

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment:07.12.2012*

+ **Company Application (M) No. 187/2012**

IN THE MATTER OF THE COMPANIES ACT, 1956
(1 OF 1956)

SECTIONS 391 & 394

AND

IN THE MATTER OF SCHEME OF ARRANGEMENT
HCL COMNET SYSTEMS & SERVICES LIMITED

HCLSS/APPLICANT COMPANY-I

AND

HCL TECHNOLOGIES LIMITED

HCLT/APPLICANT COMPANY-II

Through: Mr. NPS Chawla and Ms. Simran
Sethi, Advocates for the Applicants

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. This is a first motion joint Application under Sections 391 and 394 of the Companies Act, 1956 (for short 'Act') in connection with the Scheme of Arrangement (for short 'Scheme') of HCL Comnet Systems
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& Services Limited and HCL Technologies Limited. A copy of the proposed Scheme of Arrangement is filed along with the Application.

2. The registered offices of the Applicant Companies are situated within the National Capital Territory of Delhi and are within the jurisdiction of this Court.

3. Details with regard to the date of incorporation of the Applicant Companies, their authorized, issued, subscribed and paid up capital have been given in the Application.

4. Copies of the Memorandum and Articles of Association as well as the latest audited Annual Accounts for the year ended 30th June, 2012 of both the Applicant Companies have also been enclosed with the Application.

5. Learned Counsel for the Applicant Companies submitted that no proceedings under sections 235 to 251 of the Companies Act, 1956 are pending against any of the Applicant Companies as on the date of the present Application.

6. The proposed Scheme has been approved by the Board of Directors of both the Applicant Companies. Copies of the Board Resolutions have been filed along with the Application.

7. The status of the Shareholders, Secured and Un-secured Creditors of the Applicant Companies and the consents obtained from them for the proposed Scheme is clearly apparent from the chart given in the application which is as below:

Company	No. of Share Holders	Consent Given	No. of Secured Creditors	Consent Given	No. of Un-secured Creditors	Consent Given
HCLSS/Applicant Company -I	18	10	2	All	102	Consents not obtained
HCLT/Applicant Company - II	79089	Consents not obtained	6	All	1071	Consents not obtained

8. A prayer has been made for dispensation of the requirement of convening meetings of the Equity shareholders and Unsecured Creditors of HCLSS/Applicant Company –I and for the Unsecured Creditors of HCLT/ Applicant Company –II. Further, separate meetings of the Secured Creditors of the HCLSS/Applicant Company –I and Equity

Shareholders, Secured Creditors of the HCLT/ Applicant Company -II are proposed to be held under the supervision of this Court.

9. In view of the written consents/ NOC given by 99.97% of the Equity Shareholders of HCLSS/Applicant Company –I representing majority in number and more than 3/4th in value of the total Equity Shareholders, the requirement of convening meeting of Equity Shareholders of HCLSS/Applicant Company –I has been dispensed with.

10. In view of the reasons stated in paragraph 6 page 14 of the Company Application (Main) No. 187/2012, the requirement of convening the meeting of the Unsecured Creditors of the HCLSS/Applicant Company - I has been dispensed with. The reasons stated therein are as follows:

(a) That HCLT/Applicant Company-II is a public listed company who's net worth post demerger is Rs. 6810.06 Cr which in comparison to the pre demerger net worth of Rs. 935.50 Cr. of HCLSS/Applicant Company –I is much higher. Copy of the certificate confirming the pre and post demerger net worth of

HCLSS/Applicant Company-I and HCLT/Applicant Company-II,
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duly certified by PRYD Associates, Chartered Accountants, have also been enclosed with the Application.

(b) On becoming the unsecured creditors of HCLT/Applicant Company-II, the unsecured creditors of HCLSS/Applicant Company –I shall be benefitted with a better liquidity position in comparison to the liquidity position they were previously enjoying as the unsecured creditors of HCLSS/Applicant Company –I. The liquid assets (including the cash and bank balances) of HCLSS pre demerger are to the tune of Rs.812.43 Cr whereas the liquid assets (including the cash and bank balances) of HCLT post demerger amounts to Rs.5142.48 Cr. Copy of the certificate confirming the pre and post demerger liquidity position of HCLSS/Applicant Company-I and HCLT/Applicant Company-II, duly certified by PRYD Associates, Chartered Accountants, have also been enclosed with the Application.

11. Further, in view of the reasons stated in paragraph 9 page 18 of the Company Application (Main) No. 187/2012, the requirement of convening a meeting of the Unsecured Creditors of the HCLT/

Applicant Company –II has been dispensed with. The reasons stated therein are as follows:

- (a) That the proposed Scheme will not affect the rights of the unsecured creditors of HCLT/Applicant Company-II as no sacrifice or waiver is called from them. It may be noted that the liabilities of the demerged undertaking that are being transferred are to the tune of Rs. 186.74 crores whereas the assets of the demerged undertaking of HCLSS/Applicant Company-I as on the appointed date (Rs. 1,151.44 crores), being transferred to HCLT/Applicant Company-II are much higher vis-à-vis the liabilities being transferred. Accordingly, it is stated by the Applicants that the interest of the unsecured creditors of HCLT / Applicant Company-II shall not be prejudicially affected. The liabilities of the Demerged Undertaking being transferred to HCLT/Applicant Company-II, can be comfortably paid from the assets being taken over. In fact after paying off the liabilities, there will be a surplus of Rs. 964.70 Crores left with HCLT after giving effect to the demerger.

(b) Also as a result of the demerger the net worth of HCLT/Applicant Company-II will be increased by Rs. 831.81 Crores. The post demerger net worth of HCLT/Applicant Company-II which is approx. Rs. 6810.06 Cr. is much higher vis-à-vis the pre demerger net worth of HCLT/Applicant Company-II (Rs. 5978.25 Cr.). Copy of the certificate certifying the pre and post demerger net worth of HCLT/Applicant Company-II, duly certified by PRYD Associates, Chartered Accountants, have also been enclosed with the Application. Accordingly, it is stated by the Applicants that the unsecured creditors of the HCLT/Applicant Company-II shall stand benefited from the proposed demerger.

12. Separate meetings of Secured Creditors of the HCLSS/Applicant Company –I and Equity Shareholders, Secured Creditors of HCLT/Applicant Company –II are proposed to be held under the supervision of this Court. Consequently, I direct that separate meetings of Secured Creditors of the HCLSS/Applicant Company–I and Equity Shareholders, Secured Creditors of HCLT/Applicant Company–II shall be held on 19th day of January 2013 at 10:30 A.M., 3:30 P.M., 01:00

P.M and respectively, at FICCI Auditorium, Federation House, 1, Tansen Marg, New Delhi-110001.

13. Ms. Saroj Kaith, Advocate, Cell No. 9968261181 is appointed as the Chairperson and Mr. Sanjeev Mahajan, Advocate, Cell No.9811156437 is appointed as the Alternate Chairperson for the meeting of Secured Creditors of the HCLSS/Applicant Company –I. They would be paid a fee of Rs.50,000/- each. Mr. Hari Lal, Cell No.9899600264 and Mr. Phool Chand Gupta, official of the Court, Cell No. 8586057409 shall provide secretarial assistance to the Chairperson and the Alternate Chairperson. They shall be paid a fee of `10,000/- each for this purpose.

14. Mr. Kartik Nayar, Advocate, Cell No.9810426989 is appointed as the Chairperson and Mr. Sunil Fernandis, Advocate, Cell No.9891639491 is appointed as the Alternate Chairperson for the meeting of Equity Shareholders of the HCLT/ Applicant Company –II. They would be paid a fee of Rs.50,000/- each. Mr. Prem, Cell No.9958713230 and Mr. Surender Kumar, Cell No. 9873660764 shall provide secretarial assistance to the Chairperson and the Alternate

Chairperson. They shall be paid a fee of Rs. 10,000/- each for this purpose.

15. Mr. Sanjay Sharawat, Advocate, Cell No.9810220522 is appointed as the Chairperson and Mr. Apurv Chandola, Advocate, Cell No.9650982102 is appointed as the Alternate Chairperson for the meeting of Secured Creditors of the HCLT/ Applicant Company –II. They would be paid a fee of Rs.50,000/- each. Ms. Vandana Chhibber, Cell No. 9868149282 and Mr Rajender Singh, Cell No. 9968124350 shall provide secretarial assistance to the Chairperson and the Alternate Chairperson. They shall be paid a fee of Rs. 10,000/- each for this purpose.

16. The Applicant Companies are also directed to publish advance notice of the aforesaid proposed meetings in ‘Business Standard’ (English, Delhi Edition) and ‘Business Standard’ (Hindi, Delhi Edition). The advertisements shall be published minimum 21 days in advance before the scheduled date of meetings.

17. Individual notices of the proposed meetings would be sent by ordinary post minimum 21 days in advance before the scheduled date of

meetings. The Chairperson will ensure that dispatch is made under his/her supervision/or his authorized representative.

- 18.** The quorum of the Secured Creditors of the Transferor Company is fixed as follows:

Company	Secured Creditors	
	No.	%
Transferor Company	1	10%

- 19.** The quorum of the Equity Shareholders and Secured Creditors of the Transferee Company are fixed as follows:

Company	Equity Shareholders		Secured Creditors	
		%	NO.	%
Transferee Company	5000	10%	1	10%

- 20.** It is also directed that if the Quorum is not present in the meetings, the meetings would be adjourned for 30 minutes and the

persons present (either by proxy or in person) in the meetings would be treated as proper quorum.

21. Voting by proxy is permitted provided that the proxy in the prescribed form and duly signed by the person entitled to attend and vote at the aforesaid meetings or by his authorised representative, is filed with the Company at its registered office, not later than 48 hours before the said meetings.

22. The Chairman/Alternate Chairman shall file their reports within 2 weeks of the conclusion of the respective meetings.

23. The application stand allowed in the aforesaid terms.

Order Dasti.

INDERMEET KAUR, J

DECEMBER 07, 2012

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