filed.

6. A copy of the Scheme of Arrangement and Amalgamation has been placed on record and the salient features of the Scheme have been incorporated and detailed in the application and the accompanying affidavits. It has been submitted by the applicants that the Scheme, *inter alia*, provides (i) Demerger of the Demerged Business Undertaking of the demerged company and its merger into the applicant/transferee company no. 1, and (ii) amalgamation of the transferor company comprising the remaining undertaking, post demerger, with the transferee company no.2. It is claimed that the proposed demerger will widen the market and expertise and the combined entity will be able to offer its customers a

unique blend of services and solutions around PLM, engineering software, embedded software, mechanical engineering and geometry related technologies.

7. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, the applicant/transferee company no. 1 shall issue and allot equity shares to the shareholders of the demerged company in the following ratio:

“10 equity shares of Rs.2/- each of the transferee company no. 1, fully paid up, for every 43 equity shares of Rs.2/- each held by the shareholders in the demerged company.”

It has been further provided that the transferee company no. 2 shall issue and allot shares to the shareholders of the transferor company in the following ratio:

“01 fully paid up redeemable preference share of Rs.68/- each for every 01 fully paid up equity share held in the transferor company.”

8. It has been submitted by the applicant that no proceedings under Sections 235 to 251 of the Companies Act, 1956 or corresponding sections of the Companies Act, 2013 are pending against the applicant/transferee company no. 1.

9. The Board of Directors of the applicant/transferee company no. 1 in their separate meetings held on 1st April, 2016 have unanimously

approved the proposed Scheme of Arrangement and Amalgamation. A copy of the Resolutions passed at the meeting of the Board of Directors of the applicant/transferee company no. 1 has also been placed on record.

10. The applicant/transferee company no. 1 has 02 secured creditors. Both the secured creditors have given their consents/no objections in writing to the proposed Scheme of Arrangement and Amalgamation. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meeting of the secured creditor of the applicant/transferee company no. 1 to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Arrangement and Amalgamation is dispensed with.

11. The applicant/transferee company no. 1 is a listed company and as on 31st March, 2016 has 1,49,951 equity shareholders and a direction is sought to convene and hold their meeting to seek their approval to the proposed Scheme of Arrangement and Amalgamation. Considering the facts and circumstances aforesaid, the meeting of the equity shareholders of the applicant/transferee company no. 1 shall be held on 10th September, 2016 at 10:00 a.m. at Shri Satya Sai Auditorium, Bhishma Pitamah Marg, Lodhi Road, New Delhi - 110003. Mr. N.P.S.

Chawla, Advocate, (Mobile No. 9911140302) is appointed as the Chairperson and Mr. Ranjeet Singh Sahney, Advocate, (Mobile No. 9350276000) is appointed as the Alternate Chairperson to conduct the said meeting. Keeping in view the fact that out of the total issued, subscribed and paid up capital of the applicant company, 50 major shareholders hold approx. 76.4% of the total equity share capital, therefore, the quorum of the meeting of the equity shareholders of the applicant/transferee company no. 1 shall be fixed at 100 in number and more than 25% in value of the total equity share capital.

12. The applicant/transferee company no. 1 has 2267 unsecured creditors and a direction is sought to convene and hold their meeting to seek their approval to the proposed Scheme of Arrangement and Amalgamation. Considering the facts and circumstances aforesaid, the meeting of the unsecured creditors of the applicant/transferee company no. 1 shall be held 10th September, 2016 at 03:00 p.m. at Shri Satya Sai Auditorium, Bhishma Pitamah Marg, Lodhi Road, New Delhi - 110003. Mr. Rajeev Kumar, Advocate, (Mobile No. 9810466870) is appointed as the Chairperson and Ms. Isha Jha, Advocate, (Mobile No. 8447448222) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the unsecured creditors of the applicant/transferee company no. 1 shall be 200 in number and more than 25% in value of the total unsecured debt.

13. The applicants also seek a direction of this Court to provide to its equity shareholders with the facility to exercise their right to vote by electronic means, in terms of Section 108 of the Companies Act, 2013 read with Rule 20 of the Companies (Management and Administration) Rules, 2014 and Regulation 44(1) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and prayed that such voting may be considered as a valid exercise of their vote on the Scheme in accordance with Section 391 of the Companies Act, 1956. Section 108 of the Companies Act, 2013 read with Rule 20 of the Companies (Management and Administration) Rules, 2014 makes it mandatory for certain class of companies to compulsorily provide to its members the facility to exercise their right to vote on resolutions proposed to be considered at general meetings by electronic means. A perusal of the said Rule shows that the Rule is applicable only in case of the general meetings convened by the company and not the Court convened meetings. Since provisions relating to Compromise and Arrangement as provided in the Companies Act, 2013 have yet not been notified, they are still being governed by Sections 391-394 of the Companies Act, 1956 and the Companies (Court) Rules, 1959. Rule 77 of the Companies (Court) Rules, 1959 provides that the decision of the meeting or meetings held in pursuance of the order made under Rule 69 (directions at hearing of summons) on all resolutions shall be ascertained only by taking a poll.

Therefore, Rule 77 clearly provides that the decision in a court convened meeting(s) shall only by taking a poll and not by any other method, which could only be possible when a person is present physically either in person or through proxy in the said meeting. It is also noticed that sub-rule 4 of Rule 20 of the Companies (Management and Administration) Rules, 2014 provides that a company which provides the facility to its members to exercise voting by electronic means shall send the notice of the meeting to its members either through registered post or speed post, or through electronic means or by courier service and not by ordinary post. On the one hand the applicants are seeking permission to provide to its equity shareholders with the facility to exercise their right to vote by electronic means but on the other hand they also seek permission to send the individual notices to its shareholders by ordinary post, which is contrary to Rule 20(4) of the Companies (Management and Administration) Rules, 2014. Keeping in view the aforesaid provision, I am not inclined to allow the prayer of the applicants to provide to its equity shareholders with the facility to exercise their right to vote by electronic means. However, since there is no bar of sending the notices by ordinary post in a court convened meeting, therefore, the second prayer of the applicants regarding sending of notices to its members and creditors by ordinary post is accepted.

14. In case the quorum as noted above for the meetings is not present, then the meetings shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum, the valid proxies shall also be considered, if the proxy in the prescribed form duly signed by the person entitled to attend and vote at the meetings is filed with the registered office of the applicant company at least 48 hours before the meetings. The Chairpersons and Alternate Chairpersons shall ensure that the proxy registers are properly maintained.

15. The Chairpersons and Alternate Chairpersons shall ensure that notices for convening the aforesaid meetings of the equity shareholders and unsecured creditors of the applicant/transferor company no. 1, along with copies of the Scheme of Arrangement and Amalgamation and the statement under Section 393 of the Companies Act, 1956, are sent to the equity shareholders and unsecured creditors of the applicant/transferor company no. 1 by ordinary post at their registered or last known addresses at least 21 days before the date appointed for the meeting, in their presence or in the presence of their authorized representatives. Notice of the meeting shall also be published in the Delhi editions of the newspapers "Financial Express" (English) and "Navbharat Times" (Hindi) in terms of the Companies (Court) Rules, 1959 at least 21 days before the date appointed for the meetings.

16. The Chairpersons and Alternate Chairpersons will be at liberty to issue suitable directions to the management of the applicant company so that the aforesaid meetings of the equity shareholders and unsecured creditors of the applicant/transferor company no. 1 are conducted in a just, free and fair manner.

17. The fee of the Chairpersons and the Alternate Chairpersons for the aforesaid meetings shall be Rs.50,000/- each in addition to meeting their incidental expenses. The Chairpersons will file their reports within two weeks from the date of holding of the aforesaid meetings.

18. The application stands allowed in the aforesaid terms.

Dasti

SUDERSHAN KUMAR MISRA, J.

August 03, 2016