

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On: 14.12.2016

Judgment Pronounced On: 18.01.2017

CO.PET. 991/2016

IN THE MATTER OF:-

GEOMETRIC LIMITED ...Non-Petitioner/Demerged/Transferor Company

AND

HCL TECHNOLOGIES LIMITED ...Petitioner/Transferee No.1 Company

AND

3D PLM SOFTWARE SOLUTIONS LIMITED

...Non-Petitioner/Transferee No.2 Company

Through: Mr. Arun Bhardwaj, Sr. Advocate with
Mr. Gyanendra Verma, Ms. Shikha
Tandon and Ms. Saarpika Biswal,
Advocates for petitioner.

Mr. Rajiv Bahl, Advocate for OL

Ms. Aparna Mudium, Assistant Registrar
of Companies for Regional Director (NR)

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The present petition has been filed under Sections 391 to 394 of the Companies Act, 1956 (hereinafter referred to as 'Act') by HCL Technologies

Limited (hereinafter referred to as 'Petitioner/Transferee No.1 Company'), seeking sanction to the proposed scheme of Arrangement and Amalgamation (hereinafter referred to as 'proposed scheme') between Geometric Limited (hereinafter referred to as 'Demerged/Transferor Company'); 3D PLM Software Solutions Limited (hereinafter referred to as 'Transferee No.2 Company'); and the Petitioner/Transferee No.1 Company.

2. The registered office of the Petitioner/Transferee No.1 Company is situated at New Delhi, within the jurisdiction of this Court.

3. The registered offices of the Demerged/Transferor Company and the Transferee No.2 Company are situated at Mumbai, Maharashtra, outside the territorial jurisdiction of this Court. Learned counsel for the Petitioner/Transferee No.1 Company states that separate petitions seeking sanction to the proposed scheme, being Company Scheme Petition nos.706 and 707 of 2016, have been filed by the Demerged/Transferor Company and the Transferee No.2 Company, respectively, before the High Court of Judicature at Bombay, being the competent Court exercising territorial jurisdiction over them.

4. The Petitioner/Transferee No.1 Company was originally incorporated under the provisions of the Act, on 12.11.1991, with the Registrar of Companies, N.C.T. of Delhi & Haryana at New Delhi, under the name and style of 'HCL Overseas Limited'. Thereafter, the Petitioner/Transferee No.1

Company changed its name to 'HCL Consulting Limited' and obtained a fresh certificate of incorporation, dated 14.07.1994, in this behalf. Subsequently, the Petitioner/Transferee No.1 Company changed its name to its present name and obtained a fresh certificate of incorporation, dated 06.10.1999, in this behalf.

5. The authorized share capital of the Petitioner/Transferee No.1 Company, as on 21.08.2016, is stated to be 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 Petitioner/Transferee No.1 Company, as on 21.08.2016, is stated to be Rs.2,82,18,23,188/-, divided into 1,41,09,11,594 equity shares of Rs.2/- each.

6. Copies of the Memorandum of Association and Articles of Association of the Petitioner/Transferee No.1 Company have been duly filed as Annexures to Company Application (M) No.100 of 2016, which earlier came to be filed by the Petitioner/Transferee No.1 Company. The same are on record. The annual reports of the Petitioner/Transferee No.1 Company and the Demerged Company, as on 31.03.2016, alongwith a copy of their unaudited financial statements, as on 30.06.2016, have also been duly filed on record.

7. A copy of the proposed scheme has been placed on record and the salient features thereof have been incorporated and set out in detail in the present petition. It has been stated on behalf of the Petitioner/Transferee No.1 Company that the proposed scheme, *inter alia*, provides for (i) Demerger of the

Demerged Business Undertaking (as defined in the proposed scheme) of the Demerged/Transferor Company and its merger into the Petitioner/Transferee No.1 Company; and (ii) amalgamation of the remaining undertaking (as defined in the proposed scheme) of the Demerged/Transferor Company, post demerger, with the Transferee No.2 Company. 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.

8. So far as the share exchange ratio is concerned, the proposed scheme provides that, upon coming into effect thereof, the Petitioner/Transferee No.1 Company shall issue and allot equity shares to the shareholders of the Demerged/Transferor Company, in accordance with the terms of the proposed scheme, in the following ratio:

"10 equity shares of Rs.2/- each of the Petitioner/Transferee No.1 Company, fully paid up, for every 43 equity shares of Rs.2/- each held by the shareholders in the Demerged/Transferor Company."

It has been further provided that the Transferee No.2 Company shall issue and allot shares to the shareholders of the Demerged/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 Demerged/Transferor Company."

9. It has been averred on behalf of the Petitioner/Transferee No.1 Company that there are no proceedings pending against them, as on the date of filing of the present petition, under Sections 235 to 251 of the Act (including their corresponding Sections of the Companies Act, 2013).

10. The Board of Directors of the Petitioner/Transferee No.1 Company and the Demerged/Transferor Company in their separate meetings held on 01.04.2016, have unanimously approved the proposed scheme. Copies of the resolutions passed at the Board of Directors meeting of the Petitioner/Transferee No.1 Company and the Demerged/Transferor Company have been placed on record.

11. To recapitulate, the Petitioner/Transferee No.1 Company had earlier filed an application, being Company Application (M) No.100 of 2016, whereby a prayer was sought, seeking dispensation of the requirement of convening the meetings of its secured creditors; to convene the meetings of its unsecured creditors and equity shareholders, to consider and, if thought fit, approve, with or without modification, the proposed scheme. Vide order dated 03.08.2016, this Court allowed the said application of the Petitioner/Transferee No.1 Company, and dispensed with the requirement of convening and holding the

meetings of secured creditors; and directed convening of meetings of equity shareholders and unsecured creditors, of the Petitioner/Transferee No.1 Company.

12. The Chairpersons of the meetings so convened of the equity shareholders and unsecured creditors of the Petitioner/Transferee No.1 Company, have filed their reports stating that separate meetings of the equity shareholders and the unsecured creditors of the Petitioner/Transferee No.1 Company were duly held on 04.10.2016, as directed; and that the proposed scheme has been approved by the requisite majority of the equity shareholders and unsecured creditors of the Petitioner/Transferee No.1 Company. The said reports of the Chairpersons are on record.

13. The Petitioner/Transferee No.1 Company has thereafter filed the present petition, seeking sanction to the proposed scheme. Vide order dated 07.10.2016, notice in the present petition was directed to be issued to the Regional Director, Northern Region, Ministry of Corporate Affairs; and citations were directed to be published in the Delhi edition of the newspapers, namely, 'The Statesman' (English) and 'Veer Arjun' (Hindi). Affidavit of publication, dated 28.07.2016, showing compliance regarding publication of citations in the aforesaid newspapers has been filed by the Petitioner/Transferee No.1 Company. Copies of the newspaper clippings,

regarding publication carried out on 29.10.2016 have also been filed alongwith the said affidavit.

14. Pursuant to the issuance of notices in the present petition, the Regional Director, Northern Region, Ministry of Corporate Affairs has filed its affidavit dated 17.11.2016, stating that the office of the Regional Director has no objection to the sanction of the proposed scheme, subject to approval of Reserve Bank of India (RBI) to the proposed scheme. It has further been observed in the said affidavit dated 17.11.2016, that the National Stock Exchange of India Limited and Bombay Stock Exchange have conveyed their no objection to the proposed scheme subject to the Petitioner/Transferee No.1 Company complying with the provisions of the circulars issued by SEBI; and furnishing certain information/documents, as stated in their respective no objection letter.

15. Further, the Regional Director, while placing reliance on the report of the Registrar of Companies dated 02.11.2016, vide para 13 of the said affidavit dated 17.11.2016, has sought directions to the Petitioner/Transferee No.1 Company, to ensure compliance of Foreign Direct Investment ("FDI") norms with respect to the proposed integration of Transferee No.2 Company into the foreign Company, Dassault Systemes, since after the approval of the proposed scheme the Transferee No.2 Company will become wholly owned subsidiary of Dassault Systemes, which is a foreign Company. In this behalf, it would be

relevant to refer to Clause 35.1 of the proposed scheme, which reads as hereunder: -

“35.1. This Scheme is conditional upon and subject to:

- (a) The requisite consent, approval or permission of the Reserve Bank of India for the transfer of the overseas subsidiaries forming part of the Demerged Business Undertaking to the Resulting Company and the transfer of .all loans/guarantees provided by GL to its overseas subsidiaries forming part of the Demerged Business Undertaking to the Resulting Company;
- (b) If required, the Competition Commission of India (or any appellate authority in India having appropriate jurisdiction) having either: (a) granted approval to this Scheme in form and substance acceptable to the Demerged Company (only to the extent it does not impose any onerous conditions on the Demerged Company or the Transferee Company or alters the terms and conditions of the ancillary documents (as such term is defined in the Framework Agreement) and the Resulting Company; or (b) been deemed to have granted approval to the Scheme through the expiration of time periods available for their investigation and any period of limitation for filing an appeal there from having elapsed.
- (c) any waiting period (and any extension thereof) applicable to the consummation of the transactions contemplated in the Framework Agreement the Hart-Scott-Rodino Antitrust Improvements Act of 1976 shall have expired or been terminated;
- (d) The Scheme being approved by the written consents or requisite majorities in number and value of such classes of Persons including the respective members and/or creditors of the Companies as may be directed by" the relevant High Courts or any other competent authority, may be applicable.

- (e) The Scheme being sanctioned by the concerned High Court under Sections 391 to 394 of the Act.
- (f) The fulfilment, satisfaction or waiver (as the case may be) of the conditions precedent under the Framework Agreement by HL and GL, in accordance with the terms thereof.
- (g) Certified copy of the Order of the High Court sanctioning the Scheme being filed with the Registrars of Companies having jurisdiction over the Companies.”

16. No objection has been received to the proposed scheme from any other party. The Petitioner/Transferee No.1 Company by way of affidavit dated 09.12.2016 has stated that no objection has been received to the proposed scheme pursuant to publication of citations in the newspapers on 02.06.2016.

17. I have considered the approval accorded by the members and creditors of the Petitioner/Transferee No.1 Company to the proposed scheme; and the affidavit filed by the Regional Director, Northern Region. In view thereof, and after perusing the entire material placed on record, sanction is hereby granted to the proposed scheme, subject to following conditions:

- i. That the necessary consent, approval and/or permission is obtained by the Demerged/Transferor Company from the RBI, in terms of Clause 35.1 (a) of the proposed scheme;

- ii. That the Petitioner/Transferee No.1 Company comply with the FDI norms with respect to the proposed integration of Transferee No.2 Company into the foreign Company, Dassault Systems;
- iii. That sanction is accorded by the Court of competent jurisdiction to the proposed scheme, in respect of the Demerged/Transferor Company and the Transferee No.2 Company.; and
- iv. That the Petitioner/Transferee No.1 Company comply with all the statutory requirements with respect to the relief sought in the present petition, in accordance with law.

18. The sanction to the proposed scheme will be effective from the appointed date of the proposed scheme i.e. 31.03.2016.

19. Notwithstanding the above, if there is any deficiency found or, violation committed *qua* any enactment, statutory rule or regulation, the sanction granted by this Court to the proposed scheme will not come in the way of action being taken, *albeit*, in accordance with law, against the concerned persons, directors and officials of the Demerged/Transferor Company, Petitioner/Transferee No.1 Company and Transferee No.2 Company.

20. It is made clear, that this order shall not be construed as an order granting exemption, *inter alia*, from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any

applicable permissions that may have to be obtained or even compliances that may have to be made, as per the mandate of law.

21. A certified copy of this order shall be filed with the Registrar of Companies within 30 days of its receipt.

22. The Petitioner/Transferee No.1 Company shall deposit a sum of Rs.2,00,000/- by way of costs in the Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi, within a period of two weeks from today.

23. Consequently, the petition is allowed in the aforesaid terms and is accordingly disposed of.

SIDDHARTH MRIDUL, J

JANUARY 18, 2017

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