

**MEMORANDUM
AND
ARTICLES OF ASSOCIATION**

HCL INFOSYSTEMS LIMITED



प्रारूप० आई० धार०

Form I. R.

निगमन का प्रमाण-पत्र

Certificate of Incorporation

सं०. 23955..... 1908.....
23955..... 86-87
No..... of

मैं एतद् द्वारा प्रमासित करता हूँ कि प्राज एव सी. एल लिमिटेड।

कम्पनी अधिनियम 1956 (1956 का 1) के अधीन नियमित की गई है और यह कम्पनी परिसीमित है।

I hereby certify that.....

is this day incorporated under the Companies Act, 1956 (No. 1 of 1956) and that the Company is limited.

27 अप्रैल, 1908

मेरे हस्ताक्षर से प्राज ता..... को दिया गया।

Given under my hand at NEW DELHI this SEVENTEENTH

day of APRIL..... One thousand nine hundred and EIGHTY SIX



Handwritten signature and date: 17/4/86

सूरज कपूर।

कम्पनी रजिस्ट्रार

(SOORAJ KAPOOR)

Registrar of Companies

DELHI & HARYANA

Company No. 23955



Certificate for Commencement of Business

व्यापार प्रारंभ करने का प्रमाण-पत्र

Pursuant to section 149 (3) of the Companies Act, 1956

कम्पनी अधिनियम १९५६ की धारा १४९ (३) के अनुसरण में

I hereby certify that the HCL LIMITED
में एतद द्वारा प्रमाणित करता हूँ कि एच सी एल लिमिटेड।

which was incorporated under the Companies Act, 1956 on 27 वे, 1908
जो कि कम्पनी अधिनियम, १९५६ के अन्तर्गत पंजीकृत की गई थी दिनांक.....
the.....~~SEVENTEENTH~~..... day of..... APRIL..... 19 86

and which has filed a duly verified declaration in the
और जिस ने कि यथावत निर्धारित प्रपत्र में सत्यापित घोषणा पत्र प्रस्तुत
prescribed from that the conditions of section ~~149 (1) (a) to (d)~~
कर दिया है कि उस ने धारा ~~१४९ (१) (क) से (घ)~~/१४९ (२) (क) से (ग)
149 (2) (a) to (c) of the said Act, have been complied with, is entitled
को सभी शर्तों का अनुपालन कर दिया है, अतः व्यापार प्रारंभ करने का
to commence business.

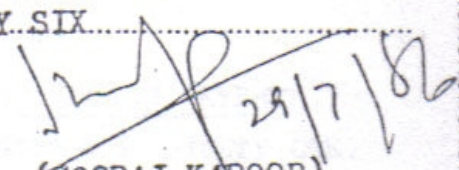
अधिकारी है।

Given under my hand at..... NEW DELHI
मेरे हस्ताक्षर से आज दिनांक..... 7 अक्टूबर, 1908

this..... TWENTY NINTH..... day of..... JULY

One thousand nine hundred and..... EIGHTY SIX
को जारी किया गया।




(SOORAJ KAPOOR)

Registrar of Companies

कम्पनी रजिस्ट्रार

दिल्ली एवं हरियाणा

FRESH CERTIFICATE OF INCORPORATION
CONSEQUENT ON CHANGE OF NAME

COMPANY NO. 55-23955.

In the Office of the Registrar of Companies, Delhi & Haryana
(under the Companies Act 1956 (1 of 1956))

IN THE MATTER OF H C L LIMITED

I hereby certify that H C L LIMITED
Limited, which was originally incorporated on SEVENTEENTH
day of APRIL One thousand nine hundred 86
under the ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~/Compan-
ies Act, 1956 (Act 1 of 1956) under the name H C L LIMITED
~~XXXXXXXX~~, having duly
passed the necessary resolution in terms of section 21 of the
Companies Act, 1956 and the approval of the Central Government
signified in writing having been accorded thereto under
section 21 read with Government of India, Department of Company
Affairs Notification No.G.S.R. 507 (E) dated 24.6.1985 by
Registrar of Companies, Delhi & Haryana, New Delhi vide letter
No. 21/55-23955/21675 dated 26.12.91
the name of the said Company is this day changed to
H C L HEWLETT-PACKARD LIMITED
Limited and this Certificate is issued pursuant to Section
23(1) of the said Act.

Given under my hand at NEW DELHI This TWENTY SEVENTH
day of DECEMBER One thousand nine hundred and NINETY ONE.



V.S. GALGALI

(V.S. GALGALI)
~~XXXXXXXXXXXX~~ REGISTRAR OF COMPANIES,
DELHI AND HARYANA.



सत्यमेव जयते

COMPANY NO. 55-23955

FRESH CERTIFICATE OF INCORPORATION
CONSEQUENT UPON CHANGE OF NAME

In the Office of the Registrar of Companies, N.C.T. Of Delhi & Haryana
[under the Companies Act, 1956 (1 of 1956)]

HCL HEWLETT-PACKARD LIMITED
IN THE MATTER OF

I hereby certify that HCL HEWLETT-PACKARD LIMITED

which was originally
incorporated on SEVENTEENTH day of APRIL

One Thousand Nine Hundred EIGHTY SIX under the
Companies Act, 1956 (Act 1 of 1956) under the name HCL LIMITED

having duly passed the necessary
resolution in terms of Section 21 of the Companies Act, 1956 and the approval of the
Central Government signified in writing having been accorded thereto under Section 21
read with Government of India, Department of Company Affairs Notification No. G.S.R.
507(E) dated 24-6-1985 by Registrar of Companies, N.C.T. of Delhi & Haryana, New Delhi
vide letter No. 21/55-23955/577 dated 8.9.97 the name of the said Company
is this day changed to HCL INFOSYSTEMS LIMITED

and this Certificate is issued pursuant to Section 23(1) of the said Act.

Given under my hand at NEW DELHI this NINTH
day of SEPTEMBER One Thousand Nine Hundred and Ninety SEVEN



N.N. Jha

(N.N. JHA)

ADDL. REGISTRAR OF COMPANIES,
N.C.T. OF DELHI AND HARYANA

भारत सरकार-कॉर्पोरेट कार्य मंत्रालय
कम्पनी रजिस्ट्रार कार्यालय, राष्ट्रीय राजधानी क्षेत्र दिल्ली एवं हरियाणा

कम्पनी अधिनियम, 1956 की धारा 18 (1) (क)

उद्देश्य-खंडों में परिवर्तन की पुष्टि हेतु विशेष विनिश्चय के पंजीकरण का प्रमाण-पत्र

कॉर्पोरेट पहचान संख्या : L72200DL1986PLC023955

मैसर्स HCL INFOSYSTEMS LIMITED

के अंशधारकों ने दिनांक 15/10/2007 को आयोजित की गई वार्षिक / असाधारण बैठक में एक विशेष विनिश्चय पारित करके कम्पनी अधिनियम, 1956 (1956 का 1) की धारा 18 (1) का अनुपालन करते हुए अपने संगम-ज्ञापन के प्रावधानों में परिवर्तन कर लिया है।

मैं, एतद्वारा सत्यापित करता हूँ कि उक्त विशेष विनिश्चय की प्रतिलिपि, यथा परिवर्तित संगम-ज्ञापन के साथ, आज पंजीकृत कर ली गई है।

मेरे हस्ताक्षर द्वारा दिल्ली में यह प्रमाण-पत्र, आज दिनांक उन्नीस अक्टूबर दो हजार सात को जारी किया जाता है।

GOVERNMENT OF INDIA - MINISTRY OF CORPORATE AFFAIRS
Registrar of Companies, National Capital Territory of Delhi and Haryana

SECTION 18(1)(A) OF THE COMPANIES ACT, 1956

Certificate of Registration of the Special Resolution Confirming Alteration of Object Clause(s)

Corporate Identity Number : L72200DL1986PLC023955

The share holders of M/s HCL INFOSYSTEMS LIMITED having passed Special Resolution in the Annual/Extra Ordinary General Meeting held on 15/10/2007 altered the provisions of its Memorandum of Association with respect to its objects and complied with the Section (18)(1) of the Companies Act, 1956 (No. 1 of 1956).

I hereby certify that the said Special Resolution together with the copy of the Memorandum of Association as altered has this day been registered.

Given under my hand at Delhi this Nineteenth day of October Two Thousand Seven.

(KLAIR ANITA)

सहायक कम्पनी रजिस्ट्रार / Assistant Registrar of Companies
राष्ट्रीय राजधानी क्षेत्र दिल्ली एवं हरियाणा
National Capital Territory of Delhi and Haryana

कम्पनी रजिस्ट्रार के कार्यालय अंगिलेख में उपलब्ध पत्राचार का पता :

Mailing Address as per record available in Registrar of Companies office:

HCL INFOSYSTEMS LIMITED
806 SIDDHARTH96 NEHRU PLACE, NEW DELHI - 110019,
Delhi, INDIA



GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS

Registrar of Companies, Delhi

4th Floor, IFCI Tower, 61, Nehru Place, New Delhi, Delhi, INDIA, 110019

Corporate Identity Number : L72200DL1986PLC023955.

SECTION 13(1) OF THE COMPANIES ACT, 2013

Certificate of Registration of the Special Resolution Confirming Alteration of Object Clause(s)

The share holders of M/s HCL INFOSYSTEMS LIMITED having passed Special Resolution in the Annual/Extra Ordinary General Meeting held on 12/05/2015 altered the provisions of its Memorandum of Association with respect to its objects and complied with the Section 13(1) of the Companies Act, 2013.

I hereby certify that the said Special Resolution together with the copy of the Memorandum of Association as altered has this day been registered.

Given under my hand at Delhi this Twentieth day of May Two Thousand Fifteen.

Signature valid

Digitally signed by
Ministry of Corporate
Affairs, Govt of India
Date: 2015.05.20 15:14:53 GMT+05:30

Ruvit Kumar
Registrar of Companies
Registrar of Companies
Delhi

Mailing Address as per record available in Registrar of Companies office:

HCL INFOSYSTEMS LIMITED
806 SIDDHARTH96 NEHRU PLACE, NEW DELHI - 110019,
Delhi, INDIA



THE COMPANIES ACT, 2013

AND

THE COMPANIES ACT, 1956 (to the extent applicable)

(COMPANY LIMITED BY SHARES)

MEMORANDUM OF ASSOCIATION

OF

HCL INFOSYSTEMS LIMITED

- I. The name of the Company is HCL INFOSYSTEMS LIMITED.
- II. The Registered Office of the Company will be situated in the NCT of Delhi.
- III. The Objects for which the Company is established are:
 - A. THE OBJECTS TO BE PURSUED BY THE COMPANY ON ITS INCORPORATION ARE:**
 - (1) To carry on in India or anywhere in the world, all or any of the following business or businesses as designers, assemblers, buyers, sellers, manufacturers, processors, dealers, retailers, traders, stockiest, distributors, importers, exporters, remodelers, installers, repairers, converters, overhaulers, representatives, developers, agents, hirers, cleaners, storers and lessors and service providers as principals, agents, contractors or otherwise deal in products and services in-
 - (a) the field of engineering in all or any of the fields of electronics, electrical, telecommunications, mechanical, chemical, solar and renewable energy, consumer lighting products and civil engineering;
 - (b) all kinds of plant, machinery, equipment, apparatus, implements, parts, components, spares, batteries, accessories, assemblies, sub-assemblies and other devices and scientific or other instruments, precision tools, moulds and other equipment (including, but not limited to and in particular computers, accessories and peripherals thereof, digital products, electronic aids and appliances, copiers, microfilm readers and processors and other reprographics equipment, hardware and software for electronic and electro-mechanical and other related equipment and other ancillary items) and any other articles, products, by-products, materials, appliances, spares and accessories, apparatus and substitutes thereof;
 - (c) technical know-how and consultancy services in the field of electronics and electrical, telecommunications and mechanical, chemical and civil engineering, particularly those requiring use of sophisticated technology, including, but not limited to, the provision of facilities and collection and dissemination of knowledge for manufacture, hire and use of equipment and devices for commercial exploitation thereof and of any patents, know-how, rights or privileges for the time being acquired by or belonging to the Company;
 - (d) information technology based and enabled services, electronic remote processing, e-services, including, but not limited to, all types of internet based / web enabled services, software development, transaction processing, fulfillment services, business support services including, but not limited to, providing related services of all kinds and description to establish and operate service processing centers for providing services for back office and processing requirements, contracting and communicating to and on behalf of customers by voice, data image, letters using dedicated domestic and/or international private lines, and to handle business process management, remote help desk

As amended by resolution passed at the Extra Ordinary General Meeting held on 26-08-1997

As amended vide shareholders resolution passed through postal ballot, result whereof was declared on 12th May, 2015

management, remote management, remote customer interaction, customer relationship management and customer servicing through call centers, email based activities and letter / facsimile based communication, knowledge storage and management, data management, warehousing, search, integration and analysis for financial and non-financial data;

- (e) providing and supply of end-to-end Technology Solutions including, but not limited to, information technology, turnkey solutions, systems integration of software, software and content, computers, peripherals networking and communication components, cabling, power supply equipment, appropriate fixtures, metering and monitoring devices, conventional and broad-band wireless, wireline and optical communications equipment, telecommunication infrastructure development and support services and other solutions to all Government authorities and other private entrepreneurs;
 - (f) all types, varieties and kind of telecommunication and electronic equipment, instruments, cellular telephone units and systems, components, accessories, assemblies, apparatus, spares, hardware thereof existing or that may be invented in future, and to acquire, develop, install, maintain and run all type of services in the telecommunication (including, but not limited to, cellular mobile telephone or fixed telephone) information technology, electronics and multimedia and also to manufacture, produce, acquire, import, export and deal in any manner in any product relating to telecommunication (including, but not limited to, cellular mobile telephone and fixed telephone), electronics, information technology (including, but not limited to, product and accessories), multimedia and enterprise products and provide installation and consultancy services in relation to the same;
 - (g) technology infrastructure on premise or off premise (cloud), provide content through this infrastructure and support or service such infrastructure;
 - (h) all types of goods, things, articles, merchandise including, but not limited to, electronic, electric digital, multimedia, consumer durables and domestic appliances including, but not limited to, all types of home-appliances, spare parts and accessories, equipment, product system, components, devices, apparatus and all type of machineries, appliances, apparatus, devices, materials, substances and component parts thereof and other materials used in or in connection with electronic, electric, digital, multimedia, consumer durables and domestic appliances industries;
 - (i) specialty solutions including, but not limited to, safety, security and surveillance devices, equipment, enterprise lighting products, products, systems, services, applications and projects and enterprise software;
 - (j) high end technology products including, but not limited to products equipped with electronic gadgets, camera and other devices, which may be installed or embedded or otherwise be part of attire or part of clothing which may be worn by a person.
- (2) To conceive, design, develop, set up and maintain integrated techno townships, technology parks, software parks, electronic and hardware technology parks, cyber cities, smart cities, digital infrastructure, electronic delivery of services, e-governance and e-commerce systems, workflow automation, Special Economic Zones / STP/ EHTP and to carry on business of all allied activities relating thereto including, but not limited to, services and to be part of any software and / or information technology parks in India or anywhere in the world and to acquire or hold any estates, or interest and to let, sub-let in whole or in part, develop, manage and exploit any lands and buildings and assets, rights, privileges and property of any kind, necessary or convenient for all or any business of the company.
- (3) To own, run, manage, administer or acquire in India or anywhere in the world, schools, colleges, education institutions, training centers or skill development centers for education, training or skill development and to develop software and contents for instructional material and educational and training curricula.

- (4) To carry on in India or anywhere in the world all or any of the above business activities in any manner, including through conventional physical means or through electronic means including, but not limited to, e-commerce using computers through online platforms or through online marketplace or using mobile devices.

B. THE MATTERS WHICH ARE NECESSARY FOR FURTHERANCE OF THE OBJECTS SPECIFIED IN PART A :

1. To enter into any contract, agreement, arrangement or other dealings in the nature of collaboration or otherwise including entering into partnership and/or filling in tenders for various contracts, which may seem profitable or beneficial to the Company.
2. To purchase or otherwise acquire, construct, erect, laydown, maintain, enlarge, alter, work and use all land and buildings, easements, gas, other works, machinery, plant, mills, stock, lamps, pipes, motors, fittings, meters, apparatus, materials and things as may be necessary, incidental or convenient, in connection with the production, use, storage, regulation, measurement, supply and distribution of any of the products of the Company.
3. To purchase, take on lease or in exchange, hire, renew or otherwise acquire and hold any estates, or interests and to let, sub- let whole or in part, develop, manage and exploit any lands, buildings, machinery, easements, rights, privileges, plant, stock- in-trade, business concerns, options, contracts, claims, choses-in-action, and any real and personal property of any kind, necessary or convenient for all or any business of the Company.
4. To apply for, aid in promoting and obtain any act of Parliament, charter, privilege, concession, license or authorisation of any Government or State or Municipality, provisional order or licence of any authority for enabling the Company to carry any of its objects into effect or for use thereof, which may seem capable of being used for or in connection with any of the purposes of the Company on payment of any fee, royalty or other consideration and to use, exercise or develop the same and manufacture under or grant licences in respect thereof or sell or otherwise deal with the same.
5. To procure the Company to be registered or recognised in any country or place in any part of the World.
6. To enter into partnership or any arrangement or agreement with any Governments or Authorities, supreme, municipal, local or otherwise or any person or company or any of them for sharing profits, union of interests, exchanging of shares, joint venture, reciprocal concession or co-operation and engage in any business or transactions which the company is authorised to carry on and to obtain from such government, authority person or company any rights, privileges, charters, contracts, licenses and concessions which the Company may think it desirable to obtain and to carry out, exercise and comply there with.
7. To promote, form and register, and aid in the promotion, formation and registration of any company or companies, subsidiary or otherwise, for the purposes of acquiring all or any of the properties, rights and liabilities of the Company or for any other purpose which may seem directly or indirectly calculated to benefit the Company and to transfer to any such company or any other company any property of the Company and to be interested in or take or otherwise acquire, hold, sell, or otherwise dispose of shares, stock, debentures and other securities in or of any such company or any other company for all or any of the objects mentioned in this memorandum, and to undertake other works, duties and business of any company on such terms as may be arranged for the purpose of Part A of the objects clause of the Company.
8. Subject to the provisions of the Companies Act, 2013 and Companies Act, 1956 (to the extent applicable) (hereinafter, "Act"), to invest in, other than investment in Company's

own shares, and deal with the moneys of the Company not immediately required in such manner as may from time to time be expedient or be determined.

9. Subject to the Act, to amalgamate with any other Company in any manner whatsoever (whether with or without liquidation of the Company) having objects altogether or in part similar to those of this company.
10. Subject to the provisions of the Act, to invest money with or without security and generally make advances of such sum or sums of money upon or in respect of or for the purchase of raw materials, goods, machinery, stores, or any other property, articles and things required for the purpose of the Company with or without security and upon such terms and subject to such conditions as the Company may deem expedient.
11. To purchase or otherwise acquire and undertake including or by merger, amalgamation or otherwise, the whole or any part of the business, property, rights, assets, liabilities and obligations of any persons, firm or company carrying on any business which the Company is authorised to carry on or possessed of property or rights suitable for any of the purposes of the Company.
12. To lend money to such persons or companies in such manner and on such terms as may seem expedient and in particular to members of the staff, customers, and others having dealings with the Company and to guarantee performances of contracts by any such persons or companies, provided that the Company shall not carry on any business which may come within the purview of the Banking Regulation Act, 1949 or of the Insurance Act, 1938.
13. Subject to the provisions of the Act, and the Rules made thereunder and the directions issued by the Reserve Bank of India, to borrow, or raise or secure the payment of money or to receive money on deposit at interest for any of the purpose of the Company, and at such times and in the manner as may be thought fit and in particular by the issue of debentures, perpetual or otherwise, debentures convertible into shares of this or any other Company or perpetual annuities and as security for any such money so borrowed, raised or received or any of such debentures or debenture stock so issued, to mortgage, pledge or charge the whole or any part of the property, assets or revenue and profits of the Company, present or future, including its uncalled capital by assignment or otherwise or to transfer or convey the same absolutely or in trust and to give the lenders power of sale and other powers as may seem expedient and to purchase, redeem and pay off any such securities.
14. To mortgage, hypothecate, pledge all or any of the properties whether movable or immovable of any description and other valuable securities of the Company.
15. To draw, make, accept, endorse, discount, execute, issue, negotiate and/or assign cheques, drafts, promissory notes, bills of exchange, hundies, debentures, bonds, bills of lading, railway receipts, warranties and all other negotiable or transferable instruments.
16. To open an account or accounts with any individual, firm or company or with any bank or banks or bankers or shroffs and to pay into and to withdraw money from such account or accounts.
17. To pay for any property or rights acquired by or for any services rendered to the Company either in cash or fully or partly paid up shares, with or without preferred rights in respect of dividend or repayment of capital or otherwise by any securities which the Company has the power to issue or by the grant of any rights or options, or partly in one mode and partly in other, and on such terms as the Company may determine.
18. To pay, out of the Funds of the Company, all costs, charges and expenses of and incidental to the formation and registration of the Company, and any company promoted by the Company and any such other company and incidental to the negotiations between

the promoters preliminary to the formation of the Company and other pre-incorporation or preliminary and other expenses and also all costs, charges, impositions and expenses of and incidental to the acquisition by the Company of any property or assets and incidental to the accomplishment of all or any formalities which the Company may think necessary or proper in connection with any of the aforesaid purposes.

19. To grant pensions, allowances, gratuities and bonuses to existing or former employees and officers (including Directors) of the Company or their dependents or connections and to make payments towards insurance for any such purpose/persons and to establish, join and support any trust funds or scheme (whether contributory or non-contributory) with a view to provide pensions or allowances for any such person or any other associations, institutions, trusts, funds, schemes, clubs and conveniences calculated to benefit any such person.
20. Subject to the provisions of the Act, to make donations to such person or persons either in cash or any other assets as may be thought directly or indirectly conducive to any of the Company's objects or otherwise expedient and to subscribe, contribute or otherwise assist or grant money for charitable, scientific, religious, benevolent, national, public or other institutions or objects or for any exhibition or for any public, general or other objects and to establish, support or aid in the establishment and support of associations, institutions, funds, trusts, and conveniences for the benefit of the employees or of persons having dealings with the Company or the dependents, relatives or connections of such persons and in particular friendly or other benefit societies and to grant pensions, allowances, gratuities and bonuses either by way of annual payments or a lump sum and to make payments towards insurance and to form and contribute to provident and benefit funds of or for such persons.
21. To provide for the welfare of employees or ex-employees of the Company and the wives and families or the dependents or connections of such persons by building houses and/or contributing to the pensions, allowances, bonuses or other payments or by creating and from time to time subscribing or contributing towards places of instruction and recreation, hospitals and dispensaries, medical and other attendance and other assistance as the Company shall think fit.
22. To compensate for loss of office, any Managing Director or Directors or other officers of the Company within the limitations prescribed under the Companies Act, or other statute or rule having the force of law and to make payments to any person whose office, employment or duties may be determined by virtue of any transaction in which the Company is engaged.
23. Subject to the provisions of the Act, to create any reserve funds, sinking fund, insurance fund or any other special funds whether for depreciation, for repairing, improving, extending or maintaining any of the properties of the Company or for any other purpose conducive to the interest of the Company.
24. Subject to the provisions the Act, to distribute as dividend or bonus among the members or to place to reserve or otherwise to apply as the Company may from time to time think fit, any moneys received by way of premium on shares or debentures issued at a premium by the Company, any moneys otherwise available for distribution as dividend or bonus.
25. Subject to the provisions to the Act, to distribute among the members in specie, all or any property of the Company, or any proceeds of sale or disposal of any property of the Company, in the event of winding up of the Company but, so that no distribution amounting to reduction of capital be made except with the sanction, if any for the time being required by law.
26. To sell or dispose of the undertaking of the Company or any part thereof for such consideration as the Company may think fit and in particular for shares, debentures or

securities of any other Company having objects altogether or in part similar to those of the Company.

27. To improve, manage, develop, grant rights or privileges in respect of or otherwise deal with all or any part of the property and rights of the Company.
28. To vest any real or personal property, rights or interest acquired by or belonging to the Company in any person or company on behalf of or for the benefit of the Company and with or without any declared trusts in favour of the Company.
29. To do all or any of the above things and all such other things as are incidental or may be thought conducive to the attainment of the objects mentioned in Part A of the objects clause or any of them in any part of the world and as principals, agents, contractors, trustees or otherwise and by or through trustees, agents or otherwise, and either alone or in conjunction with others.
30. To undertake Corporate Social Responsibility ('CSR') activities.

IV. The liability of the members is limited and this liability is limited to the amount unpaid, if any, on the shares held by them.

V. The Authorised Share Capital of the Company is Rs. 1,75,60,00,000/- (Rupees One Hundred Seventy Five Crores Sixty Lacs only) divided into 85,30,00,000 (Eighty Five Crores Thirty Lacs) Equity Shares of Rs. 2/- (Rupees Two only) each and 5,00,000 (Five Lacs) Preference Shares of Rs 100/- (Rupees One Hundred only) each.

KOMAL
BATHLA

Digitally signed by
KOMAL BATHLA
Date: 2022.11.05
13:47:41 +05'30'

We, the s
in pursua
capital of

S.No.

1.

2.

3.

4.

5.

6.

7.

Dated th

We, the several persons, whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names:-

S.No.	Name, addresses, descriptions and occupations of subscribers	No. & class of shares taken by	Signature of subscriber	Name address & description of witness
1.	SIVA PRASAD SIVA SUBRAMANIAM NADAR S/o Late Shri S.S. Nadar 100, Friends Colony (East) New Delhi – 110 065 (ENGINEER)	1 (One) Equity Share	Sd/-	I witness the Signatures of the seven subscribers Sd/- M.M. Khanna S/o Sh. K.C. Khanna (Chartered Accountant (Membership) No. 7517 H-96, Connaught Circus New Delhi – 110 001
2.	ARJUN MALHOTRA S/o Shri Mehr Chand Malhotra 143, Golf Links New Delhi – 110 003 (ENGINEER)	1 (One) Equity Share	Sd/-	
3.	YOGESH CHANDRA VAIDYA S/o Late Shri S.L Vaidya S-15, Greater Kailash I New Delhi – 110 048 (ENGINEER)	1 (One) Equity Share	Sd/-	
4.	SUBRAHAMANYAN RAMAN S/o Shri S.M. Subrahmanyam B-5/5 Vasant Vihar New Delhi – 110 057 (ENGINEER)	1 (One) Equity Share	Sd/-	
5.	DEVENDER SHINGH PURI S/o Late Shri S.S. Puri C-538, Defence Colony New Delhi – 110 024 (BUSINESS EXECUTIVE)	1 (One) Equity Share	Sd/-	
6.	PALGHAT SUBRAMANIAM VISWANATHAN S/o Shri P.V. Subramaniam E-47/48, Greater Kailash Enclave - 1, New Delhi - 110 048 (BUSINESS EXECUTIVE)	1 (One) Equity Share	Sd/-	
7.	K.P. GOPALKRISHNAN NAIR S/o Shri N.P. Panicker C-96, Greater Kailash – 1 New Delhi – 110 048 (SERVICE)	1 (One) Equity Share	Sd/-	
	Total no. of share taken	7 (Seven) Equity Shares		

Dated this 5th day March, 1986 at New Delhi

THE COMPANIES ACT, 2013
AND
THE COMPANIES ACT, 1956 (to the extent applicable)
(COMPANY LIMITED BY SHARES)
ARTICLES OF ASSOCIATION*
OF
HCL INFOSYSTEMS LIMITED

1. Unless the context otherwise requires, words or expressions contained in these Articles shall bear the same meaning as in the Act (hereinafter defined) or any statutory modification thereof in force at the date at which the Articles become binding on the Company. The marginal notes hereto are inserted for convenience and shall not affect the construction hereof and in these presents, unless there be something in the subject or context inconsistent therewith: Interpretation
- “Act”** means the Companies Act, 2013 and includes where the context so admits any re-enactment or statutory modification thereof for the time being in force and any previous company law, so far as may be applicable. Words and expressions used in the Articles shall bear the same meaning as used in the Act or the Rules, as the case may.
- “Annual General Meeting”** means a general meeting of the Members held in accordance with the provisions of Section 96 of the Act and any adjourned holding thereof.
- “Articles”** means these Articles of Association as adopted or as from time to time altered by special resolution.
- “Auditors”** or **“Auditor”** means the auditor or auditors of the Company appointed in pursuance of the provisions of Section 139 of the Act.
- “Beneficial Owner”** means the beneficial owner as defined in Clause (a) of Sub-Section (1) of Section 2 of the Depositories Act.
- “Board of Directors”** or **“Board”** means the board of directors for the time being of the Company and includes a committee constituted by the board (**“Committee”**).
- “Company”** means “HCL INFOSYSTEMS LIMITED”.
- “Depositories Act”** means the Depositories Act, 1996 and includes where the context so admits, any statutory modification or re-enactment thereof.
- “Depository”** means a depository as defined under Clause (e) of sub-section (1) of Section (2) of the Depositories Act.
- “Directors”** means the directors for the time being of the Company.
- “Dividend”** includes interim dividend but excludes bonus Shares.
- “Equity Listing Agreement”** means the agreement entered into with the Exchange for listing of equity Shares and includes where the context so admits any amendment or modification thereof for the time being in force.
- “Exchange”** means the Stock Exchange or Exchanges where the shares of the Company are listed for the time being.
- “Independent Director”** means a person as defined in Section 149(6) of the Act and/or Clause 49 of the Equity Listing Agreement entered into with the Exchange including any statutory modifications or re-enactments thereto.
- “Key Managerial Personnel”** means the persons as defined in Section 2(51) of the Act.
- “Managing Director”** means the managing director or the deputy managing director or the joint managing director for the time being of the Company by whatever name called appointed in accordance with the Act and these Articles.

*New set of articles of association adopted vide shareholders resolution passed through postal ballot, result whereof was declared on 12th May, 2015

“**Office**” means the registered office for the time being of the Company.

“**Register**” means the Register of Members of the Company required to be kept under Section 88 of the Act.

“**Registrar of Companies**” means the registrar of companies of the State in which the Office is for the time being situated.

“**Rules**” means the rules framed by the Ministry of Corporate Affairs (‘**MCA**’) under the Act, as amended from time to time.

“**Member**” or “**Shareholder**” means a Person as defined in Section 2(55) of the Act.

“**Memorandum**” means the Memorandum of Association of the Company.

“**Month**” means the English Calendar month.

“**Seal**” means the common seal of the Company.

“**Paid up**” includes credited as paid up.

“**Share Capital**” means the capital for the time being raised or authorised to be raised for the purposes of the Company.

“**Shares**” means the shares into which the capital is divided and interests corresponding to such Share.

“**Person**” includes any corporation as well as individual.

“**Proxy**” includes attorney duly constituted under a power of attorney appointed in accordance with the provisions of the Act and the Rules.

“**In Writing**” and “**Written**” includes printing, lithography and other modes of representing or reproducing words in a visible form.

Words importing the singular number also include the plural number and vice-versa.

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| Table 'F' not to apply | 2. | The regulations contained in these Articles of Association shall overrule the regulations contained in Table “F” in the Schedule I to the Companies Act, 2013. The Articles of Association referred to in this paragraph shall be subject to any exercise of the statutory power of the Company in reference to the repeal or alteration thereof, or addition to its regulations by special resolution, as prescribed by the Act and the Articles of Association shall refer to the Articles as existing from time to time. |
| Company not to purchase its own Shares | 3. | Save as permitted by Section 67 of the Act, the funds of the Company shall not be employed in the purchase of security, Shares in the Company and the Company shall not give, directly or indirectly, any financial assistance, whether by way of loan, guarantee, the provision of security or otherwise, for the purpose of or in connection with any purchase of or subscription for Shares in the Company or any company of which it may, for the time being, be a subsidiary. The Articles shall not be deemed to effect the power of the Company to enforce repayment of loans to Members or to exercise a lien conferred by Article 31. |
| Purchase of own Shares | 4. | Subject to Sections 68 and 70 of the Act, the Company may purchase its own Shares or other specified securities out of (i) its free reserves; or (ii) the securities premium account; or (iii) the proceeds of the issue of any Shares or other specified securities or (iv) otherwise specified by the law for the time being in force. |
| Registered Office | 5. | The Office shall be at such place as the Board of Directors shall determine subject to provisions of the Act. |

SHARES

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| Share Capital | 6. | a) The Authorised Share Capital of the Company is as stated in Clause V of the Memorandum with the rights, privileges and conditions attached thereto as are provided by the Articles for the time being. The Company shall have power to increase, reduce, consolidate, sub-divide or otherwise alter the Share Capital and to divide the Shares in the Share Capital for the time being into several classes and to attach thereof respectively such preferential or other rights, privileges and conditions in such manner as may be permitted by the Act or provided by the Articles of the Company for the time being. |
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| b) | Subject to the provisions of these Articles and of the Act, the Company shall have power to issue preference Shares which may, at the option of the Company, be liable to be redeemed out of the profits or out of the proceeds of a fresh issue of Shares made for the purposes of such redemption. The Board may, subject to the provisions of Section 55 of the Act and the Companies (Share Capital and Debenture) Rules, 2014, exercise such power in such manner as it may think fit. | Redeemable Preference Shares |
| c) | In respect of terms of issue of Shares the provisions of Articles 53, 54, 55, 56 and 57 shall apply. | |
| d) | The Company shall be entitled to dematerialize all or any of its existing securities, rematerialize all or any of its securities held in the Depositories and / or to offer its fresh Shares or buyback its Shares in a dematerialized form pursuant to the Depositories Act and the relevant Rules, if any. | Dematerialisation of Shares |
| (e) | Every person subscribing to or holding securities of the Company shall have the option to receive security certificates or to hold the securities with a Depository. | Option to receive securities certificates or hold Shares with Depository |
| (f) | If a person opts to hold his security with a Depository, the Company shall intimate such Depository the details of allotment of the security, and on receipt of the information, the Depository shall enter in its records the name of the allottees as the Beneficial Owner of the security. | |
| (g) | All securities held by a Depository shall be dematerialised and be in fungible form. Nothing contained in Sections 88, 89 and 186 of the Act, shall apply to a Depository in respect of the securities held by it on behalf of the Beneficial Owner. | Securities in Depositories |
| (h) | Notwithstanding anything to the contrary contained in the Act or these Articles, a Depository shall be deemed to be registered owner for the purpose of effecting transfer of ownership of security on behalf of the Beneficial Owner. | Rights of Depositories and Beneficial Owners |
| (i) | Save as otherwise provided in (a) above, the Depository, as the registered owner of the securities, shall not have any voting rights or any other rights in respect of the security held by it. | |
| 7. | Subject to the provisions of these Articles, the Act and the Rules, the Shares shall be under the control of the Board, who may issue, allot or otherwise dispose off the same or any of them, on such terms and conditions, at such times, either at par or at a premium and for such consideration as the Board thinks fit. | Allotment of Shares |
| 8. | The Company may, subject to the Act issue any part or parts of the unissued Shares (either equity or preference carrying a right to redemption out of the profits or liable to be so redeemed at the option of the Company) upon such terms and conditions and with such rights and privileges annexed thereto as the Board at their discretion may think fit and proper. Subject to the provisions of the Act and the Rules, in particular, the Board may issue such Shares with such preferential or qualifying rights to dividends and for the distribution of the assets of the Company as the Board may subject to the aforesaid sections, determine from time to time. | Power to issue Shares |
| 9. | The Company may exercise the power of paying commission conferred by Section 40(6) of the Act and in such case shall comply with the requirements of that section and Rules. Such commission may be satisfied by the payment of cash or the allotment of fully or partly paid Shares or partly in one way and partly in the other. The Company may also on any issue of Shares or debentures pay such brokerage as may be lawful. | Commission and Brokerage |
| 10. | If by the conditions of allotment of any Share, the whole or part of the amount or issue price thereof shall be payable by installments, every such installment shall, when due, be paid to the Company by the Person who, for the time being, shall be the registered holder of the Share or by his executor or administrator. | Installment of Shares to be duly paid |
| 11. | The joint-holders of a Share shall be severally as well as jointly liable for the payment of all installments and calls due in respect of such Share. | Liability of joint holders of Shares |
| 12. | Subject to Section 89 of the Act, save as herein otherwise provided, the Company shall be entitled to treat the registered holder of any Share as the absolute owner thereof and accordingly shall not, except as ordered by a court of competent jurisdiction or as by statute required, be bound to recognise any equitable or any other claim to or interest in such Share on the part of any other person. | Trust not recognised |

- Who may be registered 13. Shares may be registered in the name of any person, company or other body corporate. Not more than three persons shall be registered as joint holders of any Share.

SHARE CERTIFICATES

- Authority to issue Share Certificates 14. Subject to the provisions of the Act and the Companies (Share Capital and Debentures) Rules, 2014 or any statutory modification or re-enactment thereof, Share certificates shall be issued as follows:
- i) The certificates of title to Share and duplicate thereof when necessary shall be issued under the Seal of the Company which shall be affixed in the presence of:
 - a) two Directors duly authorized by the Board for the purpose or the Committee of the Board if so authorized by the Board, and
 - b) the Secretary or some other person appointed by the Board for the purpose, all of whom shall sign such Share certificate provided that, if the composition of the Board permits of it, at least one of the aforesaid two Directors shall be a person other than a Managing or Whole time Director.
 - c) A director may sign a Share certificate by affixing his signature thereon by means of any machine, equipment or other mechanical means such as engraving in metal or lithography, but not by means of a rubber stamp, provided that the director, or any body entrusted with the duty to take care of the same shall be responsible for the safe custody of such machine, equipment or other material used for the purpose.
 - ii) Every Member shall be entitled free of charge to one certificate for all the Shares of each class registered in his name or if the Board so approves to several certificates each for one or more of such Shares. Such certificate shall be issued in accordance with the provisions of the Act and Rules. In respect of any Shares held jointly by several Persons, the Company shall not be bound to issue more than one certificate and delivery of a certificate to one of several joint holders shall be sufficient delivery to all such holders. Provided, however, no Share certificate(s) shall be issued for Shares held by the "Beneficial Owner(s)" with the Depository. Provided that notwithstanding what is stated above the Company shall comply with such rules or regulations or requirements of any Stock exchange or the Rules made under Securities Contracts (Regulation) Act, 1956 or any other Act, or rules applicable in this behalf.
 - iii) No fee shall be charged for:
 - a) Sub-division and consolidation of Share and debenture certificates and for sub-division of letters of allotment and split, consolidation, renewal and pucca transfer receipts into denominations corresponding to the market unit of trading.
 - b) Sub-division of renounceable Letters of Right.
 - c) Issue of new certificates in replacement of those which are old, decrepit or worn-out or where the cages on the reverse for recording transfers have been fully utilized.
 - d) Registration of any Power of Attorney, Probate, Letter of Administration or similar other documents.
- Members right to Certificate
- Fees on issue of new Share certificate, registration of probates etc.

CALLS

- Calls 15. The Board may, from time to time, subject to the sanction of shareholders and subject to the terms on which any Shares may have been issued and subject to the provisions of Section 49 of the Act, make such calls as the Board thinks fit upon the Members in respect of all moneys unpaid on the Shares held by them respectively and not by the conditions of allotment thereof made payable at fixed times and each Member shall pay the amount of every call so made on him to the persons and at the times and places appointed by the Board. A call may be made payable by installments and shall be deemed to have been made when the resolution of the Board authorising such call was passed.

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| 16. | Not less than thirty (30) days notice of any call shall be given specifying the time and place of payment and to whom such call be paid. | Restriction on power to make calls and notice place of payment and to whom such call be paid |
| 17. | <p>i) If the sum payable in respect of any call or installment be not paid on or before the day appointed for payment thereof the holder for the time being in respect of the Share for which the call shall have been made or the instalment shall be due, shall pay interest for the same at maximum rate, as prescribed in the Act or Rules or under any other law for the time being in force, from day appointed for the payment thereof to the time of the actual payment or at such lower rate as the Board may determine.</p> <p>ii) The Board shall be at liberty to waive payment of any such interest either wholly or in part.</p> | Payment of interest on call |
| 18. | If by the terms of any Share or otherwise any amount is made payable upon allotment or at any fixed time or by installments at fixed times, whether on account of the amount of the Share or by way of premium, every such amount or installment shall be payable as if it were a call duly made by the Board and of which due notice had been given, and all the provisions herein contained in respect of calls shall relate to such amount or installment accordingly. | Amount payable at fixed times or payable in installments on calls |
| 19. | On the trial or hearing of any action or suit brought by the Company against any Shareholder or his representatives to recover any debt or money claimed to be due to the Company in respect of his Share, it shall be sufficient to prove that the name of the defendant is or was, when the claim arose, on the Register as a holder, or one of the holders of the number of Shares in respect of which such claim is made and that the amount claimed is not entered as paid in the books of the Company and it shall not be necessary to prove the appointment of the Board who made any call, nor that a quorum was present at the Board meeting at which any call was made nor that the meeting at which any call was made was duly convened or constituted nor any other matter whatsoever but the proof of the matters aforesaid shall be conclusive evidence of the debt. | Evidence in action by Company against shareholders |
| 20. | The Board may, if it thinks fit, receive from any Member willing to advance the same, all or any part of the money due upon the Share held by him beyond the sums actually called for and upon the money so paid or satisfied in advance, or so in respect thereof as from time to time exceeds the amount of the calls then made upon the Share in respect of which such advance has been made, the Company may pay interest at such rate as may be fixed by the Board. Money so paid in excess of the amount of calls shall not rank for dividends or confer a right to participate in profits. The Board may at any time repay the amount so advanced upon giving to such a Member not less than three (3) month's notice in writing. | Payment of calls in advance |
| 21. | A call may be revoked or postponed at the discretion of the Board. | Revocation of call |

FORFEITURE AND LIEN

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| 22. | If any Member fails to pay any call or installment of a call on or before the day appointed for the payment of the same, the Board may, at any time, thereafter during such time as the call or installment remains unpaid, serve notice on such Member requiring him to pay the same, together with any interest that may have accrued and all expenses that may have been incurred by the Company by reason of such non-payment. | If calls or installment not paid notice may be given |
| 23. | The notice shall name a day (not being less than thirty (30) days from the date of notice) and the place or places on and at which such call or installment and such interest and expenses aforesaid are to be paid. The notice shall also state that in the event of non-payment at or before the time, and at the place appointed the Shares in respect of which such call was made or installment is payable will be liable to be forfeited. | Date and place of payment of call |
| 24. | If the requirements of any such notice as aforesaid not be complied with, any Shares in respect of which such notice has been given may, at any time thereafter, before payment of all calls or installments, interest and expenses, due in respect thereof, be forfeited by a resolution of the Board to that effect. | If notice is not complied with, Share may be forfeited |
| 25. | When any Share shall have been so forfeited, notice of the resolution shall be given to the Member in whose name it stood immediately prior to the forfeiture and an entry of the forfeiture, with the date thereof, shall forthwith be made in the Register, but no forfeiture shall be in any manner invalidated by an omission or neglect to give such notice or to make such entry as aforesaid. | Notice after to forfeiture |
| 26. | Any Share so forfeited shall be deemed to be the property of the Company and the Board may | Forfeited Share to become property of the Company |

sell, re- allot or otherwise dispose of the same in such manner as it thinks fit.

- Power to cancel 27. The Board may, at any time before any Shares so forfeited shall have been sold, re-allotted or otherwise disposed off, cancel the forfeiture thereof upon such conditions as it thinks fit.
- Liability on forfeiture 28. A Person whose Share has been forfeited shall cease to be a Member in respect of the Share, but shall, notwithstanding the forfeiture, remain liable to pay and shall forthwith pay to the Company, all calls or all installments, interest and expenses, owing upon or in respect of such Share, at the time of the forfeiture, together with interest thereon, from the due date to the time of actual payment at such rate as may be fixed by the Board and the Board may enforce the payment thereof, or any part thereof without any deduction or allowance for the value of the Shares at the time of forfeiture, but shall not be under an obligation to do so.
- Evidence of forfeiture 29. A duly verified declaration in writing that, the declarant is a Director, Manager or Secretary of the Company and has been authorised by a Board resolution to act as declarant and that certain Shares in the Company have been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all Persons claiming to be entitled to the Shares and such declaration and the receipt of the Company for the consideration, if any, given for the Shares on the sale or disposition thereof shall constitute a good title to such Shares and the Person to whom any such Share is sold shall be registered as the holder of such Share and shall not be bound to see the application of purchase money, nor shall his title to such Share be affected by any irregularity or invalidity in the proceedings in reference to such forfeiture, sale or disposal.
- Forfeiture provisions to apply to non- payment in terms of issue 30. The provisions of Articles 22 to 29 hereof shall apply in the case of non-payment of any sum which, by the terms of issue of Share, becomes payable at a fixed time, whether on account of the nominal value of a Share or by way of premium, as if the same had been payable by virtue of a call duly made and notified.
- Company's lien on Shares 31. The Company shall have a first and paramount lien upon every Share not being fully paid up, registered in the name of each Member (whether solely or jointly with others) and upon the proceeds of sale thereof for moneys called or payable at a fixed time in respect of such Share whether the time for the payment thereof shall have actually arrived or not and no equitable interest in any Share shall be created except as otherwise provided in the Articles. Such lien shall extend to all dividends from time to time declared in respect of such Share subject to the provisions of Section 124 of the Act and also to bonus declared on the shares. Unless otherwise agreed, the registration of a transfer of a Share shall operate as waiver of the Company's lien if any, on such Share.
- Enforcing lien of sale 32. For the purpose of enforcing such lien, the Board may sell the Share subject thereto in such manner as it thinks fit, but no sale shall be made until such time for payment as aforesaid shall have arrived and until notice in writing of the intention to sell have been served on such a Member, his executor or administrator or his committee, curator bonis or other legal representative as the case may be and default shall have been made by him or them in the payment of the moneys called or payable at a fixed time in respect of such Share for thirty (30) days after the date of such notice.
- Application of proceeds of sale 33. The net proceeds of the sale shall be received by the Company and applied in or towards payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue, if any, shall (subject to a like lien for sums not presently payable as existed upon the Share before the sale) be paid to the Persons entitled to the Share at the date of this sale.
- Validity of sales in exercise of lien and after forfeiture 34. Upon any sale after forfeiture or for enforcing a lien in purported exercise of the powers herein before given, the Board may appoint some persons to execute an instrument of transfer of the Share sold and cause the purchaser's name to be entered in the Register in respect of the Share sold and the purchaser shall not be bound to see the regularity of the proceedings, nor to the application of the purchase money and after his name has been entered in the Register in respect of such Share the validity of the sale shall not be impeached by any Person, and the remedy of any Person aggrieved by the sale shall be in damages only and against the Company exclusively.
- Board may issue new certificate 35. Where any Share under the powers in that behalf herein contained is sold by the Board and the certificate in respect thereof has not been delivered to the Company by the former holder of such Share, the Board may issue a new certificate for such Share distinguishing it in such manner as it may think fit from the certificate not so delivered.

TRANSFER AND TRANSMISSION

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| 36. | The instrument of transfer shall be in writing and all the provisions of Section 56 of the Act and the Companies (Share Capital and Debentures) Rules 2014, shall be duly complied with in respect of all transfers of Shares and the registration thereof. | Execution of transfer, etc. |
| 37. | Nothing contained in the foregoing Article shall apply to transfer of securities affected by the transferor and transferee both of whom are Beneficial Owners with the Depository. | Transfer of Demat Shares |
| 38. | Application for the registration of the transfer of a Share may be made either by the transferor or the transferee, provided that where such application is made by the transferor no registration shall, in the case of a partly paid Share, be effected unless the Company gives notice of the application to the transferee in the manner prescribed by Section 56 of the Act and the Companies (Share Capital and Debentures) Rules 2014 and subject to provisions of these Articles the Company shall, unless objection is made by the transferee within two weeks from the date of receipt of the notice, enter in the Register the name of the transferee in the same manner and subject to the same conditions as if the application for registration of the transfer was made by the transferee. | Application by transfer |
| 39. | The instrument of transfer shall be in the form prescribed by the Act and the Companies(Share Capital and Debentures) Rules 2014, made thereunder | Form of transfer |
| 40. | Nothing contained in the foregoing article shall apply to transfer of securities affected by the transferor and transferee both of whom are Beneficial Owners with the Depository. | Form of transfer of Demat Shares |
| 41. | Subject to the provisions of these Articles, and of Section 58 or any other applicable provisions of the Act and Equity Listing Agreement or any other applicable provisions of any other law for the time being in force or any statutory modification(s), the Board, may on sufficient cause, refuse to register any transfer of shares or the transmission of shares by operation of law of the right to a Share. | In what cases the Board may refuse to register transfer |
| 42. | No transfer shall be made to a person of unsound mind and no transfer of partly paid Shares shall be made to a minor. | No transfer to a person of unsound mind etc. |
| 43. | Every instrument of transfer shall be left at the Office for registration, accompanied by the certificate of the Share to be transferred or, if no such certificate is in existence, by the Letter of Allotment of the Share and such other evidences as the Board may require to prove the title of the transferor or his right to transfer the Share. Every instrument of transfer which shall be registered shall be retained by the Company, but any instrument of transfer which the Board may refuse to register, shall be returned to the person depositing the same. | Instrument of transfer left at Office when to be retained |
| 44. | If the Board refuses whether in pursuance of Article 41 or otherwise to register the transfer of, or the transmission by operation of law of the right to any Share, the Company shall, within the time prescribed by the Act, Rules or Equity Listing Agreement send the transferee and transferor or to the person giving intimation of such transmission, as the case may be, notice of the refusal. | Notice of refusal to register transfer |
| 45. | No fee shall be payable to the Company in respect of transfer or transmission of any Shares in the Company. | Fee on registration of transfer |
| 46. | The executor or administrator of a deceased Member (not being one of several joint-holders) shall be the only person recognised by the Company as having any title to the Shares registered in the name of such Member and in case of the death of any or more of the joint-holders of any registered Share, the survivor shall be the only person recognised by the Company as having any title to or interest in such Share, but nothing herein contained shall be taken to release the estate of a deceased joint- holder from any liability on the Share held by him jointly with any other person. Before recognising any executor or administrator, the Board may require him to obtain a Grant or Probate or Letters of Administration or other legal representation, as the case may be from a competent Court in India, provided nevertheless that in any case where the Board in its absolute discretion thinks fit it shall be lawful for the Board to dispense, Letters of Administration or such other legal representation upon such terms as to indemnity, as it considers proper. | Transmission of registered Shares |
| 47. | Any committee or guardian of a lunatic or minor Member or any person becoming entitled to transfer a Share in consequence of the death or bankruptcy or insolvency of any Member upon producing such evidence that he sustains the character in respect of which he proposes to act under this Article or of his title as the Board thinks sufficient, may, with the consent of the Board (which the Board shall not be bound to give), be registered as a Member in respect of | Transfer of Shares of insane, minor, deceased, or bankrupt Members |

such Share, or may, subject to the regulations as to transfer hereinbefore contained transfer such Share.

- Election under Transmission 48. i) If the person so becoming entitled under transmission shall elect to be registered as a holder of the Share himself, he shall deliver or send to the Company a notice in writing signed by him stating that he so elects.
- ii) If the person aforesaid shall elect to transfer the Share, he shall testify his election by executing an instrument of transfer of the Share.
- iii) All the limitations, restrictions and provisions, of these Articles relating to the right to transfer and the registration of instruments of transfer of a Share shall be applicable to any such notice or transfer as aforesaid, as if the death, lunacy, bankruptcy or insolvency of the Member had not occurred.
- Rights of persons entitled to Shares under Transmission 49. A person so becoming entitled under transmission to a Share by reason of death, lunacy, bankruptcy of the holder shall, subject to the provisions of Article 82 and of Section 123 of the Act, be entitled to the same dividends and other advantages as he would be entitled to if he were the registered holder of the Share, except that he shall not before being registered as a Member in respect of the Share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company. Provided that the Board may at any time give a notice requiring any such person to elect either to be registered himself or to transfer the Share and if the notice is not complied with within the time fixed by the Board, the Board may thereafter withhold payment of all dividends, bonuses, or other moneys payable in respect of the Share, until the requirements of the notice have been complied with.
- Nomination of Shares 50. i) Every holder of Shares in, or holder of debentures of the Company may, at any time, nominate, in the prescribed manner, a person to whom his Shares in, or debentures of, the Company shall vest in event of his death.
- ii) Where the Shares in, or debentures of the Company are held by more than one person jointly, the joint holders may together nominate, in the prescribed manner a person to whom all the rights in the Shares or debentures of the Company shall vest in the event of death of all joint holders.
- iii) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of such Shares in or debentures of the Company, where a nomination made in the prescribed manner purports to confer on any person the right to vest the Shares in or debentures of the Company, the nominee shall, on the death of the shareholder or holder of debentures of the Company or, as the case may be, on the death of the joint holder becomes entitled to all the rights in the Shares or debentures of the Company or, as the case may be, all the joint holders, in relation to such Shares in or debentures of the Company to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.
- iv) Where the nominee is a minor, it shall be lawful for the holder of the Shares or holder of the debentures, to make the nomination to appoint, in the prescribed manner, any person to become entitled to Shares in, or debentures of the Company, in the event of his death, during minority.
- v) Any person who becomes a nominee may upon production of such evidence as may be required by the Board and subject as hereinafter provided, elect, either to be registered himself as holder of the Share(s) or debenture(s) as the case may be; or to make such transfer of the Share(s) or debenture(s) as the deceased shareholder or debenture holder, as the case may be, could have made.
51. The provisions of these Articles relating to transmission by operation of law shall mutatis mutandis apply to any other securities including debentures of the Company.

INCREASE AND REDUCTION OF CAPITAL

- Power to increase 52. The Company may by an ordinary resolution passed by the Members in a general meeting or by Postal Ballot, increase its capital, from time to time, by creation of new Shares of such amounts as may be deemed expedient in accordance with the applicable provisions of the Act.

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| 53. | Subject to any special rights or privileges for the time being attached to any Shares in the capital of the Company then issued, the new Shares or the existing unissued Shares of any class may be issued. In the case of new Shares upon such terms and conditions, and with such rights and privileges attached thereto as the shareholders resolving in a general meeting upon the creation thereof, shall direct, and if no directions be given, and in the case of existing unissued Shares as the Board subject to the Act shall determine, and in particular in the case of preference Shares such Shares may be issued with a preferential or qualified right to dividends and in the distribution of assets of the Company and with rights of redemption. | On what conditions new Shares may be issued |
| 54. | Subject to the provisions of Section 54 of the Act and subject to any special rights or privileges for the time being attached to any Shares in the capital of the Company then issued, the Company may issue equity Shares to employees or directors at a discount or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called or for the performance of past or future services. | Issue of Sweat Equity Shares to employees or Directors |
| 55. | (a) Before the issue of any new Shares, the Company in a general meeting or through Postal Ballot may make provisions as to the allotment and issue of the new Shares, and in particular may determine to whom the same shall be offered in the first instance and whether at par or at a premium and upon default of any such provisions, or so far as the same shall not extend, the new Shares may be issued in conformity with the provisions of Article 7. | Provisions relating to the issue of shares |
| | (b) Subject to the provisions of the Act, where the new Shares are offered to the persons who at the date of the offer, are holders of the equity shares of the Company then such Share shall be offered in proportion, as nearly as circumstances admit, to the capital paid up on these Shares at the date. Such offer shall be made by a notice specifying the number of Shares offered and limiting a time not being less than fifteen (15) days from the date of the offer within which the offer, if not accepted, will be deemed to have been declined. Such offer shall be deemed to include a right exercisable by the person concerned to renounce the Shares offered to them in favour of any other person and the notice referred to above hereof shall contain this statement of this right, provided that the directors may decline, without assigning any reason to allot any shares to any person in whose favour any member may renounce the Shares offered to him. After the expiry of the time specified in the notice aforesaid or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board may dispose of them in such manner as it thinks most advantageous to the shareholders and the Company. | |
| | (c) Notwithstanding anything contained in sub-clause (a) above, but subject, however, to Section 62(3) of the Act, the Company may increase its subscribed capital on exercise of an option attached to the debentures issued or loans raised by the Company to convert such debenture or loans into shares, or to subscribe for shares in the Company, provided however that the terms of the debentures or loans include a term providing for such option is in conformity with the rules, if any made by the Central Government in this behalf and has also been approved by a special resolution in a general meeting. | |
| 56. | Except so far as otherwise provided by the conditions of issue or by these presents, any capital raised by the creation of new Shares shall be considered part of the then existing Share Capital of the Company and shall be subject to the provisions herein contained with reference to the payment of dividends, calls and installments, transfer and transmission, forfeiture, lien, surrender and otherwise. | How far new Shares to rank with existing Shares |
| 57. | If owing to any inequality in the number of new Shares to and the number of Shares held by the Members entitled to have the offer of such new Shares, any difficulty that may arise in the apportionment of such new Shares or any of them amongst the Members, such difficulty shall, in the absence of any direction in the members' resolution creating the Shares or by the Company in a general meeting be determined by the Board. | Inequality in numbers of new Shares |
| 58. | The Company may, subject to the applicable provisions of the Act and Rules, from time to time, by special resolution reduce its capital and any capital redemption reserve account or securities premium account, in any manner and with and subject to any incident authorised and consent required by law. | Reduction of Share Capital |
| 58.A | Subject to the provisions of Sections 68 to 70 and all applicable provisions of the Act and subject to such approvals, permissions, consents and sanctions from the concerned authorities and departments, including the Securities and Exchange Board of India and the Reserve Bank of India, if necessary, the Company may, by passing a special resolution at a | Buyback of Shares |

general meeting, purchase its own Shares or other specified securities (hereinafter referred to as 'buyback') from its existing Shareholders on a proportionate basis and/or from the open market and/or from the lots smaller than market lots of the securities issued to the employees of the Company pursuant to a scheme of stock options or sweat equity, from out of its free reserves or out of the securities premium account of the Company or out of proceeds of any issue made by the Company specifically for the purpose, on such terms, conditions and in such manner as may be prescribed by law from time to time; provided that the aggregate of the securities so bought back shall not exceed such number as may be prescribed under the Act or Rules made from time to time.

ALTERATION OF CAPITAL

- Powers to alter Capital
59. The Company in a general meeting or through Postal Ballot may subject to the provisions of the Act from time to time:-
- (a) consolidate and divide all or any of its Share Capital into Shares of larger amount than its existing Shares;
 - (b) sub-divide its existing Shares or any of them into Shares of smaller amount than is fixed by the Memorandum so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced Share shall be the same as it was in the case of the Share from which the reduced Share is derived;
 - (c) convert all or any of its fully paid up Shares into stock, and reconvert that stock into fully paid up Shares of any denomination;
 - (d) cancel any Shares which at the date of the passing of the resolution, have not been taken or agreed to be taken by any person and diminish the amount of its Share capital by the amount of the Shares so cancelled.
- Surrender of Shares
60. Subject to the provisions of the Act, the Board may accept from any Member the surrender on such terms and conditions as shall be agreed, of all or any of his Shares.

MODIFICATION OF RIGHTS

- Power to modify rights
61. Whenever the capital (by reason of the issue of preference Shares or otherwise) is divided into different classes of Shares, all or any of the rights and privileges attached to each class may, subject to the provisions of the Act, be modified, commuted, affected, abrogated, varied or dealt with by agreement between the Company and any persons purporting to contract on behalf of that class provided such agreement is (a) consented to in writing by the holders of at least three-fourths of the issued Shares of that class, or (b) sanctioned by a special resolution passed at a separate meeting of the holders of the issued Shares of that class and all the provisions herein after contained as to general meetings shall mutatis-mutandis, apply to every such meeting. This Article is not by implication to curtail the power of modification which the Company would have if this Article were omitted. The Company shall comply with the provisions of Section 117 of the Act as to forwarding a copy of any such agreement or resolution to the Registrar of Companies.

BORROWING POWERS

- Power to borrow
62. Subject to the provisions of the Act and the Companies (Acceptance of Deposits) Rules, 2014, the directors from time to time at their discretion, by resolution passed at the meeting of the Board, accept deposit from Members or public or others either in advance or calls, or otherwise and generally raise or borrow or secure the payment of any sum or sums of money for the purpose of the Company not exceeding the aggregate of the Paid-up Capital of the Company and its reserves. Provided, however, where the monies to be borrowed, together with the monies already borrowed (apart from temporary loans obtained from the Company's bankers in the ordinary course of business) exceed the aforesaid aggregate, the Directors shall not borrow such monies without the consent of the Company in a general meeting by means of special resolution.
- Conditions on which money may be borrowed
63. The Board may raise or secure the repayment of such sum or sums in such manner and upon such terms and conditions in all respects as it thinks fit and in particular, by the issue of bonds, redeemable debentures or debenture-stock, or any mortgage, or other tangible

security on the undertaking or the whole or any part of the property of the Company (both present and future).

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| 64. | Any debentures, debenture-stocks, bonds or other securities may be issued at a premium or otherwise and with any special privileges, as to redemption, surrender, drawings, allotment of Shares, appointment of Directors and otherwise, debentures, debenture-stocks, bonds or other securities may be made assignable free from any equities between the Company and the person to whom the same may be issued. Provided that the debentures, debenture-stock, bonds or other securities with the right to allotment of the or conversion into Shares shall not be issued except with the consent of the Company in a general meeting or through Postal Ballot subject to provisions of Section 71 of the Act. | Issue of debentures, debenture- stocks, bonds, etc. with special privileges |
| 65. | Save as provided in Section 56 of the Act, no transfer of debentures shall be registered unless a proper instrument of transfer executed by the transferor and transferee has been delivered to the Company together with the certificate or certificates of the debentures. | Instrument of transfer |
| 66. | If the Board refuses to register the transfer of any debentures within time limit as may be prescribed, the Company shall send to the transferee and to the transferor, notice of the refusal. | Notice of refusal to register transfer |

GENERAL MEETINGS

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| 67. | In addition to any other meetings, the "Annual General Meeting" of the Company shall be held within such intervals as are specified in the Act and subject to the provisions of the Act, during such business hours and places as may be determined by the Board under the provisions of the Act or the Rules made thereunder. Any other meeting of the Company shall be called as "Extra-ordinary General Meeting". | When Annual General Meeting to be held |
| 68. | The Board may also call a general meeting by passing a resolution by circulation and the resolution so passed would be as effective as a resolution passed at the Board meeting. | Calling of a general meeting by circulation |
| 69. | The Company shall comply with provisions of Section 111 of the Act, as to giving notice of resolutions and circulating statement on the requisition of Members. | Circulation of Member's Resolution |
| 70. | Save as permitted under Section 101 of the Act, a general meeting of the Company may be called by giving not less than clear twenty one (21) days' notice either in writing or through electronic mode. Notice of every meeting shall be given to the Members and such other person or persons as required under and in accordance with Section 101 of the Act and it shall be served in the manner authorized by Sections 20 and 101 of the Act and the Rules made under the Act. | Notice of meeting |

PROCEEDINGS AT A GENERAL MEETING

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| 71. | Subject to the Act, the ordinary business of an Annual General Meeting shall be to receive and consider the financial statements, including consolidated financial statements and the reports of the Directors and the Auditors thereon, to elect Directors in the place of those retiring, to appoint Auditors and fix their remuneration and to declare dividends. All other business transacted at an Annual General Meeting and all business transacted at any other general meeting shall be deemed to be special business. | Business of meeting |
| 72. | No business shall be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business. Quorum for the meeting shall be determined in accordance with Section 103 of the Act. | Quorum to be present when business commenced |
| 73. | If within half-an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened by requisition of Members shall be cancelled, but in any other case it shall stand adjourned to the same day in the next week, at the same time and place, or to such other day and at such time and place as the Board may by notice appoint and if at such adjourned meeting a quorum is not present within half-an hour from the time appointed for holding the meeting those Members, who are present and not being less than two (2) shall be quorum and may transact the business for which the meeting was called. | When if Quorum not present, meeting to be cancelled and when to be adjourned |

Resolution to be passed by the Company in a general meeting	74.	Any act or resolution which, under the provisions of these Articles or of the Act, is permitted or required to be done or passed by the Company in a general meeting or through Postal Ballot shall be sufficiently so done or passed if effected by an ordinary resolution as defined in Section 114 (1) of the Act unless either the Act or these Articles specifically require such act to be done or resolution passed by a special resolution as defined in Section 114 (2) of the Act.
Chairman of a general meeting	75.	The Chairman of the Board shall be entitled to take the chair at every general meeting (“ Chairman ”). If there is no such Chairman, or if at any meeting he is not present within fifteen (15) minutes after the time appointed for holding such meeting, or is unwilling to act, the Directors present shall choose another Director as Chairman, and if no Directors is present, or if all the Directors present decline to take the Chair, then the Members present shall, on a show of hands or on a poll if properly demanded, elect one (1) of their numbers being a Member entitled to vote, to be the Chairman.
How questions to be decided at meetings	76.	At any general meeting a resolution put to the vote of the meeting shall unless a poll is demanded under Section 109 of the Act or voting is carried out electronically, be decided on a show of hands in accordance with Section 107 of the Act and the Companies (Management and Administration) Rules, 2014. In the case of an equality of votes, the Chairman shall both on a show of hands and at the poll have a casting vote in addition to the vote or votes to which he may be entitled as a member.
What is the evidence of passing of a resolution where poll is demanded	77.	A declaration by the Chairman that on an evidence of the show of hands a resolution has or has not been carried, either unanimously or by a particular majority and an entry to that effect in the book containing the minutes of the proceedings of the Company shall be conclusive evidence of the fact, without proof of the number or proportion the votes cast in favour of or against such resolution.
Demand for Poll	78.	<p>(i) Subject to the Act, before or on the declaration of the result of voting on any resolution on a show of hands, a poll may be ordered to be taken by the Chairman of his own motion and shall be ordered to be taken by him on a demand made in that behalf by a Member or Members present in person or by Proxy and holding Shares in the Company conferring their powers to vote on such resolution, being Shares which is not less than one tenth of the total voting power in respect of the resolution or on which the aggregate sum of not less than Rupees Five lacs has been paid up.</p> <p>(ii) If a poll be demanded as aforesaid it shall be taken forthwith on a question of adjournment or election of a Chairman and in any other case in such manner and at such time, not being later than forty-eight (48) hours from the time, when the demand was made, and at such place as the Chairman directs and subject as aforesaid, either at once or after an interval or adjournment or otherwise and the results of the poll shall be deemed to be the decision of the meeting on the resolution on which the poll was demanded.</p> <p>(iii) The demand of a poll may be withdrawn at any time by the person or persons who made the demand.</p> <p>(iv) Where a poll is to be taken the Chairman shall appoint scrutinizer (s) as prescribed by the Rules to scrutinize the votes given on the poll and report to him thereon.</p> <p>(v) On a poll a Member entitled to more than one (1) vote, or his Proxy or other person entitled to vote for him, as the case may be, need not, if he votes, use all his votes or cast in the same way all the votes he uses.</p> <p>(vi) The demand of a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.</p>
Power to adjourn a general meeting	79.	<p>(i) The Chairman of a general meeting may adjourn the same from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.</p> <p>(ii) Save as otherwise provided in Section 103 of the Act, when the meeting is adjourned it shall not be necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless the adjournment is for a period of thirty (30) days or more.</p>
Vote of Members	80.	i) Save as hereinafter provided, on a show of hands every Member present in person and being a holder of equity Shares shall have one (1) vote, and every person present either as a Proxy on behalf of a holder of equity Shares, if he is not entitled to vote in his

- own right, or as a duly authorised representative of a body corporate, being a holder of equity Shares, shall have one vote.
- ii) Save as hereinafter provided, on a poll the voting rights of a holder of equity Shares shall be as specified in Section 47 of the Act.
 - iii) The voting rights of every Member holding preference Shares, if any, shall upon a show of hands or upon a poll be subjected to the provisions, limitations and restrictions laid down in Section 47 of the Act. Provided that no body corporate shall vote by Proxy so long as resolution of its Board of Directors under the provisions of Section 113 of the Act is in force and the person named in such resolution is present at the general meeting at which the vote by Proxy is tendered.
 - iv) A Member may exercise his vote if permitted by the Act and the Rules at a meeting or by Postal Ballot by electronic means in accordance with the Section 108 of the Act read with the Companies (Management and Administration) Rules, 2014 and shall vote only once.
81. i) Where a body corporate (hereinafter called "**Member Company**") is a Member of the Company, a person duly appointed by resolution in accordance with the provisions of Section 113 of the Act to represent such Member Company at a meeting of the Company, shall not by reason of such appointment be deemed to be a Proxy and the lodging with the Company at the Office or production at the meeting of a copy of such resolution duly signed by one Director of such Member Company and certified by him as being a true copy of the resolution shall, on production at the meeting, be accepted by the Company as sufficient evidence of the validity of his appointment. Such a person shall be entitled to exercise the same rights and powers, including the right to vote by Proxy on behalf of the Member Company which he represents, as that Member Company could exercise if it were an individual Member.

Procedure where a company or body corporate is Member
 - ii) Where the President of India or the Governor of a State is a Member of the Company then his/their representation at the meeting shall be in accordance with Section 112, of the Act.
82. Any person entitled under these Articles for transfer of Shares may vote at any general meeting in respect thereof in the same manner as if he were the registered holder of such Shares, provided that at least forty eight (48) hours before the time of holding the meeting or adjourned meeting, as the case may be, at which he purports to vote he shall satisfy the Board of his right to transfer such Shares, unless the Board shall have previously admitted his right to vote at such meeting in respect thereof. If any Member is of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, he may vote whether on a show of hands or at a poll, by his committee, or other legal guardian and any such committee or legal guardian may, on a poll, give their votes by Proxy.

Votes in respect of deceased, insane and insolvent Members
 83. Where there are joint registered holders of any Share, any one of such persons may vote at any meeting either personally or by Proxy in respect of such Share as if he were solely entitled thereto and if more than one of such joint-holders be present at any meeting either personally or by Proxy, then one of the said persons so present whose name stands first on the Register in respect of such Share alone shall be entitled to vote in respect thereof. Several executors or administrators of a deceased Member in whose name any Share is registered shall for the purpose of this Article be deemed joint holders thereof.

Joint Holders
 84. Votes may be given either personally, or in the case of a body corporate, by a representative duly authorised as aforesaid, or by Proxy in accordance with the provisions of Section 105 of the Act read with the Companies (Management and Administration) Rules, 2014.

Proxies Permitted
 85. The instrument appointing a Proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing, or if such appointer is a body corporate, be under its seal or be signed by an officer or attorney duly authorized by it.

Instrument appointing Proxy to be in writing
 86. The Company agrees that it will send out Proxy forms to all shareholders and debenture holders in all cases where proposals other than of a purely routine nature are to be considered, such Proxy forms being so worded that a shareholder or debenture holder may vote either for or against each resolution.

Proxy forms to be sent
 87. The instrument appointing a Proxy and the power of attorney or other authority (if any) under which it is signed, or a notarized copy of that power or authority, shall be deposited at the Office not less than forty-eight (48) hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument purports to vote in respect thereof and

Instrument appointing a Proxy to be deposited at the office

in default the instrument of Proxy shall not be treated as valid.

- Whether vote by Proxy valid though authority revoked 88. A vote given in accordance with the terms of an instrument appointing a Proxy shall be valid notwithstanding the previous death or insanity of the principal, or revocation of the instrument, or transfer of the Share in respect of which the vote is given, provided no intimation in writing of the death, insanity, revocation or transfer of the Share shall have been received by the Company at the office before the vote is given. Provided nevertheless that the Chairman shall be entitled to require such evidence as he may in his discretion think fit of the due execution of an instrument of Proxy and that the same has not been revoked.
- Form of instrument appointing a Proxy 89. Every instrument appointing a Proxy shall be retained by the Company and shall, be in the form as prescribed in the Companies (Management and Administration) Rules, 2014.
- Restriction on voting 90. No Member shall be entitled to exercise any voting rights either personally or by Proxy at any meeting of the Company in respect of any Shares registered in his name on which any calls or other sums presently payable by him have not been paid or in regard to which the Company has, exercised, any right of lien but the Board of Directors may by a resolution passed at the meeting of the Board waive the operation of this Article.
- Objections raised on voting 91. i) Any objection as to the admission or rejection of a vote either, on a show of hands, or on a poll made in due time, shall be referred to the Chairman, who shall forthwith determine the same, and such determination made in good faith shall be final and conclusive.
- ii) No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered and every vote not disallowed at such meeting shall be valid for all purposes.

DIRECTORS

- Number of Directors 92. The number of Directors of the Company shall not be less than three (3) and not more than fifteen (15). Provided that the Company may appoint more than fifteen (15) directors after passing a special resolution of members. The composition of the Board of Directors will be in consonance with the Act and the Equity Listing Agreement.
- Company to increase or reduce number of Directors 93. Subject to the provisions of the Act and these Articles, the Company may from time to time increase or reduce the number of Directors within the limits fixed by Article 92.
- Limit on number of non-retiring Directors 94. a) Subject to the Act and these Articles, the Directors not exceeding one-third of the total number of Directors for the time being of the Company shall be liable to retirement by rotation. The Independent Directors shall not be counted in the total number of Directors for this purpose.
- b) Subject to the provisions of Articles 96 and 97 and Section 152 of the Act, all Directors other than the Directors who are not retiring by rotation, additional/ alternate/ Independent Directors shall be persons whose period of office is liable to determination by retirement by rotation. All the Directors who are not retiring except Independent Directors shall however, be counted in determining the number of retiring Directors.
- First Directors 95. The following persons are the first directors of the Company.
- 1. MR. SIVAPRASAD SIVASUBRAMANIAM NADAR**
- 2. MR. ARJUN MALHOTRA**
- 3. MR. YOGESH CHANDRA VAIDYA**
- Powers of State Financial Corporations and others to nominate Directors 96. The Board may authorise by resolution or by agreement the State Financial Corporation (SFC), State Industrial Development Corporation (SIDC), Life Insurance Corporation of India (LIC), Industrial Finance Corporation of India (IFCI), Industrial Development Bank of India (IDBI), Unit Trust of India (UTI), and/or any other Financial Institution, corporation or any Bank which continue(s) to be Member of the Company by virtue of being holder of any Share or Shares in the Company or to any of the aforesaid Financial Institutions, Corporation or Banks to whom any money remains due by the Company and SFC, LIC, IFCI, SIDC, IDBI, UTI to nominate a Director or Directors to the Board from time to time and to remove from such Office any person or persons so appointed and upon removal of any such person to appoint any other person(s) in his / their place. A Director so appointed shall not be required to hold any qualification Shares nor shall (subject to the provisions of Section 152 read with Section

161(3) of the Act) be liable to retire by rotation or be subject to removal under Article 108 hereof. But he shall be counted in determining the number of retiring directors. A Director appointed under this Article shall be ex-officio Director within the meaning of these Articles.

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| 97. | Any trust deed for securing debenture or debenture stock may, if so arranged, provide for the appointment, from time to time, by the trustees thereof or by the holders of debentures or debenture stock, of some person or persons to be Director(s) of the Company and may empower such trustees or holders of debentures or debenture stock, from time to time, to remove and re-appoint any Director(s) so appointed. The Directors appointed under this Article are herein referred to as “ Debenture Directors ” and the term “ Debenture Directors ” means the Directors for the time being in office under this Article. The Debenture Director shall not be liable to retire by rotation or be removed by the Company. The trust deed may contain such ancillary provisions as may be arranged between the Company and the trustees and all such provisions shall have effect notwithstanding any of the other provisions herein contained. But he shall be counted in determining the number of retiring directors. | Debenture Directors |
| 98. | The Board shall have power at any time and from time to time to appoint any person as an additional Director as an addition to the Board but so that the total numbers of Directors should not exceed the limit fixed by these Articles and the Act. Any Director so appointed shall hold office only until the next Annual General Meeting of the Company and shall then be eligible for re- election. | Power of Directors to add their number |
| 99. | A Director shall not be required to acquire qualification Shares. | Qualification Shares |
| 100. | Subject to the approval of the Board, each Director shall be entitled to receive out of the funds of the Company a fee for attending a meeting of the Board or a Committee of the Board, within the limit permitted, from time to time, by the Act or the Rules made thereunder. All other remuneration, if any payable by the Company to each Director, whether in respect of his services as a Managing Director or a Director in the whole or part time employment of the Company or otherwise shall be determined in accordance with and subject to the provisions of these Articles and of the Act. The Directors shall be entitled to be paid their reasonable travelling, hotel and other expenses incurred in consequence of their attending the Board and Committee meetings or otherwise incurred in the execution of their duties as Directors or in performing any of the task on behalf of the Company. | Directors Remuneration and expenses |
| 101. | If any Director, being willing, shall be called upon to perform extra services or to make any special exertions for any of the purposes of the Company or as a Members of a Committee of the Board then, subject to Section 197 of the Act, the Board may remunerate the Directors so doing either by a fixed sum or by a percentage of profits or otherwise and such remuneration may be either in addition to or in substitution for any other remuneration to which he may be entitled. | Remuneration for extra service |
| 102. | The continuing Directors may act notwithstanding any vacancy in their body but so that if the number falls below the minimum as fixed by the Articles, the Directors shall not except for the purpose of filing vacancies or for summoning a general meeting as so long as the number is below the minimum. | Board may act notwithstanding vacancy |
| 103. | The office of Director shall ipso facto become vacant if at any time he commits any of the acts set out in Section 167 of the Act. | Vacation of office of Director |
| 104. | No director or other person referred to in Section 188 of the Act shall hold an office or place of profit save as permitted by that Section and the Companies (Meetings of Board and its Powers) Rules, 2014. | Office or place of profit |
| 105. | Subject to the provisions of Section 184, 188 and 192 of the Act and the Rules made thereunder neither shall a Director be disqualified from contracting with the Company whether as vendor, purchaser or otherwise for goods, materials or services or for underwriting the subscription of any Shares in or debentures of the Company nor shall any such contract or agreement entered into by or on behalf of the Company with the relative of such Director, or a firm in which such Director or relative is a partner or with any other partner in such firm or with a private company of which such Director is a Member or Director, be void nor shall any director so contracting or being such Member or so interested be liable to account to the Company for any profit realised by any such contract or arrangement by reason of such Director holding office or of the fiduciary. | Conditions under when directors may contract with Company |
| 106. | (a) Subject to the provisions of Articles 96, 97 and Section 152 of the Act, at each Annual General Meeting of the Company one third of such of the Directors for the time being as are liable to retire by rotation, or if their number is not three or multiple of three, then the number nearest to one-third shall retire from office. | Rotation and retirement of Directors |

- (b) Neither a nominated Director nor an additional Director appointed by the Board under Article 98 hereof nor an Independent Director shall be liable to retire by rotation within the meaning of this Article. But they along with all the Directors who are not retiring except Independent Directors shall be counted in determining the number of retiring directors.
- Which Directors to retire 107. a) The Directors to retire by rotation at every Annual General Meeting shall be those who have been longest in office since their last appointment, but as between persons who became Directors on the same day those to retire shall, in default of and subject to any agreement among themselves, be determined by lot drawn at a meeting of the Board of Directors.
- b) Save as permitted by Section 162 of the Act, every resolution of a general meeting for the appointment of a Director shall relate to one named individual only.
- Power to remove Directors by ordinary resolution on special notice 108. The Company may remove any Director other than directors nominated pursuant to Articles 96 and 97 before the expiration of his period of office in accordance with the provisions of Section 169 of the Act and may subject to the provisions of Section 161 of the Act appoint another person instead of the Director so removed was appointed by the Company in a general meeting or by the Board under Article 109.
- Board may fill up casual vacancies 109. If any Director appointed by the Company in a general meeting vacates office as a Director before his term of office expires in the normal course, the resulting casual vacancy may be filled up by the Board at a meeting of the Board, but any person so appointed shall retain his office so long only as the vacating Director would have retained the same of no vacancy has occurred. Provided that the Board may not fill such a vacancy by appointing thereto any person who has been removed from the office of Director under Article 108.
- When the Company and candidate for office of Directors must give notice 110. The eligibility and appointment of a person other than a retiring Director to the office of Director shall be governed by the provisions of Section 160 of the Act.

ALTERNATE DIRECTORS

- Power to appoint alternate Directors 111. The Board may in accordance with and subject to the provisions of Section 161 of the Act, appoint any person to act as alternate Director for a Director during the latter's absence for a period of not less than three (3) months from India. No Person shall be appointed as alternate director to an Independent Director unless he is qualified to be appointed as Independent Director under the provisions of the Act.

PROCEEDINGS OF BOARD OF DIRECTORS

- Meetings of Directors 112. The Board of Directors may meet for the conduct of business, adjourn and otherwise regulate its meetings, as it thinks fit; provided that a meeting of the Board of Directors shall be held as per the provision of the Act, Rules and Equity Listing Agreement.
- Directors may summon meeting 113. A Director may, at any time, and the manager or secretary shall, upon the request of a Director made at any time, convene a meeting of the Board and the provisions of Section 173 of the Act and the Companies (Meetings of Board and its Powers) Rules, 2014 shall apply in this regard.
- Chairman/Vice Chairman 114. The Board may appoint a Chairman of its meetings. The Board may also appoint a Vice Chairman to preside over the meeting of the Board in absence of Chairman. If no such Chairman/Vice Chairman is appointed or if at any meeting of the Board, the Chairman/Vice Chairman is not present within five minutes after the time appointed for holding the same, the Directors present shall choose someone of their member to be the Chairman of such meeting.
- Quorum 115. The quorum for a meeting of the Board shall be determined from time to time in accordance with the provisions of Section 174 of the Act. If a quorum shall not be present within fifteen (15) minutes of the time appointed for holding a meeting of the Board, it shall be adjourned until such date and time as the Chairman of the Board shall appoint. The participation of the Directors can be in person or through video conferencing or other audio visual means as may be prescribed by the Companies (Meetings of Board and its Powers) Rules, 2014 or permitted by law.
- Power of Quorum 116. A meeting of the Board at which a quorum is present shall be competent to exercise all or any

of the authorities, powers and discretion by or under these Articles or the Act for the time being vested in or exercisable by the Board.

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| 117. | Subject to the provisions of Sections of 186(5), 203(3) of the Act and save as otherwise expressly provided in these Articles, questions arising at any meetings shall be decided by a majority of votes. | How questions to be decided |
| 118. | The Board may, subject to the provisions of the Act, from time to time and at any time, delegate any of its powers to a Committee consisting of such Director or Directors as it thinks fit and may, from time to time revoke such delegation. Any Committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may from time to time be imposed upon it by the Board. | Power to appoint committees and delegate |
| 119. | The meeting and proceedings of such committee consisting of two (2) or more members shall be governed by the regulations made by the Board in that regard in accordance with the provisions, if any, of the Act and Equity Listing Agreement. | Proceedings of Committee |
| 120. | Acts done by a person as a Director shall be valid, notwithstanding that it may afterwards be discovered that his appointment was invalid by reason of any defect or disqualification or had been terminated by virtue of any provisions contained in the Act or in these Articles. Provided that nothing in these Articles shall be deemed to give validity to acts done by a Director after his appointment has been shown to the Company to be invalid or to have been terminated. | When acts of a Director valid notwithstanding defective appointment |
| 121. | Save in those cases where a resolution is required by Sections 161(4), 179 , 182, 184, 186, 188, 203 of the Act, to be passed at a meeting of the Board, a resolution shall be as valid and effectual as if it had been passed at a meeting of the Board or Committee, as the case may be duly called and constituted if a draft thereof in writing is circulated, together with the necessary papers, if any, to all the Directors or to all the members of the Committee as the case may be then in India, not being less in number than the quorum fixed for meeting of the Board or Committee, as the case may be and to all other Directors or members of the Committee, at their usual address whether in India and has been approved by such of them as are then in India or by a majority of such of them as are entitled to vote on the resolution. Provided that where not less than one third of the Directors of the Company for the time being require that resolution under circulation be decided by the Board at a meeting, the Chairman shall put the resolution to be decided at a meeting of the Board. | Resolutions by circulation |

MINUTES

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| 122. | a) The Board shall in accordance with the provisions of Section 118 of the Act and the Companies (Management and Administration) Rules, 2014, cause minutes to be kept of every general meeting of the Company and of every meeting of the Board or of every committee of the Board. | Minutes to be made |
| | b) Any such minutes of any meeting of the Board or of any Committee or of the Company in a general meeting, if kept in accordance with the provisions of Section 118 of the Act and the Companies (Management and Administration) Rules, 2014, shall be evidence of the matters stated in such minutes. The minute books of general meetings of the Company shall be kept at the Office and shall be open to inspection by Members as per the provisions of the Act or the Rules made thereunder. The minute books of general meetings may also be kept for inspection in electronic mode as prescribed under the Companies (Management and Administration) Rules, 2014. | |

POWERS OF THE BOARD

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| 123. | Subject to the provisions of the Act and these Articles, the business of the Company shall be managed by or under the direction of the Board who shall be entitled to exercise all such powers and to do all such acts and things as the Company is authorised to exercise and do. Provided that the Board shall not exercise any power or do any act or thing which is directed or required, whether by the Act or any other statute or by the Memorandum of the Company or by these Articles or otherwise, to be exercised or done by the Company in a general meeting. Provided further that wherever the Act or any other statute or the Memorandum of the Company or these Articles, provide for exercise of powers by the Board subject to the members approval in a general meeting, the Board shall exercise such powers only with such approval. In exercising any such power or doing any such act or thing, the Board shall be subject to the provisions in that behalf contained in the Act or any other statute or in the Memorandum of the | General power of Company vested in the Board |
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Company or in these Articles, or in any regulations not inconsistent therewith and duly made there under, including regulations made by the Company in a general meeting, but no regulation made by the Company in a general meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made.

Specific Powers given to Directors	124. Without prejudice to the general powers conferred by the immediately preceding Article and to any other powers or authority conferred by these presents on the Directors or on the Managing Director, it is hereby expressly declared that the Directors shall subject to the regulations of these presents and to the provisions of the Act and in addition to the powers of the Board provided under Section 179 of the Act read with the Companies (Meetings of Board and its Powers) Rules, 2014, have the following powers, that is to say, power:
To carry the agreement into effect	(i) To take such steps as they think fit to implement and to carry into effect all agreements.
To pay preliminary expenses	(ii) To pay costs, charges and expenses preliminary and incidental to the promotion, formation, establishment and registration of the Company.
To acquire and dispose of property and rights	(iii) To purchase or otherwise acquire for the Company any property, rights or privileges which the Company is authorised to acquire at such price and generally on such terms and conditions as they think fit and subject to the provisions of Section 180 (1) of the Act, to sell, let, lease, exchange, or otherwise dispose of absolutely or conditionally any part of the property, privileges and undertaking of the Company upon such terms and conditions and for such consideration as they may think fit.
To pay for property in debenture etc.	(iv) At their discretion to pay for in debentures etc. property rights, privileges acquired by or services rendered to the Company either wholly or partially in cash or in Shares (subject to Section 62 of the Act), bonds, debentures or other securities of the Company and any such Shares may be issued either as fully paid up or with such amount credited as paid up thereon as may be agreed upon; and such bonds, debentures, or other securities may be either specifically charged upon all or any part of the property of the Company and its uncalled capital or not so charged.
To secure contracts by mortgage	(v) To secure, the fulfillment of any contracts, agreements or engagement entered into by Company by mortgage or charge of all or any of the property of the Company and its unpaid capital for the time being or in such manner as they may think fit, subject to Section 180 of the Act.
To appoint officers etc.	(vi) To appoint and at their discretion remove or suspend such agents, employees, officers, clerks and servants for permanent, temporary or special services as they may from time to time think fit and to determine their powers and duties and fix their salaries or emoluments whether by way of commission or participation in profits or partly in one way and partly in another and to require security in such instances and to such amount as they think fit.
To appoint trustees	(vii) To appoint any Person or Persons (whether incorporated or not) to accept and hold in trust for the Company any property belonging to the Company or in which it is interested or for any other purposes and to execute and do all such deeds, documents and things as may be requisite in relation to any such trust and to provide for the remuneration of such trustee or trustees.
To bring and defend actions etc.	(viii) Subject to the provisions of Act, to institute, conduct, defend, compound or abandon any legal proceedings by or against the Company or its officers or otherwise concerning the affairs of the Company and also to compound and allow time for payment or satisfaction of any debts due and of any claims or demands by or against the Company.
To refer to arbitration	(ix) To refer any claims as demands by or against the Company to arbitration and observe and perform the awards.
To give receipts	(x) To make and give receipts, releases and other discharges for money payable to the Company and for the claims and demands of the Company.
To act in matters of bankrupts and insolvents	(xi) To act on behalf of the Company in all matters relating to bankrupts and insolvents.
To authorize acceptance etc.	(xii) To determine who shall be entitled to sign on the Company's behalf bills, notes, receipts, acceptances, endorsements, cheques, releases, contracts, negotiable instruments and documents.
To appoint attorneys	(xiii) From time to time to provide for the management of the affairs of the Company either

in different parts of India or elsewhere in such manner as they think fit and in particular to establish branch officers and to appoint any persons to be the attorneys or agents of the Company with such powers (including powers to sub-delegate) and upon such terms as may be thought fit.

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| (xiv) | Subject to the provisions of Sections 67, 179, 180(1), 186 of the Act, to invest and deal with any of the moneys of the Company not immediately required for the purposes thereof upon such securities (not being Shares in this Company) and in such manner as they think fit and from time to time to vary or realise such investments. | To invest moneys |
| (xv) | To execute in the name and on behalf of the Company in favour of any Director or other person who may incur or be about to incur any personal liability for the benefit of the Company such mortgages of the Company's property (present and future) as they think fit and any such mortgage may contain a power of sale and such other powers, covenants and provisions as shall be agreed upon. | To give security by way of indemnity |
| (xvi) | Subject to the provisions of Section 188 of the Act, to give to any person employed by the Company, as remuneration for their services as such, a commission on the profits of any particular business or transaction or a Share in the profits of the Company such commission or Share or profits shall be treated as part of the working expenses of the Company. | To give percentage of profits |
| (xvii) | From time to time make, vary and repeal bye-laws for the regulation of the business of the Company, its officers and servants. | To make bye- laws |
| (xviii) | To enter into all such negotiations and contracts and rescind and vary all such contracts and execute and do all such acts, deeds, things in the name and on behalf of the Company as they may consider expedient or in relation to any of the matters aforesaid or otherwise for the purposes of the Company. | To make contracts etc. |
| (xix) | Subject to the provisions of Sections 181 and 182 of the Act to establish, maintain, support and subscribe to any national, political and charitable institutions or funds of public object, and any institution, society, or club which may be for the benefit of the Company or its employees or may be connected with any town or place where the Company carries on business, to give pensions, gratuities, or charitable aid to any person or persons who have served the Company or to the wives, children or dependents of such person or persons, that may appear to the Directors just or proper, whether any such person, his widow, children or dependents have or have not a legal claim upon the Company. | To establish and support charitable objects. |
| (xx) | Subject to the provisions of the Act, before recommending any dividends, to set aside portions of the profits of the Company to form a fund to provide for such pensions, gratuities or compensation, or other benefits or to create any provident or benefit or other funds in such or any other manner as the Director may deem fit. | To set aside profits for Provident Fund |
| (xxi) | To make and alter rules and regulations concerning the time and manner of payment of the contributions of the employees and the Company, respectively to any such funds and the accrual, employment, suspension and forfeiture of the benefits of the said funds and the application and disposal thereof and otherwise in relation to the working and management of the said fund as the Directors shall from time to time think fit. | To make and alter rules |
| (xxii) | Subject to the provisions of the Act, to delegate all or any of the powers hereby conferred upon them to the Managing Director or to any other Director or employees of the Company as they may from time to time think fit, other than a power to issue debentures and to make calls on shareholders in respect of moneys unpaid on their Shares. | To delegate powers to a director or employee |

MANAGING OR WHOLE – TIME DIRECTOR(S)

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| 125. | Subject to the provisions of the Act, and of these Articles, the Company in a general meeting or the Board may from time to time appoint one or more of their body to be Managing Director or Managing Directors (in which expression shall be included Joint or Deputy Managing Director) or Whole-time Director or Whole-time Directors of the Company, for such term not exceeding five years at a time and upon such terms and conditions as they may think fit, from time to time (subject to the provisions of any contract between him or them and the Company) remove or dismiss him or them from office and appoint another or others in his or their place or places. Further the Managing Director as stated in Article 126 can hold the position of the | Powers to Board to appoint Managing or Whole-time Director(s) |
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Chairman of the Board for the better governance of the Company.

- Holding of position of Managing Director and/or CEO by Chairman
126. Subject to the approval of the Board of Directors of the Company, the Chairman of the Board of Directors of the Company can hold the position of the Managing Director and / or the Chief Executive Officer of the Company at the same time.
- Managing Director(s) or Whole-time Director(s) not liable to retirement by rotation
127. Subject to the provisions of the Act, and of these Articles, a Managing Director or a Whole-time Director, may subject to the shareholders' approval at the time of appointment or re-appointment or otherwise continue to hold office not subject to retirement by rotation under Article 106. However, they shall be counted in determining the number of retiring directors. He shall, subject to the provisions of any contract between him and the Company, be subject to the same provisions as to the resignation and removal of the other Directors of the Company and he shall ipso facto and immediately cease to be a Managing Director or a Whole-time Director if he ceases to hold the office of Director for any cause, provided that if at any time the number of Directors (including Managing Director or Whole-time Director) as are not subject to retirement by rotation shall exceed one-third of the total number of Directors for the time being, then such Managing Director or Managing Directors, as the Directors shall from time to time select, shall be liable to retirement by rotation in accordance with Article 106 and the Directors not liable to retirement by rotation shall not exceed one-third of the total number of Directors for the time being.
- Remuneration of Managing Director(s) or Whole-time Director(s)
128. Subject to the provisions of the Act and of these Articles and of any contract between him and the Company, the remuneration of the Managing Director or Whole-time Director shall from time to time be fixed by the Directors, subject to the approvals of the Members of Company and may be by way of fixed monthly payment or commission on profits of the Company or by participation in such profits or by any or all of these modes or any other mode not expressly prohibited by the Act. A Managing Director or Whole-time Director shall in addition to the above remuneration be entitled to the fee for attending meetings of Board or Committee.
- Powers and duties of Managing or Whole-time Director
129. Subject to the provisions of the Act and of these Articles, the Company or the Board may from time to time entrust to and confer upon a Managing Director or Managing Directors or Whole-time Director or Whole-time Directors for the time being, such of the power exercisable under these Articles or otherwise by the Directors as they may think fit and may confer such powers for such time and to be exercised for such objects and purposes and upon such terms and they may subject to the provisions of the Act and of these Articles confer such powers either collaterally with, or to the exclusion of or in substitution for all, or any of the powers of the Directors in that behalf and may from time to time revoke, withdraw, alter or vary all or any of such powers.

MANAGEMENT

- Management of the Company
130. The Board of Directors may in accordance with the provisions of the Act appoint a Whole-time Chairman, or Managing Director or Whole-time Director or Manager to manage its affairs. A Director may be appointed as a Secretary, or Manager but Secretary or Manager need not be a Director of the Company. The terms and conditions and the appointment of Whole-time/ Managing Directors shall be subject to the provisions of the Act and to the consent of the Members of the Company, wherever required.
131. Subject to the provisions of the Act, the following regulations shall have effect: -
- Local Management
- a) The Board may, from time to time, provide for the management of the affairs of the Company outside India (or in any specified locality in India) in such manner as it shall think fit and the provisions contained in the four next following paragraphs shall be without prejudice to the general powers conferred by this paragraph.
- Local Directorate delegations
- b) The Board, from time to time and at any time, may establish any local directorates or agencies for managing any of the affairs of the Company outside India, or in any specified locality in India and may appoint any persons to be Members of any such local directorate or any managers or agents and may fix their remuneration and, save as provided in Section 179 of the Act, the Board from time to time and at any time may delegate to any person so appointed any of the powers, authorities and discretions for the time being of any such local directorate or any of them to fill up any vacancies therein and to act notwithstanding vacancies and may fix any such appointment conditions as the Board may think fit and the Board may at any time remove any person so appointed and may annul or vary any such delegation.

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| c) | The Board may, at any time and from time to time, by power of attorney under the Seal appoint any persons to be the attorney of the Company for such purposes and with such powers, authorities and discretions (not exceeding those which may be delegated by the Board under the Act and these Articles) and for such period and subject to such conditions as the Board may, from time to time think fit any such appointments may, if the Board thinks fit be made in favour of the members or any of the members of any local directorate established as aforesaid, or in favour of the Company or of the members, directors, nominees, or officers of any company or firm, or in favour of any fluctuating body of persons whether nominated directly or indirectly by the Board and any such power of attorney may contain such provisions for the protection or convenience of persons dealing with such attorneys as the Board thinks fit. | Power of Attorney |
| d) | Any such delegate or attorneys as aforesaid may be authorised by the Board to sub-delegate all or any of the powers, authorities and discretions for the time being vested in them. | Sub-delegation |
| e) | The Company shall cause to be kept a Register of Members and index of Members and a Register and index of Debenture holders and a Register and index of other security holders in accordance with the applicable provisions of the Act, with details of shares and debentures held in material/physical and dematerialised form in any media as may be permitted by law including in any form of electronic media. The Register and Index of Beneficial Owners maintained by a Depository under Section 11 of the Depositories Act shall be deemed to be Register of Members and index of Members and Register and Index of Debenture holders and Register and Index of other Security holders, as the case may be, for the purpose of the Act. The Company may cause to be kept in any State or country outside India, as may be permitted by the Act, a foreign Register of Members or debenture holders resident in any such State or country and the Board may from time to time, make such provisions as it may think fit relating thereto and may comply with the requirement of any local law and shall in any case comply with the provisions of Sections 88 of the Act and the Companies (Management and Administration) Rules, 2014. | Register of Members or debenture holders |
| f) | If a Beneficial Owner seeks to opt out of a Depository in respect of any security, the Beneficial Owner shall inform the Depository accordingly. | Option to opt out in respect of any security |
| g) | The Depository shall, on receipt of information as above, make appropriate entries in its records and subsequently inform the Company. | |
| h) | The Company shall within thirty (30) days of the receipt of the intimation from the Depository and on fulfillment of such conditions and payment of such fees as may be specified by the regulations, issue the certificate of securities to the Beneficial Owner or the transferee as the case may be. | |
| i) | Notwithstanding anything in the Act, or these Articles to the contrary, where securities are held in a Depository, the records of the beneficial ownership may be served by such Depository on the Company by means of electronic mode or by delivery of floppies or discs. | Service of Documents |
| j) | Except as specifically provided in these Articles, the provisions relating to joint holders of Shares, calls, lien on Shares, forfeiture of Shares and transfer and transmission of Shares shall be applicable to shares held in Depository so far as they apply to shares in physical form subject to the provisions of the Depository Act. | Provisions of Articles to apply to shares held in Depository |
| k) | Notwithstanding anything in the Act, or these Articles where securities are dealt with by a Depository, the Company shall intimate the details thereof to the Depository immediately on allotment of such securities. | Allotment of Securities dealt with in a Depository |
| l) | The shares in the capital shall be numbered progressively according to their several denominations provided, however, that the provision relating to progressive numbering shall not apply to the shares of the Company which are dematerialised or may be dematerialised in future or issued in future in dematerialised form. Every forfeited or surrendered share held in material form shall continue to bear the number by which the same was originally distinguished. | Distinctive number of securities held in a Depository |

KEY MANAGERIAL PERSONNEL

- Key Managerial Personnel
132. Subject to Section 203 of the Act, the Board shall appoint a Managing Director, Whole-time Director, Chief Executive Officer, Company Secretary, Chief Financial Officer and other Officers as may be prescribed on such terms and conditions and on such remuneration as may be approved by the Board and may remove a Managing Director, Whole-time Director, Chief Executive Officer, Company Secretary, Chief Financial Officer and other Officers as may be prescribed by means of resolution of the Board.

AUTHENTICATION OF DOCUMENTS

- Power to authenticate documents
133. Any Director or the Key Managerial Personnel or any officer appointed by the Board for the purpose shall have power to authenticate any documents and accounts relating to the business of the Company and to certify copies thereof, extracts thereof or extracts therefrom as true copies or extracts, where any books records, documents or accounts are elsewhere than at the Office, the local manager or other officer of the Company having the custody thereof, shall be deemed to be a person appointed by the Board as aforesaid.
- Certified copies of resolution of the Board
134. A document purporting to be a copy of resolution of the Board or an extract from the minutes of a meeting of the Board which is certified as such in accordance with the provisions of the immediately preceding Article shall be exclusive evidence in favour of all persons dealing with the Company upon the faith thereof that such resolution has been duly passed or, as the case may be, that such extract is a true and accurate record of a duly constituted meeting of the Directors.

THE SEAL

- Custody of Seal
135. The Board shall provide for the safe custody of the Seal and the Seal shall never be used except by the authority previously given by the Board or a committee of the Board authorised by the Board in that behalf and save as provided in Article 14 (i) hereof, any one (1) Director and the secretary or such other person as the Board may appoint shall sign every instrument on which the Seal is affixed. Provided nevertheless, that any instrument bearing the Seal of the Company and issued for valuable consideration shall be binding on the Company notwithstanding any irregularity touching the authority of the Board to issue the same.

ANNUAL RETURNS

- Annual Returns
136. The Company shall comply with the provisions of Section 92 of the Act as to the making of Annual Returns.

RESERVES

- Reserves
137. The Board may, from time to time before recommending any dividend, set apart any and such portion of the profits of the Company as it thinks fit as reserves to meet contingencies or for the liquidation of any debentures, debts or other liabilities of the Company, for equalisation of dividends, for repairing, improvising or maintaining any of the property of the Company and for such other purposes of the Company as the Board in its absolute discretion thinks conducive to the interest of the Company and may, subject to the provisions of the Act invest the several sums so set aside upon investments (other than Shares of the Company) as it may think fit and from time to time deal with and vary such investment and dispose of all or any part thereof for the benefit of the Company and may divide the reserve into such special funds as the Board thinks fit, with power to employ the reserve or any parts thereof in the business of the Company and that without being bound to keep the same separate from other aspects.
- Investment of Money
138. All money carried to the reserves shall nevertheless remain and be profits of the Company subject to due provisions being made for actual loss or depreciation for the payment of dividends and such moneys and all the other moneys of the Company not immediately required for the purposes of the Company may, subject to the provisions of the Act, be invested by the Board in or upon such investments or securities as it may select or may be

used as working capital or may be kept at any Bank on deposit or otherwise as the Board may, from time to time think proper.

139. The Board may also carry forward any profits which it may consider necessary not to divide without setting them aside as a reserve. Carry forward of profits

CAPITALISATION OF RESERVES

140. Any general meeting may resolve that any moneys, investments, or other assets forming part of the undivided profits of the Company standing to the credit of the reserves, or any capital redemption reserve accounts, or in the hands of the Company and available for dividend or representing premiums received on the issue of Shares and standing to the credit of the securities premium account be entitled and distributed amongst such of the shareholders as would be entitled to receive the same if distributed by way of dividend and in the proportions on the footing that they become entitled thereto as capital and that all or any part of such capitalized fund be applied on behalf of such shareholders in paying up in full of any unissued Shares, of the Company which shall be distributed accordingly or in or towards payment of the uncalled liability on any issued Shares, or towards both and that such distribution or payment shall be accepted by such shareholders in full satisfaction of their interest in the said capitalised sum. Provided that any sum standing to the credit of a securities premium account or a capital redemption reserve account may, for the purpose of this Article only be applied in the paying up of unissued Shares to be issued to Members of the Company as fully paid bonus Shares. Capitalisation of reserves
141. A general meeting may resolve that any surplus moneys arising from the realisation of any capital assets of the Company or any investments representing the same, or any other undistributed profits of the Company not subject to charge for income tax, be distributed among the Members. Surplus money
142. For the purpose of giving effect to any resolution under the two immediately preceding Articles hereof the Board may settle any difficulty which may arise in regard to the distribution as it thinks expedient and in particular may issue fractional certificate, and may determine that cash payments shall be made to any Members upon the footing of the value so fixed for such fractional certificate in order to adjust the rights of all parties and may vest such cash or for such fractional certificates in trustees upon such trusts for the persons entitled to the dividends or capitalised funds as may seem expedient to the Board. Where requisite, a proper contract shall be filled in accordance with Section 39 of the Act, and the Board may appoint any person to sign such contract on behalf of the person entitled to the dividends or capitalised fund and such appointment shall be effective. Fractional certificates

DIVIDENDS

143. The Company in a general meeting may declare dividends to be paid to the Members according to their rights and interest in the profits and may, subject to the provisions of Section 127 of the Act, fix the time for payment. The dividend declared shall not exceed the amount recommended by the Board, but, the Company in a general meeting may declare a dividend, which is lesser in amount than as recommended by the Board. Declaration of Dividends
144. No dividend shall be paid otherwise than out of the profits of the year or any other undistributed profits except as provided by Section 123 of the Act. No dividend shall carry interest against the Company. Dividends to be paid out of profits
145. Subject to the special rights of the holders of preference Shares, if any, for the time being, the profits of the Company distributed as dividends or bonus shall be distributed among the Members in proportion to the amounts paid or credited as paid on the Shares held by them, respectively, but no amount paid on a Share in advance of calls shall while carrying interest be treated for the purpose of this Article as paid on the Share. All dividends shall be apportioned and paid pro-rata according to the amounts paid or credited as paid on the Shares during any portion or portions of the period in respect of which the dividends is paid, but if any Share is issued on terms providing that it shall rank for dividend as from a particular date such Shares shall rank for dividend accordingly. Dividends to be pro-rata on the paid up amount
146. The declaration of the Board subject to members adoption in Annual General Meeting as to the amount of the net profits of the Company shall be conclusive. What to be seemed net profit

Interim Dividends	147. The Board may subject to Section 123 from time to time, pay to the Members such interim dividends as in its judgment the position of the Company justifies.
Debts may be deducted	148. The Board may retain any dividends on which the Company has lien and may apply the same in or towards satisfaction of the debts, liabilities or engagements in respect of which the lien exists.
Dividend and call together	149. Subject to the provisions of Article 15, any general meeting declaring a dividend may make a call on the Members of such amount as the meeting fixes, but so that the call on each Members shall not exceed the dividend payable to him, so that the call be made payable at the same time as the dividend and the dividend may, if so arranged between the Company and the Member may be set off against the call.
Dividend in cash	150. No dividend shall be payable except in cash, provided that nothing in the foregoing shall be deemed to prohibit the capitalisation of profits or reserves of the Company for the purpose of issuing fully Paid-up bonus Shares or paying up any amount for the time being unpaid on the Shares held by the Members of the Company.
Dividend Profit	151. A transfer of Shares shall not pass the rights to any dividend declared thereon before the registration of the transfer.
Power to retain dividend until transmission is effected	152. The Directors may retain the dividends payable upon Shares in respect of which any person is under transmission entitled to transfer, until such person shall become a Member in respect of such Shares or shall duly transfer the same.
Payment of Dividend to Member on mandate	153. No dividend shall be paid in respect of any Share except to the registered holder of such Share or to his order or to his bankers, but nothing contained in the Article shall be deemed to require the bankers of a registered shareholder to make a separate application to the Company for the payment of the dividend.
Dividend to joint-shareholders	154. Any one of several persons who are registered as the joint holders of any Share may give effectual receipt for all dividends, bonuses and other payments in respect of such Share.
Notice of declaration of dividend	155. Notice of any dividend, whether interim or otherwise, shall be given to the persons entitled to Share therein in the manner hereinafter provided.
Payment of Dividend	156. All dividends and other dues to Members shall be deemed to be payable at the Office of the Company. Unless otherwise directed any dividend, interest or other moneys payable in cash in respect of a Share may be paid by any banking channels or cheque or warrant sent through the post to the registered address of the holder, or in the case of joint-holders, to the registered address of that one of the joint-holders who is the first named in the Register in respect of the joint-holding or to such person and at such address as the holder, or joint- holders, as the case may be, may direct and every cheque or warrant so sent shall be made payable to the order of the person to whom it is sent.
Unclaimed dividends	157. All unclaimed dividend along with interest accrued shall not be forfeited but shall be credited to a special bank account as per Section 124 of the Act, and after a period of seven (7) years transferred to Investor Education and Protection Fund established by the Central Government in terms of Section 125 of the Act.
Forfeiture of dividend	158. The Company agrees that it will not forfeit unclaimed dividend before the claim becomes barred by law and that such forfeiture, when effected will be annulled in appropriate cases.

BOOKS AND DOCUMENTS

Books of account to be kept	159. The Board shall cause proper books of account to be kept in accordance with Section 128 of the Act.
Where to be kept	160. Subject to the provisions of the Act, the books of account shall be kept at the Office or at such other place in India as the Board may decide and when the Board so decides, the Company shall, within seven (7) days of the decision, file with the Registrar of Companies a notice in writing giving the full address of that other place. The books can also be kept in electronic mode as prescribed by the Act and Rules subject to compliance of prescribed guidelines.
Inspection by Director	161. a) The books of account shall be open to inspection by any Director during business hours in accordance with the applicable provisions of the Act and the Rules. b) The Board shall, from time to time, determine whether and to what extent and at what

times and places and under what conditions or regulations, the books of account and books and documents of the Company, other than those referred to in Articles 122 and 172 or any of them shall be open to the inspection of the Members not being Directors and no Member (not being a Director) shall have any right of inspecting any books of account or books or documents of the Company except as conferred by law or authorised by the Board or by Company in a general meeting.

ACCOUNTS

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| 162. At every Annual General Meeting, the Board shall lay before the Company the financial statements including consolidated financial statements in accordance with the provisions of Section 129 of the Act read with the Companies (Accounts) Rules, 2014, and such financial statements including consolidated financial statements shall comply with the requirements of Sections 129, 133 and 134 and of Schedule III to the Act so far as they are applicable to the Company but, save as aforesaid the Board shall not be bound to disclose greater details of the result or extent of the trading and transactions of the Company than it may deem expedient. | Balance Sheet and Profit and Loss Account |
| 163. There shall be attached to every Balance Sheet laid before the Company in the Annual General Meeting a report by the Board complying with Section 134 of the Act. | Director's Report |
| 164. A copy of every financial statements including consolidated financial statements, Auditors report and every document required by law to be annexed or attached to the balance sheet shall, as provided by Section 136 of the Act, not less than twenty-one (21) days before the Annual General Meeting be sent to every such Member, debenture-holder, trustee and other person to whom the same is required to be sent by the said Section either electronically or through such other mode as may be prescribed by the Rules. | Copies to be sent to Members and others |
| 165. The Company shall comply with Section 137 of the Act as to filing copies of the financial statement including consolidated financial statement and documents required to be annexed or attached thereto with the Registrar of Companies. | Copies of balance Sheet etc. to be filed with the Registrar of Companies |

AUDITORS

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| 166. Subject to the provisions of the Act, once at least in every year the books of account of the Company shall be audited by one or more auditor or auditors. | Accounts to be audited annually |
| 167. The appointment, powers, rights, remuneration and duties of the auditors shall be regulated by Sections 139 to 146 and Section 148 of the Act. | Appointment, remuneration, rights and duties of Auditors |

SERVICE OF NOTICES AND DOCUMENTS

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| 168. A notice or other documents may be given by the Company to its Members in accordance with Sections 20, 101 and 136 of the Act and Rules made thereunder. | How notice to be served on Members |
| 169. Subject to the provisions of Article 170 any notice or document delivered or sent by post to or left at the registered address of any Members in pursuance of these Articles shall, notwithstanding such Members be deceased and whether or not the Company have notice of his death, be deemed to have been duly served in respect of any registered Share, whether held solely or jointly with other persons by such Member until some other persons be registered instead as the holder or joint-holders thereof and such service shall for all purposes of those presents be deemed to be a sufficient service of such notice or document on his heirs, executors or administrators and all persons, if any, jointly interested with him in any such Share. | Notice valid though Member deceased |
| 170. Subject to the provisions of the Act, in the event of a winding-up of the Company, every Member of the Company who is not for the time being in the place where the Office of the Company is situated shall be bound, within eight (8) weeks after the passing of an effective resolution to wind up the Company voluntarily or the making of an order for the winding up of the Company, to serve notice in writing on the Company appointing some person residing in the neighbourhood of the Office upon whom all summons, notices, process, orders and judgments in relation to or under the winding-up of the Company may be served and in default of such nomination, the liquidator of the Company shall be at liberty, on behalf of such Member, to appoint some such person and serve upon any appointee whether appointed by the Member or the liquidator shall be deemed to be good personal service on such | Service of process in winding-up |

Member for all purposes and where the liquidator makes any such appointment, he shall, with all convenient speed, give notice thereof to such Member by advertisement in some daily newspaper circulating in the neighbourhood of the office or by a registered letter sent by post and addressed to such Member at his address as registered in the Register and such notice shall be deemed to be served on the day on which the advertisement appears or the letter would be delivered in the ordinary course of the post. The provisions of this Article do not prejudice the right of the liquidator of the Company to serve any notice or other document in any other manner prescribed by these Articles.

KEEPING OF REGISTERS AND INSPECTION

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| Registers, etc. to be maintained by Company | 171. The Company shall duly keep and maintain at the Office, Registers, in accordance with Sections 85, 88, 170, 187 and 189 of the Act and Rules made thereunder in electronic form or in such form and in such manner as may be prescribed under the Act or the Rules. |
| Supply of copies of Registers | 172. The Company shall comply with the provisions of Sections 85, 94, 117, 171, 186 and 189 of the Act and the Rules as to the supplying of copies of the registers, deeds, documents, instruments, returns, certificates, and books herein mentioned to the persons herein specified when so required by such persons on payment, where required, of such fees as may be fixed by the Board but not exceeding charges as prescribed by the said Sections of the Act and Rules framed thereunder. |
| Inspection of Registers etc. | 173. Where under any provision of the Act or Rules any person whether a Member of the Company or not, is entitled to inspect any register, return, certificate, deed, instrument or document (including electronic records) required to be kept or maintained by the Company, the person so entitled to inspection shall be permitted to inspect the same during such business hours and place as may be determined by the Board under the provisions of the Act and the Rules thereunder. |
| When Registers of Members and Debenture holders may be closed | 174. The Company, after giving not less than seven (7) days previous notice, subject to the provisions of Section 91 of the Act and Rules made thereunder, by advertisement in one vernacular newspapers circulating in the district in which the Office is situated close the Register of Members or the register of debenture holders or the register of security holders, as the case may be, for any period or period not exceeding in the aggregate forty-five (45) days in each year but not exceeding thirty days at any one time. |

RECONSTRUCTION

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| Reconstruction | 175. On any sale of the undertaking of the Company the Board or the liquidator on a winding-up may, if authorized by a special resolution, accept fully paid or partly paid up Shares, debentures, or securities of any other company whether incorporated in India or not other than existing or to be formed for the purchase in whole or in part of the Company's property and the Board (if the profits of the Company permit) or the liquidators (in a winding-up) may distribute such Shares or securities, or any other property of the Company amongst the Members without realization or vet the same in trustees for them and the special resolution may provide for the distribution or appropriation of the cash, Shares or other securities benefit or property, otherwise than in accordance with the strict legal rights of the members of contributories of the Company and for the valuation of any such securities or property at such price and in such manner as the meeting may approve and all holders of Shares shall be bound by any valuation or distribution so authorised and waive all rights in relation thereto, save only in case the Company is proposed to be or is in course of being wound up, such statutory right (if any) under the Act as are incapable of being varied or excluded by these Articles. |
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SECRECY

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| Secrecy | 176. Every Director, manager, secretary, Trustee for the Company, its Member or debenture- holder, members of a Committee, officer, servant, agent, accountant, other person employed in or about the business of the Company shall, if so required by the Board or by a Managing Director before entering upon his duties, sign a declaration pledging himself to observe a strict secrecy respecting all transactions of the Company with its customers and the state of accounts with individuals and in matters relating thereto and shall by such declaration pledge himself not to reveal any of the matters which may come to his knowledge in the discharge of |
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his duties except when required so to do by the Board or by any meeting or by a Court of Law and except so far as may be necessary in order to comply with any of the provisions in these Articles contained.

177. No shareholder, or other person (not being a Director) shall be entitled to enter upon the property of the Company or to inspect or examine the premises or properties of the Company without the permission of the Board or subject to Article 161 to require discovery of or any information respecting any details of the trading of the Company or any matter which is or may be in the nature of a trade secret, mystery of trade, or secret process or of any matter whatsoever which may relate to the conduct of the business of the Company and which in the opinion of the Board it will be inexpedient in the interest of the Company to communicate.
- No shareholder to enter the premises of the Company without permission

WINDING UP

178. Subject to the provisions of the Act, if the Company shall be wound up and the assets available for distribution among Members as such shall not be sufficient to repay the whole of the Paid-up capital such assets shall be distributed so that as nearly as may be and the losses shall be borne by the Members in proportion to the capital paid up at the commencement of the winding up, on the Shares held by them respectively. And if in a winding-up assets available for distribution among the Members shall be more than sufficient to repay the whole of the capital paid up at the commencement of the winding-up, the excess shall be distributed amongst the Members in proportion to the capital at the commencement of the winding-up, Paid-up or which ought to have been paid up on the Shares held by them, respectively. But this Article is to be without prejudice to the rights the holders of Shares issued upon special terms and conditions. Preference shareholders shall have prior rights to repayment of capital and dividends due.
- Distribution of assets
179. Subject to the provisions of the Act, if the Company shall be wound up, whether voluntarily or otherwise, the liquidators may, with the sanction of a special resolution divide among the contributories, in specie or kind, any part of the assets of the Company and may, with the like sanction, vest any part of the assets of the Company in trustees upon such trusts for the benefits of the contributories, or any of them, as the liquidators with the like sanction, shall think fit.
- Distribution of assets in specie

INDEMNITY

180. Subject to the provisions of the Act every Director, Managing Director, whole-time Director, manager, secretary or officer of the Company or any person (whether an officer of the Company or not) employed by the Company and any person appointed as Auditor shall be indemnified out of the funds of the Company against all bonafide liabilities incurred by him as such Director, Managing Director, whole-time Director manager, secretary officer, employee or Auditor in defending any proceedings, whether civil or criminal in which judgment is given in his favour, or in which he is acquitted or in connection with any application under the Section 463 of the Act in which relief is granted to him by the Court.
- Indemnity to Directors and officers
181. Subject to the provisions of the Act and the Rules, the Company may take and maintain any insurance as the Board may think fit on behalf of its present and/or former Directors, Key Managerial Personnel and officers for indemnifying all or any of them against any liability for any acts in relation to the Company for which they may be liable but they have acted honestly and reasonably.
- Insurance Policy for indemnity

GENERAL POWERS

182. Where any provisions of the said Act, provides that the Company shall do such act, deed, or thing, or shall have a right, privilege or authority to carry out a particular transaction, only if it is so authorised in its Articles, in respect of all such acts, deeds, things, rights, privileges and authority, this Article hereby authorises the Company to carry out the same, without the need for any specific or explicit Article in that behalf.
- General powers under the Article

S.No.	Name, address, descriptions and occupations of subscribers	Signature of subscriber	Name address & description
1.	SIVA PRASAD SIVA SUBRAMANIAM NADAR S/o Late Shri S.S. Nadar 100, Friends Colony (East) New Delhi – 110 065 (ENGINEER)	Sd/-	I witness the Signatures of the seven subscribers Sd/- M.M. Khanna S/o Sh. K.C. Khanna (Chartered Accountant (Membership) No. 7517 H-96, Connaught Circus New Delhi – 110 001 New Delhi – 110 001
2.	ARJUN MALHOTRA S/o Shri Mehr Chand Malhotra 143, Golf Links New Delhi – 110 003 (ENGINEER)	Sd/-	
3.	YOGESH CHANDRA VAIDYA S/o Late Shri S.L Vaidya S-15, Greater Kailash I New Delhi – 110 048 (ENGINEER)	Sd/-	
4.	SUBRAHAMANYAN RAMAN S/o Shri S.M. Subrahmanyam B-5/5 Vasant Vihar New Delhi – 110 057 (ENGINEER)	Sd/-	
5.	DEVENDER SHINGH PURI S/o Late Shri S.S. Puri C-538, Defence Colony New Delhi – 110 024 (BUSINESS EXECUTIVE)	Sd/-	
6.	PALGHAT SUBRAMANIAM VISWANATHAN S/o Shri P.V. Subramaniam E-47/48, Greater Kailash Enclave – 1, New Delhi – 110 048 (BUSINESS EXECUTIVE)	Sd/-	
7.	K.P. GOPALKRISHNAN NAIR S/o Shri N.P. Panicker C-96, Greater Kailash – 1 New Delhi – 110 048 (SERVICE)	Sd/-	

Dated this 5th day of March, 1986 at New Delhi.

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision : November 26, 1991
Co. Petition No. 122 of 91

**HCL Limited
and
HCL Hewlett-Packard Limited**

Through Mr. S.S. Shroff & Ms. Ritu Bhalla, Advocates.

CORAM :

The Hon'ble Mr. Justice Arun B. Saharya

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?

ARUN B. SAHARYA, J.

1. An application, being CA No. 428/91 was filed on 29th of May 1991 by the petitioners under Section 391 of the Companies Act, 1956 (hereinafter referred to as the Act) seeking directions to hold meetings of the equity share-holders; secured creditors and debenture holders; unsecured creditors and fixed deposit holders; and statutory creditors of the first petitioner, namely, H.C.L. Limited, a public limited company incorporated under the Act (hereinafter referred to as the existing company) and the equity share-holders of the second petitioner, namely, H.C.L. Hewlett-Packard Limited, also a public limited company incorporated under the Act (hereinafter referred to as the new company) for approving, with or without modification, a Scheme of Arrangement between the existing company and the new company and their respective share-holders.
2. By an order dated 30th of May 1991, directions were given for holding separate meetings of the above-mentioned classes. Individual notices were directed to be given to all the shareholders of the two companies and to the creditors of the existing company in accordance with rules. On C.A. 429/91, however, issue of individual notices to unsecured creditors of the existing company of nominal value of less than Rs. 50,000/- and fixed deposit value of less than Rs. 10,000/- was dispensed with as the numerical value of such creditors is 3.23% of the aggregate debt and 7.48% of the unsecured creditors. Notices of the meetings were directed to be published at least 21 days before the date of the meetings in daily newspapers 'Hindustan Times' and 'Navbharat Times'. Separate Chairpersons and alternate Chairpersons were appointed for each meeting. They were directed to submit their respective reports within a week after holding the meetings. The coram and the right to vote by proxy was directed to be governed by Memorandum and Articles of Association of the respective companies.

Since there are no creditors of the new company, save and except for preliminary expenses which have been incurred for the existing company, holding of meeting of creditors of the new company was also dispensed with.
3. Notices of the application were issued to the Central Government, Regional Director, Company Law Board, Kanpur and to the Registrar of the Companies in Delhi and Haryana. Later, by an order dated 11th of July 1991 on CA. 474/91, the coram in respect of meeting of statutory creditors of the existing company was also dispensed with; and in so far as the meeting of the secured creditors was concerned, the coram was fixed at 2 in number and for the meeting of unsecured creditors, it was fixed at 5 in number.
4. Notices of the meetings, as approved by this Court, are stated to have been sent to the various share-holders and concerned creditors of the petitioner companies together with a copy of the Scheme of Arrangement, the explanatory statement required by Section 393 of the Act and a form of proxy. Notices were also advertised in accordance with the directions of this Court.
5. Four separate meetings of equity share holders, secured creditors, unsecured creditors and statutory creditors of the existing company were duly convened and held on 15th of July 1991. Separate meeting of the share-holders of new company was also held on the same day. Reports of scrutiniser and Chairpersons of each of the meetings have been filed.

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6. Chairperson appointed for the meeting of equity share-holders of the existing company has reported inter alia, that an amendment was moved to the Scheme of Arrangement in relation to Annexure 'A' which lists down the names of 50 share-holders who have given their consent to transfer the number of shares indicated against their respective names to Hewlett-Packard Company, USA post reduction and consolidation. The amendment was essentially a substitution of the list annexed with the Scheme by another list giving the revised number of shares agreed to be transferred by these 50 share-holders to Hewlett-Packard Company (hereinafter referred to as the HP Co.). The Scheme of Arrangement and the amendment were passed by more than 3/4th majority of the equity share-holders present and voting at the meeting.
 7. Reports filed by Chairpersons of the other meetings show that the Scheme of Arrangement was passed unanimously by the secured creditors; it was passed by more than 3/4th majority in value of unsecured creditors; and it was also passed unanimously by the statutory creditors present and voting at the respective meetings. Likewise, the amendment to the Scheme of Arrangement vis-a-vis Annexure 'A' was moved at the meeting of the equity share-holders of the new company and it was passed unanimously. The poll results were duly published in newspapers 'Hindustan Times' and 'Navbharat Times' of 20th July 1991 and 21st July 1991 respectively.
 8. It was then on 2nd of August 1991 that the present petition was filed for sanction of the Scheme of Arrangement between the existing company and the new company in accordance with the Scheme of Arrangement as amended (Annexure U) so as to be binding upon the share-holders of both the companies as well as the creditors of the existing company.
 9. By an order dated 5th of August 1991, notice to the Central Government was again issued and directions were given for publication in accordance with Rules to be effected in newspapers in which the earlier application was advertised. In response to the notice and public advertisement, except an affidavit of Mr. K.M. Gupta dated 13th September 1991 filed on behalf of the Central Government in pursuance of the provisions made under Section 394-A of the Act, no objections from any one to sanction of the Scheme of Arrangement have been received. Initially, advertisements were issued for hearing on 16th of September 1991. That day, the case could not be taken up for certain unavoidable reasons. So, fresh publication of advertisement was directed to be made in daily newspapers, namely, Hindustan Times and Navbharat Times for hearing on 23rd of October 1991. Despite fresh publication, no objections have been received.
 10. The stand taken by the Central Government by way of Mr. K. M. Gupta's affidavit may be noted. Paras 4 and 5 of the affidavit, relevant for the present purpose, are reproduced below :—
 4. That the Central Government has the following observations to make with reference to the aforesaid petition :
 - a) That it has been observed from the Scheme that "Appointed Date" has been fixed by both the petitioner companies as 1st July, 1990 by which all business of HCL Division be transferred in the transferee company w.e.f. 1st July, 1990 although the transferee company was incorporated only on 15.5.1991.

It is, therefore, not quite clear how the transferee company w.e.f. the "Appointed Date" take over the business of the transferor company when the transferee company viz. HCL Hewlett-Packard Limited was not in existence.
 - b) That it is further observed from the scheme that the transferor company is going to reduce its share capital and no petition before the High Court regarding the reduction of the said capital appears to have been moved.
 5. That subject to the aforesaid observations, the Central Government has no objection to the Scheme of Arrangement which may be decided by the court on its merits."
 11. The existing company was incorporated on 17th of April 1986 and is engaged in the manufacturing, marketing, maintenance and selling of micro and mini range of computers, engineering workstations for computer aided design (CAD/CAM Applications), Plain paper copiers, Micro film reader printers, EPABX systems, PC based telex systems, electronic teleprinters, computer peripherals and tests and measuring instruments. It has manufacturing facilities located in NOIDA (U.P.), Dehradun (U.P.), Madras and Dundahera (Haryana). The latest available balance-sheet of the Company for the accounting year ending 30th of June 1990 is Annexure 'C' to the petition. It has entered into a joint venture agreement dated 2nd of April 1991 with H.P. Co., inter alia, for the purpose of combining the respective computer manufacturing, marketing, servicing and sales activities in India of the existing company and HP Co. The joint venture agreement contemplates that HP Co. will participate in the existing company where computer, CAD/CAM and Peripheral Divisions are only to be retained.

The residual divisions (consisting of Reprographic Communication and Instrument Divisions) together with the investments shall be spun off to the new company in which HP Co. shall not participate.

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12. The new company was incorporated on 15th of May 1991. The main objects of this company are identical with those of the existing company. It has been formed, inter alia, for the purpose of taking over the residual divisions of the existing company on the same being spun off in pursuance of the joint venture agreement between the existing company and HP Co.
 13. Mr. Shroff, learned counsel for the petitioners has explained that the Scheme of Arrangement is in furtherance of the joint venture agreement. Under the Scheme, the existing company would be vertically split and the Computer, CAD/CAM and Peripheral Divisions of the existing company shall be retained in itself while the Residual Divisions along with the investments held by it shall be spun off and transferred to the new company. Each share-holder of the existing company shall be allotted 32 equity shares of Rs. 10/- each as fully paid-up in the new company for 100 equity shares of Rs. 10/- fully paid-up as held by such member in the existing company as on a record date. There will be a reduction in the capital paid up of the existing company as on a record date. There will be a reduction in the capital paid up of the existing company to the extent of Rs. 3.20 per equity share of Rs. 10/- each. The equity shares of Rs. 6.80 each so reduced shall be consolidated into equity shares of Rs. 10/- each 26% shares of the existing company after reduction and consolidation would be acquired by HP Co. from the share-holders of the existing company for an aggregate consideration of Rs. 46.30 crores. The Scheme of Arrangement contemplates division of the assets and liabilities in accordance with the bifurcation of line of manufacture and business as stipulated in the Scheme. It is stated that the assets of both the existing company and the new company are more than adequate to meet the creditors demand and other liabilities as is evident from the split balance-sheet as on 30th of June 1990 prepared by M/s. Price Waterhouse, a firm of Chartered Accountant (Annexure E to the petition).
 14. The Scheme of Arrangement is divided into six parts. Part I contains definitions of the expressions used in the Scheme. Part II, under the heading "HCL Divisions", indicates the divisions of the existing company to be spun off the new company. Part III describes the divisions to be retained by the existing company described as "HCL-HP Divisions". Part IV explains division and distributions of liabilities, inter se, the existing company and the new company. Part V and Part VI envisage re-organisation of the capital of the existing company and the new company and the general terms and conditions. A perusal of the Scheme of Arrangement shows that it provides for division and distribution of assets and liabilities and rights and obligations, inter se the existing company and the new company and their respective share-holders, creditors and employees in great detail.
 15. So far as the Central Government's representation is concerned, Mr. K.M. Gupta has affirmed that the Central Government "has no objection to the Scheme of Arrangement". This, however, is made subject to two 'observation'.
 16. The first observation is about the "Appointed Date". This expression is defined in the Scheme itself :—

"The "Appointed Date" means the commencement of business of the "Existing Company" on the 1st day of July, 1990".

This date, Mr. Shroff has explained, has been taken for the identification and quantification of the assets and liabilities of the existing company and the new company consequent upon the proposed spin off. This identification has been done on the basis of the audit balance-sheet of the existing company for the financial year ending 30th of June 1990. The "Appointed Date" is relevant for the purpose of fixation of the share valuations/share exchange rate which HP Co. would offer to the existing share-holders after the bifurcation and spinning off of the divisions as the price is payable per share post-consolidation and reduction. The Scheme nowhere seeks transfer artificially of new assets in July 1990. All the assets which are sought to be transferred to the new company were in fact in existence on the "Appointed Date". There is, as such, no deeming fiction in so far as the existence of assets is concerned for the purposes of transfer to the new company despite its incorporation only on 15th of May 1991. The observation made by the Central Government overlooks the distinction between the "Appointed Date" and the "Effective Date" under the Scheme. The definition of the latter expression makes it clear. It reads thus :

The "Effective Date" means the later of the date on which all the consents and approvals referred to in Part VI Clause 9 of this Scheme are obtained and/or the date on which the certified copy of the order passed by the Hon'ble High Court at Delhi sanctioning this Scheme of Arrangement is filed with the Registrar of Companies, Delhi.

This provision in the Scheme of Arrangement in conformity with the provisions made in the Act as well. The first observation is, therefore, found to be illusory.

17. Next, the observation regarding reduction of share capital also is of little consequence. The provisions made in the Scheme of Arrangement clearly show that there is no diminution of liability in respect of unpaid share capital or payment to any share-holder of any paid-up share capital so as to attract the procedure envisaged under Section 101(2) of the Act. In the existing company, the shares are fully paid-up and the proposal is one whereby some divisions of the existing company are being spun off into the new company. There is really no reduction in capital as the bifurcation involves both the assets and the liabilities to go with the divisionis which are being spun off. The division which are to spin off into the new company would discharge these liabilities to the creditors. The creditors of the existing company would become the creditors of the new company and the new company, upon which the assets and liabilities are devolved under the Scheme of Arrangement

is to discharge the liabilities from the assets which are available and represented in the divisions transferred. The cash and bank balances are also partially bifurcated as is evident from the split balance sheet. It is unnecessary, in these circumstances, to make an order directing the existing company to add to its name as the last words thereof the word "and reduced".

18. Ergo, in the representation of the Central Government under Section 394-A of the Act, nothing is found to interdict the petition. At the hearing, no one appeared for the Central Government. Apparently, it was not interested in pursuing the representation.
19. Here, it may be noted that amendment to the Memorandum and Articles of Association of both the petitioner companies and inter-change of their names are also envisaged so as to enable effectuation of the Scheme. For this purpose, members of both the existing company and the new company have passed the required resolutions at the extra ordinary general meeting of each company held on 16th of July 1991. Certified copies of those resolutions (Annexure 'S' and Annexure 'T') have been placed on record.
20. Hence, it is found that no objections to the proposed Scheme of Arrangement have been received and that the two 'observations' made in the Central Government's representation are insignificant. In accordance with Section 391(2) of the Act, the requisite majority in number representing three-fourths in value of the creditors and members of the existing company as well as by the members of the new company agree to the arrangement. The petitioners have disclosed to the court all material facts relating to the existing company and the new company. The latest information about the financial position of the two companies has also been placed on record. No investigation in relation to either of the petitioner companies is pending. Therefore, I hereby sanction the Scheme of Arrangement, and declare that the same shall be binding on the said two companies, on the share-holders and the creditors of the existing company, and on the share-holders of the new company.
21. Further, it is directed that the assets, liabilities and reserves shall vest in the existing company and the new company in accordance with the split balance-sheet as on 30th of June 1990 as certified by M/s. Price Waterhouse.
22. The Registry shall draw and issue the formal order in accordance with the Rules. The audited balance-sheet of the existing company as on 30th of June 1990 (Annexure C), the split balance-sheet as on 30th of June 1990 (Annexure E) together with the Scheme of Arrangement as sanctioned (Annexure U) shall form part of the order.
23. Further, the petitioners are directed to file, with the Registrar of Companies, a certified copy of the order within 14 days from this date.
24. The "Effective Date" will be the date when certified copy of this Court's order is filed with the Registrar of Companies.
25. Petition allowed.

November 26, 1991

Sd/-

ARUN B. SAHARYA

JUDGE

IN THE HIGH COURT OF DELHI AT NEW DELHI

ORIGINAL JURISDICTION

IN THE MATTER OF THE COMPANIES ACT, 1956

AND

IN THE MATTER OF

1. HCL LIMITED

AND

2. HCL HEWLETT-PACKARD LIMITED
COMPANY PETITION NO. 122 OF 1991
CONNECTED WITH
COMPANY APPLICATION NO. 428-429 OF 1991

HCL LIMITED
(Existing Company)
having its Registered Office
at 806-808, Siddharth,
96, Nehru Place,
New Delhi - 110 019.

.....Petitioner

HCL HEWLETT-PACKARD LIMITED
(New Company)
having its Registered Office
at 806-808, Siddharth,
96, Nehru Place,
New Delhi - 110 019.

.....Petitioner

Before the Hon'ble Mr. Justice Arun B. Saharya Dated the 26th day of November, 1991

ORDER ON PETITION

The above petition coming on for hearing on 26th day of November, 1991, upon reading the said petition, the order dated 30th May, 1991 whereby the petitioner companies were ordered to convene separate meetings of equity shareholders, secured creditors, unsecured creditors and statutory creditors of the first petitioner, namely HCL Limited and equity shareholders of the second petitioner, namely HCL Hewlett-Packard Limited for the purpose of considering, and if thought fit, approving, with or without modification, the Scheme of Arrangement proposed to be made between the aforesaid companies and their respective shareholders and annexed to the affidavits of Shri S. Bhattacharya and Shri Anil Chanana in C.A. 428 & 429/91 filed the 29th day of May, 1991 and the 'Navbharat Times' dated 18th June, 1991 and the 'Hindustan Times' dated 19th June, 1991 each containing the advertisements of the said notices convening the said meetings directed to be held by the said order dated 30th May, 1991, the affidavits of the chairpersons/alternate chairpersons all dated 8th July, 1991 showing the publication and despatch of notices convening the said meetings by Shri S.S. Shroff, Advocate, the reports of Shri Sandeep Sethi, Alternate Chairperson of the meeting of equity shareholders of HCL Limited dated 24.7.1991 and Shri S.S. Chaman, Chairperson of the meeting of secured creditors of HCL Limited, Ms. Hima Kohli, Chairperson of the meeting of unsecured creditors of HCL Limited. Ms. Meenakshi Singh, Chairperson of the meeting of statutory creditors of HCL Limited and Shri Rajiv Mehra, Chairperson of the meeting of equity shareholders of HCL Hewlett-Packard Limited all dated 22nd day of July, 1991 as to the result of the said meetings, and upon hearing Shri S.S. Shroff and Ms. Ritu Bhalla, Advocates for the petitioner companies, and upon considering the representation dated 13th September, 1991 filed by Shri K.M. Gupta, Under Secretary to the Government of India stating that the Central Government has no objection to the Scheme of Arrangement subject to two observations made in the Central Government's representation which are insignificant as per order dated 26th November, 1991 and it appearing from the reports of all five chairpersons of the meetings that the proposed Scheme of Arrangement and the amendments were passed by more than 3/4th

majority of the equity shareholders of the existing company present and voting at the meeting, that the Scheme of Arrangement was passed unanimously by the secured creditors of the existing company, it was passed by more than 3/4th majority in value of unsecured creditors; and it was also passed unanimously by the statutory creditors of the existing company present and voting at the respective meetings. Likewise, the amendment to the Scheme of Arrangement vis-a-vis Annexure 'A' was moved at the meeting of equity shareholders of the new company and it was passed unanimously. The poll results were duly published in Newspapers 'Hindustan Times' and 'Navbharat Times' of 20th July, 1991 and 21st July, 1991 respectively.

THIS COURT DOTH HEREBY SANCTION THE SCHEME OF ARRANGEMENT set fourth in Annexure 'U' of the Petition and schedule 1 hereto alongwith the audited balance sheet of the existing company as on 30th June 1990 (Annexure 'C' of the Petition) and the split balance sheet as on 30th June, 1990 (Annexure 'E' of the Petition), and DOTH HEREBY DECLARE that the same shall be binding on said two companies, on the shareholders and the creditors of the existing company, and on the shareholders of the new company.

The "Effective Date" will be the date when certified copy of this Court's order is filed with the Registrar of Companies.

AND THIS COURT DOTH FURTHER ORDER :

1. That all the property, assets, movable or immovable including all plants and machineries, rights and powers together with all present and further liabilities including contingent liabilities and obligations of the existing company relating to HCL Divisions as per the said Scheme of Arrangement including those specified in first, second and third parts of the Schedule II hereto be transferred further act or deed to the new company namely HCL Hewlett-Packard Limited and accordingly the same shall pursuant to section 394(2) of the Companies Act, 1956, be transferred to and vest in the new company for all the estate and interest of the existing company therein but subject nevertheless to all charges now affecting the same as per the Scheme of Arrangement (Annexure 'U' of the Petition); and
2. That all the liabilities and duties of the existing company relating to HCL Divisions under the Scheme of Arrangement be transferred without further act or deed to the new company and accordingly the same shall, pursuant to section 394(2) of the Companies Act, 1956, be transferred to and become the liabilities and duties of the new company; and
3. That all proceedings now pending by or against the existing company and relating to HCL Divisions be continued by or against the new company; and
4. That the new company do without further application, allot to each members of the existing company as per the Scheme of Arrangement herein the shares in the new company to which they are entitled under the said Scheme of Arrangement; and
5. That the assets, liabilities and reserves shall vest in the existing company and the new company in accordance with the split balance sheet as on 30th June, 1990 as certified by M/s Price Waterhouse; and
6. That the petitioner companies do within 14 days from the date of this order cause a certified copy of this order together with the Scheme to be delivered to the Registrar of Companies for registration; and
7. That the parties to the Scheme of Arrangement shall be at liberty to apply to the Court for any directions that may be necessary in regard to the working of the Scheme of Arrangement.

SCHEDULE-1
SCHEME OF ARRANGEMENT BETWEEN

1. HCL LIMITED
 2. HCL HEWLETT-PACKARD LIMITED
- AND
- THEIR RESPECTIVE SHAREHOLDERS

SCHEME OF ARRANGEMENT BETWEEN

1. HCL LIMITED

2. HCL HEWLETT-PACKARD LIMITED

AND

THEIR RESPECTIVE SHAREHOLDERS.

PART - I

1. DEFINITIONS :

In this Scheme unless repugnant to the meaning or context thereof, the following expressions shall have the following meaning :

- A. The "Act" means the Companies Act, 1956.
- B. The "Appointed Date" means the commencement of business of the "Existing Company" on the 1st day of July, 1990.
- C. The "Effective Date" means the later of the date on which all the contents and approvals referred to in Part VI Clause 9 of this Scheme are obtained and/or the date on which the certified copy of the order passed by the Hon'ble High Court at Delhi sanctioning this Scheme of Arrangement is filed with the Registrar of Companies, Delhi.
- D. "The Existing Company" or "HCL" means the Company presently known as HCL Limited, a Company incorporated under the Companies Act, 1956 having its Registered Office at 806-808, Siddharth, 96 Nehru Place, New Delhi - 110 019.
- E. "The new Company" or "HCL-HP" means the Company presently known as HCL Hewlett-Packard Limited, a Company incorporated under the Companies Act, 1956 having its Registered Office at 806-808, Siddharth, 96 Nehru Place, New Delhi-110019.
- F. "HCL-HP Divisions" means the following Divisions of the "Existing Company":
 - (i) Computer Division;
 - (ii) CAD-CAM Division;
 - (iii) Peripheral Division;

and shall mean and include :

- (a) All assets, movable or immovable, including all plants and machineries together with all present and future liabilities including contingent liabilities and debts appertaining specifically to Existing Company as on 30th June, 1990 as per records of the Existing Company and/or allocated to the Existing Company in accordance with this Scheme.
- (b) All permits, quotas, rights, entitlement, industrial and other licences, tenancies, offices and depots, trade marks, patents, copyrights, privileges and benefits of all contracts, agreements and all other rights including lease rights, licences, powers and facilities of every kind, nature and description whatsoever appertaining/allocated to HCL – HP Divisions.
- (c) All permanent employees of the Existing Company engaged in or in relation to the HCL-HP Divisions of the Existing Company at their respective factories, branch and other offices as also the persons employed in relation to the HCL-HP Divisions at the Head Office at 806-808, Siddharth, 96, Nehru Place, New Delhi - 110 019 and also such other employees of the said Head Office as may be specified by the management of the Existing Company.
- (d) All earnest moneys and/or security deposits paid by the Existing Company in connection with or relating to HCL-HP Divisions.

G. "HCL Divisions" means the following Divisions of the Existing Company :

- (i) Reprographic Division;
- (ii) Communication Division;
- (iii) Instrument Division;
- (iv) Investments in the equity shares of HCL America Inc., USA; Far East Computers Pte. Ltd., Singapore; and HCL Finance and Investment Ltd. and any other Company's whether held by Existing Company directly or indirectly;

and shall mean and include :

- (a) All assets, movable or immovable, including all plants and machineries together with all present and future liabilities including contingent liabilities and debts appertaining specifically to HCL Divisions as on 30th June, 1990 as per records of the Existing Company and/or allocated to the New Company in accordance with this Scheme.
 - (b) All permits, quotas, rights, industrial and other licences, tenancies, offices and depots, trade marks, patents, copyrights, privileges and benefits of all contracts, agreements and all other rights including lease rights, licences, powers and facilities of every kind, nature and description whatsoever appertaining/allocated to HCL Divisions.
 - (c) All permanent employees of the Existing Company engaged in or in relation to the HCL Divisions of the Existing Company at their respective factories, branch and other offices as also the persons employed in relation to the HCL Divisions at the Head Office at 806-808, Siddharth, 96, Nehru Place, New Delhi - 110 019 and also such other employees of the said Head Office as may be specified by the Management of the Existing Company.
 - (d) All earnest moneys and/or security deposits paid by Existing Company in connection with or relating to HCL Divisions.
- H. "HPCo" means Hewlett-Packard Company, a Company duly created, organised and existing under and by virtue of the laws of the State of California, United States of America and having its Offices at 3000 Hanover Street, Palo Alto, California 90304, U.S.A.
- I. Hewlett-Packard India Private Limited means a Company incorporated under the Indian Companies Act, 1956.
- J. "Joint Venture Agreement" means the Agreement dated 2nd day of April, 1991 entered into by and among HCL, HPCo, Hewlett-Packard India Private Limited and the control group of shareholders of HCL, as amended.

2. SHARE CAPITAL :

The present capital structure of the Existing Company and the New Company as on 17th May, 1991 is as under :

Authorised Share Capital (Rs.)

Name of the Company	Equity	Preference	Total
HCL Limited (Existing Company)	20,00,00,000	5,00,00,000	25,00,00,000
HCL Hewlett-Packard Ltd. (New Company)	50,00,00,000	10,00,00,000	60,00,00,000

Paid-up Share Capital (Rs.)

Name of the Company	Equity	Preference	Total
HCL Limited (Existing Company)	14,83,74,470	—	14,83,74,470
HCL Hewlett-Packard Ltd. (New Company)	70	—	70

IN CONSIDERATION OF THE JOINT VENTURE AGREEMENT AS AMENDED, HCL LIMITED, HCL HEWLETT-PACKARD LIMITED AND THEIR RESPECTIVE SHAREHOLDERS HAVE PROPOSED THE SCHEME OF ARRANGEMENT AS SET OUT IN PARTS II TO VI BELOW :

PART II

HCL DIVISIONS

1. (a) With effect from the Appointed Date, HCL Divisions shall pursuant to Section 394(2) of the Act and without any further act or deed be transferred to and vested in or be deemed to have been transferred to and vested in the New Company for all the estate and interest of the Existing Company therein subject to existing charges thereon in favour of Banks, Financial Institutions, Trustees for the Debenture-holder as modified under Part IV of the Scheme.

(b) Provided that leases and licences containing restrictions against transfers shall be transferred with the approval of the respective landlords and other leases and licences shall be transferred also with such permissions as may be required by law.
2. It is further provided that in addition to the above the following non-specific assets i.e. assets which do not pertain to any particular Division of the Existing Company shall also be transferred to and vested in the New Company for all the assets and interest of the Existing Company therein subject to existing charges thereon in favour of Banks, Financial Institutions, Trustees, for the Debenture-holders as modified under Part IV of the Scheme.
 - (a) Land at Ahmedabad valued at Rs. 1.05 lacs.
 - (b) Land at C-56, Phase-II, Noida (U.P.)
 - (c) Commercial Flat at 201 and Basement at Todi Udyog Kendra, 35, Saki Vihar Road, Andheri (East), Bombay valued at Rs. 27.45 lacs.
 - (d) Goodwill to the extent of Rs. 136.98 lacs.
 - (e) All other assets other than those specifically retained and or allocated to HCL-HP Divisions as per Part III of the Scheme.
3. (a) It is clarified that all debts, liabilities and obligations of the Existing Company relating to the said HCL Divisions as on the close of business on the 30th day of June, 1990 whether provided for or not in the Books of Accounts of the Existing Company, whether disclosed or undisclosed in the Balance Sheet and all other liabilities relating to the HCL Divisions which may accrue or raise after the 30th June, 1990 but which relate to the period upto the 30th day of June, 1990 shall be the debts, liabilities, duties and obligations of the New Company and the New Company undertakes to meet, discharge and satisfy the same.

(b) All loans raised and used and all liabilities and obligations incurred by the Existing Company after the Appointed Date for operations of any specific unit of HCL Divisions would also stand transferred to and vested in the New Company.
4. It is further clarified that all non-specific borrowings from Banks being borrowings other than those referred to in Part IV hereof cash credit accounts and other loans and advances raised for working capital which do not appertain to the operations of any particular Division of the Existing Company, existing as on 30th June, 1990 shall be allocated between the Existing Company and New Company in the ratio of 65:35 to arrive at an equitable distribution of total borrowings, after taking into account the specific allocation of certain borrowings on cash credits accounts. The Existing Company and the New Company shall take all steps reasonably necessary to enter into new or amendatory loan or security agreements, or instruments and the like as may be necessary with the creditors such that the Existing Company and the New Company respectively will assume sole responsibility for the repayment of borrowings allocated to each of them. To the extent that the non-specific liabilities, allocated to the New Company are not made the subject of new loan or amendatory agreements, instruments, security documents, or the like pursuant to the above, the New Company further undertakes to pay its share of such non-specific liabilities as per this Scheme to the Existing Company (as and when the same is finally determined or is otherwise required to be paid).
5. All legal or other proceedings by or against the Existing Company under any statute, whether pending on the Appointed Date or which may be instituted in future in respect of any matter arising before the Effective Date and relating to the HCL Divisions (including those relating to any property, right, power, liability, obligation or duties of the Existing Company in respect of the HCL Divisions) shall be continued and enforced by or against the New Company only after the Effective Date. If proceedings are taken against the Existing Company, it will defend the same as per advice of the New Company at the costs of the New Company and the latter will reimburse and indemnify the Existing Company against all liabilities and obligations incurred by the Existing Company in respect thereof.

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6. With effect from the Appointed Date and upto and including the Effective Date the Existing Company:
 - (a) Shall be deemed to have been carrying on and to be carrying on all business and activities relating to the HCL Divisions and stand possessed of the properties so to be transferred for and on account of and in trust for the New Company.
 - (b) All profits accruing to the Existing Company including taxes, if any thereon or losses arising or incurred by it relating to the HCL Divisions shall for all purposes, be treated as the profits, taxes or losses as the case may be, of the New Company.
 7. The Existing Company hereby undertakes from the Appointed Date upto and including the Effective Date to carry on its business with proper prudence and without the prior written consent of the New Company, not to alienate, charge or otherwise deal with or dispose of the HCL Divisions of any part thereof (except in the usual course of business) or undertake substantial expansion of its existing business pertaining to the HCL Divisions.
 8.
 - (a) The New Company undertakes to engage, on and from the Effective Date, all permanent employees of the Existing Company engaged in the HCL Divisions at their respective factories, branches and other offices and also at the Head Office as aforesaid and elsewhere and who are in the employment of the Existing Company, on the same terms and conditions on which they are engaged as on the Effective Date by the Existing Company without any interruption of service as a result of the transfer. The New Company undertakes to continue to abide by any of the Agreement/Settlement etc. entered into by the Existing Company in respect of HCL Divisions with any Union/employee of HCL Divisions. The New Company agrees that the service of all such employees with the Existing Company upto the Effective Date shall be taken into account for purpose of all retirement benefits to which they may be eligible in the Existing Company upto the Effective Date. The New Company agrees that for the purpose of payment of any retrenchment compensation, gratuity and other terminal benefits, such past services with the Existing Company shall also be taken into account and agrees and undertakes to pay the same as and when payable.
 - (b) The existing Provident Fund Trusts and Pension Fund Trusts created by the Existing Company for its employees including employees of HCL Divisions shall be continued for the benefit of such employees, including employees who may hereafter join the New Company, on the same terms and conditions and with effect from such day the New Company shall make the necessary contributions for such employees taken over by the New Company until the New Company constitutes its own Provident Fund and Pension Fund Trust and obtains necessary approval for the same.
 - (c) The New Company undertakes to pay, discharge and satisfy all debts, liabilities, duties and obligations of the Existing Company relating to HCL Divisions as on the close of business on the 30th day of June, 1990 and all liabilities, debts, duties and obligations relating to the said Divisions which may accrue or arise after the 30th day of June 1990 but which relate to the period upto the 30th day of June, 1990.
 - (d) The New Company undertakes to have all legal or other proceedings by or against the Existing Company pending on the Effective Date and relating to the HCL Divisions (including those relating to any property, right, power, liability or duty of the Existing Company in respect of the HCL Divisions), transferred in its name and to have the same continued prosecuted and enforced by or against the New Company to the exclusion of the Existing Company. The New Company also undertakes to deal with all legal or other proceedings which may be started by or against the Existing Company or the New Company after the Effective Date relating to the HCL Divisions in respect of the period upto the Effective Date in its own name and account and to the exclusion of the Existing Company and further undertakes to pay all amounts including interest, penalties, damages etc. which the Existing Company may be called upon to pay or secure in respect of any liability or obligation relating to HCL Divisions for the period upto the Effective Date and reasonable costs incurred by the Existing Company in respect of any proceedings started by or against it for the period upto the Effective Date at any time after the said date on submission of necessary evidence by the Existing Company to the New Company.
 - (e) It is further clarified that all liabilities and obligations arising out of guarantees executed by the Existing Company for any of its Subsidiaries or any third party/s will be borne by the New Company and the beneficiary/s shall be entitled to proceed against the New Company only.
 - (f) All obligations and liabilities of the Existing Company not specifically allocated to or retained in the Existing Company pursuant to this Scheme of Arrangement, shall become the sole and exclusive obligations and liabilities of the New Company and the New Company shall indemnify the Existing Company against all such obligations and liabilities incurred by the Existing Company in respect thereof.
 9. The transfer and vesting of the properties and liabilities of the HCL Divisions under clause 1 and the continuance of the proceedings by or against the New Company under Clauses 5 and 8(d) hereof shall not affect any transaction or proceedings already completed by the Existing Company on and after the Appointed Date to the end and intent that the New Company accepts all acts, deeds and things done and executed by and/or on behalf of the Existing Company as acts, deeds and things done and executed by and on behalf of the New Company.

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10. Subject to the other provisions contained in this Scheme all contracts, lease rights, deeds, bonds, agreements and other instruments of whatever nature relating to HCL Divisions to which the Existing Company is a party subsisting or having effect immediately before the Effective Date shall remain in full force and effect against or in favour of the New Company and may be enforced as fully and effectually as if instead of the Existing Company, the New Company had been a party thereto.

PART III

HCL-HP DIVISIONS

1. The HCL-HP Divisions shall continue to belong to and be vested in and be managed by the Existing Company subject to existing charges thereon in favour of Banks, Financial Institutions, Trustees for the Debenture-holders as modified under Part IV of the Scheme.
2. It is further provided that in addition to the above, the following non-specific assets, i.e., assets which do not pertain to any particular Division of the Existing Company shall also continue to belong to and be managed by the Existing Company for the assets and interest of the Existing Company therein subject to existing charges thereon in favour of Banks, Financial Institutions, Trustees for the Debenture-holders as modified under Part IV of the Scheme.
 - (a) Land measuring 4800 sq. mtrs. situated in Plot No. E-4, 5, 6, 33, 34 & 35, Sector XI, Noida, U.P. alongwith Buildings constructed or under construction thereon.
 - (b) Furniture and fixtures valued at Rs. 27.47 lacs as at 30th June, 1990 in Hyderabad Office of the Existing Company.
 - (c) Advance payments for furniture at Madras and Bombay offices amounting to Rs. 20.50 lacs as at 30th June, 1990.
 - (d) Investment in HDFC Bonds and Units of Unit Trust of India under 1964 Scheme in proportion to Fixed Deposits to be allocated.
 - (e) Goodwill to the extent of Rs. 140 lacs.
3. It is clarified that all debts, liabilities and obligations of the Existing Company relating to the said HCL-HP Divisions as on the close of business on the 30th day of June, 1990, whether provided for or not in the books of accounts of the Existing Company, whether disclosed or undisclosed in the Balance Sheet and all other liabilities relating to HCL-HP Divisions which may accrue or arise after the 30th day of June, 1990 but which relate to the period upto the 30th day of June, 1990 shall be the debts, liabilities, duties and obligations of the Existing Company and the Existing Company undertakes to meet discharge and satisfy the same.
4. It is further clarified that all non-specific borrowings from Banks being borrowings other than those referred to in Part IV hereof, on cash credit accounts and other loans and advances raised for working capital which do not appertain to the operations of any particular Division of the Existing Company existing as on 30th June, 1990 shall be allocated between the Existing Company and the New Company in the ratio of 65:35 to arrive at an equitable distribution of total borrowings, after taking into account the specific allocation of certain borrowings on cash credit accounts. The Existing Company and the New Company shall take all steps reasonably necessary to enter into new or amendatory loan or security agreements or instruments or the like as may be necessary, with the creditors such that the New Company and the Existing Company respectively will assume the sole responsibility for the repayment of borrowings allocated to each of them. To the extent that non-specific liabilities allocated to the Existing Company are not made subject matter of the new or amendatory loan agreements or security documents or instruments or the like, pursuant to the above or pursuant to the provisions of Clause 4 of Part II, the New Company shall be indemnified by the Existing Company in respect of its share of such non-specific liabilities as per the Scheme as and when the same is finally determined or is otherwise required to be indemnified.
5. All legal or other proceedings by or against the Existing Company under any statute, whether pending on the Appointed Date or which may be instituted in future in respect of any matter arising before the Effective Date and relating to HCL-HP Divisions (including those relating to any property, right, power, liability, obligation or duties of the Existing Company in respect of HCL-HP Divisions) shall be continued and enforced only by or against the Existing Company after the Effective Date.
6. All loans raised and used and liabilities incurred by the Existing Company after the Appointed Date for operations of any specific unit of HCL-HP Divisions would also remain in the Existing Company.
7. With effect from the Appointed Date and upto and including the Effective Date the Existing Company:
 - (a) Shall be deemed to have been carrying on and to be carrying on all business and activities relating to HCL-HP Divisions for and on its own behalf.
 - (b) All profits accruing to the Existing Company including taxes thereon or losses arising or incurred by it relating to HCL-HP Divisions shall for all purposes, be treated as the profits, taxes or losses as the case may be, of the Existing Company.

PART IV
LIABILITIES

SECTION "A" - FIXED DEPOSITS:

1. The Fixed Deposits together with interest accrued thereon held by the Existing Company on the Appointed Date will be allocated between the Existing Company and the New Company in the ratio of 50:50. The Fixed Deposits accepted after 1st July, 1990 and till the Effective Date, shall be allocated between the Existing Company and the New Company on the basis of 50:50. The Fixed Deposits allocated as above and as existing on the Effective Date would stand transferred to the respective companies. For effecting such transfer, the holders of Fixed Deposits shall surrender their Fixed Deposit Receipts to the Existing Company, and the Existing Company and the New Company will issue new Fixed Deposit Receipts to the extent of their respective liability to each depositor on the same terms and conditions including in respect of the original date of maturity.

SECTION "B" - NON-CONVERTIBLE DEBENTURES :

2. The fixed assets of the Existing Company which are already charged for the Debentures issued with The Industrial Credit & Investment Corporation of India Limited as Trustee for all the Debenture holders of the Existing Company, shall subject to what is stated herein below, continue to stand charged with repayment of moneys payable in respect of all the series of Debentures issued by the Existing Company and outstanding on the Effective Date.

3. The liability under each of the 3,00,000, 14% Non-Convertible Privately Placed Debentures of Rs. 100/- each and 2,50,000, 14% Non-Convertible Privately Placed Debenture of Rs. 100/- each shall stand sub-divided and reduced as follows :

(i) *The Existing Company's Liability :*

One-half of the liability on the Secured Non-Convertible Privately Placed Debentures of the face value of Rs. 100/- each from each series of Debentures.

(ii) *The New Company's Liability :*

One-half of the liability on the Secured Non-Convertible Privately Placed Debentures of the face value of Rs. 100/- each from each series of Debentures.

with proportionate interest, costs, charges and expenses as above but otherwise on the same terms and conditions, except that the charges shall stand modified to the effect that —

- (a) HCL-HP Divisions shall stand charged for repayment of the principal, interest and other moneys payable by the Existing Company in respect of the said Debentures allocated to it under clause (i) above and shall be freed and discharged from all liabilities of the New Company under clause (ii) above in respect of the said Debentures and that HCL Divisions of the Existing Company transferred to the New Company shall stand released from the above liability of the Existing Company in respect of such Debentures allocated to the Existing Company as above.
 - (b) HCL Divisions shall stand charged for repayment of principal, interest and other moneys payable by the New Company in respect of Debentures allocated to it under clause (ii) above and shall be freed and discharged from all the liabilities of the Existing Company under clause (i) above in respect of the said Debentures and that HCL-HP Divisions retained in the Existing Company shall stand released from the above liability of the New Company in respect of such Debentures allocated to the New Company as above.
4. Upon the Scheme becoming effective, the Existing Company and the New Company shall file necessary particulars and/or modification(s) of charge in terms of clause 2 and 3 above, with the Registrar of Companies, New Delhi and execute all such other writings as may be necessary in the light of the above.
 5. The Existing Company and the New Company hereby jointly appoint Existing Company as their Registrars and shall duly and punctually pay their respective shares of liability as per Clause 3 above to the said Registrars in respect of principal, interest and all amounts payable on the Debentures for payment to the Debenture holders on the respective due dates. In case of default on the part of either the Existing Company or the New Company the Debenture holders can proceed against the defaulting Company only and its assets alone charged to the above extent and not against the other Company or its assets.

The cost of Registrars will be borne by both the companies in the same proportion as in Clause 3 above in respect of allocation of debentures.

6. The Debenture Certificate of each series issued by the Existing Company shall continue to be held by the Debenture holders as at present and the Registrar appointed as per Clause 5 above shall be responsible to maintain the Register of Debentureholders and to transfer the debentures as and when any application is made for such transfer by any Debentureholder. The New Company shall stand as a primary obligor for payment of the amounts due and payable by the New Company under Clause 3 above on debentures including interest thereon from time to time in the proportion as allocated in Clause 3 above. Similarly the Existing Company shall continue to be liable as an obligor on the debentures, to the extent of its liability as allocated in Clause 3 above.
7. It is expressly provided that same as mentioned in the Para B of this Part, no other term and condition of the issue of the debentures shall be modified except to the extent that such amendment is required by necessary implication. Upon subdivision and reduction of the liability as stated in Clause 3 above, the Debenture Redemption Reserve in the books of the Existing Company shall with reference to the Appointed Date also be equally apportioned between the two companies.
8. The provisions of Para B above shall operate notwithstanding anything to the contrary contained in any deed, instrument, or writing or the terms of sanction or issue or any security document, or in the debenture certificate, all of which instruments shall stand modified and/or over-ridden by the foregoing provisions. If necessary, the requisite endorsement of the above provisions shall be made on the Debenture Certificates hitherto issued by the Existing Company.

SECTION "C" - APPORTIONMENT OF NON-SPECIFIC LIABILITIES AND ENCUMBRANCES IF ANY THEREON

9. Save as specifically provided in this Scheme, the non-specific liabilities of the Existing Company whether secured or unsecured, shall be allocated and/or apportioned in the following manner :-
 - (a) As far as loans or liabilities which were obtained from financial institutions or banks in the nature of term loans or bridge loans for the purpose of any specific Division and which are generally charged on the assets of the Company including the assets other than the Division in respect of which such facility was obtained, and further if such loan or liability is to be transferred exclusively as part of either the HCL Divisions or HCL-HP Divisions, these charges and encumbrances or other securities created in respect thereof, shall be amended and/or modified to the end and intent that such facility shall be charged only on the assets of that Company where such facility is retained/allocated.
 - (b) The non-specific borrowings or facilities from financial institutions or banks in the nature of term loans or bridge loans are to be allocated and/or apportioned in the following manner :-

(Rs./lacs)

Description of facility principal amount as on Appointed Date	Total Value of the outstanding Company	Allocated to the New Existing Company	Retained with the Existing Company
From Financial Institutions :			
Foreign Currency Loan	29.33	29.33	–
Rupee Term Loan	658.00	210.56	447.44
Bridge Loan	115.00	115.00	–
From Banks :			
Term Loan	88.89	28.44	60.45
Bridge Loans	381.00	121.92	259.08

- (c) The liabilities in respect of the above loans towards interest and other debt service payments in accordance with the respective agreements shall also be apportioned in the same proportions. The parties shall take all steps reasonably necessary to enter into new or amendatory loan or security agreements, instruments or the like with the creditors such that the Existing Company and the New Company respectively will assume sole responsibility for the repayment of the borrowings which shall include the principal, interest and all debt service payments in respect of borrowings allocated

to each of them. Charges in respect of such facilities shall be suitably modified so that the charges on the portion of the borrowings apportioned and allocated to the New Company are secured only on assets of the new Company and similarly the charges in respect of facilities apportioned and allocated to the Existing Company are charged only on the assets of the Existing Company. The conversion option embedded in the loan shall also be pro-rata apportion and shall be exercisable on the same terms and conditions with reference to the New Company and the Existing Company.

- (d) The principles stated in the foregoing paragraph shall be applicable mutatis mutandis to any new facility or loan availed of by the Existing Company after the Appointed Date.
- (e) As far as unsecured loans are concerned, the interest-free loan from PICUP under the Sales Tax Scheme shall be retained in the Existing Company on the same terms and conditions.
- (f) As far as other unsecured loans and advances outstanding as on the Appointed Date are concerned, they shall be allocated and/or apportioned in the following manner :

(Rs./lacs)

Description of facility	Total Value of the outstanding principal amount as on Appointed Date	Allocated to the New Company	Retained with the Existing Company
Deferred Payment Credits	62.90	11.63	51.27

- (g) All non-specific liabilities of any nature including borrowings from Banks and others which do not appertain to the operations of any particular Division of the Existing Company arising on or after the Appointed Date whether or not relating to the period on or before 30th day of June, 1990 shall be shared between the Existing Company and the New Company in the ratio of net current assets as on the Effective Date. The net current assets for this purpose would mean total of current assets, loans and advances minus current liabilities and provisions. All assets and income arising on or after the Appointed Date whether or not relating to the period on or before 30th June, 1990, which do not appertain to the operations of any particular Division, shall be shared between the Existing Company and the New Company in the ratio of 70:30.

PART V

REORGANIZATION OF CAPITAL OF THE EXISTING COMPANY AND THE NEW COMPANY

SECTION - "A"

1. In consideration of the provisions of this Scheme, the capital of the Existing Company and the capital of the New Company shall be restructured and reorganized in the manner appearing below. Shares shall appropriately be issued and/or transferred as the case may be and the share capital be reduced in the manner provided hereinbelow. The provisions of this Part shall operate notwithstanding anything to the contrary in the Scheme or in any other instrument deed or writing.

SECTION - "B"

2. Upon coming into effect of the Scheme, and upon the vesting and transfer of the HCL Divisions in the New Company pursuant to Part II of the Scheme, the Existing Company through its Board of Directors shall fix a "Record Date" for completion of all pending transfers in consultation with the Delhi Stock Exchange Association Limited. The New Company shall without any further act or deed issue and allot to every member of the Existing Company on such "Record Date" fixed, 32 Equity Shares in the New Company of Rs. 10/- each credited as fully paid-up for every 100 Equity Share of Rs. 10/- each fully paid-up held by such member in the Existing Company and such shares in the New Company will for all purposes, save as expressly provided otherwise, be deemed to have been held by each such member from the Appointed Date. Provided that in case the total number of equity shares required to be issued by the New Company comes in fractions, the fractions shall be ignored and the total number of shares to be issued shall be rounded off to the lower integer.
3. In case any member's holding in the Existing Company is such that he becomes entitled to a fraction of one share of the New Company, the New Company shall not issue fractional shares certificates to him but shall consolidate such fractions and issue consolidated shares to a Trustee nominated by the New Company in that behalf, who shall sell the shares and distribute the net sale proceeds to the shareholders respectively entitled to the same.
4. Such Equity Shares to be issued and allotted by the New Company in terms of Clause 2 above, shall rank pari passu in all respect from the date of their allotment in terms of the Scheme with the existing Equity Shares of the New Company.
5. (a) Accordingly, the paid-up capital of the Existing Company shall be reduced from Rs. 14,83,74,470/- to Rs. 10,08,94,640/- and that such reduction shall be effected by cancelling that paid-up capital to the extent of Rs. 3.20 per Equity Share of Rs. 10/- each which have been issued and which are then outstanding.

(b) Simultaneously with such reduction of capital of the Existing Company, the Equity Shares of Rs. 6.80 each so reduced shall be consolidated into Equity Shares of Rs. 10/- each and if any fractions arises on such consolidation, the same will be allotted to a Trustee appointed by the Existing Company in that behalf, consolidated and sold and the net sale proceeds shall be paid to the respective shareholders entitled to the same.
6. The shareholders of the Existing Company, upon the Scheme becoming effective and upon receiving intimation/notice of the Record Date fixed under clause 2 above, shall surrender their share certificates in the Existing Company, to it, which shall thereafter in due course deliver to such shareholders, the shares in the New Company issued in terms of Clause 2 above, and, the reduced-cum-consolidated shares in the Existing Company, to which they are entitled in terms of the foregoing provision of the Scheme upon allotment thereof.

SECTION - "C"

7. Subject to the relevant approvals and simultaneously with the completion of formalities for allotment of shares in the New Company, the following further steps shall be taken by the Existing Company for implementation of the Scheme of Arrangement and the provisions of the Joint Venture Agreement :—
 - (a) The existing Company shall act and is constituted as the Registrar and Transfer Agent to receive the deposit of share certificates of the Existing Company and for issue and exchange of the shares in the New Company and the reduced-cum-consolidated share certificates of the Existing Company in accordance with Part "V" Section "B" hereof.
 - (b) The Existing Company shall be authorised on behalf of the entire body of its shareholders to transfer 26% of the reduced-cum-consolidated shares in the Existing Company to HP Co. The transfer shall be effected by the Existing

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-
- Company only upon receiving written confirmation that M/s. Price Waterhouse has received in escrow the full purchase consideration of Rs. 46.30 crores and stamp duty and other costs of transfer, as provided herein. After receipt of such written confirmation from M/s. Price Waterhouse, the Existing Company shall deposit and deliver these shares to M/s. Price Waterhouse in escrow. The shareholders of the Existing Company whose shares are transferred in accordance with this Scheme shall receive the purchase consideration at the unit price per share of Rs. 176 (approx.) from HP Co. acting through M/s. Price Waterhouse under the escrow arrangement, subject to the Financial Institutions not exercising their option of conversion before the Effective Date. In the event of the Financial Institutions exercising their option of conversion before the Effective Date, the unit price per share receivable as purchase consideration will be a sum of Rs. 169 (approx.) instead of Rs. 176 (approx.) as mentioned above.
- (c) As far as the persons mentioned in Annexure-A to the Scheme are concerned, the shares to be transferred to HP Co are those indicated in the Annexure-A. As far as rest of the shareholders are concerned, they are bound and liable as a condition of the Scheme for the pro-rated transfer of shares out of their holding to HP Co to the extent of 26%.
- (d) In case the transfer result in any fractional shares in the hands of any shareholder, such fraction shall not be required to be transferred but the shareholders concerned shall transfer shares equal to the nearest lowest integer. In case there is a short fall in the shares transferable to HPCo as a result of the fractions created and/or for any reason, the aggregate of such shortfall shall be made up in the first instance by transferring the shares allotted to the Trustee appointed in pursuance of Part "V" Section "B" Clause 5(b) and the balance, if any from the persons mentioned in Annexure-A in a manner mutually agreed by them and HPCo.
- (e) M/s. Price Waterhouse would deliver the shares deposited by the Existing Company as transfer agent of its shareholders to M/s. HPCo or its nominees only upon the simultaneous distribution of the consideration received in trust to the said shareholders.
- (f) The escrow arrangement shall stand dissolved only upon M/s. Price Waterhouse simultaneously and forthwith releasing the purchase consideration. No interest shall be payable on the purchase consideration to any shareholder whatsoever.
- (g) In view of the Existing Company being constituted as a Transfer Agent on behalf of all of its shareholders, the Existing Company as an agent constituted under the Scheme and in furtherance of the Joint Venture Agreement shall execute a single transfer deed on behalf of the shareholders for 26% of the shares transferred to HPCo post reduction-cum-consolidation of the capital of the Existing Company in accordance with Part "V" Section "B" Clause 5 herein. The stamp duty for the above transfer shall be borne by the HPCo. Prior to lodgement for transfer HPCo shall make such additional remittance to M/s. Price Waterhouse of an amount equivalent to such stamp duty and any other cost of transfer as may be required for such purpose. M/s. Price Waterhouse shall make over this money to the Existing Company for executing the transfer deed and for purchase of the transfer stamps.
- (h) HPCo shall be deemed to include any of its wholly owned subsidiary incorporated in USA and nominated in that behalf by HPCo.
8. Unless otherwise decided by the Board of Directors of the Existing Company and the New Company allotment of shares in terms of Clause 2 & 6 of this Part shall be done within 60 days from the record date fixed under Clause 2 of this part.
9. In the event any of the shareholder of the Existing Company failing to deposit or surrender the share certificates for the purposes of obtaining the new share certificates of the New Company and the consolidated-cum-reduced shares of the Existing Company, the previous share certificates shall nevertheless become non-tradeable securities post reduction-cum-consolidation under the Scheme. The Existing Company shall deliver the share certificates of both the companies in accordance with this Part to the shareholders as per the Register of Members of the Existing Company on the Record Date, by registered post. The new share certificate of the Existing Company shall be tradeable and marketable security after the Record Date.
10. The Existing Company shall not be required to use the words "and reduced" as part of the corporate name and such use is dispensed with. Share certificates issued in the New Company and the Existing Company shall be in respect of the renamed company in terms of Clause 3 of Part VI of this Scheme.

PART VI

GENERAL TERMS & CONDITIONS

1. In recognition of the conversion option available to the Financial Institutions pursuant to the Loan Agreement dated 19th February 1990 it is hereby provided that should the Financial Institutions exercise their option before the Effective Date to acquire 6,76,706 equity shares or part thereof by conversion of loan, equity share so acquired by the Financial Institutions shall be deemed to have been acquired on the Appointed Date and shall have all the rights, privileges and obligations of other shareholders under this Scheme and the share capital and share premium account arising as a consequence of such conversion shall be allocated between the Existing Company and the New Company in the ratio of 68:32.
2. Despite HPCo being registered as a shareholder in the midst of a financial year, only the registered shareholders in the books of the Company as on the date of book closure before the ensuing Annual General Meeting of the Existing Company, shall be entitled to such dividend as may be declared by the Existing Company.
3. (a) Upon coming into effect of the Scheme, the Existing Company shall change its name from "HCL LIMITED" to "HCL-HEWLETT PACKARD LIMITED". The New Company shall be renamed as "HCL LIMITED". The two companies shall file requisite applications before the Central Government or the Registrar of Companies as the case may be for the purposes of change of such name,
 - (b) The Existing Company shall amend its Articles of Association in order to provide for various matters relating to the protection of the name of "Hewlett-Packard" or HPCo, and, in respect of protection of various rights of HPCo as a Joint Venture partner in the Existing Company and as holders of 26% shares in the Existing Company. The Existing Company shall, as an ingredient of the Scheme, but not otherwise, pass appropriate resolutions of the General body of shareholders of the Company for carrying out such amendments to its Articles of Association.
 - (c) The New Company shall suitably amend its Memorandum & Articles of Association.
4. (a) The accounts of the Existing Company, HCL-HP Divisions and HCL Divisions have prepared on the basis of book values as on 30th June, 1990 as approved by the Board for the purpose of this Scheme.
 - (b) The profits and losses of the Existing Company and the New Company after 30th June, 1990 shall include Corporate Management Fees allocated on the same basis as above.
5. The issue and allotment of the shares under the provisions of this Scheme to the non-resident shareholders will be made subject to the approval of the Reserve Bank of India under the Foreign Exchange Regulation Act, 1973 and on such terms and in such manner as the Reserve Bank of India may impose.
6. The Existing Company and the New Company shall make necessary applications before the Hon'ble High Court at Delhi for the sanction of this Scheme of Arrangement under Sections 391 and 394 of the Act. All the disputes/differences arising out of this Scheme shall be subject to the jurisdiction of Delhi Court only.
7. All costs, charges, taxes including duties, levies and all other expenses, if any, (save and expressly provided otherwise) arising out of or incurred in carrying out and implementing the terms and provisions of this Scheme and incidentals thereto shall be borne and paid by the Existing Company and the New Company in the ratio of 70:30. However, costs, charges, taxes including duties, levies and other expenses arising out of the implementation of the Scheme will respect to assets or liabilities which are divided in a ratio different from 70:30 shall be divided according to the ratio applicable to such assets or liabilities.
- 7A. In the event of their being any pending share transfers, whether lodged or outstanding, of any shareholders of the Existing Company, the Board of Directors of the Existing Company shall be empowered in appropriate cases even subsequent to the Record Date or the Effective Date as the case may be to effectuate such a transfer in the Existing Company as if such change in registered holder were operative as on the Record Date, in order to remove any difficulties arising to the transferor in the New Company and in relation to the new shares after the Scheme becomes effective. The Board of Directors of the Existing Company shall be empowered to remove such difficulties as may arise in the course of implementation of the Scheme and registration of new members in the New Company on account of difficulties faced in the transaction period.
8. The Existing Company (by its Directors) and the New Company (by its Directors) may, in their full and absolute discretion, assent to any alteration or modification to this Scheme which the Court and/or any other Authority may deem fit to approve or impose and may give such directions as they may consider necessary to settle any question or difficulty arising under the

Scheme or in regard to its implementation or in any matter connected therewith (including any question or difficulty arising in connection with any deceased or insolvent shareholders, depositors or debentureholders of the respective companies).

The Scheme is conditional upon and subject to :

- (a) The Scheme being agreed to by the respective requisite majorities of the various classes of members and creditors (where applicable) of the Existing Company and the New Company as may be required and the requisite orders of the court referred to in Clause 6 hereof being obtained;
 - (b) The approval of the Controller of Capital Issues under the Capital Issues (Control) Act, 1947 to the issue and allotment of Equity Shares in the New Company to the Equity Shares of the Existing Company in terms of this Scheme;
 - (c) The approval of the Reserve Bank of India under the Foreign Exchange Regulation Act, 1973 to various matters referred to in terms of this Scheme for which approval is necessary;
 - (d) Such other sanctions and approvals including sanction of any Government Authority, creditor, lessor or contracting party as may be required by law in respect of the Scheme being obtained; and
 - (e) The certified copies of the orders referred to in this Scheme being filed with the Registrar of Companies, Delhi.
10. In the event of this Scheme failing to take effect finally by 31st December 1992 or such further period as may be agreed by Board of Directors of the two Companies, this Scheme shall become null and void and in that event no rights and liabilities whatsoever shall accrue to or be incurred inter-se by the parties or their shareholders or creditors or employees or any other person. In such case each Company shall bear its own cost or as may be mutually agreed.
 11. In the event of non-fulfillment of any or all obligations under the Scheme, by any Company towards the other Company, then such company will indemnify all costs/interest, etc. to the other Company.

ANNEXURE 'A'

S. No.	Name of the Shareholder	No. of shares of HCL Limited agreed to be sold to HPCo post reduction & consolidation
1.	Guddu Investments P. Ltd.	14800
2.	Kiran Nadar	21500
3.	Northwest Consultancy Services P. Ltd.	5000
4.	Perfect Audio Visual Systems P. Ltd.	5000
5.	Roshini Investments P. Ltd.	10000
6.	Roshini Nadar	4000
7.	S. S. Nadar S/o Late S. S. Nadar	100000
8.	Shiv Nadar Investments Pvt. Ltd.	32600
9.	Slocum Investments Pvt. Ltd.	404002
10.	Vama Sundari Investments P. Ltd.	18900
11.	Vincent Engineering P. Ltd.	5000
12.	A. K. Chowdhry	114486
13.	Appollo Trading & Finance P. Ltd.	20000
14.	Gita Chowdhry	7000
15.	Kunal Chowdhry	3000
16.	D. S. Puri (HUF)	25000
17.	Devender Singh Puri S/o Late S. S. Puri	–
18.	Nina Puri	10000
19.	Reetika Puri (Minor)	15500
20.	Reetika Puri (Trust)	15500
21.	Vikramjit Singh Puri (Minor)	15500
22.	Vikramjit Sing Puri (Trust)	15500
23.	Vireet Investments P. Ltd.	9166
24.	Viren Investments P. Ltd.	–
25.	A. K. M. Systems P. Ltd.	–
26.	Arjun Malhotra (HUF)	42000
27.	Glad Investments P. Ltd.	26710
28.	Kiran Malhotra	34000
29.	M. C. Malhotra	87000
30.	P. Malhotra	38000
31.	Poorva Investment P. Ltd.	–

Contd.....2

ANNEXURE 'A' – Contd.....

32.	Poorva Malhotra (Minor)	68000
33.	Poorva Malhotra Trust	97000
34.	Shiven Investment P. Ltd.	–
35.	Shiven Malhotra (Minor)	68000
36.	Shiven Malhotra (Trust)	97000
37.	Ashish Vaidya (Minor)	45000
38.	Associated Techno Plastics P. Ltd.	152820
39.	Prasanna Vaidya	35000
40.	Shamili Vaidya (Minor)	45000
41.	Y. C. Vaidya (HUF)	30000
42.	Anshul Arora (Minor)	25000
43.	Manik Arora (Minor)	25000
44.	Molly Trading Co. P. Ltd.	47000
45.	Subhash Arora (HUF)	10000
46.	Subhash Arora Investment P. Ltd.	140657
47.	Akshay Chowdhry	3000
48.	Arjun Malhotra	43000
49.	Subhash Arora	40000
50.	Y. C. Vaidya	–
		<hr/>
		20,70,641

This constitutes 26% of the aggregate transferable shares of the above 50 shareholders

SCHEDULE – II

PART – I

(Short description of the freehold property of the existing company)

1. Land at 3, Udyog Vihar, Dundhera, Gurgaon and building thereon.
2. Land in village Niranjapur, P.O. Majra, Dehradun and building thereon.
3. Land at Mouje Chhatral, Taluka Kalol, Dist. Mehsana Ahmedabad, Gujarat.
4. Flat No. 311, Tulsani Chambers, Nariman Port, Bombay.
5. Flat No. 221, 222, T.V. Industrial Estate, Worli, Bombay.
6. Flat No. 201 and Basement at Todi Udyog Kendra, 35, Saki Vihar Road, Andheri (East), Bombay.

PART – II

(Short description of the leasehold property of the existing company)

1. Industrial Plot at C-56, Phase – II, Noida, U.P.

PART – III

(Short description of all stocks, shares, debentures and other choses in action of the existing company)

1. 550 H.D.F.C Bonds of Rs. 1000/- each redeemable at par.
2. 75,000 Units of Rs. 10/- each of Unit Trust of India under 1964 scheme fully paid.
3. 5000 Units of Rs. 100/- each in Vecaus-II Scheme (initial subscription @ Rs. 30/- per unit paid).
4. 45,00,101 nos. equity shares of one US \$ each fully paid up in HCL America Inc. U.S.A.
5. 9,99,930 equity shares of Rs. 10/- each fully paid up in HCL Finance and Investments Limited.
6. 5,50,000 nos. ordinary shares of one Singapore \$ each fully paid up in Far East Computers Pte. Limited, Singapore.

Sd/-

Dated this 26th day of November, 1991

REGISTRAR

IN THE HIGH COURT OF DELHI

Company Petition No. 341 of 2002

In the matter of HCL INFOSYSTEMS LIMITED

.....Petitioner

Through Mr. Manish Lamba, Advocate.

Ms. Geeta Sharma for the O.L.

Mr. Dinesh Chand, Dy. Registrar for Regional Director.

CORAM:

HON'BLE MR. MUKUL MUDGAL

ORDER

19.02.2003

This petition is filed under Section 391(2) and 394 of the Companies Act praying for grant of sanction to a scheme of Amalgamation between Newage Industries Pvt. Limited (Transferor Company) and HCL Infosystems Limited (Transferee Company). The petitioner herein is the transferee company.

The registered office of the petitioner company is within the territorial jurisdiction of this Court.

A copy of the Scheme of Amalgamation has been placed on record. The salient features of the Scheme and the circumstances which necessitated the amalgamation between the companies have been explained in the petition.

The Board of Directors of the petitioner company had passed the Resolution approving the proposed Scheme of Amalgamation. The petitioner company had filed CA(M) No. 150/2002 praying for directions regarding the convening of the meetings of its shareholders and the creditors for the purpose of considering and approving the Scheme of Amalgamation. By the Order dated 3rd September, 2002 passed in the said application, directions were issued by this Court, dispensing with the requirement of holding the separate meetings of the Shareholders and the Creditors of the petitioner company. It is stated in the petition that no proceedings under Sections 235 to 251 of the Companies Act are pending against the petitioner company.

Notice of this petition was issued to the Official Liquidator attached to this Court and the Regional Director, Department of Company Affairs, Kanpur. Both of them have filed their reply affidavit raising objection to the effect that the Memorandum of the company does not contain powers to amalgamate with any other company. This objection has been dealt with in para 9 of the Judgement of Hon'ble Mr. Justice Vikramajit Sen in Company Petition No. 312 - 314/2002 delivered on 21st November, 2002. The learned judge held as follows:

"9. ----- It is quite clear that the powers of the Court under Sections 391 to 394 are not circumscribed or predicated on the applicant company possessing powers under its objects clause to amalgamate with any other company. As has been observed by the Division Bench of the Calcutta High Court, if such a power is in fact contained in the Memorandum of the respective companies, those companies need not seek the imprimatur and approval of the Company Judge and may initiate and effect the amalgamation de hors the company judge. In these circumstances the objection raised by the Regional Director is overruled."

The extract of the above judgment clearly indicates that the powers of company judge under Section 391 to 394 were construed to mean that the powers of the company Judge are not circumscribed by the memorandum of the company and the decision did not turn on the Company being a Transferee Company or Transferor Company. Accordingly this objection is overruled.

Notice of the petition was also advertised in "Times of India" (English) and 'Veer Arjun' (Hindi). However, nobody has filed any objection to the grant of sanction to the proposed Scheme of Amalgamation.

Having regard to the averments in the petition and the materials placed on record, I am satisfied that the petitioner company has disclosed to this Court all material facts relating to the Company as are required under Section 391 of the Companies Act. Since the shareholders and the creditors of the company have approved the proposed Scheme of Amalgamation and since the objection raised by the O.L. and the Regional Director does not survive nor has any objection been filed to the proposed Scheme, I do not find any legal impediment to the grant of sanction to the proposed Scheme of Amalgamation. In my view, the prayer made in this petition deserves to be allowed in the interest of justice.

In the above circumstance, sanction under section 391(2) of the Companies Act is granted to the proposed Scheme of Amalgamation.

The petition stands disposed of in the above terms.

Dasti to the parties.

February 19, 2003

Sd/-
MUKUL MUDGAL. J.

IN THE HIGH COURT OF DELHI AT NEW DELHI
(ORIGINAL JURISDICTION)
IN THE MATTER OF THE COMPANIES ACT. 1956

AND

IN THE MATTER OF SCHEME OF AMALGAMATION

BETWEEN

COMPANY PETITION NO. 340/2002
CONNECTED WITH
COMPANY APPLICATION NO. (M) 151/2002

IN THE MATTER OF M/s Newage Industries Pvt. Ltd.
having its Regd. Office at
C-91/10, Wazirpur Industrial Area,
New Delhi - 110052

.....Petitioner
Transferor Company
(Within the Jurisdiction of this Court)

AND

COMPANY PETITION NO. 341/ 2002
CONNECTED WITH
COMPANY APPLICATION NO. 150/2002
IN THE MATTER OF M/s HCL Infosystems Ltd.
having its Regd Office at 806-808, Siddharth, 96, Nehru Place,
New Delhi - 110019

.....Petitioner
Transferor Company
(Within the Jurisdiction of this Court)

BEFORE HON' BLE MR. JUSTICE MUKUL MUDGAL
DATED THIS 19TH DAY OF FEBRUARY, 2003

ORDER UNDER SECTION 394 OF THE COMPANIES ACT, 1956.

The above petitions coming up for hearing on 19.02.2003 for sanction of the scheme of amalgamation proposed to be made between M/s Newage Industries Pvt. Ltd. (hereinafter referred to as the transferor company) and M/s HCL Infosystems Ltd., (hereinafter referred to as the transferee company), upon reading the said petition the order dated 3.9.2002 dispensing with the requirement for convening the meeting of the creditors / shareholders / equity shareholders of the transferor and transferee companies for the purpose of considering, and if though fit, approving, with or without modification, the scheme of amalgamation annexed to the affidavit of Sh. K.R. Radhakrishnan, the Director of the Transferor Company and the Secretary of the Transferee Company filed on 29th day of August, 2002 and the newspapers namely (1) Times of India (English) (2) Veer Arjun (Hindi) both dated 16.11.2002 each containing the advertisement of the said notice of the petition and upon hearing Sh. Manish Lamba, advocate for the petitioner Ms. Geeta Sharma for the Official Liquidator and Sh. Dinesh Chand Deputy Registrar for the Regional Director and upon reading the affidavit dated 24.1.2003 of Sh. U.G. Nahta, Regional Director, Northern Region Department of Company Affairs, Kanpur on behalf of Central Government and the affidavit of Sh. V.P. Singhal Official Liquidator dated 4.2.2003 both of them raised objection to the effect that the Memorandum of the company does not contain powers to amalgamate with any other company. This objection has been dealt with in para 9 of the judgment of Hon'ble Mr. Justice Vikramajit Sen in Company Petition No. 312-314/2002 delivered on 21st November, 2002. The learned Judge held as follows :

“ 9 ----- It is quite clear that the powers of the Court under Sections 391 to 394 are not circumscribed or predicated on the applicant company possessing powers under its objects clause to amalgamate with any other company. As has been observed by the Division Bench of the Calcutta High Court, if such a power is in fact contained in the Memorandum of the respective companies, those companies need not seek the imprimatur and approval of the Company Judge and may initiate and effect the amalgamation de hors the Company Judge. In these circumstances the objection raised by the Regional Director is overruled.”

Learned counsel for O.L. states that the above judgement is related to the Transferee Company and not to the Transferor Company whereas the objection is raised on the pleadings that the Transferor Company lacking power in its memorandum to amalgamate with any other Company. The extract of the above judgement clearly indicates that the power of Company Judge under Section 391 to 394 were construed to mean that the power of the Company Judge are not circumscribed by the memorandum

of the company and the decision did not turn on the company being a transferee or a transferor company. Accordingly this objection is overruled and the Transferor Company could be dissolved without process of winding up there being no investigation proceedings pending in relation to petitioner companies under sections 235 to 251 of the Companies act, 1956.

THIS COURT DOT H HEREBY SANCTION THE SCHEME OF AMALGAMATION set forth in Schedule-I annexed hereto and DOT H HEREBY DECLARE the same to be binding on all the shareholders and creditors of the Transferor Company and Transferee Company and doth approved the scheme of amalgamation with effect from the appointed date i.e. 1.4.2002.

AND THIS COURT DOT H FURTHER ORDERS:

1. That all the property, rights and powers of the Transferor Company specified in the First, Second and Third parts of the Schedule -II herto and all other property, rights and powers of the Transferor Company be transferred without further act or deed to the transferee company and accordingly the same shall pursuant to section 394 (2) of the Companies Act, 1956 be transferred to and vest in the transferee company for all the estate and interest of the transferor company therein but subject neverthe less to all charges now affecting the same: and
2. That all the liabilities and duties of the Transferor Company be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 394 (2) of the Companies Act, 1956 be transferred to and become the liabilities and duties of the Transferee Company; and
3. That all proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company; and
4. That the Transferee Company do without further application allot to such members of the Transferor Companies as not given such notice of dissent as is required by Clause 3 given in the scheme of Amalgamation herein the shares in the Transferee Company to which they are entitled under the said Amalgamation; and
5. That the said Transferor Company do within 30 days after the date of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Transferor Companies shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Company and registered with him on the file kept by him in relation to the Transferee Company and the files relating to the said two companies shall be consolidated accordingly; and
6. That any person interested shall be at liberty to apply to the court in the above matter for any direction that may be necessary.

**SCHEME OF AMALGAMATION
OF
NEWAGE INDUSTRIES PVT. LTD.
WITH
HCL INFOSYSTEMS LTD.**

This Scheme of Amalgamation (hereinafter referred to as the "Scheme") consists of the Scheme for the Amalgamation of Newage Industries Pvt. Ltd. with HCL Infosystems Limited.

1. GENERAL

The Scheme is made pursuant to the provisions of Sections 391 to 394 and other relevant provisions of the Company Act, 1956 ("the Act ")

2. DEFINITIONS

In the Scheme, unless repugnant to the meaning or context thereof, the following expressions shall have the meanings given below;

- (a) **"Act"** means the Company Act, 1956 or any amendments thereto or re-enactment thereof.
- (b) **"Appointed Date"** for the purposes of the Scheme means the 1st Day of April, 2002 or such other date(s) as the Honourable High Court of Delhi may direct.
- (c) **"Effective Date"** shall be the last of the following dates or such other dates as the Honourable High Court of Delhi may direct, namely:
 - (i) the date on which the last of all the consents, approvals, permissions, resolutions, sanctions and/or orders as may be required by law have been obtained or passed; and
 - (ii) the date on which certified copies of the Order of the Court under Section 391, 392 and 394 of the said Act are filed with the Registrar of Company, National Capital Territory of Delhi and Haryana.
- (d) **"Scheme"** means this Scheme of Amalgamation in its present form with any amendment/modifications approved or imposed or directed by the shareholders of the Transferor Company or by the Transferee Company or approved or directed by the Honourable High Court of Delhi.
- (e) **"Transferor Company"** means **Newage Industries Pvt. Ltd.**, a company incorporated under the Company Act, 1956 and having its registered office at C-91/10, Wazirpur Industrial Area, Delhi 110 052.
- (f) **"The Transferee Company"** means **HCL Infosystems Limited**, a company incorporated under the Company Act, 1956 and having its registered office at 806-808 Siddharth, 96, Nehru Place, New Delhi 110 019.

3. SHARE CAPITAL

The authorized, issued, subscribed and paid up capital of the Transferor Company and the Transferee Company is as under:

(Amount in Rs.)

Transferor Company	Authorised Share Capital	Issued, Subscribed and Paid up Capital
Newage Industries Pvt. Ltd.	Rs. 25,00,000/- (Rupees Twenty five lacs only) consisting of 25,000 equity shares of Rs. 100/- each	12,291 Equity shares of Rs.100/- each fully paid up in cash aggregating to Rs.12,29,100/-

Transferee Company	Authorised Share Capital	Issued, Subscribed and Paid up Capital
HCL Infosystems Limited	Rs. 85,00,00,000/- (Rupees Eighty Five Crores only) consisting of 8,00,00,000 Equity shares of Rs.10/- each aggregating to Rs.80,00,00,000/- and 5,00,000 preference shares of Rs.100/- each aggregating to Rs.5,00,00,000/-	3,19,09,459 Equity shares of Rs.10/- each fully paid up in cash aggregating to Rs.31,90,94,590/-

4. TRANSFER OF ASSETS AND LIABILITIES

(a) Transfer of Assets, Rights, Title etc.

- 4.1 With effect from the Appointed Date and subject to the provisions of the Scheme including in relation to the mode of vesting, the undertaking and the entire business of the Transferor Company including all the movable and immovable properties, tangible and intangible properties, assets, buildings, offices, investments of all kinds, lease and hire purchase contracts, lending contracts, benefit of any security arrangements, reversions, powers, authorities, allotments, approvals, consents, licenses, registrations, contracts, agreements, engagements, arrangements of all kind, rights, titles, interests, power, benefits, easements, and privileges of whatsoever nature and wherever situate belonging to or in the ownership, power or possession and in the control of or vested in or granted in favour of or enjoyed by the Transferor Company, including but without being limited to trade names and other intellectual property rights of any nature whatsoever, permits, approvals, authorizations, rights to use telephones, telexes, facsimile connections and installations, utilities, electricity and other services, reserves, provisions, funds, benefits of all agreements and all other interests or benefits whatsoever shall without any further act or deed be and stand vested in and/or be deemed to be and stand vested in the Transferee Company pursuant to the provisions of Section 394 of the said Act so as to become on and from the Appointed Date, the estate, assets, rights, title and interests of the Transferee Company.
- 4.2 Without prejudice to the provisions of clause 4.1 thereof in respect of such of the assets of the Transferor Company, as are movable in nature or are otherwise capable of transfer by mutual delivery or by endorsement and delivery, the same may be so transferred by the Transferor Company and shall, become the property of Transferee Company thereon as an integral part of the Transferee Company. Such delivery and transfer shall be made on a date to be mutually agreed upon between the respective Board of Directors of the Transferee and Transferor Companies after the order of the Delhi High Court sanctioning the Scheme is duly passed.
- 4.3 In respect of such of the said Assets of the Transferor Company other than those referred to in 4.2 above, the same shall, without any further act, instrument or deed, be transferred to and vested in the Transferee Company on and from the Appointed Date pursuant to the provisions of Section 394 of the said Act.

Transfer of debts, liabilities, etc.

- 4.4. Upon the coming into effect of the Scheme and with effect from the Appointed Date:
- (a) All secured and unsecured debts, liabilities including contingent liabilities, whether disclosed or undisclosed, duties, taxes and obligations of the Transferor Company alongwith any charge, encumbrance, lien or security thereon (hereinafter referred to as the “**said Liabilities**”) shall also be vested or be deemed to be and stand vested, without any further act, instrument or deed, to the Transferee Company, pursuant to the provisions of Section 394 of the said Act so as to become the debts, liabilities, duties and obligations of the Transferee Company, and further that it shall not be necessary to obtain the consent of any third party or other person who is a party to any contract or arrangement by virtue of which such debts, liabilities, duties and obligations have arisen in order to give effect to the provisions of this Clause.
- (b) (i) In so far as securities, note if any, issued by the Transferor Company and held by the Transferee Company, and vice versa, are concerned, the same shall, unless sold or transferred by the Transferor Company or Transferee Company as the case may be, at any time prior to the Effective Date, stand cancelled, and shall be of no effect and the relevant Transferor Company or the Transferee Company, as the case may be, shall have no further obligation outstanding in that behalf.

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- (ii) All debts, outstandings and receivables of the Transferor Company shall accordingly, on and from the Appointed Date stand transferred to and vested in the Transferee Company without any notice or other intimation to the debtors (although the Transferee Company may, if it so deems appropriate, give notice to the debtors that the debts do stand transferred to and vested in the Transferee Company) and the debtors shall be obliged to make payments to the Transferee Company on and after the Appointed Date.
 - (c) Upon the coming into effect of this Scheme, the borrowing limits of the Transferee Company in terms of Section 293(1)(d) of the said Act, shall without further act or deed stand enhanced by an amount being the aggregate liabilities of the Transferor Company which are being transferred to the Transferee Company pursuant to this Scheme.

Continuance of business activities pending approval

4.5 (A) With effect from the Appointed Date up to and including the Effective Date:

- (a) the Transferor Company shall carry on and shall be deemed to have carried on all their businesses and activities and shall hold and stand possessed of and shall be deemed to have held and stood possessed of all their assets for and on account of, and in trust for, the Transferee Company;
 - (b) the Transferor Company shall carry on its business and activities with reasonable diligence and business prudence and shall not, without the prior written consent of the Transferee Company, undertake any additional financial commitments of any nature whatsoever, borrow any amounts nor incur any other liabilities or expenditure, issue any additional guarantee, indemnities, letters of comfort or commitments, either for itself or on behalf of its subsidiaries, if any, or group companies or any third party, or same as expressly permitted by this Scheme or with the prior written consent of the Transferee Company, alienate, charge, mortgage or encumber the said Assets and shall not deal with the said Assets or any part thereof; and
 - (c) the Transferor Company and the Transferee Company shall not make any change in their respective capital structure either by any increase, (by issue of equity or shares on a rights basis, bonus shares, convertible debentures or otherwise) decrease, reduction, reclassification, sub-division or consolidation, re-organization, or in any other manner, except by mutual consent of the respective Boards of Directors of the Transferor Company and the Transferee Company.
- (B) With effect from Appointed Date upto and including the Effective Date, all the profits or incomes accruing or arising to the Transferor Company or expenditure, or losses arising or incurred (including the effect of taxes, if any, thereon) by the Transferor Company shall, for all purposes, be treated and be deemed to be and accrue as the profits or incomes or expenditure or losses of the Transferee Company, as the case may be.

Notwithstanding the aforesaid, the Transferee Company can declare and pay dividend to the shareholders whose names appear on the Register of Members of the respective company at the relevant point of time.

4.6 Legal Proceedings

Upon the coming into effect of this Scheme,

- (a) all suits, actions and proceedings by or against the Transferor Company, if any, pending and/or arising on or before the Effective Date shall be continued and be enforced by or against the Transferee Company as effectually as if the same had been pending and/or arising by or against the Transferee Company.
- (b) the Transferee Company undertakes to have all legal or other proceedings initiated by or against the Transferor Company referred to in sub-clause (a) above transferred to its name and to have the same continued, prosecuted and enforced by or against the Transferee Company.

4.7 Contracts, Deeds, Bonds and other Instruments:

- (a) Upon the coming into effect of this Scheme, and subject to the provisions of this Scheme, all contracts, deeds, bonds, agreements, guarantees, leasehold, rights, tenancy rights, arrangements and other instruments of whatsoever nature to which the Transferor Company are parties or to the benefit of which

the Transferor Company may be eligible, and which are subsisting or having effect immediately before the Effective Date, shall be in full force and effect against or in favour of the Transferee Company as the case may be and may be enforced as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party or beneficiary or obligee thereto. The Transferee Company shall, wherever necessary, enter into and/or issue and/or execute deeds, writings or confirmations, enter into any tripartite arrangements, confirmations or novation to which the Transferor Company will, if necessary, also be a party in order to give formal effect to the provisions of this Clause.

- (b) The Transferee Company, at any time after the coming into effect of this Scheme, may execute deeds of confirmation in favour of any party to any contract arrangement, agreement etc. as referred in clause (a) above, to which the Transferor Company are parties or any writings as may be necessary to be executed in order to give formal effect to the above provisions. The Transferee Company shall, under the provisions of this Scheme, be deemed to be authorized to execute any such writings on behalf of the Transferor Company to carry out or perform all such formalities or compliance, referred to above on the part of the Transferor Company to be carried out or performed.
- (c) All guarantees provided by third parties for and on behalf of the Transferor Company shall continue to operate and remain effective for and on account of and for the benefit of the Transferee Company and shall be dealt in the same manner as it would have been given for and on behalf of the Transferee Company.

Dissolution of the Transferor Company

- 4.8 The Transferor Company, upon coming into effect of this Scheme, shall be dissolved without winding up, subject to an Order being made by the Honourable High Court under Section 394 of the said Act.

5. Accounting Treatment and Consideration:

(A) Accounting Treatment

- 5.1 Upon the Scheme becoming effective and as on the Effective Date:

- (i) Share capital of the Transferor Company to the extent the same is held by the Transferee Company stand cancelled. Correspondingly, the investments appearing in the books of the Transferee Company pertaining to shares held in the Transferor Company also stand extinguished. Difference in the values at which such share capital and investments of the Transferor Company and the Transferee Company get extinguished shall be adjusted through the "Share Premium Account" and/or the "General Reserve Account" in the books of the Transferee Company.
- (ii) The net surplus/deficit, if any, arising out of the amalgamation in the books of the Transferee Company, after providing for the adjustments set forth above, shall be credited/debited by the Transferee Company, to the "Amalgamation Reserve Account" or General Reserve Account as the case may be.

- 5.2 As the entire issued, subscribed and paid up share capital of the Transferor Company is held by the Transferee Company, upon the Scheme becoming effective, the share capital of the said Transferor Company shall automatically stand cancelled and there will be no issue and allotment of shares by the Transferee Company as a result of amalgamation of the Transferor Company with the Transferee Company.

- 5.3 The approval of the Scheme by the Hon'ble High Court shall be considered as an approval under sections 17, 100 and 101 and other applicable provisions of the Act.

6. OTHER CONDITIONS APPLICABLE TO THE SCHEME

6.1 Application/Petition to Hon'ble High Court of Delhi

The Transferor Company and the Transferee Company shall with all reasonable dispatch, make applications to the Honourable High Court of Delhi under Sections 391 and 394 and other applicable provisions of the said Act, for sanctioning this Scheme and for dissolution of the Transferor Company without winding up and for convening and/or seeking exemption to convene the meeting of the shareholders and/or of the creditors, and to obtain all other approvals as may be required under law.

6.2 Modifications/amendments to the Scheme

- (a) The Transferor Company and the Transferee Company by their respective Boards of Directors either by themselves or by any committee constituted by the Board of Directors in this behalf may make or assent from time to time on behalf of all persons concerned to any extensions, modifications or amendments to this Scheme or of any conditions or limitations which the Court and/or any authorities/persons may deem fit to approve of or impose and to resolve all doubts or difficulties that may arise for carrying out the Scheme and to do and execute all acts, deeds, matters and things necessary for putting the Scheme into effect, or to review the position relating to the satisfaction of the conditions to this Scheme, and if necessary, to waive any of those (to the extent permissible under law)
- (b) for the purpose of giving effect to this Scheme or to any modification or amendments thereof, the Board of Directors of the Transferee Company or any committee constituted by the Board of Directors in this behalf may give and are authorised to give all such directions as are necessary including directions for settling any question or doubt or difficulty that may arise.

6.3. Scheme conditional on Approvals/Sanctions

This Scheme is conditional on and subject to:

- (a) Sanction of the Scheme by the Hon' ble High Court of Delhi.
- (b) such other sanctions and approvals including sanction by any Govt. or Regulatory Authority, as may be required by law in respect of the Scheme being obtained.

6.4. Effect of non-receipt of approvals/sanctions:

- (a) In the event of any of the said sanctions and approvals not being obtained and/or the Scheme not being sanctioned by the Hon'ble High Court and/or the order(s) not being passed as aforesaid on or before 31st March, 2003 or within such further period or periods as may be agreed upon by and between the Transferor Company and the Transferee Company, this Scheme shall stand revoked and cancelled and become null and void and be of no effect.
- (b) In the event any of the conditions that may be imposed by the Court and/or competent authority which the Transferor Company and/or the Transferee Company may find unacceptable for any reason then they are at liberty to withdraw from the Scheme.
- (c) If any part of this Scheme is found to be unworkable for any reason whatsoever the same shall not, subject to the decision of the Transferor Company and the Transferee Company, affect the validity of or implementation of the other part and/or the provisions of this Scheme.

6.5. Expenses Connected with the Scheme

The Transferor Company and the Transferee Company shall bear their respective costs, charges and expenses in relation to or in connection with or incidental to this Scheme and of carrying out and completing the terms.

6.6 Headings

The headings inserted in this Scheme are for convenient reference only and shall not be used to construe or interpret the Scheme.

**SCHEDULE OF PROPERTIES, RIGHTS AND POWERS OF THE
TRANSFEROR COMPANY AS ON 31ST MARCH, 2002**

PART-I – FREEHOLD PROPERTY

NIL

PART-II – LEASEHOLD PROPERTY

Industrial Plot at E-1, 2, 3, 36, 37 and 38 in Sector XI, Noida.

PART-III – STOCKS, SHARES, DEBENTURES AND OTHER CHARGES IN ACTION

NIL

Dated this the 19th day of February, 2003

(By order of the Court)

Registrar (Admn. Judl.)

IN THE HIGH COURT OF DELHI AT NEW DELHI

COMPANY PETITION NO. 140 OF 2003
& CA Nos. 460-461, 565, 647, 662, 705-708/2003
with Company Petitions Nos. 141/2003 and 142/2003

Date of Decision: July 8, 2003

In the matter of

CP No. 140/2003:
HCL INFOSYSTEMS LIMITED

CP No. 141/2003:
HCL INFINET LIMITED

CP No. 142/2003:
HCL TECHNOLOGIES LIMITED

.....Petitioners.

... represented by Mr. C.S. Vaidaynath, Senior Advocate
with Mr. C. Mukhopadhyay, Mr. Ajoy, K. Roy,
and Mr. Nishant K. Singh, Advocates

Ms. Shelka Arora, Advocate, for
Ms. Bindu Khosla, Objector.

Mr. Pawan Kumar Dalmia, Objector, in person.

Mr. Rupan Khosla, Objector, in person.

Mr. Dinesh Chand, Deputy Registrar, ROC, for
Regional Director, Deptt. of Co. Affairs, Kanpur

CORAM:
HON'BLE JUSTICE DR. MUKUNDKAM SHARMA

- | | |
|---|-----|
| 1. Whether reporters of local papers may be allowed to see the judgement? | |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

Dr. Mukundakam Sharma, J:

These are three petitions filed by the petitioner companies under sections 391 to 394 of the Companies Act, 1956, praying for according sanction to the scheme of arrangement between M/s. HCL Infosystems Limited, the demerged company, and HCL Technologies Limited, the resulting company, and HCL Infnit Limited, the transferee company. As the issues arising for consideration revolve around similar facts and similar issues. I propose to dispose of all the three petitions by this common judgment and order.

HCL Infosystems Limited proposed to enter into a scheme of arrangement with HCL Technologies Limited and HCL Infnit Limited. The aforesaid scheme was approved by the Boards of all the three companies. The petitioners on the basis thereof filed applications in this Court under section 391(1) and 394 of the Companies Act praying for directions convening of the meetings of the shareholders and the secured and unsecured creditors of all the three companies for the purpose of considering the scheme of arrangement.

The application filed by HCL Infosystems Ltd. was registered as CA(M) 21 of 2003. This Court after considering the records and the averments made in the application was satisfied that it was not necessary to hold separate meetings of the unsecured creditors of the said company to whom the debt due is below Rs. 10 lakhs. Accordingly, the requirement of convening the meeting of 3137 unsecured creditors of the said company to whom the debt due was below Rs. 10 lakhs was dispensed with. However, the meeting of the shareholders, secured creditors and the unsecured creditors to whom the debt due was above Rs. 10 lakhs were directed to be convened for the purpose of considering and approving the proposed scheme of arrangement. In terms thereof certain directions were issued by this Court on February 3, 2003 directing for convening the meetings of the Shareholders, secured creditors and unsecured creditors in the aforesaid manner on March 24, 2003. In order to carry out the aforesaid directions as made in the said order dated February 3, 2003, this Court appointed Mr. Ravi Kant Chadha, Advocate, and Mr. Sridhar Y. Chitale, Advocate, as Chairperson and Alternate Chairperson, respectively, to conduct the aforesaid meetings. The meetings were so convened and the same were held as directed in the order dated February 3, 2003 and a report thereof was submitted by the Chairperson appointed by this Court. In the said report submitted by the Chairperson it is stated that the meetings of the shareholders, the secured creditors and the unsecured creditors were summoned by notice individually served upon each of the shareholders, secured and unsecured creditors through U.P.C. and by advertisements dated February 28, 2003 in The Statesman and Veer Arjun. It is also stated in the report submitted that such shareholders and secured and unsecured creditors of HCL Infosystems Limited approved and adopted the aforesaid scheme of arrangement.

The application filed by HCL Ininet Limited was registered as CA (M) 22/2003 and that filed by HCL Technologies Limited as CA (M) 23/2003. By separate orders passed by this Court directions were issued for convening the meetings of the shareholders, secured creditors and unsecured creditors on March 24, 2003. The requirement of convening the meeting of the sole secured creditor of HCL Technologies Ltd. was dispensed with as the sole secured creditor had no objection to the proposed scheme of arrangement. The meetings were held as directed and the Chairpersons appointed submitted their respective reports. Thereafter, the present petitions were filed by the petitioner companies seeking for the aforesaid relief.

Notices were issued on these petitions upon which the Regional Director has submitted a report. In Company Petition No. 140/2003 filed by HCL Infosystems Limited three objections have also been filed by three shareholders raising various objections to the manner and mode in which the aforesaid meetings were held and also raising various objections to the scheme of arrangement. The Regional Director filed his report. In paragraph 4 of the said report it is stated that the details of the assets and liabilities and the value of the software service business proposed to be transferred to the resulting company, namely, M/s. HCL Technologies Limited, have not been stated either in the scheme of arrangement or in the joint valuation report submitted by M/s. Price Waterhouse Coopers Pvt. Ltd., New Delhi, and M/s. Bansi S. Mehta & Co. Chartered Accountants, Mumbai. In the said report another statement is made by the Regional Director to the effect that detailed calculations and the basis on which the share entitlement ratio of 2:9 has been worked out have not been stated in the valuation report. It is stated that in absence of said detailed calculations the Central Government is not in a position to form an opinion on the reasonableness of the share entitlement ratio. In paragraph 5 of the said report, reference is also made by the Regional Director to a letter filed by one of the shareholders of the company, namely, Shri Pawan Kumar Dalmia. It is pointed out that the said letter was submitted to the Regional Director alleging that the scheme of arrangement was illegal, wrong and contrary to the provisions of the Companies Act. It is, however, stated that the allegations made in the said letter could not be substantiated with relevant facts and evidence and that the allegations made in the said letter are general in nature. Said Pawan Kumar Dalmia also submitted an objection in this Court opposing the prayer for according sanction to the scheme of arrangement. Similarly, Shri Rupan Khosla and Ms. Bindu Khosla have also filed two objections in this Court. In the light of the aforesaid facts and the objections filed I have heard the learned counsel appealing for the petitioners, as also Mr. Rupan Khosla and Mr. Pawan Kumar Dalmia, who appealed in person before me, and also Ms. Shellka Arora, Advocate, who appeared for and represented Ms. Bindu Khosla. The Deputy Registrar represented the Regional Director during the course of arguments and he was also heard at length.

Incidentally, Ms. Bindu Khosla is the wife of Mr. Rupan Khosla and they together held 1250 number of shares constituting 0.00387% of the total paid up share capital of 31,9,09,459 equity shares of Rs.10 each of HCL Technologies Limited. It is also disclosed from the records that all the three objectors, namely, Rupan Khosla, Bindu Khosla and Pawan Kumar Dalmia, are ex-employee of the said company. Mr. Rupan Khosla was an employee of the company till August 28, 2000 when his services were terminated. The services of Bindu Khosla were also dispensed with. On the other hand, Mr. Pawan Kumar Dalmia joined the said company in May 1994 as Company Secretary and remained in that capacity till June 15, 1999 when the company terminated his services. It is also brought out that at the time of his release from service an amount of Rs.6,79,467/- was allegedly due and payable to the company in respect of which a claim was filed claiming the said amount as the principal amount along with interest at the rate of 24%. The said claim is pending for consideration before the Arbitrator. The said objector Mr. Pawan Kumar Dalmia and his wife have also filed three petitions against the said company before the Additional District Judge, Tis Hazari Courts, Delhi. It also appears that a complaint filed by the said objector is also pending for consideration before the Registrar of Companies. That said three objectors being ex-employees of the company and their services having been terminated by the company, it is but natural that the said objectors have axes to grind being disgruntled ex-employees of the company and inimically poised as against the said company. One of the objectors, namely, Pawan Kumar Dalmia in his

objection as also during the course of his arguments sought to refer to incidents and alleged conduct of the company to the period even much prior to the proposed scheme of arrangement. The aforesaid effort clearly proves and establishes the inimical attitude of the objector towards the said company. Even Rupan Khosla during the course of his arguments tried to refer to some of such incidents which were incidents and happenings of the company much prior to the date the aforesaid scheme of arrangement was proposed. The present petitions revolve around the scheme of arrangement in which the first meeting was held on December 18, 2002 whereas the allegations of at least two objectors, as referred to above, pertain to incidents and occurrences much prior to the said date and have no proximity and relevance to the present scheme. This Court is not considering a case of mismanagement and oppression of the company and is only considering the matter regarding the grant of sanction to a scheme of arrangement proposed. The jurisdiction of this Court is limited only to the merit of the present scheme and none of the issues raised beyond the said scheme could be considered by this Court in the present petitions. This was made clear to all the objectors during the course of hearing which position was also accepted by them. The said position is also reiterated in this judgment and order as well, Having held thus, I may now proceed to consider the merit of the objections raised by the three objectors and by the Regional Director in respect or the merit of the scheme of arrangement.

One of the objections that is raised against grant of sanction to the scheme or arrangement is that the three objectors have been denied the opportunity to inspect the documents and the statutory records. It was also pleaded and urged by the said objectors that the documents and the statutory records have not been maintained by the company in accordance with law. In this connection I may record that applications were filed by the objectors praying for a direction to the company to allow the said objectors to inspect the relevant records for the purpose of filing their objections and also to enable them to make their submissions. The company conceded to the aforesaid request in the applications and stated that such records which are necessary for the preparation of the objections and for making arguments could be allowed to be inspected by the said objectors as shareholders in accordance with the provisions of the Companies Act and the Rules framed thereunder. In the light of the stand taken by the parties, this Court appointed a Local Commissioner who was directed to obtain the records from the company and allow inspection thereof as entrusted to her. She has submitted a report contending inter alia that the objectors were given copies and allowed inspection of all such documents which could be given/inspected by a shareholder. It is also stated in the said report that some of the documents as slated in the report could not be shown and copies thereof could not be given as the three objectors as shareholders are not entitled to the same. It is clear from the records placed before me including the report of the Local Commissioner that relevant information and documents have been provided in accordance with law to the objectors. The objectors have inspected the register maintained by the company under section 301 of the Companies Act, the register maintained under sections 372, 372A and 370 of the Companies Act, the valuation report and the register of members. Certified copies of various documents as required by the objectors were also given as is indicated from the report of the Local Commissioner. It also could not be pointed out during the course of argument that any of the documents, access to which was disallowed, was required to be shown to a shareholder like the objectors. All the three objectors have filed detailed objections and have also advanced lengthy arguments in support of their objections and therefore, they are in no manner prejudiced in contesting the scheme of arrangement. The power of this Court also cannot be sought to be invoked for making a fishing and roving enquiry. In Tata Oil Mills Co. Ltd. and Hindustan Lever Limited (1994) 3 Comp.Law Journal 46, it is held by the Bombay High Court that as far disclosure of information is concerned, it will not suffice for the dissenting shareholder merely to show that he was not provided with all the informations and materials on which he could come to a just conclusion in accepting and rejecting the scheme. In that view of the matter, one of the objections raised that the objectors were denied inspection of the relevant documents and of the statutory records cannot be accepted.

The next objection that was raised by all the three objectors was that the scheme of arrangement between the demerged company and the resultant company and the transferee company is illegal, fraudulent and without proper and necessary approval of the shareholders. It is also submitted that the approval of the shareholders and of the secured and unsecured creditors in the aforesaid meetings was obtained on the basis of gross suppression and misrepresentation of material facts. The said objection goes to the root of the matter and, therefore, needs scrutiny by this Court.

The aforesaid objection was sought to be substantiated by stating that statutory requirement of section 391(1)(a) of the Companies Act was not disclosed in the explanatory statement submitted with the notice. It is an admitted position that an explanatory statement was submitted by the company with the notice issued to the shareholders as also the secured and unsecured creditors for whom meetings were directed to be held by this Court. The company has stated that all the necessary disclosures as required under the provisions of section 393 have been made by the company in the explanatory statement submitted with the notice. Apart from the three objectors, a number of other shareholders were present in the meeting held for the purpose. None of the said shareholders, nor any of the secured and unsecured creditors who had attended the meetings raised any such objection either in the meetings held for the purpose in terms of the order of this Court nor any such objection has been raised before this Court by any other shareholders, or secured or unsecured creditors. It could not be established by any of the three objectors that the effect of the scheme of arrangement would vary in the case of the Directors from that of the other shareholders. The Directors under the scheme of arrangement would be receiving the same shareholdings as would be received/receivable by the other shareholders which is also specifically stated and accepted by the petitioners. It is also a settled position of law that the explanatory statement as required under section 173 with notice to members of a special resolution is quite different from the statement which is required under section 393(1)(a). In the decisions of Tata Oil Mills Co.

Ltd. and Hindustan Lever Ltd. Reported in (1994) 3 Comp Cases 46, the Bombay High Court has held that section 393(1)(a) does not require disclosure of all the material facts, it only requires explanation of the material interests involved. I also cannot accept the contention that there is no attempt to disclose the shareholdings of the Directors as their shareholding is reflected in the register of members maintained at the registered office of the company. It is also brought out on record that a promoter's shareholding is also published quarterly in the newspapers and such disclosures are also made on quarterly basis to all the stock exchanges where the company's shares are listed. The objectors have failed to prove that any material interest involved is not reflected in the explanatory statement appended to the notice. The court would accept the bona fides of the explanatory statements appended to the notice and would not investigate into such bona fides until and unless it could be shown by the objectors that there is a fraudulent intention involved in not disclosing the material interest. In United Bank of India Ltd. v. United India Credit & Development Co. Ltd. Reported in (1997) 47 Com. Cases 689, the Calcutta High Court has held that unless and until it could be shown that the shareholders have been misled by the statements made in the explanatory statement or any objection raised regarding the notice by any of the shareholders, the court would not accept a contention that the explanatory statements were misleading or insufficient. The ratio of the aforesaid decision was approved by the Bombay High Court in the decisions in Tata Oil Mills Co. Ltd. and Hindustan Lever Ltd. (supra). In my considered opinion the explanatory statements appended to the notice cannot be said to be misleading or insufficient. Except for the three objectors, none of the other shareholders and secured and unsecured creditors has made any such allegations or any objections regarding such statements made. The objectors although have raised such objections, but they have also failed to prove and establish that the material interests involved have not been disclosed in the aforesaid statements. In this connection reference may also be made to the decision of the Supreme Court in Hindustan Lever Employees' Union v. Hindustan Lever Ltd. reported in (1995) 83 Com Cases 30, wherein it was held thus:-

“where considering the overwhelming manner in which the Shareholders, the creditors, the debenture holders, the financial institutions, had Supported the scheme and had not complained about any lack of notice or lack of understanding of what the scheme was about, it would not be right to hold that the explanatory statement was not proper or was lacking in material particulars”.

In my considered opinion the aforesaid ratio of the said decision of the Supreme Court is squarely applicable to the facts of the present case.

Similar objections as have been raised in this case were also raised before the Bombay High Court in the case of Tata Oil Mills Co. Ltd. and Hindustan Lever Ltd. (supra) which were negated by the said court. The following observation made by the Court in the said decisions is apposite and accordingly the same is extracted:-

“13. (iii) It was further submitted on behalf of Mr. Hazari that explanatory statement was very cryptic and that this ground alone was sufficient to nullify the meeting. In my view the explanatory statement as required under section 172 is quite different than the explanatory statement which is required under section 393(1)(a) of the Act. Mridul J, as he then was, has in the matter of Khandelwal Udyog Ltd. And Acme Mfg. Ltd., in re (1997) 47 Comp Cas 503 (Bom), inter alia, held that section 393(1)(a) does not ordain disclosure of all material facts. Clause (a) not only enumerates the categories of particulars, but it deliberately makes a departure by omitting any reference to material facts. It was further held that the Legislature having used a different phraseology in the said two provisions, it must be held that the legislative intent under the said section 393 was not to provide for disclosure of all material facts. Similar view is taken by learned single judge of the Calcutta High court in the matter of United Bank of India Ltd. v. United India Credit and Development Co. Ltd. (1977) 47 Comp Cas 689 (Cal).”

In All India Blue Star Employees Federation v. Blue Star Ltd., reported in (2000) 27 SCL, 265, the Division Bench of the Bombay High Court has held that there is no obligation on the part of the company to disclose such shareholding of each individual director as can be discovered from the register of members. No such grievance could be made and, therefore, the objections raised by the objectors in that regard in the present case also stand negated even according to the ratio of the aforesaid decision. The Gujarat High court also in the decision of Alembic Ltd. v. Dipak Kumar, reported in 41 SCL 2003 (Guj) 145, has held as follows:-

“It appears from a perusal of the aforesaid provision that the material interest of the directors/managing director/manager of the company would be required to be given whether such material interests in their capacity as directors or as shareholders of the company or otherwise and in a given case even in their capacity as shareholders in another company which holds the shares in the applicant-company, but such disclosure is to be made when the effect of the proposed compromise and arrangement on those material interest is different from the effect on the like interests of other persons. It is not the case of the objector that the effect of the proposed scheme on the interests of the directors of Alembic Ltd. in their capacity as shareholders in other closely held companies having shares in Alembic Ltd. is going to be different from the effect on the like interests of the other shareholders either in Alembic Ltd. or in Darshak Ltd. In this view of the matter, the sanction to the scheme is not required to be withheld on the ground that the disclosure in the notice convening the meeting fell short of the requirement of section 393(1)(a) of the companies Act, 1956.”

Accordingly, the aforesaid objection raised about the non-disclosure of material interest stands rejected.

Objections were also raised with regard to the manner and mode of holding the meetings, as also the resolutions adopted in the aforesaid meetings. According to the objectors, the meeting of the shareholders convened is no meeting at all in the eye of law. The aforesaid objection has been considered by me and in order to appreciate the same I have also carefully perused the reports submitted by the Chairperson and the Alternate Chairperson who were appointed by order dated February 3, 2003. Along with their reports they have also Submitted certain documents which were also perused by me while appreciating the aforesaid objections raised by the objectors. It is disclosed therefrom that a notice containing a copy of the scheme of arrangement, explanatory statement and proxy from duly approved by the registry of this Court and the details of the Chairperson appointed by this Court for the meetings was served by way of U.P.C. upon each of the shareholders, secured creditors and unsecured creditors of the companies. Notices of the meetings were also published in two newspapers of February 28, 2003. The reports of the Chairperson containing an affidavit prove and establish the aforesaid facts. One of the objections raised is that only half an hour time was given for the meeting of the shareholders which was inadequate in view of the capacity of the hall and the attendance. The timings of the three meetings were fixed by this Court in the order dated February 3, 2003. While fixing the time schedule of the aforesaid three meetings, this Court considered all the factors and thereafter fixed the schedule of timings of the three meetings and, therefore, no such objections could be raised by the objectors alleging that time given for the meeting was inadequate. Section 391(2) requires the scheme to be passed by 3/4 of the Value of the creditors or the class of creditors, present and voting in person or through proxy at the meeting. In the present case, 151 shareholders of the company were present and the scheme has been unanimously approved by 99.99% of the shareholders present and voting. The three objectors who have raised objections along with two others did not approve the scheme of arrangement. In that view of the matter, the capacity of the hall and attendance has no relevance, and relation for considering and approving the scheme of arrangement. It was also sought to be contended by the objectors that the amendment sought to be introduced and raised by Rupan Khosla was not allowed to be raised by the Chairperson of the meeting. In this connection reference can be made to the report of the Chairperson who has stated in his report in the following manner:-

“In the midst of voting on the resolution, a member, who introduced himself as Mr. Rupan Khosla, requested the Chairman that he wanted to raise a point of order to amend the resolution by his modification. As Mr. Khosla insisted upon reading a few lines of his text, the Chairman allowed him to read the proposed text/modification. Some papers delivered prior to meeting, on the day of voting and after voting received from Mr. Rupan Khosla along with other papers received from one Mrs. Manju Dalmia and Mr. Pawan Dalmia are attached herewith a “Documents received from Mr. Rupan Khosla, Ms. Manju Dalmia and Mr. Pawan Dalmia”. However, since voting on the Resolution had already Commenced and some members had voted, there was no proposal for the said proposed modification as contained in Mr. Rupan Khosla’s letter dated March 24, 2003 (Annexure ‘Z’ Colly) nor same was seconded. The motion raised by Mr. Rupan Khosla was not proper, hence it was invalidated. However, in the opinion of the Chairman and the alternate chairman, members who wanted to mention about said proposed modification were allowed to do so and same is brought to the notice of this Hon’ble Court.”

It is, thus, established therefrom that no amendment or modification seeking to amend the resolution was circulated in advance as required under the provisions of the Companies Act. A reference to the provisions of section 188(2) of the Companies Act would disclose the eligibility criteria of the member and the requirement to circulate a resolution and to make a request for the aforesaid purpose. In the present case, the aforesaid requirement was not complied with and fulfilled. Even otherwise it is indicated from the report of the Chairperson that opportunity was given to all the members who wanted to consider the said proposed modification but except for the three objectors the same did not receive any approval from any other shareholders. Therefore, it is established that although no amendment or modification seeking to amend the resolution was circulated in advance, yet the shareholders had the benefit to consider the same but did not approve of and rejected the said modification/ amendment. The Chairperson was also satisfied that the amendment raised by Rupan Khosla was not only not proper but was also satisfied to the extent that the same would alter the basic structure of the scheme. Even in spite of the aforesaid satisfaction the Chairperson allowed the members who wanted to vote on the proposed amendment, but the said amendment was not approved by the shareholders present and voting, and the said amendment stood defeated by the house itself which is apparent from the percentage of voting as 99.99% of the members present and voting rejected the aforesaid amendment and approved the scheme of arrangement as proposed. It is also established that the aforesaid amendment proposed by Mr. Rupan Khosla was not seconded by any other shareholder. The aforesaid position is approved by the report of the Chairperson. Paragraph 14.6 of the Company Secretary Practice Manual, Vol. II, states as follows :-

“The Act or Table A of Schedule I do not provide for proposing and the seconding of a motion or proposal or a resolution moved at a meeting. It is, however, customary at company meeting to formally propose and second a motion so as to be put to vote. When a motion is proposed and seconded, it leads to a debate and voting. To propose means to offer or put forward for consideration and to second means to express formal support to (a motion, proposal, etc.), as a necessary preliminary to further discussion or to voting. Secunder is a person who expresses formal support of a motion so that it may be discussed or put to a vote.”

In Tata Oil Co. Ltd. and Hindustan Levers Ltd. (supra), the Court observed as follows:-

“.....Mr. Hazari had proposed a resolution by way of an amendment.....In my opinion, first of all Mr. Hazari had not got circulated any draft amendment earlier for being considered. Secondly, the same was definitely beyond the scope of the meeting.”

Even assuming that there was a minor irregularity in that regard, yet the resolution proposed by the company was passed by an overwhelming majority representing 99.99% in value of the equity shareholders. It is also worth mentioning that the five dissenting members also cast their votes on the said resolution but unfortunately they were the only dissenting members, whose holding amounted to only 0.1171% of the total value of the shareholding of the company.

Another objection that was raised was with regard to the appointment of scrutinizers. It was contended that both the scrutinizers are the employees of the company which violated the provisions of section 184 of the Companies Act. The said provision contemplates that one of the two scrutinizers appointed by the Chairperson should be the member and not an officer or an employee of the company present at the meeting. In the present case, Mr. K. Radhakrishnan was appointed as one of the scrutinizers and he is the Company Secretary of the company. Mr. D.C. Kottiyam was appointed as the other scrutinizer by the Chairperson. It is pointed out by the company that D.C. Kottiyam is not an employee of any of the three companies. The said position is also proved and admitted that he is a contractor/consultant. He was present in the said meeting not as an employee of the company but as a member. When the Chairperson was satisfied that he was not an employee of the company and thereafter was appointed as one of the scrutinizers, no objection can be raised against his appointment as a scrutinizer. In the present case there is no violation of the provision of section 184 of the Companies Act.

The next allegation raised is that no debate and discussion took place during the course of meeting of the shareholders. The Chairperson has submitted a detailed report with regard to the conduct and the manner in which the meeting was held. On perusal of the same it is apparent and established that the Chairperson followed the due process and procedure of law. The Chairperson called the meeting in order. Thereafter the Chairperson gave the welcome address wherein he stated that the scheme of arrangement is accepted as already read in view of the fact that a copy of the scheme of arrangement was sent and individually served on each of the equity shareholders along with the notice. As directed by the Chairperson, the notice convening the meeting was read and thereafter the scrutinizers were appointed by the Chairperson. The Chairperson declared the poll timings and ordered that voting on the resolution would be by poll and put the resolution for vote. Mr. Rupan Khosla proposed the amendment which was allowed to be read as is indicated from the minutes of the meeting. The same was considered by the Chairperson and he gave a ruling on the same which is also disclosed from the minutes of the meeting and it is, therefore, apparent and established that there was effective deliberation on the aforesaid proposed amendment propounded by Mr. Rupan Khosla and the same was effectively considered by the members. The aforesaid allegation, therefore, is also without any merit.

It was also sought to be contended that the objector or his proxy was not allowed entry into the hall for the meeting. The said contention is apparently misleading on the face of the records. Mr. Rupan Khosla, in his capacity as a shareholder of the company and as proxy of Mr. Pawan Kumar Dalmia's wife, was present in the meeting. Mr. Pawan Kumar Dalmia himself was also present in person as also Ms. Bindu Khosla was also present. The said allegation is baseless on the face of it.

An objection was also raised challenging the validity of the meeting on the ground that the resolution of the meeting was not announced by the Chairperson. In this connection reference may be made to the provision of Rule 78 of the Companies Court Rules which provides the procedure as to how the Chairperson of the meeting is to submit his report. In my considered opinion, the report which was submitted by the Chairperson the present case satisfies the requirement and the mandate of section 78 of the Rules. It was also sought to be submitted that no notice convening the meeting was received by the three objectors who are shareholders. The very fact that they were present in the meeting, or were represented by proxy indicates that they had notice of the meeting. Rather they actively participated in the said meeting. The said objection has also no basis at all.

Objection is also taken to the holding of the meetings on the ground that the meeting procedure was not explained by the Chairperson. Report of the Chairperson, which is on record, clearly establishes that the Chairperson duly apprised the members present about the purpose of the meeting and explained to them the manner and the procedure of the meeting and its purpose and how the polling has to be done. Except for the three objectors none of the shareholders who were present and voting in favour of the resolution has taken up a stand in support of the allegations raised by the objectors herein. The resolution was passed by a majority of shareholders present and voting, the value of which was 99.99%. The objection with regard to manner and mode of holding the meetings is without any merit and rejected. All the allegations in that regard are found to be baseless.

It was also contended that the company did not comply with the provisions of section 293(1)(a) of the Companies Act. I have given my anxious consideration to the aforesaid submission. I am, however, constrained to hold that the provision of section

293(1) is not applicable to the facts and circumstances of the present case. Section 391 to 394 of the Companies Act is a complete code in itself and, therefore, there is no requirement to comply with the provisions of section 293(1)(a). In PMP Auto Industries Ltd. and S.S. Miranda Ltd. (1994) 80 Comp. Cases 289, it was held that once a scheme of arrangement falls squarely within the ambit of aforesaid sections, namely, sections 391 to 394, the same could be sanctioned even if it involves doing acts for which procedure is specified in other sections of the Companies Act.

Objectors also raised an objection with regard to the transfer of the R&D Division. The said R&D Division was transferred in the year 1996. The same, therefore, has no relevance to the present scheme of arrangement and the aforesaid objection is found, therefore, to be not relevant to the present scheme.

Objections have been raised to the scheme of arrangement on the ground that the valuation report is unfair and biased. Even the Regional Director has also raised an objection that the valuation report does not disclose the basis of calculations for arriving at the share exchange ratio. The aforesaid Objection, therefore, requires consideration by this Court. I have given an indepth consideration to the said allegation. The valuation of the business in the present case has been jointly done by reputed valuers like M/s. Pricewaterhouse Coopers Pvt. Ltd. and Bansi S. Mehta & Co. The aforesaid valuation report has been adopted by the Board of the companies and passed by the overwhelming majority of the shareholders. In Miheer H. Mafatlal v. Mafatlal Indusuies Ltd. (1996) 87 Comp. Cases 792, the Supreme Court has held that if share exchange ratio is fixed by Chartered Accountant upon consideration of various factors and approved by majority of shareholders in a meeting, the Court will not disturb the ratio. The aforesaid decision was considered by this Court in Chaturan Industries Ltd. v. Sulabh Leafin (P) Ltd. and others, (1998) 5 Comp. LJ 444. In the said case this Court referred to the aforesaid decision of the Supreme Court and in paragraph 15 it held thus:-

“15. It is admitted in the present case that the valuation of the shares in the present case was done by a recognized firm of chartered accountants of repute. It is also reported by the chartered accountants that while determining the exchange ratio in the present case, he has followed not only the book value method but also profitability and earning per share. The aforementioned method of valuation of shares is recognized as a proper mode of valuation., it is not for the court either to substitute the exchange ratio, especially when the same has been accepted without demur by the overwhelming majority of the shareholders of the two companies, or to say that the shareholders in their collective wisdom could not have accepted the said exchange ratio on the ground that it would be detrimental to their interest.”

In Hindustan Lever Employees Union's case (supra), the Supreme Court observed thus :-

“The valuation of shares is a technical matter, it requires considerable skill and experience. There are bound to be differences of opinion among accountants as to what is the correct value of the shares of a company, it was emphasized that more than 99% of the shareholders had approved the valuation. The test of fairness of this valuation is not whether the offer is fair to a particular shareholder..... who may have reasons of his own for not agreeing to the valuation of the shares, but the overwhelming majority of the shareholders have approved of the valuation. The Court should not interfere with such valuation.

XX XX XX

In the absence of it being shown to be vitiated by fraud and malafide, the mere fact that the determination done by slightly different method might have resulted in different conclusion would not justify interference of Court.”

It is also settled position of law that once the exchange ratio of the shares of the transferee company to be allotted to the shareholders of the transferor company has been worked out by a recognised firm of chartered accountants who are experts in the field of valuation and if no mistake can be pointed out in the said valuation, it is not for the court to substitute its exchange ratio, especially when the same has been accepted without demur by the overwhelming majority of the shareholders of the two companies. The aforesaid ratio was also accepted by this Court in Jindal (India Pvt. Ltd. v. Cold Rollings India Pvt. Ltd. (1998) 1 Comp. L.J. 36.

In Hindustan Lever Employees Union's case (supra) it was again held by the Supreme Court that the jurisdiction of the Court in sanctioning a claim of merger is not to ascertain mathematical accuracy, if the determination satisfied the arithmetical test. It was further held that a Company Court does not exercise an appellate jurisdiction. In the said decision it was held as follows:-

“The Court's obligation is to be satisfied that valuation was in accordance with law and it was carried out by an Independent body. The High Court appears to be correct in its approach that this test was satisfied even though the chartered accountant who performed this function was a director of TOMCO, but he did so as a member of renowned firm of chartered accountants. His determination was further got checked and approved by two other independent bodies at

the instance of shareholders of TOMCO by the High Court and it has been found that the determination did not suffer from any infirmity. The Company Court, therefore, did not commit any error in refusing to interfere with it. May be as argued by the learned counsel for the petitioner that if some other method would have been adopted, probably the determination of valuation could have been a bit more in favour of the shareholders. But since admittedly more than 95% of the shareholders who are the best judge of their interest and are better conversant with market trend agreed to the valuation determined, it could not be interfered by Court as, certainly it is not part of the judicial process to examine entrepreneurial activities to ferret out flaws.”

The aforesaid ratio of the decision of the Supreme Court is squarely applicable to the facts of the present case and on that count the objection raised by the objectors as also by the Regional Director cannot be entertained, and rather required to be rejected which I hereby do.

Mr. Rupan Khosla appearing in person also made an objection to the scheme of arrangement on the ground that the company is siphoning of the profitable business. He also referred to the interview in C.N.B.C. on December 19, 2002. So far the said interview is concerned, it is only to be noted that different interviewer may have different opinion with regard to the scheme. It is also not understood as to whether or not the interviewer had studied and understood the scheme properly. The opinion of the interviewer, in my considered opinion, cannot be given due weightage in considering the question of grant of sanction to the scheme of arrangement. It is the shareholders' company and, therefore, the views of the shareholders is paramount and not that of the interviewer. Since in the present case the overwhelming majority of the shareholders has approved the scheme, the same cannot override the opinion of the interviewer. The allegation of the objector that there is an effort to siphoning of the profitable business of the company in which case the minority shareholder would be deprived of the benefit is also considered by me giving due weightage thereto. No basis is provided in support of the aforesaid allegation. There is increase in the profit of the Company and as a matter of fact there is almost 100% increase in revenue of the software business of the company. The revenue of the company without the software business has also increased from Rs.336 crores in the financial year ending March 31, 2002 to Rs.2,729 crores in the year ending March 31, 2003. Therefore, the aforesaid contention is also without any merit.

In the light of the aforesaid discussions, the objections that are raised as against the grant or sanction to the scheme of arrangement are found to be without merit and are dismissed. Accordingly, I am of the considered opinion that the scheme if approved would be beneficial to all concerned, and as such the scheme approved by the members stands confirmed. Sanction is hereby granted to the aforementioned scheme of arrangement. Petitions stand disposed of in the above terms along with all the pending applications.

— Sd —

(Dr. Mukundakam Sharma)
Judge

July 8th, 2003
Pcj

IN THE HIGH COURT OF DELHI AT NEW DELHI
(ORIGINAL JURISDICTION)
IN THE MATTER OF THE COMPANIES ACT, 1956

AND

IN THE MATTER OF SCHEME OF ARRANGEMENT

BETWEEN

COMPANY PETITION NO. 140/2003
CONNECTED WITH
COMPANY APPLICATION No. (M) 21/2003
IN THE MATTER OF M/S. HCL Infosystems Ltd.
having its Regd. Office at
806-808, Siddharth, 96, Nehru Place
New Delhi-110019

....Petitioner
Demerged Company

AND

COMPANY PETITION No. 141/2003
CONNECTED WITH
COMPANY APPLICATION NO. (M) 22/2003
IN THE MATTER OF M/S. HCL Ininet Ltd.
having its Regd. Office at
806-808, Siddharth, 96, Nehru Place
New Delhi-110019

....Petitioner
Transferee Company

AND

COMPANY PETITION NO. 142/2003
CONNECTED WITH
COMPANY APPLICATION No. (M) 23/2003
IN THE MATTER OF M/S. HCL Technologies Ltd.
having its Regd. Office at
806-808, Siddharth, 96, Nehru Place
New Delhi-110019

....Petitioner
Resulting Company

BEFORE HON'BLE OR, JUSTICE MUKUNDAKAM SHARMA
DATED THIS 8TH DAY OF JULY, 2003

ORDER UNDER SECTION 394 OF THE COMPANIES ACT, 1956

The above petitions coming up for hearing on 8.7.2003 for sanction of the scheme of Arrangement proposed to be made between M/s. HCL Infosystems Ltd. hereinafter referred to as the Demerged Co.), M/s. HCL Technologies Ltd., (hereinafter referred to as the resulting Company) and M/s. HCL Ininet Ltd. (hereinafter referred to as the Transferee Company), upon reading the said petitions, the orders, dated 3.2.2003 whereby the above said demerged company, resulting company and transferee company were ordered to convene a meeting of their respective shareholders, secured and unsecured creditors to whom the debt owned is above Rs. 10,00,000/- for the purpose of considering, and if thought fit, approving, with or without modification, the scheme of Arrangement annexed to the affidavits of Sh. K.R. Radhikrishanan, company secretary of demerged company, Sh. Suman Ghose Hazra, Director of the transferee company and Mr. Allwyn Noronha, company secretary of the resulting company filed on the 24th day of January, 2003 and the publication in the Newspapers namely (1) The Statesman (English) (2) Veer Arjun (Hindi) both dated 28.2.2003 each containing the advertisement of the notice convening the said meetings directed to be held by the said order dt. 3.2.2003, the affidavits of Sh. Ravi Kant Chaddha, Advocate, Sh. B.K. Sood, Advocate and Sh. H.P. Singh, Adv., filed on 17.3.2003 & 22.3.2003 showing the publication and despatch of the notices convening the said meetings, the reports of Chairmen of the said meetings as to the result of the said meetings and upon hearing Sh. Vaidaynathan, Sr. Adv., with Mr. C. Mokhopadhyay Mr. Ajoy K. Roy and Mr. Nishant K. Singh, Advocates for the

petitioner, Ms. Shellka Arora, advocate for Ms. Bindu Khosla, Objector, Mr. Pawan Kr. Dalmia, objector in person, Mr. Rupan Khosla, objector in person, Mr. Dinesh Chand, Deputy Registrar, Registrar of Companies for Regional Director, Deptt. of Company Affairs, Kanpur and it appearing from the reports that the proposed scheme of arrangement has been approved and adopted without any modification by the said shareholders and creditors of the demerged company, resulting company and transferee company present and voting either in person or by proxy and upon reading the affidavits dated 21.5.2003 of Sh. U.C. Nahta, Regional Director, Northern Region, Department of Company Affairs, Kanpur on behalf of Central Government and the objection raised by Regional Director in its affidavits and also by the objectors against the grant of sanction to the scheme of arrangement having been dismissed by the court, there being no investigation proceedings pending in relation to the petitioner Companies under Section 235 to 251 of the Companies Act, 1956.

THIS COURT DOTH HEREBY SANCTION THE SCHEME OF ARRANGEMENT

set forth in Schedule-I annexed hereto and DOTH HEREBY DECLARE the same to be binding on all the shareholders and creditors of the demerged company, resulting company and transferee company and all concerned and doth approve the said scheme of arrangement from the appointed dt. i.e. 1.1.2003.

AND THIS COURT DOTH FURTHER ORDER :

1. That all the property, rights and powers of the software service business and the Office Automation and telecommunication division of the demerged company specified in the First, Second and Third parts of the schedule-II hereto and all other property, right and the power of the software service business and the Office Automation and Telecommunication Division of the demerged company be transferred without further act of deed to the resulting company and transferee company respectively and accordingly the same shall pursuant to Section 394 (2) of the Companies Act, 1956 be transferred to and vest in resulting company and the transferee company respectively for all the estate and interest of the demerged company therein but subject nevertheless to all changes now affecting the same; and
2. That all the liabilities and duties of the software service business and the office automation and telecommunication division of the demerged company be transferred without further act or deed to the resulting company and the transferee company respectively and accordingly the same shall pursuant to Section 394 (2) of the Companies Act, 1956 be transferred to and become the liabilities and duties of the resulting company and the transferee company respectively; and
3. That all the proceedings now pending by or against the demerged company and relating to the software service business and the office automation and Telecommunication division be continued by or against resulting company and the transferee company respectively as specified in the said scheme of arrangement; and
4. That the resulting company do without further application allot to such members of the demerged company as is required by Clause 20 given in the scheme or arrangement herein the shares in the resulting company to which they are entitled under the said arrangement. The transferee company a wholly owned subsidiary company of the demerged company shall comply with clause 36 of the said scheme of arrangement;
5. That the demerged company do within 30 days after the date of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration.

SCHEDULE – 1

SCHEME OF ARRANGEMENT

BETWEEN

HCL INFOSYSTEMS LIMITED	...	DEMERGED COMPANY
HCL TECHNOLOGIES LIMITED	...	RESULTING COMPANY
HCL INFINET LIMITED	...	TRANSFEREE COMPANY

AND

THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

PART I – GENERAL

1. The Demerged Company is primarily engaged in the business of information technology, facilities and network management, network consulting, call-centre consulting, software services, and providing hardware equipments, office automation and telecommunication equipments through its various divisions through its various subsidiaries worldwide.
2. The Resulting Company is primarily engaged in providing to customers in India and worldwide, technology and software services through a network of sales and project management offices in various countries including India.
3. The Transferee Company is a wholly owned subsidiary of the Demerged Company and is primarily engaged in the business of providing value added internet business services and solutions, hardware, software, support and consulting services.
4. This composite scheme of arrangement (hereinafter referred to as the “**Scheme**”) provides for;
 - (a) the demerger of Demerged Undertaking (as defined hereinafter) of the Demerged Company to the Resulting Company, and the consequent issue of equity shares by the Resulting Company to the shareholders of the Demerged Company; and
 - (b) the transfer of the Transferred Undertaking of the Demerged Company to the Transferee Company for such consideration and in such manner as provided herein.

Pursuant to Sections 391 to 394 and other relevant provisions of the Act in the manner provided for herein.

5. The Scheme is divided into the following parts:
 - (a) Part I, which deals with the introduction and definitions;
 - (b) Part II, which deals with the demerger of the Demerged Undertaking from the Demerged Company to the Resulting Company;
 - (c) Part III, which deals with the transfer of the Transferred Undertaking of the Demerged Company to the Transferee Company; and
 - (d) Part IV, which deals with the general terms and conditions that would be applicable to both Part II and Part III of the Scheme.
6. The Scheme also provides for various other matters consequential or otherwise integrally connected herewith.
7. In this Scheme, unless repugnant to the meaning or context thereof, the following expressions shall have the following meanings:

“**Act**” means the Companies Act, 1956 or any statutory modification or re-enactment thereof;

“**Appointed Date**” means January 1, 2003;

“**Demerged Company**” means HCL Infosystems Limited, a company incorporated under the Act and having its registered office at 806-808, 96, Nehru Place, New Delhi;

“**Demerged Undertaking**” means the software services business of the Demerged Company (including the software technology park units whether in India or otherwise), on a going concern basis, and which shall include (without limitation):

- (a) all the property of or required for the software services business wherever situated, whether movable or immovable, tangible or intangible, including all lands, plant and machinery, buildings and structures, warehouses, offices, residential and other premises, vehicles, capital work in progress, furniture, fixtures, office equipment, appliances, accessories;

-
- (b) deposits, stocks, assets, sundry debtors, inventories, investments of all kinds (including shares, scrips, stocks, bonds, debenture stock, units or pass through certificates and in particular investments made directly or indirectly in overseas subsidiaries), cash and bank accounts (including balances with banks), bills of exchange, loans, advances, contingent rights or benefits, receivables, benefit of any deposits, financial assets, leases (including lease rights) and hire purchase contracts, lending contracts, benefit of any security arrangements, reversions, powers, authorities, allotments, approvals, permits and consents, quotas, rights (including rights under any agreements, or customer contracts, or other contracts or agreements), entitlements, contracts, licenses (including in relation to software technology park units), municipal permissions, tenancies in relation to the office and/or residential properties for the employees or other persons, guest houses, godowns, warehouses, leases, licenses, fixed and other assets, benefits of assets or properties or other interest held in trust, registrations, contracts, engagements, arrangements of all kind, privileges and all other rights including sales tax deferrals, title, interests, other benefits (including tax benefits and privileges under the Income Tax Act, 1961 and entitlements) and advantages of whatsoever nature and wheresoever situate belonging to or in the ownership, power or possession and in the control of or vested in or granted in favour of or enjoyed by the Demerged Undertaking;
- (c) all trade and service names and marks, patents, copyrights, and other intellectual property rights of any nature whatsoever, authorisations, permits, approvals, rights to use and avail of telephones, telexes, facsimile, email, internet, leased line connections and installations, utilities, electricity and other services, reserves, provisions, funds, benefits of all agreements, all records, files, papers, computer programmes, manuals, data, catalogues, sales and advertising materials, lists and other details of present and former customers and suppliers, customer credit information, customer and supplier pricing information and other records in connection with or relating to the Demerged Undertaking and all other interests of whatsoever nature belonging to or in the ownership, power, possession or the control of or vested in or granted in favour of or held for the benefit of or enjoyed by the Demerged Undertaking, whether in India or abroad;
- (d) all earnest moneys and/or security deposits paid by the Demerged Company in connection or relating to the Demerged Undertaking; and
- (e) present and future liabilities (including contingent liabilities and the Transferred Liabilities) and other liabilities (other than those referred to in Clause 12(c) of this Scheme) relating to the Demerged Undertaking.

“Effective Date” or **“coming into effect of this Scheme”** or **“effectiveness of this Scheme”** means the last of the dates on which all the orders, approvals, consents, conditions, matters or filings referred to in Clause 46 hereof have been obtained or fulfilled;

“Resulting Company” means HCL Technologies Limited incorporated under the Companies Act, 1956, and having its registered office at 806-808, Siddharth, 96, Nehru Place, New Delhi-110019;

“Record Date” shall have the meaning ascribed to it in Clause 20 hereof;

“Remaining Business” means all the business and the divisions of the Demerged Company other than the Demerged Undertaking and the Transferred Undertaking;

“Scheme” means this composite Scheme of Arrangement;

“Transferred Liabilities” shall have the meaning ascribed to it in Clause 17 (a) hereof;

“Transferee Company” means HCL Infinet Limited, a company incorporated under the Companies Act, 1956, and having its registered office at 806-808, Siddharth, 96, Nehru Place, New Delhi-110019 and a wholly owned subsidiary of the Demerged Company; and

“Transferred Undertaking” means the office automation and the telecommunication division of the Demerged Company, on a going concern basis, which shall mean and include without limitation

- (a) all the property of or required for the office automation and telecommunication division, wherever situated, whether movable or immovable, tangible or intangible, including plant and machinery, buildings and structures, offices (including marketing and liason offices), residential and other premises, capital work in progress, furniture, fixtures, office equipment, appliances, accessories;
- (b) all stocks, assets, investments of all kinds (including shares, scrips, stocks, bonds, debenture stock, units or pass through certificates), cash balances with banks, loans, advances, contingent rights or benefits, receivables, benefit of any deposits, financial assets, leases (including lease rights) and hire purchase contracts, lending contracts, benefit of any security arrangements, reversions, powers, authorities, allotments, approvals, permits and consents, quotas, rights, entitlements, contracts, licenses (industrial and otherwise), municipal permissions, tenancies in relation to the office and/or residential properties for the employees or other persons, guest houses, godowns, warehouses, leases, licenses, fixed and other assets, benefits of assets or properties or other interest held in trust, registrations, contracts, engagements, arrangements of all kind, privileges and all other rights including sales tax deferrals, title, interests, other benefits (including tax benefits and entitlements) and advantages

of whatsoever nature and wheresoever situate belonging to or in the ownership, power or possession and in the control of or vested in or granted in favour of or enjoyed by the Transferred Undertaking;

- (c) all trade and service names and marks, patents, copyrights, and other intellectual property rights of any nature whatsoever, authorisations, permits, approvals, rights to use and avail of telephones, telexes, facsimile, email, internet, leased line connections and installations, utilities, electricity and other services, reserves, provisions, funds, benefits of all agreements, all records, files, papers, computer programmes, manuals, data, catalogues, sales and advertising materials, lists and other details of present and former customers and suppliers, customer credit information, customer and supplier pricing information and other records in connection with or relating to the Transferred Undertaking and all other interests of whatsoever nature belonging to or in the ownership, power, possession or the control of or vested in or granted in favour of or held for the benefit of or enjoyed by the Transferred Undertaking whether in India or abroad;
- (d) all earnest moneys and/or security deposits paid by the Demerged Company in connection or relating to the Transferred Undertaking; and
- (e) present and future liabilities (including contingent liabilities) and other liabilities relating to the Transferred Undertaking.
8. (a) The share capital of the Demerged Company as of December 31, 2002 is as under:

Authorised	(Rupees in Lacs)
8,00,00,000 equity shares of Rs. 10/- each	8,000.00
5,00,000 preference shares of Rs. 100/- each	500.00
	8,500.00
Issued, Subscribed and Paid Up	
3,19,09,459 equity shares of Rs 10/- each fully paid up	3190.95
Add: Shares forfeited	0.01
	3190.96

- (b) The share capital of the Resulting Company as of December 31, 2002 is as under:

Authorised	(Rupees in Lacs)
350,000,000 Equity Shares of Rs. 2/- each	7,000.00
	7,000.00
Issued, Subscribed and Paid-up	
288,332,312 Equity Shares of Rs. 2/- each, fully paid up	5,766.65
	5,766.65

- (c) The share capital of the Transferee Company as of December 31, 2002 is as under:

Authorised	(Rupees in Lacs)
20,000,000 equity shares of Rs. 10/- each	2,000.00
	2,000.00
Issued, Subscribed and Paid Up	
19,506,757 equity shares of Rs. 10/- each	1,950.68
	1,950.68

PART II – DEMERGER

SECTION 1 – TRANSFER AND VESTING

9. (a) Upon the coming into effect of this Scheme and with effect from the Appointed Date and subject to the provisions of this Scheme, the Demerged Undertaking (including all the estate, assets, rights, title, interest and authorities

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- including accretions and appurtenances of the Demerged Undertaking) shall, subject to the provisions of this Clause in relation to the mode of vesting and pursuant to Section 394(2) of the Act, without any further act, instrument or deed, be and stand transferred to and vested in and/or be deemed to have been and stand transferred to and vested in the Resulting Company as a going concern so as to become as and from the Appointed Date, the estate, assets, rights, title and interests and authorities of the Resulting Company subject to Section 2 of Part II of the Scheme in relation to the charges thereon in favour of banks and/or financial institutions
- (b) Without prejudice to sub-clause (a) above, in respect of such of the assets of the Demerged Undertaking as are movable in nature or are otherwise capable of transfer by manual delivery or by endorsement and/or delivery, the same shall stand transferred by the Demerged Company without requiring any deed or instrument of conveyance or transfer of the same, and shall, upon such transfer become the property of the Resulting Company as an integral part of the Demerged Undertaking.
- (c) In respect of such of the assets belonging to the Demerged Undertaking other than those referred to in sub-clause (b) above, the same shall, as more particularly provided in sub-clause (a) above, without any further act, instrument or deed, be demerged from the Demerged Company and stand transferred to and vested in the Resulting Company and/or be deemed to be demerged from the Demerged Company and transferred to and vested in the Resulting Company upon the coming into effect of the Scheme and with effect from the Appointed Date pursuant to the provisions of Section 394 of the Act. For the avoidance of doubt, it is hereby clarified that all the rights, title and interest of the Demerged Company in any leasehold properties in relation to the Demerged Undertaking shall, pursuant to Section 394 (2) of the Act and the provisions of this Scheme, without any further act or deed, be transferred to and vested in or be deemed to have been transferred to and vested in the Resulting Company.
- (d) All assets, estate, rights, title, interest and authorities acquired by the Demerged Company after the Appointed Date and prior to the Effective Date for operation of the Demerged Undertaking shall also stand transferred to and vested in the Resulting Company upon the coming into effect of the Scheme.
10. (a) Upon the coming into effect of the Scheme and subject to the provisions of this Scheme, all contracts, deeds, bonds, agreements, schemes, arrangements and other instruments of whatsoever nature in relation to the Demerged Undertaking to which the Demerged Company is a party or to the benefit of which the Demerged Company may be eligible, and which are subsisting or having effect immediately before the Effective Date, shall be in full force and effect on or against or in favour, as the case may be, of the Resulting Company and may be enforced as fully and effectually as if, instead of the Demerged Company, the Resulting Company had been a party or beneficiary or obligee thereto.
- (b) Without prejudice to the other provisions of the Scheme and notwithstanding the fact that vesting of the Demerged Undertaking occurs by virtue of Part II of the Scheme itself, the Resulting Company may, at any time after the coming into effect of this Scheme in accordance with the provisions hereof, if so required, under any law or otherwise, execute deeds, confirmations or other writings or tripartite arrangements with any party to any contract or arrangement to which the Demerged Company is a party or any writings as may be necessary to be executed in order to give formal effect to the above provisions. The Demerged Company will, if necessary, also be a party to the above. The Resulting Company shall, under the provisions of Part II of this Scheme, be deemed to be authorised to execute any such writings on behalf of the Demerged Company and to carry out or perform all such formalities or compliances referred to above.
- (c) For the avoidance of doubt and without prejudice to the generality of the foregoing, it is clarified that upon the coming into effect of this Scheme, and with effect from the Appointed Date, all consents, permissions, licenses, certificates, clearances, authorities given by, issued to or executed in favour of the Demerged Company shall stand transferred to the Resulting Company as if the same were originally given by, issued to or executed in favour of the Resulting Company, and the rights and benefits under the same shall be available to the Resulting Company.
- (d) It is hereby clarified that if any asset (including any estates, rights, title, interest in or authorities relating to such assets) or any contracts, deeds, bonds, agreements, schemes, arrangements, or other instruments of whatsoever nature in relation to the Demerged Undertaking which the Demerged Company owns or to which the Demerged Company is a party cannot be transferred to the Resulting Company for any reason whatsoever, the Demerged Company shall hold such asset, contract, deed, bond, agreement, scheme, arrangement, or other instrument of whatsoever nature in trust for the benefit of the Resulting Company.
11. All the assets and liabilities of the Demerged Undertaking shall be transferred at the values appearing in the books of the Demerged Company immediately before the demerger which are set forth in the closing balance sheet relating to the Demerged Undertaking as of December 31, 2002.
12. (a) It is clarified that, upon the coming into effect of the Scheme, the general or multipurpose borrowings and liabilities of the Demerged Company the amount of which in the aggregate stands in the same proportion which the value

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- of the assets of the Demerged Undertaking (being the fixed assets, gross current assets) transferred to the Resulting Company bears to the assets of the Demerged Company on the Appointed Date shall, without any further act or deed be and stand transferred to the Resulting Company, and shall become the liabilities and obligations of the Resulting Company which shall undertake to meet, discharge and satisfy the same. The amount of the general or multipurpose borrowings and liabilities which are transferred on this basis are more particularly specified in **Schedule I** hereto.
- (b) Where any of the liabilities and obligations of the Demerged Company as on the Appointed Date deemed to be transferred to the Resulting Company have been discharged by the Demerged Company after the Appointed Date and prior to the Effective Date, such discharge shall be deemed to have been for and on account of the Resulting Company, and all loans raised and used and all liabilities and obligations incurred by the Demerged Company for the operations of the Demerged Undertaking after the Appointed Date and prior to the Effective Date shall be deemed to have been raised, used or incurred for and on behalf of the Resulting Company and to the extent they are outstanding on the Effective Date, shall also without any further act or deed be and stand transferred to the Resulting Company and shall become the liabilities and obligations of the Resulting Company which shall meet, discharge and satisfy the same.
- (c) Any claims, liabilities or demands arising out of the activities or operations of the Demerged Undertaking which relate to the period prior to the Appointed Date but arise at any time including after the Effective Date shall be entirely borne by the Demerged Company. In the event that such liability is incurred by or such claim or demand is made upon the Resulting Company, then the Demerged Company shall indemnify the Resulting Company for any payments made in relation to the same.
13. (a) Upon the coming into effect of the Scheme, all legal, taxation or other proceedings (including before any statutory or quasi-judicial authority or tribunal) by or against the Demerged Company under any statute, whether pending on the Appointed Date or which may be instituted any time in the future and in each case relating to the Demerged Undertaking shall be continued and enforced by or against the Resulting Company after the Effective Date, save and except as provided in Clause 12(c) of this Scheme. In the event that the legal proceedings referred to herein require both the Demerged Company and the Resulting Company to be parties thereto, the Resulting Company shall be added as party to such proceedings and shall prosecute or defend such proceedings in co-operation with the Demerged Company. The Demerged Company and the Resulting Company shall agree on the list of such proceedings that pertain to the Demerged Undertaking.
- (b) If proceedings are taken against the Demerged Company in respect of the matters referred to in sub-clause (a) above and pertaining to the Demerged Undertaking, it shall defend the same in accordance with the advice of the Resulting Company and at the cost of the Resulting Company, and the latter shall reimburse and indemnify the Demerged Company against all liabilities and obligations incurred by the Demerged Company in respect thereof.
- (c) The Resulting Company undertakes to have all legal, taxation or other proceedings initiated by or against the Demerged Company referred to in sub-clause (a) above transferred into its name and to have the same continued, prosecuted and enforced by or against the Resulting Company to the exclusion of the Demerged Company.
14. With effect from the Appointed Date and up to and including the Effective Date:
- (a) the Demerged Company shall be deemed to have been carrying on and to be carrying on all business and activities relating to the Demerged Undertaking and stand possessed of all the estates, assets, rights, title, interest, authorities, contracts, investments and strategic decisions of the Demerged Undertaking, including the rights and interest in any documents specified in Clause 10 hereof, for and on account of, and in trust for, the Resulting Company; and
- (b) all profits accruing to the Demerged Company, or losses arising or incurred by it (including the effect of taxes if any thereon), relating to the Demerged Undertaking shall for all purposes, be treated as the profits, taxes or losses, as the case may be, of the Resulting Company.
15. (a) The Resulting Company undertakes to engage, on and from the Effective Date, such employees of the Demerged Company (including such employees engaged by the Demerged Company in the ordinary course of business) engaged in the Demerged Undertaking and who are in the employment of the Demerged Company as on the Effective Date, on terms and conditions not less favourable than those on which they are engaged by the Demerged Company, with continuity of service. The Resulting Company undertakes to continue to abide by any agreement/settlement entered into by the Demerged Company in respect of the Demerged Undertaking with any union/ employee of the Demerged Company in relation to the Demerged Undertaking. The Resulting Company agrees that for the purpose of payment of any compensation, gratuity and other terminal benefits, the past services of such employees with the Demerged Company shall also be taken into account, and agrees and undertakes to pay the same as and when payable.

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- (b) In so far as the existing provident fund trusts, gratuity fund and pension and/or superannuation fund trusts created by the Demerged Company for its employees (including employees of the Demerged Undertaking) are concerned, the existing trusts created by the Demerged Company and the funds that are referable to the employees of the Demerged Undertaking shall be transferred to the Resulting Company, and the Resulting Company shall continue to contribute to such trusts in accordance with the provisions thereof, and such trusts shall be held for the benefit of the employees transferred to the Resulting Company.
16. The transfer and vesting of the assets, liabilities and obligations of the Demerged Undertaking under Clause 9 and the continuance of the proceedings by or against the Resulting Company under Clause 13 hereof shall not affect any transaction or proceedings already completed by the Demerged Company on and after the Appointed Date to the end and intent that the Resulting Company accepts all acts, deeds and things done and executed by and/or on behalf of the Demerged Company as acts, deeds and things done and executed by and on behalf of the Resulting Company.

SECTION 2 – LIABILITIES

LOANS, DEBENTURES AND RELATED SECURITY

17. (a) In so far as loans, borrowings and debentures of the Demerged Company are concerned, the amounts pertaining to the general or multipurpose loans, debentures and liabilities listed in **Schedule I** which are to be transferred to the Resulting Company in terms of Clause 12 hereof (the “**Transferred Liabilities**”) being a part of the Demerged Undertaking shall, upon coming into effect of the Scheme and subject to sub-clause (b) below, without any further act or deed, become loans and debentures of the Resulting Company, and all rights, powers, duties and obligations in relation thereto shall be and stand transferred to and vested in and shall be exercised by or against the Resulting Company as if it had entered into such loans, incurred such borrowings or issued such debentures.
- (b) In so far as the existing security, if any, in respect of the Transferred Liabilities (more particularly set out in **Schedule I**) is concerned, such security shall, without any further act, instrument or deed be modified and shall be extended to and shall operate only over the assets comprised in the Demerged Undertaking which have been charged and secured in respect of the Transferred Liabilities as transferred to the Resulting Company pursuant to Part II of this Scheme. Provided that if any of the assets comprised in the Demerged Undertaking which are being transferred to the Resulting Company pursuant to Part II of this Scheme have not been charged or secured in respect of the Transferred Liabilities, such assets shall remain unencumbered and the existing security referred to above shall not be extended to and shall not operate over such assets. The absence of any formal amendment which may be required by a lender or third party shall not affect the operation of the above.
- (c) In so far as the assets comprising the Remaining Business are concerned, the security over such assets relating to the Transferred Liabilities shall, without any further act, instrument or deed be released and discharged from the obligations and security relating to the same. The absence of any formal amendment which may be required by a lender or third party shall not affect the operation of the above.
- (d) Further, in so far as the assets comprised in the Demerged Undertaking are concerned, the security and charge over such assets relating to any loans, borrowings or debentures which are not transferred pursuant to Part II of this Scheme, the same shall without any further act or deed be released and discharged from such encumbrance and shall no longer be available as security in relation to any liabilities of the Remaining Business.
- (e) Without prejudice to the provisions of Clause 17(a) or the foregoing clauses, and upon the Scheme becoming effective, the Demerged Company and the Resulting Company shall execute any instruments or documents or do all the acts and deeds as may be required, including the filing of necessary particulars and/or modification(s) of charge, with the Registrar of Companies, New Delhi respectively to give formal effect to the above provisions, if required.
- (f) The Demerged Company and/or the Resulting Company shall enter into and execute such further deeds, documents or writings as may be required to give full effect to the above provisions.
- (g) Upon the coming into effect of the Scheme, the Resulting Company alone shall be liable to perform all obligations in respect of the Transferred Liabilities as the borrower/issuer thereof, and the Demerged Company shall not have any obligations in respect of the Transferred Liabilities.
- (h) It is expressly provided that, save as mentioned in this Clause 17, no other term or condition of the Transferred Liabilities shall be modified except to the extent that such amendment is required by necessary implication or by any agreement entered into with the respective lender.
- (i) The provisions of this Clause shall operate notwithstanding anything to the contrary contained in any deed or writing or the terms of sanction or issue or any security document, all of which instruments shall stand modified and/or superseded by the foregoing provisions.

SECTION 3 - REORGANISATION OF CAPITAL.

18. The provisions of this Section shall operate notwithstanding anything to the contrary in any other instrument, deed or writing.
19. In consideration of the provisions of Part II of this Scheme and as an integral part of this Scheme, the share capital of the Resulting Company shall be restructured and reorganised in the manner set out in Clauses 20 to 27 below.
20. Upon the coming into effect of the Scheme and in consideration of the demerger of the Demerged Undertaking to the Resulting Company pursuant to Part II of the Scheme, the Resulting Company shall, without any further act or deed, issue and allot to each member of the Demerged Company whose name is recorded in the register of members of the Demerged Company on a date (the "**Record Date**") to be fixed in that behalf by the Board of Directors or a committee thereof of the Demerged Company, in the ratio (the "**Share Entitlement Ratio**") of 2 (two) equity shares in the Resulting Company of Rs. 2/- each credited as fully paid-up for every 9 (nine) equity shares of Rs. 10/- each fully paid up held by such member in the Demerged Company.
21. (a) The shares issued pursuant to Clause 20 above shall be issued in dematerialised form by the Resulting Company. Each of the members holding shares in physical form shall have the option, exercisable by notice in writing by them to the Resulting Company on or before such date as may be determined by the Board of Directors of the Resulting Company or a committee of such Board of Directors, to receive, either in certificate form or in dematerialised form, the shares of the Resulting Company in lieu thereof in accordance with the terms hereof. In the event that such notice has not been received by the Resulting Company in respect of any of the members of the Demerged Company, the shares shall be issued to such members of the Demerged Company as on the Record Date in certificate form. Those of the members exercising the option to receive the shares in dematerialised form shall be required to have an account with a depository participant and shall provide details thereof and such other confirmations as may be required. It is only thereupon that the Resulting Company shall issue and directly credit the demat/dematerialised securities account of such member with the shares of the Transferee Company. It is clarified that each of the members of the Demerged Company holding shares in dematerialised form shall be issued the shares of the Resulting Company in dematerialised form as per the records maintained by the National Securities Depository Limited and/or Central Depository Services Limited on the Record Date.

(b) It is clarified that upon the coming into effect of the Scheme (or such later time as may be determined by the Board of Directors of the Demerged Company and the Resulting Company) the stock options granted by the Demerged Company under its employees' stock options scheme to the employees of the Demerged Undertaking (and that are transferred to the Resulting Company in terms of the Scheme) and which stock options have not yet been exercised and are outstanding (the "**Demerged Company Stock Options**") shall stand cancelled, and such employees that have been transferred to the Resulting Company in terms of the Scheme shall not be entitled to the Demerged Company Stock Options, and the Demerged Company shall take such actions as may be necessary to cancel the Demerged Company Stock Options.
22. In case any member's holding in the Demerged Company is such that the member becomes entitled to a fraction of an equity share of the Resulting Company, the Resulting Company shall not issue fractional share certificates to such member but shall consolidate such fractions and issue consolidated equity shares to a trustee nominated by the Resulting Company in that behalf, who shall sell such shares and distribute the net sale proceeds (after deduction of the expenses incurred) to the shareholders respectively entitled to the same in proportion to their fractional entitlements.
23. The equity shares of the Resulting Company issued and allotted in terms of Clause 20 above shall rank pari passu in all respects with the existing equity shares of the Resulting Company.
24. In respect of equity shares of the Demerged Company where calls are in arrears, and such equity shares have not been forfeited by the Demerged Company prior to the coming into effect of the Scheme, without prejudice to any remedies that the Demerged Company or the Resulting Company, as the case may be, shall have in this behalf, the Resulting Company shall not be bound to issue any shares of the Resulting Company (whether partly paid or otherwise) nor to confirm any entitlement to such holder until such time as the calls-in-arrears are paid. In so far as the forfeited shares of the Demerged Company are concerned, no shares shall be issued by the Resulting Company in lieu thereof.
25. Equity shares of the Resulting Company issued in terms of Clause 20 above, shall, subject to applicable regulations, be listed and/or admitted to trading on the relevant Stock Exchange/s in India where the existing equity shares of the Resulting Company are listed and/or admitted to trading.
26. Unless otherwise determined by the Board of Directors or any committee thereof of the Demerged Company and the Board of Directors or any committee thereof of the Resulting Company, allotment of shares in terms of Clause 20 shall be done within 90 days from the Effective Date.

PART III – TRANSFER OF THE TRANSFERRED UNDERTAKING

SECTION 1 – TRANSFER AND VESTING

27. (a) Upon the coming into effect of the Scheme and with effect from the Appointed Date, the Transferred Undertaking (including all the estates, assets, rights, properties, obligations, title, interest and authorities including accretions and appurtenances of the Transferred Undertaking) shall, subject to the provisions of this Clause in relation to the mode of vesting and pursuant to Section 394 (2) of the Act and without any further act or deed, be transferred to and vested in or be deemed to have been transferred to and vested in the Transferee Company as a going concern so as to become as and from the Appointed Date, the estates, assets, rights, properties, liabilities, obligations, title, interest and authorities of the Transferee Company, subject to the charges thereon in favour of banks and/or financial institutions and trustees for debentureholders as set out in Section 2 of Part III of the Scheme.
- (b) Without prejudice to sub-clause (a) above, in respect of such of the assets of the Transferred Undertaking as are movable in nature or are otherwise capable of transfer by manual delivery or by endorsement and/or delivery, the same shall stand transferred by the Demerged Company without requiring any deed or instrument of conveyance for transfer of the same, and shall become the property of the Transferee Company as an integral part of the Transferred Undertaking.
- (c) In respect of such of the assets of the Transferred Undertaking other than those referred to in sub-clause (b) above, the same shall, as more particularly provided in sub-clause (a) above, without any further act, instrument or deed, be transferred to and vested in and/or be deemed to be transferred to and vested in the Transferee Company upon coming into effect of the Scheme and with effect from the Appointed Date pursuant to the provisions of Section 394 of the Act.
- (d) All assets, estate, rights, title, interest and authorities acquired by the Demerged Company after the Appointed Date and prior to the Effective Date for operation of the Transferred Undertaking shall also stand transferred to and vested in the Transferee Company upon the coming into effect of the Scheme and with effect from the Appointed Date.
28. (a) Upon the coming into effect of this Scheme and with effect from the Appointed Date and subject to the provisions of this Scheme, all contracts, deeds, bonds, agreements, schemes, arrangements and other instruments of whatsoever nature in relation to the Transferred Undertaking, to which the Demerged Company is a party or to the benefit of which the Demerged Company is or may be eligible, and which are subsisting or having effect immediately before the Effective Date, shall be in full force and effect on or against or in favour, as the case may be, of the Transferee Company and may be enforced as fully and effectually as if, instead of the Demerged Company, the Transferee Company had been a party or beneficiary or obligee thereto.
- (b) Without prejudice to the other provisions of the Scheme and notwithstanding that the transfer and vesting of the Transferred Undertaking occurs by virtue of Part III this Scheme itself, the Transferee Company may, at any time after the coming into effect of this Scheme in accordance with the provisions hereof, if so required, under any law or otherwise, execute deeds, confirmations or other writings or tripartite arrangements with any party to any contract or arrangement to which the Demerged Company is a party or any writings as may be necessary to be executed in order to give formal effect to the above provisions. The Demerged Company will, if necessary, also be a party to the above. The Transferee Company shall, under the provisions of this Scheme, be deemed to be authorized to execute any such writings on behalf of the Demerged Company and to carry out and perform all such formalities or compliance referred to above.
- (c) For the avoidance of doubt and without prejudice to the generality of the foregoing, it is clarified that upon the coming into effect of this Scheme and with effect from the Appointed Date, all consents, permissions, licenses, approvals, certificates, clearances, authorities given by, issued to or executed in favour of the Demerged Company in relation to the Transferred Undertaking shall stand transferred to the Transferee Company as if the same were originally given by, issued to or executed in favour of the Transferee Company, and the rights and benefits under the same shall be available to the Transferee Company.
- (d) It is hereby clarified that if any asset (including any estates, rights, title, interest in or authorities relating to such assets) or any contracts, deeds, bonds, agreements, schemes, arrangements, or other instruments of whatsoever nature in relation to the Transferred Undertaking which the Demerged Company owns or to which the Demerged Company is a party cannot be transferred to the Transferee Company for any reason whatsoever, the Demerged Company shall hold such asset, contract, deed, bond, agreement, scheme, arrangement, or other instrument of whatsoever nature in trust for the benefit of the Transferee Company.
29. (a) Upon the coming into effect of the Scheme and with effect from the Appointed Date, the liabilities in relation to the Transferred Undertaking shall without any further act or deed be and stand transferred to the Transferee Company and shall thereupon become the debts, liabilities and obligations of the Transferee Company which it undertakes to meet, discharge and satisfy to the exclusion of the Demerged Company and to keep the Demerged Company indemnified at all times from and against all such liabilities and from and against all actions, demands and proceedings in respect thereto. It shall not be necessary to obtain the consent of any third party or other

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- person who is a party to any contract or arrangement by virtue of which such liabilities have arisen in order to give effect to the provisions of this sub-clause.
- (b) All loans raised and used and all liabilities and obligations incurred by the Demerged Company for the operations of the Transferred Undertaking after the Appointed Date and prior to the Effective Date shall be deemed to have been raised, used or incurred for and on behalf of the Transferee Company and to the extent they are outstanding on such later date, shall also without any further act or deed be and stand transferred to the Transferee Company and shall become the liabilities and obligations of the Transferee Company which shall meet, discharge and satisfy the same.
- (c) Where any of the liabilities in relation to the Transferred Undertaking have been discharged by the Demerged Company after the Appointed Date and prior to the Effective Date, such discharge shall be deemed to have been for and on account of the Transferee Company.
30. (a) Upon the coming into effect of the Scheme, all legal or other proceedings (including any proceedings before any statutory or quasi judicial authority or tribunal) by or against the Demerged Company under any statute, whether pending on the Appointed Date or which may be instituted in future in respect of any matter and in each case relating to the Transferred Undertaking shall be continued and be enforced by or against the Transferee Company after the Effective Date. In the event that the legal proceedings referred to herein require both the Demerged Company and the Transferee Company to be parties thereto, the Transferee Company shall be added as a party to such proceedings and shall prosecute or defend such proceedings in co-operation with the Demerged Company. The Demerged Company and the Transferee Company shall agree on the list of such proceedings which pertain to the Transferred Undertaking.
- (b) If proceedings are taken against the Demerged Company in respect of the matters referred to in sub-clause (a) above and pertaining to the Transferred Undertaking, it shall defend the same in accordance with the advice of the Transferee Company and at the cost of the Transferee Company, and the latter shall reimburse and indemnify the Demerged Company against all liabilities and obligations incurred by the Transferee Company in respect thereof.
- (c) The Transferee Company undertakes to have all legal, taxation or other proceedings initiated by or against the Demerged Company in relation to the Transferred Undertaking referred to in sub-clause (a) above transferred into its name and to have the same continued, prosecuted and enforced by or against the Transferee Company to the exclusion of the Demerged Company.
31. With effect from the Appointed Date and upto and including the Effective Date:
- (a) the Demerged Company shall be deemed to have been carrying on and to be carrying on all business and activities relating to the Transferred Undertaking and stand possessed of all the estates, assets, rights, title and interest, authorities, contracts, investments and strategic decisions of the Transferred Undertaking including the rights and interest in any documents specified in Clause 28 hereof for and on account of, and in trust for, the Transferee Company; and
- (b) all profits accruing to the Demerged Company, or losses arising or incurred by it (including the effect of taxes if any thereon), relating to the Transferred Undertaking shall for all purposes, be treated as the profits, taxes or losses, as the case may be, of the Transferee Company.
32. Any claims, liabilities or demands arising out of the activities or operations of the Transferred Undertaking which relate to the period prior to the Appointed Date but arises at any time including after the Effective Date shall be deemed to be part of the Transferred Undertaking and shall consequently be entirely borne by the Transferee Company. In the event that such liability is incurred by or such claim or demand is made upon the Demerged Company, then the Transferee Company shall indemnify the Demerged Company for any payments made in relation to the same.
33. (a) The Transferee Company undertakes to engage, on and from the Appointed Date, such of the employees of the Demerged Company (including such employees engaged by the Demerged Company in the ordinary course of business) as are engaged in the Transferred Undertaking and who are in the employment of the Demerged Company as on the Effective Date. The service of each such employee shall not be affected by such transfer and the terms and conditions of service applicable to each such employee after such transfer shall not be less favourable than those applicable to him immediately before the transfer. The Transferee Company undertakes to continue to abide by any agreement/settlement entered into by the Demerged Company in respect of the Transferred Undertaking with any union/ employee of the Demerged Company in relation to the Transferred Undertaking. The Transferee Company agrees that for the purpose of payment of any compensation, gratuity and other terminal benefits, the past services of such employees with the Demerged Company shall also be taken into account, and agrees and undertakes to pay the same as and when payable.
- (b) In so far as the existing provident fund trusts, gratuity fund and pension and/or superannuation fund trusts created by the Demerged Company for its staff, workmen and employees (including employees of the Transferred Undertaking) are concerned, the part of the funds referable to the employees who are being transferred shall continued to be held by the Demerged Company for the benefit of the employees who are being transferred to the Transferee Company pursuant to this Scheme in the manner provided hereinafter.

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34. The transfer and vesting of the assets, liabilities and obligations of the Transferred Undertaking under Clause 27 and the continuance of the proceedings by or against the Transferee Company under Clause 30 hereof shall not affect any transaction or proceedings already completed by the Demerged Company on and after the Appointed Date to the end and intent that the Transferee Company accepts all acts, deeds and things done and executed by the Demerged Company as acts, deeds and things done and executed by and/or on behalf of the Transferee Company.

SECTION 2 –SECURITY

35. (a) In so far as the existing security, if any, in respect of liabilities of or relating to the Transferred Undertaking is concerned, such security shall, without any further act, instrument or deed be modified and shall be extended to and shall operate only over the assets comprising the Transferred Undertaking which have been charged and secured in respect of such liabilities. Provided that if any assets comprising the Transferred Undertaking which are being transferred to the Transferee Company pursuant to the Scheme have not been charged or secured in respect of such liabilities, such assets shall remain unencumbered and the existing security referred to above shall not be extended to and shall not operate over such assets unless otherwise determined by the Board of Directors of the Transferee Company. The absence of any formal amendment which may be required by a lender or third party shall not affect the above.
- (b) In so far as the assets comprising the Remaining Business are concerned, the security relating to or relating to the Transferred Undertaking over such assets shall, without any further act, instrument or deed be released and discharged from the obligations and security relating to the same. The absence of any formal amendment which may be required by a lender or third party shall not affect the above.
- (c) In so far as the assets comprising the Transferred Undertaking which are being transferred to the Transferee Company pursuant to this Scheme are concerned, the security and charge over such assets relating to any loans, borrowing or debentures which are not transferred pursuant to this Scheme (and which shall continue with the Demerged Company) shall, without any further act, instrument or deed be released and discharged from such encumbrance and shall no longer be available as security in relation to the Remaining Business. The absence of any formal amendment which may be required by a lender or third party shall not affect the above.
- (d) The provisions of this Clause shall operate, notwithstanding anything to the contrary contained to any deed or writing or terms of sanction or issue or any security documents all of which instruments shall stand modified and/or superseded by this Clause.

SECTION 3 – CONSIDERATION

36. (a) All the assets and liabilities of the Transferred Undertaking shall be transferred at the values appearing in the books of the Demerged Company immediately before the transfer which are set forth in the closing balance sheet relating to the Transferred Undertaking as of December 31, 2002.
- (b) In consideration for the transfer of the Transferred Undertaking and within 90 days of the coming into effect of the Scheme, the Transferee Company shall, without any further act or deed, pay a sum of Rs. 40,34,54,444.31 (Rupees Forty Crores Thirty Four Lakhs Fifty Four Thousand Four Hundred and Forty Four and Thirty One paise only) (the “**Consideration**”) to the Demerged Company. In the event that payment of the Consideration is delayed beyond the aforesaid period, the Demerged Company and the Transferee Company shall mutually agree to the payment of interest at commercially reasonable rates. Payment of such interest shall be made by the Transferee Company along with the payment of the Consideration.

PART IV

The provisions of this Part shall be applicable to both the Demerger pursuant to Part II and the transfer of the Transferred Undertaking pursuant to Part III hereof.

37. (a) The Remaining Business and all the assets, liabilities and obligations pertaining thereto shall continue to belong to and be vested in and be managed by the Demerged Company subject to Section 2 of Part II and Section 2 of Part III of the Scheme in relation to charges thereon in favour of banks, financial institutions and trustees for the debentureholders.
- (b) All legal, taxation or other proceedings by or against the Demerged Company under any statute, whether pending on the Appointed Date or which may be instituted in future whether or not in respect of any matter arising before the Effective Date and relating to the Remaining Business (including those relating to any property, right, power, liability, obligation or duties of the Demerged Company in respect of the Remaining Business) shall be continued and enforced by or against the Demerged Company. The Resulting Company and the Transferee Company shall in no event be responsible or liable in relation to any such legal, taxation or other proceeding against the Demerged Company.
- (c) With effect from the Appointed Date and up to and including the Effective Date, the Demerged Company:
- (i) shall be deemed to have been carrying on and to be carrying on all business and activities relating to the Remaining Business for and on its own behalf; and

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- (ii) all profits accruing to the Demerged 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, taxes or losses, as the case may be, of the Demerged Company.
38. (a) With effect from the date of filing of this Scheme with the High Court of Delhi at New Delhi and upto and including the Effective Date, the Demerged Company, the Resulting Company and the Transferee Company shall be entitled to declare and pay dividends, whether interim or final, to their respective equity shareholders in respect of the accounting period after the Appointed Date and prior to the Effective Date.
- (b) The holder of equity shares of the Demerged Company, the Resulting Company and the Transferee Company shall, save as expressly provided otherwise in this Scheme, continue to enjoy their existing rights under their respective articles of association including the right to receive dividends.
- (c) It is clarified that the aforesaid provisions in respect of declaration of dividends, whether interim or final, are enabling provisions only and shall not be deemed to confer any right on any member of any of the Demerged Company and/or the Resulting Company and/or the Transferee Company to demand or claim any dividends which, subject to the provisions of the Act, shall be entirely at the discretion of the respective boards of directors of the Demerged Company, the Resulting Company and the Transferee Company and subject, wherever necessary, to the approval of the shareholders of the Demerged Company, the Resulting Company and the Transferee Company, respectively.
39. With effect from the date of filing of this Scheme with the High Court of Judicature at Delhi, New Delhi and upto and including the Effective Date:
- (a) The Demerged Company shall carry on its business and activities with reasonable diligence and business prudence and shall not, undertake any additional financial commitments of any nature whatsoever, borrow any amounts nor incur any other liabilities or expenditure, issue any additional guarantees, indemnities, letters of comfort or commitments either for itself or on behalf of its subsidiaries or group companies or any third party, or sell, transfer, alienate, charge, mortgage or encumber or deal with the Demerged Undertaking or the Transferred Undertaking save and except in each case in the following circumstances:
- (i) if the same is in its ordinary course of business as carried on by it as on the date of filing this Scheme with the High Court of Judicature at Delhi, New Delhi; or
- (ii) if the same is expressly permitted by this Scheme; or
- (iii) if written consent of the Resulting Company has been obtained.
40. (a) Upon the coming into effect of this Scheme and with effect from the Appointed Date, for the purpose of accounting for and dealing with the value of the assets and liabilities of the Demerged Company, the Resulting Company and the Transferee Company, all the assets and liabilities of the Demerged Undertaking and the Transferred Undertaking shall be transferred at the values appearing in the books of accounts of Demerged company immediately before the demerger of the Demerged Undertaking and the transfer of the Transferred Undertaking without any revaluation.
- (b) Upon the coming into effect of this Scheme and with effect from the Appointed Date:
- (i) an amount representing (A) the aggregate of the surplus of the assets over the liabilities of the Demerged Undertaking and (B) the assets over liabilities of the Transferred Undertaking as reduced by the consideration received from the Transferee Company shall be adjusted against the General Reserves in the books of the Demerged Company; and
- (ii) an amount representing surplus of (A) the assets over (B) the liabilities of the Demerged Undertaking in its books of account, over the aggregate face value of the share capital issued by the Resulting Company shall be credited to the General Reserve in the books of the Resulting Company.
41. (a) Upon the coming into effect of this Scheme, the borrowing limits of the Resulting Company in terms of Section 293(1)(d) of the Act shall, without any further act, instrument or deed stand enhanced to an amount aggregating to Rs. 250 crores (Rupees Two Hundred and Fifty crores only) in excess of the paid up capital and free reserves of the Resulting Company (apart from temporary loans obtained from the Resulting Company's bankers in the ordinary course of business).
- (b) Upon the coming into effect of this Scheme, the borrowing limits of the Transferee Company in terms of Section 293(1)(d) of the Act shall, without any further act, instrument or deed stand enhanced to an amount aggregating to Rs. 150 crores (Rupees One hundred and Fifty crores only).
42. (a) The Capital Clause (V) of the Memorandum of Association of the Resulting Company shall, upon the Scheme coming into effect and without any further act or deed, be replaced by the following clause:
"The Authorised Share Capital of the company is Rs. 80,00,00,000 (Rupees Eighty Crores only) divided into 40,00,00,000 (Forty Crores only) of Rs. 2 (Rupees two) each."
- (b) Clause 5.a of the Articles of Association of the Resulting Company shall, upon the Scheme coming into effect and without any further act or deed, be replaced by the following clause:

“The authorised Share Capital of the company is Rs. 80,00,00,000 (Rupees Eighty Crores only) divided into 40,00,00,000 (Forty Crores only) of Rs. 2 (Rupees two) each with the rights, privileges and conditions attaching thereto as are provided in the Articles of Association of the Company for the time being, the company shall have the power to increase or reduce the capital and to divide the shares in the Capital for the time being into several classes and to attach thereof respectively such preferential or other rights, privileges and conditions in such manner as may be permitted by the Companies Act, 1956 or provided by the Articles of Association of the Company for the time being.”

43. The Demerged Company, the Resulting Company and the Transferee Company with all reasonable despatch, make all applications/petitions under Sections 391 and 394 and other applicable provisions of the Act to the High Court of Delhi at New Delhi.
44. In the event of there being any pending share transfers, whether lodged or outstanding, of any shareholder of the Demerged Company, the Board of Directors or any committee thereof of the Demerged Company shall be empowered in appropriate cases, even subsequent to the Record Date or the Effective Date as the case may be, to effectuate such a transfer in the Demerged Company as if such changes in registered holder were operative as on the Record Date, in order to remove any difficulties arising to the transfer of the share in the Resulting Company as the case may be, and in relation to the new shares after the Scheme becomes effective. The Board of Directors of the Demerged Company shall be empowered to remove such difficulties as may arise in the course of implementation of the Scheme and registration of new members in the Resulting Company as the case may be, on account of difficulties faced in the transaction period.
45. (a) The Demerged Company, the Resulting Company and the Transferee Company may assent from time to time on behalf of all persons concerned to any modifications or amendments or additions to this Scheme or to any conditions or limitations which either the Boards of Directors or a committee or committees of the concerned Board of Directors or any Director authorised in that behalf by the concerned Board of Directors (hereinafter referred to as the “**Delegates**”) of the Demerged Company, or the Resulting Company or the Transferee Company, as the case may be, deem fit, or which the High Court of Delhi at New Delhi or any other authorities under law may deem fit to approve of or impose. In the event that any of the conditions may be imposed by the Courts and/or other authorities which Demerged Company, or the Resulting Company or the Transferee Company may find unacceptable for any reason, then Demerged Company, or the Resulting Company or the Transferee Company are at liberty to withdraw the Scheme.
 - (b) The Demerged Company, or the Resulting Company or the Transferee Company, as the case may be, may in their discretion deem fit and to resolve all doubts or difficulties that may arise for carrying out this Scheme and to do and execute all acts, deeds, matters and things necessary for bringing this Scheme into effect, or to review the position relating to the satisfaction of the conditions to this Scheme and if necessary, to waive any of those (to the extent permissible under law) for bringing this Scheme into effect.
 - (c) The aforesaid powers of the Demerged Company, the Resulting Company and the Transferee Company may be exercised by the Delegates of the respective Companies.
 - (d) For the purpose of giving effect to this Scheme or to any modifications or amendments thereof or additions thereto, the Delegates may give and are authorised to determine and give all such directions as are necessary including directions for settling or removing any question of doubt or difficulty that may arise and such determination or directions, as the case may be, shall be binding on all parties, in the same manner as if the same were specifically incorporated in this Scheme.
 - (e) Any issue as to whether any asset, liability, employee or litigation pertains to the Demerged Undertaking or the Transferred Undertaking or not shall be decided by the Boards of Directors of the Demerged Company, either by themselves or through a committee appointed by them in this behalf, and if considered necessary by them, after consultation with the Board of Directors of the Resulting Company or the Transferee Company, as the case may be, on the basis of evidence that they may deem relevant for the purpose (including the books and records of the Demerged Company).
46. This Scheme is conditional upon and subject to:
 - (a) The Scheme being agreed to by the requisite majority of the members of the Demerged Company, the Resulting Company and the Transferee Company as required under the Act and the requisite orders of the High Court of Delhi at New Delhi referred to in Clause 42 above being obtained;
 - (b) Such other sanctions and approvals including sanctions of any governmental or regulatory authority, creditor, lessor, or contracting party as may be required by law in respect of the Scheme being obtained; and
 - (c) The certified copies of the court orders referred to in this Scheme being filed with the Registrar of Companies, Delhi.
47. The Demerged Company (through its Board of Directors) and the Resulting Company (through its Board of Directors) shall have the right to waive any of the conditions referred to in Clause 46 above (other than those required to be complied with by law) and the waiver of such condition shall not affect in any manner the coming into effect of the Scheme.

48. In the event of this Scheme failing to take effect finally by December 31, 2003 or by such later date as may be agreed by the respective Boards of Directors of the Demerged Company, the Resulting Company, and the Transferee Company this Scheme shall become null and void and in that event no rights and liabilities whatsoever shall accrue to or be incurred inter se by the parties or their shareholders or creditors or employees or any other person. In such case each Company shall bear its own costs or as may be mutually agreed.
49. In the event of non-fulfillment of any or obligations under the Scheme by any company towards any of the other companies, inter-se or to third parties and non-performance of which will put any of the other companies under any obligation, then such company will indemnify all costs or interest which may be incurred to such other companies.
50. If any part of this Scheme is found to be unworkable for any reason whatsoever, the same shall not, subject to the decision of the Demerged Company and the Resulting Company, affect the validity or implementation of the other parts and/or provisions of this Scheme. It is clarified that the Demerged Company shall have the right to sever Part II or Part III from this Scheme, and to implement the remaining Parts, as may be applicable, as a complete Scheme to give effect to the Demerger, and the severance of Part II or Part III, as the case may be, shall not affect the validity or implementation of the other parts of this Scheme.
51. All costs, charges and expenses, including any taxes and duties (including stamp duty) in relation to or in connection with this Scheme and incidental to the completion in pursuance of this Scheme shall be borne and paid by the Resulting Company and the Demerged Company in the ratio of 60:40 respectively.

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SCHEDULE I
Allocation of Multipurpose Borrowings

Rs. in crores

	Total as on 31st December 2002	Transferred to Resulting Company
Working Capital Demand Loans	35.00	5.90

SCHEDULE – II
IN THE HIGH COURT OF DELHI AT NEW DELHI
ORIGINAL COMPANY JURISDICTION
COMPANY APPLICATION NO. 21 OF 2003

In the matter of the Companies Act, 1956

In the matter of Sections 391-394 of the Companies Act, 1956

In the matter of Scheme of Arrangement between HCL Infosystems Limited, a Company incorporated under the companies Act, 1956 having its registered office at 806-808, Siddharth, 96, Nehru Place, New Delhi-110 019. HCL Technologies Limited, a Company incorporated under the Companies Act, 1956 having its registered office at 806-808, Siddharth, 96, Nehru Place, New Delhi-110 019, HCL Ininet Limited, a Company incorporated under the Companies Act, 1956 having its registered office at 806-808, Siddharth, 96, Nehru Place, New Delhi-110 019 and their respective shareholders and creditors.

In the matter of the HCL Infosystems Limited, a Company incorporated

under the Companies Act, 1956 and having its registered office at

Applicant/Demerged Company

806-808, Siddharth, 96, Nehru Place, New Delhi-110 019

SCHEDULE

PART – I

1. Short description of the freehold property of the demerged company (HCL Infosystems Limited) being transferred to the Transferee Company (HCL Ininet Limited)

Freehold property bearings office No. 311, having an area of 428 sq. ft. (build up area) equivalent to 39.78 sq. metres or thereabouts on the thirs floor of the building known as "Tulsiani Chambers" consisting of ground and 10 upper floor belonging to Tulsiani Chambers Premises Co-operative Society Limited situate, lying and being at Plot No. 212, Block III, Nariman Point, Mumbai - 400 021.

PART – II

2. Short desription of the leasehold property of the demerged company (HCL Infosystems Limited) being demerged to the Resulting Company (HCL Technologies Limited).

Leasehold flat/flats bearing Module No. 229 admeasuring 125 sq. metre be the same a little more or less situate on the 1st floor in SDF Building in Salt Lake electronics complex, Sector V within the Police Station of Bidhannagar, Sub-Registration Office Bidhannagar in the district of 24 Paraganas (North).

PART – III

1. Short description of all stocks, shares, debentures and other charges in action of the demerged company (HCL Infosystems Limited) being transferred to the Transferee Company (HCL Ininet Limited).

16091352.53 Units of Rs. 10/- each fully paid up of Grindlays Cash Fund

2. Short description of all stocks, shares, debentures and other charges in action of the demerged company (HCL Infosystems Limited) being demerged to the Resulting company (HCL Technologies Limited).

- a. 143,000 Nos. of Common Shares of US\$ 10 each in Infosystems (Bermuda) Limited, Bermuda bearing certificate Nos. 1 to 8.

- b. 550,000 Nos. of equity shares of S \$1 each in FEC Infosystems Pte Limited. Singapore bearing certificate No. 27.

Indicative list of licence, exemption, certificates and statutory approvals under various applicable laws to be transferred from Demerged Company (HCL Infosystems Limited) to Resulting Company (HCL Technologies Limited).

- a. Approval No: 5(4)/95/71/421 dated 16.3.95 issued by the Director, STPI, Noida.
- b. Approval No: 253 dated 21.11.1997 issued by the Director, STPI, Kolkata.
- c. Approval No: STPB/TMSC/93/655 dated 8.9.93 issued by Director, STPI, Chennai.
- d. Approval No: STP

Dated this the 8th day of July, 2003

(By order of the Court)

S/d
Registrar (Admn. Judl.)

IN THE HIGH COURT OF DELHI AT NEW DELHI

COMPANY PETITION NO. 268 OF 2006

CONNECTED WITH

COMPANY APPLICATION C.A (M) NO. 151 OF 2006

IN THE MATTER OF COMPANIES ACT, 1956

AND

IN THE MATTER OF SECTION 391 AND 394

OF THE COMPANIES ACT, 1956

AND

IN THE MATTER OF SCHEME OF ARRANGEMENT BETWEEN

MEMO OF PARTIES

HCL Infinet Limited, a company incorporated under the Companies Act, 1956 and having its registered office at 806, Siddharth, 96, Nehru Place, New Delhi -110019.

PETITIONER COMPANY-I

AND

Microcomp Limited, a company incorporated under the Companies Act, 1956 and having its registered office at 806, Siddharth, 96, Nehru Place, New Delhi -110019.

PETITIONER COMPANY - II

AND

HCL Infosystems Limited, a company incorporated under the Companies Act, 1956 and having its registered office at 806, Siddharth, 96, Nehru Place, New Delhi - 110 019.

PETITIONER COMPANY – III

THROUGH

Sd/-

SATWINDER SINGH

Vaish Associates, Advocates

Advocates for the Petitioner

Flat No. 5 - 7,

10, Hailey Road

New Delhi-110001

Phone no. 01142492525

E-mail id : satwinder@vaishlaw.com

PLACE: New Delhi

DATED: 4 November 2006

IN THE HIGH COURT OF DELHI AT NEW DELHI

(COMPANY JURISDICTION)

C.A 146 of 2007 & COMPANY PETITION No.268/2006

DATE OF DECISION: 20.03.2007

In the matter of The Companies Act, 1956;

And

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

Scheme of Arrangement of :

HCL Inifinet Limited ... Petitioner Company - I

AND

Microcomp Limited ... Petitioner Company - II

AND

HCL Infosystems Limited ... Petitioner Company - III

Through: Mr. Rajiv Shakdhar, Senior Advocate
with Mr. Mukul Talwar, Mr. Satwinder
Singh and Ms. Sheenam Parwanda
Advocates for petitioner
Mr. Suresh Kait, Advocate for Regional
Director with Mr. R.D.Kashyap, Dy. ROC.
Ms. Manisha Tyagi Advocate for Official
Liquidator

ANIL KUMAR, J. (ORAL)

1. The present petition seeks sanction of Scheme of Arrangement whereby it is proposed that the business of networking and internet related products and services consisting of internet access services, virtual private network, and other connectivity services and sale of related hardware of HCL Inifinet Limited (Petitioner Company-I) be vested as a going concern, to and in Microcomp Limited (Petitioner Company-II) and for amalgamation of HCL Inifinet Limited (Petitioner Company-I) with HCL Infosystems Ltd. (Petitioner Company-III).
2. The registered offices of the petitioner companies are located in Delhi within the jurisdiction of this Court. In a company application being CA(M) No.151 of 2006 by order dated 12th September, 2006 holding of meetings of the shareholders and the secured creditors of all the petitioner companies and the unsecured creditors of the petitioner companies Nos. II and III were dispensed with.
3. The Petitioner Company-I was, however, directed to convene a separate meeting of its unsecured creditors for approving with or without modifications the proposed Scheme of Arrangement and Shri T.S. Chaudhary was appointed as the Chairperson and Mr. Kamal Mohan Gupta as the alternate Chairman for the meeting of the unsecured creditors of the Petitioner Company-I (HCL Inifinet Limited).
4. The HCL Irifinet Ltd. (Petitioner Company-I) was incorporated on 3rd February, 2000 under the name 'HCL e-Commerce Limited' with registration No.55-103599 of 1999-2000. Subsequently, the name of the Petitioner Company-I was changed from HCL e-Commerce Limited to HCL Inifinet Limited and a fresh certificate of incorporation was issued on 21st March, 2000. The Petitioner Company-I, HCL Inifinet Limited, is a wholly owned subsidiary of Petitioner Company - III, HCL Infosystems Ltd.

5. The Petitioner Company-II, Microcomp Limited, was originally incorporated as a private limited company in the name and style of Microcomp Pvt. Ltd. on 15th September, 1975. Its name was changed to its present name, Microcomp Limited, with effect from 31st January, 1977. Microcomp Limited, Petitioner Company- II, is a wholly owned subsidiary of Petitioner Company-I, HCL Infinet Limited.
6. The HCL Infosystems Limited (Petitioner Company -III) was incorporated on 17th April, 1986 under the Companies Act, 1956 and a certificate for commencing of business was given to it on 29th July, 1986. The name of the company was changed from HCL Limited to HCL Hewlett Packard Limited on 27th December, 1991 and this name was also changed from "HCL Hewlett Packard Limited" to "HCL Infosystems Limited" on 9th September, 1997, The petitioners contended that the Directors of petitioner companies have no material interest in the proposed Scheme of Arrangement/ Amalgamation except to the extent of their shareholding, if any, and no proceedings under Section 235-251 of the Companies Act. 1956 are pending against the companies.
7. As the other meetings of the petitioner companies were dispensed with except the meeting of unsecured creditors of Petitioner Company-I, therefore, individual notices to each of the unsecured creditors having claim of more than Rs.10,000/- were sent in compliance with the order dated 12th September, 2006 together with a copy of the explanatory statement required under Section 393 of the Companies Act, 1956, scheme of arrangement and a form of proxy. The notice of the meeting was also published in the 'Statesmen' and 'Veer Arjun' on 4th October, 2006.
8. The Chairman of the said meeting of unsecured creditors of Petitioner Company-I, Mr. T.S. Chaudhary, has filed an affidavit dated 16th October, 2006 regarding service of notices for convening the meeting of the unsecured creditors of the Petitioner Company-I. Meeting of unsecured creditors of Petitioner Company-I was duly convened on 28th October, 2006. The quorum of the meeting for the unsecured creditors for the Petitioner Company-I was fixed as 25 unsecured creditors representing 25% of the total outstanding amount. The meeting of unsecured creditors was attended by 52 unsecured creditors entitled together to unsecured debt of Rs.3,49,81,40,969/- constituting 85.52% of the total value of unsecured debt of Rs.4,09,05,57,141/- owed by Petitioner Company-I.
9. The scheme of arrangement during the meeting of the unsecured creditors was unanimously approved and the report filed by the Chairman of the meeting indicate that.
10. The scheme of arrangement provides that authorized share capital of Petitioner Company- III has stood increased by clubbing of a part of authorised share capital of Petitioner Company-I which shall involve alteration of Memorandum and Article of Association of Petitioner Company-III. While seeking dispensation of the meeting of the shareholders of the Petitioner Company-III for approval of the scheme under Section 391 of the Companies Act, 1956 at the time of making Company Application (M) No.151 of 2006, an undertaking was given by the Petitioner Company-III that it shall obtain approval of its shareholders for increase in its authorised share capital consequent to scheme of arrangement. The Petitioner Company -III obtained in their AGM held on Tuesday, 19th October, 2006 the said approval, a copy of which has been filed by petitioners.
11. The petitioners have prayed that the Petitioner Company-I be dissolved without going through the process of winding up and no one will be prejudiced if the scheme of arrangement and sanction is approved as the scheme will be beneficial for everyone including petitioner companies, their shareholders, creditors, employees and all concerned.
12. The present petition was filed by the petitioners and thereafter notices were issued to the Official Liquidator and the Regional Director (NR) and citations were ordered to be published in the newspapers. 'The Statesmen', (English) and 'Jansatta' (Hindi) in accordance with the Companies (Court) Rules, 1959.
13. An affidavit of service dated 11th January, 2007 has been filed by the petitioner along with the copies of newspapers dated 24th November, 2006 was filed where the citations were published.
14. The Official Liquidator pursuant to the notice issued has filed his report dated 23rd January, 2007 contending inter alia that as per the Scheme of Arrangement, the Demerged Undertaking and all its movable properties where so ever situated and capable of passing by physical delivery as also and other properties pertaining to networking services business of Petitioner Company-I/Demerged Company would be transferred as going concern basis with effect from demerger appointed date to the Petitioner Company-II/Resulting Company and all debts, liabilities, dues and obligations of every kind, nature and description pertaining to the said business shall be transferred or deemed to be transferred to the Petitioner Company-II/Resulting Company without any further Act or deed and the employees of the Petitioner Company-I/Demerged Company employed in the networking services business as on the date

immediately preceding the date on which the scheme finally takes effect shall become the employees of the Petitioner Company-II/Resulting Company without any break or interruption in their services. Under the scheme of arrangement appointed date of the demerger is the first day of April 2006 or such other date as this Court may direct and the appointed date for amalgamation is the first day of April 2006 after giving effect to the Demerger or such other date as the court may direct and the effective date of the demerger and amalgamation will be the date on which the certified copies of the orders of the High Court under Sections 391 and 394 of the Companies Act, 1956 are filed with the concerned Registrar of Companies

15. The Official Liquidator has given his report on the basis of the information furnished by the companies in the prescribed proforma. The Official Liquidator has shown a comparative financial position of the Petitioner Company-I for the last three years ending 30th June, 2006, 30th June, 2005 and 30th June, 2004 as per audited accounts of the Company. The Official Liquidator has also considered the financial position of the Petitioner Company-II/ Resulting Company for the last three years ending 31st March, 2006, 31st March, 2005 and 31st March, 2004 and also the financial position of the Petitioner Company-III/Transferee Company for the last three years ending 30th June, 2006, 30th June, 2005 and 30th June, 2004.
16. According to the Official Liquidator as per the scheme, the Petitioner Company-II/Resulting Company would issue 16,96,810 equity shares of Rs.100/- each to Petitioner Company-III/Transferee Company, only shareholder of the Petitioner Company-I, Transferor Company, in consideration of transferring and vesting of networking business of Demerged Company to the Resulting Company.
17. As per the report of the Official Liquidator, the authorized share capital of the Petitioner Company-I/Transferor Company shall stand split and reduced and same shall be combined with authorised share capital of Petitioner Company- II/Resulting Company and Petitioner Company- III/Transferee Company in the following manner:-
 - i. The authorised share capital of Petitioner Company-II/Resulting Company shall be increased by Rs.35 crores and accordingly the Memorandum and the Article of Association of Petitioner Company-II/Resulting Company shall stand amended.
 - ii. The authorised share capital of Petitioner Company-III/Transferee Company shall be increased by Rs.30 crores and accordingly the Memorandum and Article of Association of the Petitioner Company-III (Transferee Company shall stand amended.
18. The Official Liquidator has contended in his report that he has not received any complaint against the proposed Scheme of Arrangement from any person/party interested in the scheme in any manner and it has been stated, on the basis of information submitted by the Petitioner Company-I, that the business of the company does not appear to have been conducted in any manner which is prejudicial to the interest of member of public pursuant to requirement of second proviso of sub-Section 1 of Section 394 of the Companies Act, 1956.
19. The Petitioner Companies have also filed an application being CA No.146/2007 contending inter alia that the copy of the scheme which was annexed with the present petition had an inadvertent typographical error, as instead of 1696810 shares of Rs.100/- each, it has been mentioned that 1507252 equity shares of Rs.100 each will be issued by Resulting Company, Microcomp Limited, Petitioner company No. II to HCL Infosystems Limited, Petitioner Company No. III. It was contended that it was a typographical error as from the net assets statement it can be inferred that the consideration amount will be on the basis of 1696810 shares of Rs. 100/- each and not 1507252 equity shares of Rs.100 each and consequent correction was sought. A reply to the application has been filed on behalf of Regional Director (Northern Region) dated 6th March, 2007 contending that .Petitioner Company-II/ Resulting Company could issue 1696810 equity shares of Rs.100 each to the petitioner company No.III being the holder of entire shareholding of the petitioner No.1 along with its nominee in consideration of transfer and vesting of networking business of Demerged Company to the Resulting Company and consequently it was stated on behalf of Regional Director that the Central Government has no objection to the said application and for decision of the case accordingly.
20. The reply to CA.No.146/2007 has also been filed on behalf of Official Liquidator regarding rectification of typographical error contending that Petitioner Company-II/Resulting Company should issue 1696810 equity shares of Rs.100 each to the Petitioner Company-III/ Transferee Company being the holder of entire shareholding of Petitioner Company-I along with its nominee in consideration of transfer and vesting of network business of demerged company to the Resulting Company. It is also contended that no one will be prejudiced in case the prayer for correction of typographical mistake is allowed.

21. Consequently the application being CA 146 of 2007 is allowed and the petitioners are allowed to correct the typographical error and the scheme will read so as to mean that Petitioner Company-II/Resulting Company will issue 1696810 equity shares of Rs.100 each to the Petitioner Company No.III being the holder of entire shareholding of the Petitioner Company No.1 along with its nominee in consideration of transfer and vesting of networking business of Demerged Company to the Resulting Company in place of 1507252 equity shares of Rs.100.
22. A report has also been filed by Shri Rakesh Chandra, Regional Director (Northern Region), Ministry of Company Affairs to the scheme of arrangement. It is contended that as per clause 2.11 of Part II of the scheme of arrangement, all the employees of the Demerged Company, vis., M/s. HCL Ininet Limited, engaged in 'networking service business' shall become the employees of the Resulting Company, vis., M/s. Microcomp Limited, without any break or interruption in their services upon sanctioning of scheme of arrangement/amalgamation.
23. Referring to para 2.15 (d) of (Part II of the Scheme of Arrangement, which is as under:-

“Upon the coming into effect of De-merger, the Authorised Equity Share Capital of the De-merged Company shall stand split and reduced by an amount of Rs.35,00,00,000/- (Rupees Thirty Five Crores only) and such amount by which the Authorised Share Capital has been reduced i.e. 35,00,00,000/- (Rupees Thirty Five Crores only) shall be clubbed with the Authorised Share Capital of the Resulting company. Consequently, the reduced authorized share capital of the De-merged Company shall be Rs.30,00,00,000/-”

It is objected to by Regional Director on the ground that reduction in share capital can be effected only in accordance with the provisions of Section 78 read with Section 100/101 of the Act by way of filing a separate petition under Section 100/101 of the Companies Act, 1956. It is also contended that the authorised share capital of a company can be increased only after following the procedure prescribed under the relevant provisions of Companies Act, 1956 and payment of requisite fee to the Registrar of Companies and stamp duty to the State Government. Regarding section 78 of the Companies Act, 1956, it was, however, contended by Mr. Kait, learned counsel for the Regional Director that section 78 has been mentioned on account of typographical error and section, 97 of the Companies Act, 1956 is relevant.

24. Referring to Para 2.12 of Part II of the Scheme, which is as under:-

“Clause III (a) of the Memorandum of Association of the Resulting company shall, upon De-merger coming into effect and without any further act or deed, stand amended by adding the new main object after sub-clause (3) of clause III (a) of the Memorandum of Association of the Resulting Company, to be pursued by the Resulting Company.”

It is objected to by the regional director on the ground that Memorandum of Association of a company can be amended only after following the procedures prescribed under the relevant provisions of the Companies Act. 1956. which should be only after passing the special resolution by the members of the company in General Meeting and after filing the relevant form with the Office of the Registrar of Companies. Consequently, it is prayed that the Clause 2.12 of Part II of the Scheme of Arrangement be not allowed.

25. In respect of Para 2.13 of Part II of the Scheme, which is reproduced as under:-

“In order to maintain corporate identity amongst the networking Services Business customers, the Board of Directors of the Resulting Company in its meeting held on 26.07.2006 has proposed to change the name of the Resulting Company upon the Scheme becoming effective to HCL Ininet Ltd. Therefore, with effect from the Effective Date the name of the Resulting Company shall forthwith stand changed to I-ICL Ininet Ltd. (the then erstwhile name of the De-merged Company) without any further act or deed.”

It is objected to by the Regional Director on the ground that the name of the resulting Company can be changed only after following the procedures prescribed under the relevant provisions of Companies Act, 1956 and consequently, it is prayed that the said clause in the Scheme of Arrangement be not allowed.

26. In reference to Para 2.15 of Part II of the Scheme, it is contended that in the petition it has been mentioned that 'upon the Scheme becoming effective', the Resulting Company shall without any further act or deed issue and allot to the HCL Infosystems Limited (being the only shareholder holder holding entire capital of the Demerged Company) 1696810 equity shares in the Resulting Company of Rs. 100/- each which shall be credited as fully paid up whereas the said clause 2.15 in the copy of the Scheme provides only for 1507252 equity shares of Rs.100/- each in the

Resulting Company. Regarding this objection the Regional Director has stated though it is stated that an application being CA No.146/2007 has been filed for correcting the typographical mistake but it is not clear whether all the companies have obtained the consent from their respective shareholders, secured and unsecured creditors regarding amendment in the petition. This application has already been allowed on no objection by the Regional Director and the official liquidator and the copy or scheme has already been ordered to be corrected.

27. The objection has also been taken that proposed allotment of share has not been worked out by an independent valuer, as normally the valuation of shares and swap ratio are calculated by a professional firm of Chartered, Accountants and reliance has been placed on Miheer H. Mafatlal Versus Mafatlal Industries Ltd. and. In the circumstances, it is contended that Petitioners, Demerged Company as well as Resulting Company, be directed to obtain valuation report from a recognised firm of Chartered Accountants.

28. Referring to clause 3.14 of Para III of the Scheme of Arrangement, it is contended that all the employees of the Transferor Company. viz.. M/s.HCL Ininet Limited other than engaged in 'Networking Services Business' shall become the employees of the Transferee Company, viz., M/s.HCL Infosystems Ltd. without any break or interruption in their services upon sanctioning of the Scheme of Arrangement.

29. The objection has also been taken regarding Para 3.16 of Para III the Scheme. which is as under:-

“Upon the coming into effect of this Scheme, the Authorised Share Capital of the Amalgamating Company, after giving effect to the Provisions of clauses 2.15(d) of the Scheme, i.e., Rs.30.00,00,000 (Rupees Thirty Crores only) shall stand combined with the Authorised Share Capital of the Amalgamated Company and the Memorandum and Article of Association of the Amalgamated Company shall automatically stand amended accordingly.”

It is contended that the authorised share capital of a company can be increased only after following the procedures prescribed under the relevant provisions of the Companies Act. 1956 and payment of requisite fee to the Registrar of Companies and stamp duty to the State Government.

30. On behalf of Companies, a reply dated 9 March, 2007 has been filed to the objections raised by the Regional Director (Northern Region), Ministry of Company Affairs. It is contended by the petitioner companies that the Scheme envisages the following steps also to give effect to the Scheme:-

(i) The authorised share capital of HCL Ininet Limited amounting to Rs.65,00,00,000/- (Rs.Sixty Five Crores) shall be split and consequently inure to the benefit of HCL Infosystems Limited and Microcomp Limited to the extent of Rs.30,00,00,000/- and 35,00,00,000/- respectively.

(ii) As a result, upon the Scheme becoming effective, the authorized share capital of HCL Infosystems Limited would stand increased to Rs.115,00,00,000/- as compared to the existing figure of Rs.85,00,00,000/-. Similarly, the authorized share capital of Microcomp Limited shall stand increased to Rs.35,05,00,000/- from the existing figure of Rs.5,00,000/-.

(iii) Microcomp Limited shall issue 16,96,810 equity shares of Rs.100/- each amounting to Rs.16,96,81,000/- to HCL Infosystems Limited, the sole shareholder of HCL Ininet Limited.

(iv) Upon the Scheme becoming effective, the Remaining Business of HCL Ininet Limited shall be merged with HCL Infosystems Limited and HCL Ininet Limited stand dissolved without winding up.”

31. It is pleaded that Scheme envisages a demerger of networking services business of HCL Ininet Limited in Microcomp Limited along with simultaneous merger of remaining business of HCL Ininet Limited with HCL Infosystems Limited. Emphasis is led on the fact that HCL Ininet Limited is a 100% subsidiary of HCL Infosystems Limited which holds 100% shares of HCL Ininet Limited and is the sole shareholder of HCL Ininet Limited. Microcomp Limited is also a 100% subsidiary of HCL Ininet Limited and is thus wholly owned subsidiary of HCL Infosystems Limited.

32. Regarding the reduction of share capital, it is stated that the plea of the regional director is untenable about decision of splitting of authorised share capital of HCL Ininet Limited whereby Rs.30.00 crores of authorised share capital of HCL Ininet Limited is added to the authorised share capital of HCL Infosystems Limited and the remaining Rs.35.00 crores to the authorised share capital of Microcomp Limited. It is contended by the petitioner companies

that there is no violation of Sections 78, 100 and 101 of the Companies Act, 1956 as Section 78 of the Companies Act, 1956 refers to Issue of shares at a premium while Sections 100 and 101 deals with reduction in share capital of the company. The emphasis is led by the petitioners that there is no provision for issuance of shares at a premium and, therefore, Section 78 is not applicable to the Scheme. Regarding reduction of capital, it also is stated that Section 101 deals with the paid-up share capital and the purpose of the said Section is to protect the interest of the creditors through a mechanism of approaching the court in case uncalled capital or paid-up capital is returned to the existing shareholders. It is contended by petitioners that the Scheme of Arrangement does not envisages compliance of the requirement under Section 100 and,101 of the Companies Act. 1956 as scheme only envisages the splitting up of authorized share capital of HCL Infinet Limited of Rs.65,00,00,000 to the extent of Rs.30,00,00,000 in favour of HCL Infosystems Limited and Rs.35,00,00,000 in favour of Microcomp Limited and not of paid up capital. It is also contended that the Court, in any case, has the power to approve such reduction which forms part of scheme while sanctioning the scheme itself. Reliance has also been placed on Novapan India Limited. In re (1995) 88 Com Cases 596 (604) and In re, Manechchowk and Ahmedabad Manufacturing Co.Ltd (1969) 40 Corn Case 819 (868).

33. Regarding the objection of amendment in the Memorandum of Association, it is stated that Clause 2.12 and 2.15 (e) and (f) of Para II of the Scheme are the clauses which are consequent to the provisions of the Scheme for splitting the authorised share capital of HCL Infinet Limited as well as demerging/disgorging of the networking services business in favour of Microcomp Limited and transferring the remaining business by way of amalgamation to HCL Infosystems Limited. The petitioners have relied on the fact that these are consequential ministerial steps which the court sanctions under the Scheme under Sections 391 to 394 and is thus empowered to permit it in order to avoid duplicity of the proceedings. Reliance has been placed in support of the plea raised by the petitioners on In Re. Maneckchowk and Ahmedabad Manufacturing Co. Ltd., [1970 (40) Comp Case 819] holding that section 391 is a complete code in itself. The relevant extract are as under:-

“If section 391 was subject to other provisions of the Act every time the scheme of compromise and arrangement is put forth for the sanction of the court, if it includes things for which specific provisions are made and that will have to be gone through before the scheme is sanctioned, it would result in unnecessary duplication of procedure and would be cumbersome. On the contrary, it appears that if the creditors and members of the company arrive at a certain compromise which the court considers fair, it can be sanctioned under Section 391 despite the fact that for some of those things included in the Compromise another procedure is prescribed in the Companies Act and which has not been carried out. It, therefore, appears that the section is a complete code which provides for sanctioning of the scheme of compromise and arrangement.”

34. Reliance has also been placed, on the Judgement of a single Judge in PMP Auto Industries Limited. In Re (1994) 80 Comp Case 289 at page 299, the relevant extract is as under:-

“The position in law appears to be clear, Section 391 invests the court with powers to approve or sanction a scheme of amalgamation/arrangement which is for the benefit of the company. In doing so, if there are any other things which, for effectuation, require a special procedure to be followed -except reduction of capital - then the court has powers to sanction them while sanctioning the scheme itself. It would not be necessary for the company to resort to other provisions of the Companies Act, or to follow other procedures prescribed for bringing about the changes requisite for effectively implementing the scheme which is sanctioned by the court. Not only is section 391 a complete code as held by the courts, but, in my view, it is intended to be in the nature of a ‘single window clearance’ systems to ensure that the parties are not put to avoidable, unnecessary and cumbersome procedure of making repeated applications to the court for various other alterations or changes which might be needed effectively to implement the sanctioned scheme whose overall fairness and feasibility has been judged by the court under section 394 of the Act.”

35. Regarding the objection of the Regional Director relating to increase in authorised share capital of the company and payment of fee and stamp duty, the reliance has been placed on Jaypee Cement Limited in re (2004) 52 SCL 801 page 820.

The relevant portion is reproduced as under:-

“The second objection of the Central Government is with regard to another condition mentioned in para 4.03 (ii) of the scheme which provides that upon the merger authorised share capital of JPI shall stand combined with the authorised share capital of JPC. According to the Regional Director, this amounts to increase of the authorised capital of JPC. which cannot be done without paying the requisite fee/stamp duty to the Government. In reply to this objection, it was submitted on behalf of JPC that the fee/stamp duty is nominal and has a maximum limit which the JPC is prepared to pay. But, it was submitted that the requisite fee has

already been paid on the authorised capital of JPI and merely because of its merger, with JPC, there is no reason why the same fee should be paid again by JPC on the same authorised capital.”

36. The petitioners have also contended that there is no requirement for the Petitioner Companies I and II to pay duty again on the same authorised capital on which the duty has already been paid and regarding increase of authorised capital by merger, it is stated that an order can be passed under Section 391 of the Companies Act itself and reliance has been placed on *Bazley Finvest Limited (2005) 64 SCL 480* and *In Hotline Hol Celdings (P) Ltd. (2005) 4 CLA 72 (Delhi)* and *Maharishi Ayurveda Corporation Limited*.
37. Regarding the objection of the change of name of Microcomp Limited to HCL Ininet Lirnlited, it is stated that it is no longer *res integra* in view of the judgement of *Jindal Photo Limited, Bhimtal In Re 65 CLA 246*. The petitioners have contended that change in name is a ministerial step and once the court accepts the basic premise of the scheme and if the scheme is in the interest of shareholders and creditors and does not go in any manner against the public policy, the change of name should also be permitted.
38. I have heard the counsel for the parties at length and have considered the objections of Regional Director and the reply filed by the petitioner companies and the precedents relied on by them.
39. The first objection of the Regional Director is regarding para 2.15(d) of Part II of the scheme regarding the reduction of authorised share capital. The objection is that share capital can be reduced only by filing a separate petition under Section 100/101 of Companies Act. 1956. The objection has also been taken regarding reduction of share capital in compliance with Section 78 of the Companies Act. 1956. During the arguments, learned counsel for the Regional Director, Mr. Kait. submitted that Section 78 has been referred on account of typographical mistake and reliance has been placed on Section 97 of the Companies Act. 1956.
40. Perusal of the scheme unequivocally reflects that in the totality of facts and circumstances there is no reduction of paid up share capital of the companies. The reduction of share capital is dealt with under Section 100/101 of the Companies Act. 1956 which contemplates that the reduction can be effected by reducing the paid up capital of the company. In *Novopan India Limited, in re (1995) 88 Company Cases 596* the scheme of amalgamation of Novopan India Limited with G.V.K. Hotels Limited was involved which also involved reduction of share capital. The scheme of amalgamation had contemplated reduction of share capital of the Transferee Company and such reduction was to be effected by cancelling the paid up share capital to certain extent which was objected to by Central Government. A single Judge of Andhra Pradesh High court had held that the proposed reduction of capital involved only an adjustment of unrepresented share capital to certain extent leaving the balance unrepresented capital and the arrangement proposed did not involve any loss to creditors, considering the fact it was only unrepresented loss which was sought to adjusted against the share capital by way of reduction and the total assets and liabilities of the Transferee Company did not indicate any change. Relying on Rule 85 of the Companies (Court) Rules, 1959 regarding proposed reduction of the share capital. it was held that it has already been approved by the shareholders unanimously and even the creditors have given their consent to the proposed scheme of arrangement and since the secured creditors had expressed that they had no objection to the amalgamation and arrangement, it was not necessary for the transferor/transferee companies to report compliance with the requirement of Section 102 of the Act because no objection of the secured creditors was placed before the members and the same had also been produced before the Court. It was held that there was sufficient material with the shareholders which could be treated as substantial compliance with the provisions of Section 173 of the Act which provides for an explanatory statement to be annexed to the notice. The learned single Judge held that since the resolution regarding the scheme of amalgamation and arrangement was passed unanimously, there was no reason not to treat the said resolution as satisfying all the requirement of the special resolution.
41. In *Maneckchowk and Ahmedabad Manufacturing Co. Ltd. (supra)*, it was held that in case of reduction of share capital as a part of scheme of compromise and arrangement. Rule 85 will have to be given full effect. If a scheme has been approved by a statutory majority and if the scheme is to be sanctioned, as part of such a scheme reorganisation of the share capital, except the reduction of share capital can be sanctioned and it will be necessary to find out whether the procedure prescribed for effecting reduction of the share capital has been gone through or not. It was further held that if the reduction or share capital proposed in a scheme does not involve other diminution of liability in respect of unpaid share capital or payment to any shareholder of unpaid share capital, the court can sanction the same without reference to the creditors.

42. In case of petitioner, the scheme envisages the splitting of authorised share capital of HCL Infinet limited of Rs.65.00 crores to the extent of Rs.30.00 crores in favour HCL Infosystems Limited and Rs.35.00 crores to Microcomp Limited. Section 101 deals with reduction of paid up share capital. The object of the provision is to approach the Court in order to reduce the paid up capital in order to protect the interest of the creditors so that uncalled capital or paid up capital is not returned to the existing shareholders. The reduction of share capital proposed in a scheme does not involve other diminution of liability in respect of unpaid share capital or payment to any shareholder of paid-up share capital. What is contemplated is the splitting of a part of the authorized share capital of HCL Infinet Limited in favour of HCL Infosystems Limited and a part in favour of Microcomp Limited. The learned counsel for the regional Director has not been able to point out as to how this is in violation of the provisions relied on behalf of regional Director. No precedent to the contrary has also been brought to my notice so as not to permit this consequential reorganization of the capital. It also can not be disputed that Section 391 invests the court with powers to approve or sanction a scheme of demerger/amalgamation which is for the benefit of the company. In doing so, if there are any other things which for effectuation, require a special procedure to be followed then the court has powers to sanction them while sanctioning the scheme itself and it is not necessary for the company to resort to other provisions of the Companies Act, or to follow other procedures prescribed for brining about the changes requisite for effectively implementing the scheme which is sanctioned by the court. Section 391 is a complete code and it is almost in the nature of a 'single window clearance" systems to avoid unnecessary and cumbersome procedure for various other alterations or changes which might be needed effectively to implement the sanctioned scheme whose overall fairness and feasibility is being judged while sanctioning the scheme under section 394 of the Act. Though the judgment relied on by the petitioner carved out an exception to this in case of reduction of share capital but in the case of the petitioner, it is not intended to reduce the paid up capital of the companies so as to undergo the separate procedure prescribed. Consequently the objection of the Regional Director is not sustainable that the petitioner must resort to the separate procedure as contemplated under section 100/101 of the Companies Act. 1956 and that para 2.15 (d) of the Part II of the scheme needs modification. The objection is therefore, not accepted.
43. The Regional Director has also objected clause 2.12 of Part II of the scheme on the ground that Memorandum of Association can be amended only after following the procedure prescribed under the relevant provisions of the Companies Act which contemplates passing a special resolution by the members of the company in the General Meeting and filing of relevant forms with the Registrar of Companies. Perusal of Section 391 of the Companies Act, 1956 will reflect that it is a complete code In Itself and compliance with the provisions as laid down in Section 391 shall be a compliance of procedure for amendment of Memorandum of Association under Section 17 of the Companies Act. 1956. In Marhrishi Ayurveda Corporation Limited, CP 288 of2005 decided on 31st January. 2006, an objection was taken on behalf of Regional Director that the status of the Transferee Company from a public company to a private company and the Article of Association cannot be automatically amended contrary to Section 31 of the Companies Act. 1956 because of the reason that change of status has to be as per the procedure prescribed under Section 31 of the Act. Dealing with the objection of the Regional Director, the learned single Judge had held that Section 391 to 394 of the Companies Act, 1956 constitute a complete code and the object of which is to eliminate duplication of the procedure and frequent applications being made to the court as also to effectively implement scheme of amalgamation which the court sanction in exercise of its powers under Section 394 of the Act. Similarly Gujarat High Court In Maneckchowk and Ahmedabad Manufacturing Co. Ltd (supra) and Bombay High Court in PMP Auto Industries Limited. 1994 (80) Company Cases 289, it was held that insofar as special procedure prescribed for change of status of the company from public company to private company and amendment in the Memorandum of Association of the company concerned that Section 391 invests the court with powers to approve or sanction a scheme of demerger/amalgamation which is for the benefit of the company and in doing so, if there are any other things which, for effectuation, require a special procedure to be followed then the court has powers to sanction them while sanctioning the scheme itself and it is not necessary for the company to resort to other provisions of the Companies Act, or to follow other procedures prescribed for brining about the changes requisite for effectively implementing the scheme. The learned single Judge had held as under:-
- "16. The next objection of the Regional Director was that the provision with regard to change of the status of the transferee company from Public Company to Private Company, as contained in para 5.24(a) of the Scheme, may not be allowed by this court as the status of a company from Public Company to Private Company can be changed after following the procedure prescribed in Section 31 of the Companies Act. 1956. The Regional Director also objected that amendment in the Memorandum of Association of a company, as referred to in para 5.23 of the Scheme, may not be allowed as it can be amended only after following the procedure prescribed under the relevant provisions of the Companies Act. 1956, which includes passing of the resolution by the members of the company in general meeting and filing of relevant form with the office of the Registrar of

Companies. In response to the said objections the learned counsel for the petitioner urged that Sections 391 to 394 of the Companies Act, 1956 constitute a complete code, the object of which is to eliminate duplication of the procedure and frequent applications being made to the court, as also to effectively implement scheme of amalgamation, which the court sanctions in exercise of its powers under section 394 of the Act. Learned counsel for the petitioner also submitted that change in the status of the company shall not effect any rights or obligations of the company or render defective any legal proceeding by or against it. In *Maneckchowk and Ahmedabad Manufacturing Co. Ltd.* 1970(40) Comp Cas 819. Gujarat High Court held (at Page 854) as under:

“If section 391 were not to be treated as a complete code and if it is intended that various things that can be done by way of a scheme of compromise and arrangement, if they were to fall under different provisions of the Companies Act, which prescribe certain procedure for doing the same and that procedure has to be gone through, it was not necessary to provide specifically that if the scheme of compromise and arrangement includes reduction of capital special procedure in respect of reduction of capital must be gone through before it could be sanctioned as part of the scheme of compromise and arrangement. There seems to be good reason for making such a provision in rule 85...”

17. The Gujarat High Court in *Maneckchowk and Ahmedabad Manufacturing Co. Ltd.* further held:

“If section 391 was subject to other provisions of the Act, every time the scheme or compromise and arrangement is put forth for the sanction of the Court, if it includes things for which specific provisions are made and that will have to be gone through before the scheme is sanctioned, it would result in unnecessary duplication of procedure and would be cumbersome. On the contrary, it appears that if the creditors and members of the Company arrive at a certain compromise which the court considers fair, it can be sanctioned under section 391 despite the fact that for some of those things included in the compromise another procedure is prescribed in the Companies Act and which has not been carried out. It, therefore, appears that section 391 is a complete code which provides for sanctioning of the scheme of compromise and arrangement.”

18. The judgment of Gujarat High Court in *Maneckchowk and Ahmedabad Manufacturing Co. Ltd.* 1970(40) Comp Case 819 was followed in *PMP Auto Industries Limited*, 1994(80) Comp Case 289. The observations of Bombay High Court in *PMP Auto Industries Limited* (supra) are extracted as under:

“Thus, the position in law appears to be clear, Section 391 invests the court with powers to approve or sanction a scheme of amalgamation/arrangement which is for the benefit of the company. In doing so, if there are any other things which, for effectuation, require a special procedure to be followed - except reduction of capital - then the court has powers to sanction them while sanctioning the scheme itself. It would not be necessary for the company to resort to other provisions of the Companies Act or to follow other procedures prescribed for bringing about the changes requisite for effectively implementing the scheme which is sanctioned by the court. Not only is section 391 a complete code as held by the courts, but in my view, it is intended to be in the nature of a “single window clearance” system to ensure that parties are not put to avoidable, unnecessary and cumbersome procedure of making repeated applications to the court for various other alterations or changes which might be needed effectively to implement the sanctioned scheme whose overall feasibility has been Judged by the court under section 394 of the Act.”

19. Taking note of the Judgment of the Gujarat High Court in *Maneckchowk and Ahmedabad Manufacturing Co. Ltd.* (supra) and of Bombay High Court in *PMP Auto Industries Limited* (supra). I am of the view that the observations, given in the said Judgments, are equally applicable in so far as the special Procedure, prescribed for change of status of the company from Public Company to Private Company and amendment in the Memorandum of Association of the company is concerned.”

44. In view of these, it is apparent that the objection of the Regional Director is not sustainable. Clause 2.12 of Part II of the Scheme cannot be objected to by the Regional Director. Amendment to Memorandum and Article of Association being consequent to the provision of scheme for splitting of authorised share capital HCL Infinet Limited as well as demerging/dis-gauging of the networking services business in favour of Microcomp Limited and transferring the remaining business by way of amalgamation to HCL Infosystems Limited in the present facts and circumstances are the ministerial and consequential steps which this Court is empowered to permit in order to avoid duplicity of proceedings while sanctioning the scheme and consequently there is no requirement to file a separate

application for seeking amendment to the Memorandum of Article or Association with the Registrar of Companies. The learned counsel for the regional director has also not pointed out anything to the contrary. Therefore, this objection of the regional director also can not be sustained.

45. Whether the authorized share capital of a company can be increased only after following the procedure prescribed under the relevant procedure of the Companies Act, 1956 and payment of requisite fee to the Registrar of Companies and the stamp duty to the State Government or the authorized share capital of the transferee company will increase without following the procedure on sanction being granted for the amalgamation of the companies. The objection of the Regional Director that the authorized share capital can be increased only after following the procedure prescribed and payment of requisite fees to the Registrar of companies and stamp duty to the State Government.
46. Similar objection was considered by this Court in the case of in Re Hotline Hol Celdings Pvt. Ltd. and Others, (2005) 127 Company Cases 165 (Delhi) holding that in case of complete merger authorized share capital of the transferee company can be enhanced by the authorized share capital of the transferor company without payment of stamp duty. Stamp duty and fee paid by the transferor company can be treated as paid by the transferee company.
47. Regarding the increase of authorized share capital by merger of the authorized capitals of the two companies, an order can be passed under section 391 of the (Companies) Act itself. This has been laid down by the Bombay High Court in the case of Vasant Investment Corporation Ltd. v. Official Liquidator, Colaba Land & Mills Co. Ltd. [1981] 51 Comp. Cas. 20 [at p.34/[1980] Tax LR 2079]. The relevant part of the judgment is reproduced below:

“The whole purpose of section 391 is to reconstitute the company without the company being required to make a number of applications under the [Companies Act] for various alterations which may be required in its memorandum and articles of association for functioning as a reconstituted company under the scheme [vide Maneckchowk and Ahmedabad Mfg. Co. Ltd., In re [1970] 40 Com. Cas. 819 (GuJ.)]. The Company is, therefore, not required to make a separate application under the [Companies] Act for alteration of its memorandum of association to show the new share capital. Such an alteration can be sanctioned under the scheme itself.
48. A Similar view has been taken by the Bombay High Court in the case of PMP Auto Industries Ltd., In re. [1972] 7 CLA 17 [1994] 80 Comp.Cas.289 at pp. 295,296 (Bom.), and by the Gujarat High Court in the case of Maneckshowk & Ahemdabad Mfg. Co. (supra). In view of the aforesaid legal position, the objection of the Regional Director is not tenable. It is inferable that combined authorized capital of the amalgamated company does not exceed the authorized capital of the two companies, calling for any further fees or stamp duty or to follow separate procedure for such merger of authorized share capital. Consequently, the objection of the Regional Director (NR), Ministry of Company Affairs, can not, be sustained and the transferee company shall be entitled for increase of its authorized share capital on the amalgamation without following the procedures as contemplated under the Companies Act.
49. The next objection of the Regional Director is regarding the change of name of Microcomp Limited to HCL Infnnet Limited. In Jindal Photo Limited. Bhimtal in re 65 CLA 246, it was held that the company was not required to make separate application for alteration with respect to change in its name and Memorandum of Association and its authorised share capital. Similarly, in re J.P. Cement Limited. 121 Company Cases 854, it was held that if a scheme provides for change in name and if the Registrar as delegate of Central Government making the name available and the special resolution sanctioning the scheme can be construed as a special resolution for change of name and, therefore, the requirement for change of name is satisfied and there will not be any impediment to sanction the change of name. It is contended by the learned counsel that the HCL Infnnet Limited is the name which is already approved by the Registrar of Companies and consequently the change of name of Microcomp Limited to HCL Infnnet Limited will fulfil the requirement for change of name and, therefore, there would be no impediment to sanction the scheme contemplating the change of name of Microcomp Limited to HCL Infnnet Limited.
50. Learned counsel for the Regional Director, Mr. Kait, is also not able to point out any decision to the contrary and has rather contended that in the peculiar facts and circumstances of this case where the changed name, HCL Infnnet Limited, has already been approved by the Registrar, therefore, the requirements for the change of name are fulfilled and, consequently, the scheme contemplating change of name, in these circumstances, cannot be objected to.
51. The objection of the Regional Director regarding the typographical error about 15,07,252 shares to be issued by the resulting company of 16,96,810 the application for rectification of typographical error being CA 146 of 2007 has been

allowed on the no objection being given by the Regional Director and the official liquidator and consequently the resulting company has to issue 16,96,810 shares and this objection is not sustainable any further.

52. The last objection of the Regional Director is that there has to be a valuation of share swap ratio and it is to be done by a recognised firm of Chartered Accountant. This objection is not sustainable in the facts and circumstances of this case. It cannot be disputed that the sole shareholder of Demerged Company, i.e., HCL Inifinet Limited, and the Resulting Company, Microcomp Limited is HCL Infosystems Limited only and therefore, there is no swapping of shares and, therefore, there will not be any requirement to get the shares of demerged company and resulting company to arrive at exchange ratio. The scheme envisages issuance of shares of a sum of Rs.16,96,81,000 by Microcomp Limited to HCL Infosystems Limited based on the net assets of demerged undertaking networking services business of HCL Inifinet Limited. Reliance can be placed on Larsen and Toubro Ltd. (2004) 121 Com Cases 523 holding:

“Valuation of the shares which is mandatory in a scheme of amalgamation may not be necessary in cases of demerger like this since the shareholders continue to hold shares in the transferor company and the shareholders of the transferor companies are also issued shares in the transferee company.

53. Consequently, none of the objections of the Regional Director are sustainable and, therefore, having regard of the averments made in the petition, the material placed on record and the affidavits filed on behalf of companies, I am satisfied that the prayer made in the petition deserves to be allowed. I do not find any legal impediment in order to sanction the scheme of demerger and amalgamation. Consequently, the sanction is hereby granted to the proposed scheme of demerger/arrangement and amalgamation under Section 391(2) and 394 of the Companies Act, 1956. Consequent upon the amalgamation, the HCL Inifinet Limited shall stand dissolved without the process of winding up. The resulting company shall comply with the statutory requirements. Certified copy of this order will, be filed with the Registrar of Companies within five weeks from the date of order.
54. The petition is, therefore, disposed of in terms hereof.

-Sd-
ANIL KUMAR.J

March 20. 2007
'sdp'

IN THE HIGH COURT OF DELHI AT NEW DELHI

(ORIGINAL JURISDICTION)

IN THE MATTER OF THE COMPANIES ACT, 1956

AND

IN THE MATTER OF SCHEME OF ARRANGEMENT AND AMALGAMATION

OF

COMPANY PETITION NO. 268/2006

CONNECTED WITH

COMPANY APPLICATION (M) NO. 151/2006

IN THE MATTER OF M/s. HCL Ininet Ltd.,
having its Regd. Office at
806, Siddharth, 96, Nehru Place New Delhi-110019
Petitioner Company No./Demerged Company

AND

IN THE MATTER OF M/s. Microcomp Ltd.,
having its Regd. Office at
806, Siddharth, 96, Nehru Place New Delhi-110019
Petitioner Company No.2/Resulting Company

AND

IN THE MATTER OF M/s. HCL Infosystems Ltd.,
having its Regd. Office at
806, Siddharth, 96, Nehru Place New Delhi-110019
Petitioner Company No.3/Transferee Company

BEFORE HON'BLE MR. JUSTICE ANIL KUMAR

DATED THIS THE 20TH DAY OF MARCH, 2007

ORDER UNDER SECTION 394 OF THE COMPANIES ACT. 1956

The above petition coming up for hearing on 20/3/2007 for sanction of scheme of arrangement and amalgamation proposed to be made of M/s. HCL Ininet Ltd (hereinafter referred to as the Petitioner Company No./Demerged Company) and M/s. Microcomp Ltd. (hereinafter referred to as the Petitioner Company No. 2/Resulting Company) and M/s. HCL Infosystems Ltd. (hereinafter referred to as the Transferee Company) comprising of two stages: Stage-I being the demerger of demerged undertaking of the Demerged Company to the Resulting Company and Stage-2 being the amalgamation of the remaining business of the Demerged Company to the Transferee Company, upon reading the said petition, the order dt. 12/9/2006 whereby the requirement of convening and holding the meetings of the shareholders and secured creditors of the Petitioner Company No. 1 and shareholders and creditors of the Petitioner Company No. 2 and Transferee Company was dispensed with and the meeting of unsecured creditors of the Petitioner Company No.1 was ordered to be convened for the purpose of considering, and if thought fit, approving, with or without modification, the Scheme of arrangement & amalgamation annexed to the affidavit of Sh. Sushil Kumar Jain, authorized signatory of the applicant companies filed on 6th day of September, 2006 and the publication in the newspapers namely (1) Statesman (English) and (2) Veer Arjun (Hindi) both dt. 4/10/2006 each containing the advertisement of the said notice convening the said meeting directed to be held by the said order dt.12/9/2006, the affidavit of Sh. T.S. Chaudhary, Chairperson filed on 16/10/2006 showing the publication and despatch of the notices convening the said meeting, the report of the Chairperson of the said meeting as to the result of the said meeting and upon hearing Sh. Rajiv Shakhdar, Sr. Advocate with Mr. Mukul Talwar, Mr. Satwinder

Singh and Ms. Sheenam Parwanda, Advocate for the petitioner, Ms. Manisha Tyagi, Advocate for Official Liquidator and Sh. Suresh Kait, Advocate with Mr. R.D. Kashyap, Dy. Registrar of Companies for the Regional Director and it appearing from the report that the proposed scheme of arrangement and amalgamation has been approved unanimously without any modification by the unsecured creditors of the Petitioner Company No.1 present and voting either in person or by proxy and upon reading the affidavit dated 19/1/2007 of Sh. Rakesh Chandra, Regional Director, Northern Region, Ministry of Company Affairs, Noida on behalf of Central Government whereby he raised the following objections: (1) First objection is that reduction in share capital can be effected only in accordance with the provisions of Section 97 read with Section 100/101 of the Act by way of filing a separate petition under Section 100/101 of the Companies Act, 1956. (2) Second objection is that Memorandum of Association of the company can be amended only after following the procedure prescribed under the relevant provisions of the companies Act, 1956 which should be only after passing the special resolution by the members of the company in General Meeting and after filing the relevant Form with the office of Registrar of companies. (3) Third objection is that the name of the resulting company can be changed only after following the procedure prescribed under: the relevant provisions of the Companies Act, 1956. (4) Fourth objection is that the proposed allotment of shares has not been worked out by an independent valuer as normally the valuation of shares and swap ratio are calculated by a professional firm of Chartered Accountants: (5) Fifth objection is that the authorized share capital of a company can be increased only after following the procedures prescribed under the relevant provisions of the Companies Act, 1956 and payment of requisite fees to the Registrar of Company and stamp duty to the State Government. The Court ordered that none of the objections of the Regional Director are sustainable; and considering the affidavit of Sh. A.K. Chaturvedi, Official Liquidator filed on 24/1/2007 stating therein that the affairs of the Petitioner Companies No. 1 and 2 have not been conducted in a manner prejudicial to the interest of its members or to public interest; and there being no investigation proceedings pending in relation to the petitioner companies under Section 235 to 251 of the Company Act, 1956.

THIS COURT DOTH HEREBY SANCTION THE SCHEME OF ARRANGEMENT AND AMALGAMATION setforth in Schedule-I annexed hereto and DOTH HEREBY DECLARE the same to be binding on all the shareholders and creditors of the Demerged, Resulting and Transferee Companies and all concerned and doth approve the said scheme of arrangement and amalgamation with effect from the appointed date i.e. 1.4.2006.

AND THIS COURT DOTH FURTHER ORDER:

- 1(a). That all the property, rights and powers of the demerged undertaking of the Demerged Company specified in the First, Second and Third parts of the Schedule-II hereto and all other property, rights and powers of the demerged undertaking of the Demerged Company be transferred without further act or deed to the Resulting Company and accordingly the same shall pursuant to Section 394 (2) of the Companies Act, 1956 be transferred to and vest in the Resulting Company for all the estate and interest of the demerged undertaking of the Demerged Company therein but subject nevertheless to all charges now affecting the same; and
- 2(a). That all the liabilities and duties of the demerged undertaking of the Demerged Company be transferred without further act or deed to the Resulting Company and accordingly the same shall pursuant to Section 394 (2) of the Companies Act, 1956 be transferred to and become the liabilities and duties of the Resulting Company; and
- 3(a). That all the proceedings now pending by or against the demerged undertaking of the Demerged Company be continued by or against the Resulting Company; and
- 4(a). That the Resulting Company do without further application allot to such members of the demerged undertaking of the Demerged Company as have not given such notice of dissent as is required by Clause 2.15 given in the scheme of arrangement and amalgamation herein the shares in the Resulting Company to which they are entitled under the said arrangement and amalgamation; and
- 5(a). That the Demerged Company do within five weeks after the date of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration; and
- 1(b). That all the property, rights and powers of the remaining business of the Demerged Company specified in the First, Second and Third parts of the Schedule-II hereto and all other property, rights and powers of the remaining business of the Demerged Company be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 394 (2) of the Companies Act. 1956 be transferred to and vest in the Transferee Company for all the estate and interest of the remaining business of the Demerged Company therein but subject nevertheless to all charges now affecting the same; and

- 2(b). That all the liabilities and duties of the remaining business of the Demerged Company be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 394(2) of the Companies Act, 1956 be transferred to and become the liabilities and duties of the Transferee Company; and
- 3(b). That all the proceedings now pending by or against the remaining business of the Demerged Company be continued by or against the Transferee Company; and
- 4(b). That the entire share capital of the amalgamating company is held by the Transferee Company, the share capital of the amalgamating company shall stand cancelled upon the scheme becoming effective and there will be no allotment of shares by the Transferee Company consequent to the amalgamation as the company cannot allot shares to itself; and
- 5(b). That the Demerged Company do within five weeks after the date of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the remaining business of the Demerged Company shall be dissolved without the process of winding up and the Registrar of Companies shall place all documents relating to the Demerged Company and registered with him on the file kept by him in relation to the Transferee Company and the files relating to the said Demerged and Transferee Companies shall be consolidated accordingly; and
6. That any person interested shall be at liberty to apply to the Court in the above matter for any directions that may be necessary.

SCHEME OF ARRANGEMENT

BETWEEN

**HCL INFINET LIMITED... Demerged Company/ Amalgamating
Company**

MICROCOMP LIMITED... Resulting Company

HCL INFOSYSTEMS LIMITED... Amalgamated Company

AND

THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

- A. This composite Scheme of Arrangement (hereinafter referred to as the "Scheme") provides for :
- (a) the transfer by way of a demerger of the Demerged Undertaking (as defined hereinafter) of the Demerged Company to the Resulting Company, and the consequent issue of equity shares by the Resulting Company to the shareholders of the Demerged Company; and
 - (b) the amalgamation of the Amalgamating Company (comprising the Remaining Business, as defined hereinafter) with the Amalgamated Company;
- pursuant to Sections 391 to 394 and other relevant provisions of the Companies Act, 1956 in the manner provided for in the Scheme.
- B. The Scheme is divided into the following parts:
- (a) Part I deals with the Introduction and Definitions;
 - (b) Part II deals with vesting of Demerged Undertaking of Demerged Company into Resulting Company;
 - (c) Part III deals with the amalgamation of Amalgamating Company with Amalgamated Company; and
 - (d) Part IV deals with the general terms and conditions that would be applicable to the Scheme.
- C. The Scheme also provides for various other matters consequential or otherwise integrally connected therewith.

PART-I

Introduction & Definition

1.1 INTRODUCTION:

WHEREAS:

- A. HCL Infosystems Limited is a listed public limited company registered under the Companies Act, 1956, and having its registered office at 806, Siddharth, 96 Nehru Place, New Delhi - 110019. HCL Infosystems Limited is primarily engaged in manufacturing, sale and service of computer system and related products & services.
- B. HCL Infinet Limited is a company registered under the Companies Act, 1956, and having its registered office at 806, Siddharth, 96 Nehru Place, New Delhi -110019. It is, a wholly owned subsidiary of HCL Infosystems Limited. HCL Infinet Limited is primarily engaged in providing internet services, networking, security solutions, call center services, contents services, trading and servicing of mobile phones and trading and servicing of office automation and telecommunication equipment.
- C. Microcomp Limited is a company registered under the Companies Act, 1956, and having its registered office at 806, Siddharth, 96 Nehru Place, New Delhi-110019. It is a wholly owned subsidiary of HCL Infinet Limited and was incorporated with the following objects:

- (a) To manufacture, develop, import, export, buy, sell, (on installment, hire purchase or other basis), distribute, repair, convert, alter, let on hire and otherwise deal in all kinds of electronic data products including calculators, microcomputers and minicomputers and other similar articles: products and devices and their accessories, stores, spares, parts, components and assemblies and all kinds of instruments apparatuses, appliances and gadgets used for or in connection with any of the aforesaid.
- (b) To manufacture, develop, export, import, distribute and deal of electronic, electrical, electro-mechanical and other similar equipment used in instrumentation, process control, communication and office equipment fields and electronic components and sub-assemblies of all types.
- (c) To develop, imports, export and deal in computer software.

D. The business structure of HCL Inifinet Limited is primarily divided into two divisions:

- (i) The business of office automation and telecommunication product and services consisting of sale of telecommunication products, office equipment products and related comprehensive maintenance services relating to these (hereinafter referred to as the 'Product and Services Business');
- (ii) The business of networking and internet related products and services consists of Internet Access Services, Virtual Private Network, other connectivity services and sale of related hardware (hereinafter referred to as 'Networking Services Business'),

Networking Services Business operates under an ISP licence and has also obtained NLD licence and thus will evolve as a telecom network services company over a period of time, Therefore in order to focus on the Networking Service Business, it is proposed to align all the licensed telecom businesses together under one entity, It is, therefore, proposed to demerge the. Networking Services Business of HCL Inifinet Limited into Microcomp Limited which is a subsidiary of HCL Inifinet Limited. This would ensure that the Networking Business is run with independant control, greater focus enabling the company to look for technology and financial infusion at appropriate time. Further In order to continue to maintain the corporate identity amongst the networking customers, it is proposed to change the name of Microcomp Limited to HCL Inifinet Limited after the Scheme becomes effective.

The residual business in HCL Inifinet will comprise of Office Automation and Telecommunication Products and Services Business. The technologicis of IT, Telecom and Office Automations products and services are converging and products are being introduced which are multifunctional in nature and which cater to all the three segments of the market viz, IT, Telecom and Office automation. HCL Infosystems and HCL Inifinet are currently engaged in the business of computer, cellular phones, printers, multifunctional products, telecom switches, copiers, projectors etc. All these products are already converging with Computers and related chips acting as 'fulcrum' for the overall functionality.

HCL Infosystems Limited, the parent company, is a leading computer manufacturing company in India. The company's distribution channel is spread all over India. Through the distribution channels, it can reach to the customers in all parts of India for sales and services of the products manufactured and traded by it. The Products and Services Business of HCL Inifinet Limited has increased manifold and it has developed relationship with top telecom and imaging products players in the world like Ericsson, Toshiba, Nokia, Infocus, Duplo etc. HCL Inifinet Limited holds a leadership position in the distribution of digital and multimedia projectors. The business is witnessing very strong growth rate. The telecom business has also witnessed an explosive growth. The growth in the product distribution and service business is expected to gain further momentum in the years to come. The direct and indirect sales and distribution and service channels by both the companies for their products are resulting in duplication of effort and resources. The duplication in selling, distribution and service efforts are costing huge amount of resources in terms of time and money.

It is therefore proposed to merge the residual business of HCL Inifinet with HCL Infosystems Limited. With the amalgamation of HCL Inifinet, carrying the residual business, in HCL Infosystems Limited, the merged entity would be in a better position to serve the customer needs and address the converging product categories. The proposed merger will also address the issue of managing financial and operational discipline in the distribution and support chain considering anticipated growth in the said business. The merger will result in better and efficient distribution model, better customer service resulting in improved profit for the combined entity. This will also enable the shareholders of HCL Infosystems Limited to directly participate in the business of Product and Services Business of HCL Inifinet Limited..

E. The major benefits that will accrue from the proposed Scheme are as under:

- (1) The arrangement would keep the licenced businesses (Networking business) of HCL Infinet Limited under one company for better focus, control and management and to provide proper technology and financial infusion at the appropriate time.
- (2) The arrangement will help the applicant Companies to address the changing market scenario to take advantage of increasing convergence in the IT, Telecom and Office automation technologies by offering these multifunctional products and services from one company to cater the needs of customers and thus help compete better in the market place.
- (3) The arrangement would result in consolidating the Products and Services Business under one banner and to focus on the common activities which can be carried on more efficiently and economically in one entity instead of being divided into two entities and to develop expertise and to acquire and retain competitive edge by controlling costs, eliminating common expenses, focused management ,developing technical skills and to provide technology infusion in one entity for the same area of operations instead of making available the same to two entities.
- (4) The arrangement would enable the Products and Services business to use the excellent marketing and distribution channels of HCL Infosystems Limited to sustain the growth in its business.
- (5) Economies of scale and operational synergy will result in cost reduction and obviate duplication of efforts.
- (6) The arrangement would result in better and focused utilization of managerial resources.

F. Accordingly, a composite Scheme of Arrangement, pursuant to sections 391 to 394 of the Companies Act, 1956, (hereinafter referred to as the "Scheme") has been arrived at, in its present form or with any modification(s) approved or imposed or directed by the shareholders and/ or creditors of HCL Infosystems Limited and/or HCL Infinet Limited and/or Microcomp Limited or by the High Court, which, provides for:

- (a) Demerger of "Demerged Undertaking" (defined hereinafter) of HCL Infinet Limited into Microcomp Limited; and
- (b) Amalgamation of HCL Infinet Limited (comprising of Remaining Business) with HCL Infosystems Limited.
- (c) Changes of name of Microcomp Limited to HCL Infinet Limited with effect from the Effective Date.

1.2 DEFINITIONS:

In this Scheme unless repugnant to the meaning or context thereof, the following expressions shall have the following meanings:

- A. "**Act**" means the Companies Act, 1956 and. shall include any statutory modification, re-enactment or amendment thereof;
- B. "**Amalgamation**" means the amalgamation of the Amalgamating Company with the Amalgamated Company in terms of the Scheme in its present form or with any modification(s) as approved or imposed or directed by the shareholders and/ or creditors of Amalgamating Company and/or Amalgamated Company or by the High Court or any other authority concerned.
- C. "**Amalgamation Appointed Date**" means 1st April 2006 after giving effect to the Demerger pursuant to Part-II of the Scheme or such other date(s) as the Hon'ble High Court may direct or approve;
- D. "**Amalgamated Company**" means **HCL Infosystems Limited**, a company incorporated under the Act, and having, its registered office at 896, Siddharth, 96 Nehru Place, New Delhi -110019; The Registered Office of the Company was shifted from 806 –808 Siddharth, 96, Nehru Place, New Delhi 110 019 to 806 Siddharth, 96 Nehru Place, New Delhi 110 019 with effect from 23rd of September 2003.
- E. "**Amalgamating Company**" means the Demerged Company comprising of the Remaining Business as it would exist following and consequent to the Demerger in terms of Part II of this Scheme;

- F. **“Board”** means the Board of Directors of HCL Ininet Limited or Microcomp Limited or HCL Infosystems Limited, as the context may require.
- G. **“Demerger”** means the transfer by way of demerger of the Demerged Undertaking of the Demerged Company to the Resulting Company on, going concern basis, and the consequent issue of equity shares by the Resulting Company to the shareholders of the Demerged Company as set out in Part II hereof,
- H. **“Demerger Appointed Date”** means 1st April 2006 or such other date(s) as the Hon’ble High Court may direct or approve;
- I. **“Demerged Company” means HCL Ininet Limited**, company incorporated under the Act, and having its registered office at 806, Siddharth, 96, Nehru Place, New Delhi-110 019. (The term Demerged Company wherever the context requires shall include its successors in interest and assigns). The Registered Office of the Company was shifted from 806-808, Siddharth, 96, Nehru Place, New Delhi-110 019 to 806, Siddharth, 96, Nehru Place, New Delhi-110 019 with effect from 14th October, 2003.
- J. **“Demerger Effective Date”** in relation to Demerger means last of the following dates or such other dates as the Court may direct, namely;
- i. the date on which the certified copy of the order or the High Court under section 394 of the Act is filed with the Registrar of Companies, -NCT of Delhi and Haryana at New Delhi or
 - ii. the date on which last of the consents, approvals, sanctions and/or orders as are hereinafter referred to in para 4.3 of this Scheme have been obtained, whichever is later.

References in this Scheme to the date of “coming into effect of the Demerger” or “Demerger becoming” effective” shall mean the Demerger Effective Date;

- K. **“Demerged Undertaking”** means the Networking Services Business of Demerged Company, which would be transferred on a going concern basis with effect from Demerger Appointed Date to the Resulting Company, and which shall include (without limitation):
- all the property of or required for the Networking Services Business, wherever situated, whether movable or immovable, tangible or intangible, including all lands, plant and machinery, buildings and structures, warehouses, offices, residential and other premises, vehicles, capital work in progress, furniture, fixtures, office equipment, appliances, accessories;
 - deposits, stocks, assets, sundry debtors, inventories, cash and bank accounts (including balances with banks), bills of exchange, loans, advances (excluding inter divisional balances), contingent rights or benefits, receivables, benefit of any deposits, financial assets, leases (including lease rights) and hire purchase contracts, lending contracts, benefit of any security arrangements, reversions, powers, authorities, allotments, approvals, permits and consents, quotas, rights (including rights under any agreements, or customer contracts, or other contracts or agreements), entitlements, contracts, licenses including but not limited to the licenses issued by Department of Telecommunication to the Demerged Company for carrying on the Networking Services Business, municipal permissions, tenancies in relation to the office and/or residential properties for the employees or other persons, guest houses, godowns, warehouses, leases, licenses, fixed and other assets, benefits of assets or properties or other interest held in trust, registrations, contracts, engagements, arrangements of all kind, privileges and all other rights including sales tax deferrals, title, interests, other benefits (including tax benefits and privileges under the Income Tax Act, 1961 and entitlements) and advantages of whatsoever nature and wheresoever situate belonging to or in the ownership, power or possession and in the control of or vested in or granted in favour of or enjoyed by the Networking Services Business of the Demerged Company;
 - all trade and service names and marks, patents, copyrights, and other intellectual property rights of any nature whatsoever, authorizations, permits, approvals, rights to use and avail of telephones, telexes, facsimile, email, internet, leased line connections and installations, utilities, electricity and other services, reserves, provisions, funds; benefits of all agreements, all records, files, papers, computer programmes, manuals, data, catalogues, sales and advertising materials, lists and other details of present and former customers and suppliers, customer credit information, customer and supplier pricing information and other records in connection with

or relating to the Networking Services Business of the Demerged Company and all other interests of whatsoever nature belonging to or in the ownership, power, possession or the control of or vested in or granted in favour of or held for the benefit of or enjoyed by the Networking Services Business of Demerged Company, whether in India or abroad;

- all earnest moneys and/or security deposits paid by Demerged Company in connection or relating to the Networking Services Business; and
 - all debt, liabilities, loans, deposits, obligations, provisions, present and future (excluding inter divisional balances), contingent or whatsoever nature, relating to Networking Services Business of Demerged Company.
- L. “Effective Date”** in relation to merger of Amalgamating Company with Amalgamated Company means the date, after the Demerger Effective Date, when actions as are hereinafter referred to in para 4.3 of this Scheme have been duly given effect to by the Demerged Company. References in this Scheme to the date of “coming into effect of the Scheme” or “upon Scheme becoming effective” shall mean the Effective Date;
- M. “High Court”** means the High Court of Delhi at New Delhi or the National Company Law Tribunal or any other relevant authority empowered to approve the Scheme.
- N. “Remaining Business”** means all of the business and divisions/undertakings of the Demerged Company other than those pertaining to the Demerged Undertaking.
- O. “Resulting Company” means Microcomp Limited**, a company incorporated under the Act, and having its registered office at 806, Siddharth, 96 Nehru Place, New Delhi -110019. The Company was originally incorporated as a private limited company in the name and style or Microcomp Private Limited on 15th September 1975 under the Company Registration No.55-7904, and subsequently changed its name to its present name - Microcomp Limited with effect from 31st January 1977. Pursuant to the Scheme, the name of the Resulting Company shall again be changed to HCL Infinet Limited upon Scheme becoming effective.

1.3. SHARE CAPITAL:

The position of authorized, issued, subscribed and paid up capital of the Companies as on June 30th 2006 is as under:

Name of the Company	Authorised Share Capital	Issued Subscribed and Paid Up Capital
HCL Infosystems Limited	Rs.85,00,00,000/- (Rupees Eighty Five Crores only) consisting of 40,00,00,000 Equity shares of Rs.2/- each aggregating to Rs.80,00,00,000/- and 5,00,000 preference shares of Rs.100/- each aggregating to Rs.5,00,00,000/-	16,87,29,255/- Equity shares of Rs. 2/- each fully paid up aggregating to Rs.33,74,58,510/-
HCL Infinet Limited	Rs.65,00,00,000/- (Rupees sixty five crores only) consisting of 6,50,00,000 equity shares of Rs. 10/- each	1,95,06,757 Equity shares Rs.10/- each fully paid up aggregating to Rs.19,50,67,570/-
Microcomp Limited	Rs.5,00,000/- (Rupees Five Lacs only consisting of 5000 equity shares of Rs. 100/- each.	5000 Equity shares of Rs.100/- each fully paid up aggregating to Rs.5,00,000/-

PART -II

DEMERGER

2.1 Vesting of properties:

- (a) Upon the coming into effect of Demerger and with effect from the Demerger Appointed Date, all the properties, estates and interests of Demerged Company in the Demerged Undertaking in its entirety (including but not restricted to its assets, liabilities, rights, licences, benefits, obligations etc. but excluding inter divisional balances) shall, pursuant to Section 394(2) of the Act and without any further act or deed be transferred to and vested in or be deemed to have been transferred to and vested in the Resulting Company on a "going concern" basis, subject to all existing charges, mortgages, encumbrances, if any created/ existing in favour of banks and/ or financial institutions and/or other lenders.
- (b) Without prejudice to sub- clause 2.1(a) above, in respect of such of the assets of the Demerged Undertaking as are movable in nature, or incorporeal property, or are otherwise capable of transfer by manual delivery or by endorsement and delivery, the same may, upon coming into effect: of the Demerger, be so transferred to the Resulting Company without requiring any deed or instrument of conveyance and shall upon such transfer become the property and an integral part of Resulting Company.
- (c) All assets, estate, rights, title, interest and authorities acquired by the Demerged Company after the Demerger Appointed Date and prior to the Demerger Effective Date for operation of the Demerged Undertaking shall also stand transferred to and vested in Resulting Company upon coming into effect of the Demerger.

2.2 Licenses and Permissions:

With effect from the Demerger Appointed Date, all statutory licenses including but not limited to Internet Service Provider (ISP) license, National Long Distance (NLD,) license, International Long Distance (ILD) license (granted or applied for), permissions, approvals, sanctions; consents or exemptions, including but not limited to exemptions with respect to sales tax and income tax, relatable to the Demerged Undertaking shall stand vested in or transferred to the Resulting Company without further act or deed, and shall be appropriately mutated/transferred by the concerned authorities in favour of the Resulting Company upon the vesting and transfer of the Demerged Undertaking of Demerged Company, pursuant to this Scheme. The benefit of all such statutory and regulatory permissions, factory licences, environmental approvals and consents including the statutory licences, permissions, approvals, sanctions or consents, and exemptions relatable to the Demerged Undertaking shall vest in and become available to the Resulting Company pursuant to the Scheme. Any no-objection certificates, licences, permissions, consents, approvals, sanctions, authorizations, registrations, statutory rights or exemptions as are held by Demerged Company including the statutory licences, permissions or approvals or consents or exemptions relatable directly or indirectly to the Demerged Undertaking shall be deemed to constitute separate licences, permissions, no-objection certificates, consents, approvals, sanctions, authorizations, registrations, statutory rights or exemptions, and the relevant or concerned statutory authorities and licensors shall endorse and/or mutate or record the separation, upon the filing of the Scheme as sanctioned with Such authorities and licensors after the Demerger becoming effective, so as to facilitate the continuation of operation in the Resulting Company and Demerged Company (or any successor thereof) without hindrance. It is hereby clarified that upon Demerger becoming effective any license issued by the Department of Telecommunication including but not limited to ISP, NLD and/or ILD license pertaining to Demerged Undertaking issued or applied for in the name of Demerged Company shall stand transferred to the Resulting Company, without any further act or deed, as a part of the Demerged Undertaking and till such time the name of the Demerged Company is substituted for Resulting Company, the Resulting Company shall be entitled to carry on the Networking Services Business in the name of Demerged Company.

2.3 Loans and Obligations:

- (a) All debts, liabilities and obligations, excluding inter divisional balances, of the Demerged Company relating to the Demerged Undertaking including the general or multipurpose loans and borrowings of the Demerged Company to the extent specified in sub-clause (b) with effect from the Demerger Appointed Date, whether provided for or not in the books of account of Demerged Company and other liabilities relating to the Demerged Undertaking which may accrue before or after the Demerger Appointed Date, but which relate

to the period upto the day immediately preceding the Demerger Appointed Date, (hereinafter referred to as **the Transferred Liabilities**) shall become the debts, liabilities, duties and obligations of the Resulting Company, upon Demerger becoming effective, who shall undertake to meet, discharge and satisfy the same to the exclusion of the Demerged Company (or its successor). The Resulting Company undertakes to meet, discharge and satisfy the same and keep the Demerged Company (or its successor) indemnified against all costs, losses, etc. in future in respect of such debts, liabilities and obligations.

- (b) As regards the general or multipurpose borrowings and liabilities, if any, of the Demerged Company not pertaining to any particular undertaking of the Demerged Company, the aggregate value of such liabilities shall be apportioned in the same proportion which the value of the assets of the Demerged Undertaking (being the aggregate of fixed assets & gross current assets) transferred to the Resulting Company bears to the assets of the Demerged Company as on the Demerger Appointed Date. The liabilities so apportioned shall, without any further act or deed, stand transferred to the Resulting Company, and shall become the liabilities and obligations of the Resulting Company. Resulting Company undertakes to meet, discharge and satisfy the same.
- (c) Where any of the liabilities and obligations of the Demerged Company as on the Demerger Appointed Date deemed to be transferred to the Resulting Company have been discharged by the Demerged Company after the Demerger Appointed Date and prior to the Demerger Effective Date, such discharge shall be deemed to have been taken for and on account of the Resulting Company and all loans raised and used and all liabilities and obligations incurred by the Demerged Company for the operations of the Demerged Undertaking after the Demerger Appointed Date and prior to the Demerger Effective Date shall be deemed to have been raised, used or incurred, for and on behalf of the Resulting Company and to the extent they are outstanding on the Demerger Effective Date shall also without any further act or deed be and stand transferred to the Resulting Company and shall become liabilities of the Resulting Company which shall meet, discharge and satisfy the same. Such liabilities shall also form part of the Transferred Liabilities as defined hereinabove.
- (d) In respect of securities over the Transferred Liabilities, if any, concerned, the same shall be dealt with as may be mutually agreed between the Board of Directors of the Demerged Company and the Resulting Company or any committee constituted by the Board of Directors of the respective companies in this regard.
- (e) Without any prejudice to the provisions of the foregoing clauses and with effect from the Demerger Effective Date, the Demerged Company (or its successor) and the Resulting Company shall execute instruments or documents or do all the acts and deeds as may be required, including the filing of necessary particulars and/or modification(s) of charge, with the Registrar of Companies, NCT of Delhi and Haryana at New Delhi to give formal effect to the above provisions, if required.
- (f) Demerged Company (or its successor) and the Resulting Company shall enter into and execute such further deeds, documents or writings as may be required to give effect to the provisions of this Clause.
- (g) With effect from the Demerger Effective Date, the Resulting Company alone shall be liable to perform all obligations in respect of the Transferred Liabilities and the Demerged Company (or its successor) shall not have any obligations in respect of the Transferred Liabilities and the Resulting Company shall indemnify the Demerged Company (or its successor) in this behalf.
- (h) It is expressly provided that; save as mentioned in this Clause, no other terms or conditions of the Transferred Liabilities is modified by virtue of this Scheme except to the extent that such amendment is required by necessary implication.
- (i) Subject to the necessary consents being obtained, if required, in accordance with the terms of this Scheme, the provisions of this Clause shall operate, notwithstanding anything to the contrary contained in any instrument, deed or writing or the terms of sanction or issue or any security document; all of which instruments, deeds or writings shall stand modified and/or superseded by the foregoing provisions.

2.4 Legal Proceedings:

- (a) All legal or other proceedings by or against the Demerged Company, whether pending on the Demerger Appointed Date or any matter arising before the Demerger Appointed Date, and relating to the Demerged

Undertaking (including those relating to any property, rights, power, liability, obligation) or duty of the Demerged Company in respect of the Demerged Undertaking shall be continued and enforced by or against the Resulting Company. If any proceedings relating to Demerged Undertaking are instituted against the Demerged Company before the Demerger Effective Date, the Demerged Company (or its successor) will defend the same with due notice to the Resulting Company for indemnification from and against all liabilities, obligations, actions, claims and demands in respect thereof. However, after the Demerger Effective Date, the parties hereto shall take appropriate steps to substitute the name of Resulting Company for that of the Demerged Company.

2.5 Business to be carried on in trust for Resulting Company: With effect from the Demerger Appointed Date and upto the Demerger Effective Date:

- (a) the Demerged Company shall be deemed to have been carrying on all business and activities relating to the Demerged Undertaking and stand possessed of the properties to be transferred to the Resulting Company for and on account of and in trust for Resulting Company.
- (b) All profits accruing to the Demerged Company or losses arising or incurred by it relating to the Demerged Undertaking shall for all purposes, be treated as profits or losses, as the case may be, of the Resulting Company.
- (c) All income, receipts and gains of whatsoever nature and all expenses, payments and losses of whatsoever nature relating to the Demerged Undertaking' pertaining to the period up to the Demerger Appointed Date, which due to any inadvertence or for any reason could not be accounted for or disclosed in the books of the Demerged Company, shall be to the account of the Resulting Company. Similarly all continuing gains/losses, income/expenses, receipts/payments relating to Demerged Undertaking in respect of the period on and after the Demerger Appointed Date shall also accrue to the Resulting Company's account.

2.6 Demerged Company is entitled to various benefits under various incentive schemes and policies in relation to the Demerged Undertaking and pursuant to this Scheme, it is declared that the benefits under all such schemes and policies shall be transferred to and vest in the Resulting Company and all benefits, entitlements and incentives of any nature whatsoever including sales tax and income-tax concessions/exemptions and incentives available to different independent undertakings forming part of the Demerged Undertaking shall be claimed and/or to be claimed by the Resulting Company and these shall relate back to the Demerger Appointed Date as if the Resulting Company was originally entitled to all benefits under such incentive scheme and/or policies.

2.7 Filing of relevant intimations with Statutory Authorities:

Since each of the permissions, licences including but not limited to ISP/NLD/ILD license granted, approvals, consents, sanctions, remissions, special reservations, backward area sales tax remissions, holidays, incentives, concessions and other authorizations pertaining to the Demerged Undertaking shall stand vested in the Resulting Company, by the order of sanction of the Scheme by the Hon'ble High Court, the parties shall file the relevant intimations, for the record of the statutory authorities who shall take them on file and endorse the same in the name of the Resulting Company, pursuant to the sanction of the Scheme.

2.8 Revision of various returns:

Demerged Company (or any successor thereof) and the Resulting Company are expressly permitted to revise their Income Tax, Wealth Tax, Sales Tax, Excise and other statutory returns, including without limitation TDS/TCS certificates and the right to claim refunds, advance tax credits etc., on and from the Demerger Effective Date. It is specifically declared that the taxes paid by the Demerged Company relating to the period on or after the Demerger Appointed Date whether by way or deduction at source or advance tax, which pertains to the Demerged Undertaking, shall be deemed to be the taxes paid by the Resulting Company and the Resulting Company shall be entitled to claim credit for such taxes deducted/paid against its tax liabilities notwithstanding that the certificates/challans or other documents for payment of such taxes are in the name of the Demerged Company. Further any tax payments not directly relatable to the Demerged Undertaking shall be apportioned between the Demerged Company and the Resulting Company in the proportion of their taxable income or wealth pertaining to Demerged Undertaking and the Remaining Business respectively or any other appropriate basis as the Board of the Demerged Company and the Resulting Company mutually in their discretion deem fit and proper.

2.9 Demerger to be on a going concern basis:

The demerger of the Demerged Undertaking as a going concern to the Resulting Company is in accordance with Section 2(19AA) of the Income Tax Act, 1961.

2.10 Undertakings:

Demerged Company hereby undertakes, to carry on the business of the Demerged Undertaking from the Demerger Appointed Date upto the Demerger Effective Date in the ordinary course and not to alienate, charge or otherwise deal with or dispose of its assets or any part thereof except in the usual course of business.

2.11 Employees:

- (a) Resulting Company undertakes to engage, on and from the Demerger Effective Date, all permanent employees including the whole time or executive directors of the Demerged Company engaged in the Demerged Undertaking on the same terms and conditions at which these employees are engaged by the Demerged Company without any interruption of service as a result of the transfer. The Resulting Company also undertakes to accept and abide by any change in terms and conditions that may be agreed/effected by the Demerged Company with all such permanent employees between the Demerger Appointed Date and Demerger Effective Date.
- (b) The Resulting Company undertakes to continue to abide by any agreements/settlements that may be entered into by the Demerged Company in respect of Demerged Undertaking with any union/representatives of the employees of the Demerged Company. Resulting Company agrees that the service of all such employees with the Demerged Company upto the Demerger Effective Date shall be taken into account for the purpose of all retirement benefits to which they may be eligible in the Demerged Company upto the Demerger Effective Date. Resulting Company further agrees that for the purpose of payment of any retrenchment compensation, gratuity and other terminal benefits, such past service with the Demerged Company, shall also be taken into account and agrees and undertakes to pay the same as and when payable.
- (c) The Provident Fund balances accumulated up to the Demerger Effective Date in respect of the employees engaged in the Demerged Undertaking shall either continue to remain in the existing fund and the further contributions shall also be made by the Resulting Company to such fund, if so permitted, or till such time the necessary funds are created by the Resulting Company, contributions shall continue to be made to the existing funds and the accumulated balance in such existing fund shall stand transferred to the new fund to be created by the Resulting Company.
- (d) In so far as the existing gratuity fund and pension and/or superannuation fund trusts and retirement funds or employees state insurance schemes or funds or any other benefits created by the Demerged Company for its employees (including employees of the Demerged Undertaking) are concerned, such proportion of the investments made by the funds which is relatable to the employees pertaining to the Demerged Undertaking as on the Demerger Effective Date, who are being transferred along with the Demerged Undertaking in terms of the Scheme, shall upon Demerger becoming effective, either continue to remain in the existing fund/schemes and the further contributions shall also be made by the Resulting company to such funds/schemes, if so permitted or till such time the necessary funds/schemes are created by the Resulting Company contribution shall continue to be made to the existing funds/ schemes.
- (e) The Resulting Company will file the relevant intimations to the statutory authorities concerned who shall take the same on record and endorse the name of the Resulting Company for Demerged Company

2.12 Object clause

- (a) Clause III(a) of the Memorandum of Association of the Resulting Company shall, upon Demerger coming into effect and without any further act or deed, stand amended by adding the following main object, after sub-clause (3) of Clause III (a) of the Memorandum of Association of the Resulting Company, to be pursued by the Resulting Company

"4. To carry on the business of providing private network products, services, solutions and services related to Electronic Commerce, Web-technologies and, internet including but not limited to hosting, designing,

accessing and application services and to carry on the business of providing and supply of end-to-end information technology solutions, including turnkey solutions, system integration of software, computer peripherals, networking and communication components, cabling, power supply equipment appropriate fixtures metering and monitoring devices, conventional broad-band wireless, wireline and optional communications equipment and providing sights, interactivity etc. for electronic portal solutions and to undertake all activities.”

- (b) The Resulting Company shall file the amended copy or its Memorandum and Articles of Association with the Registrar of Companies, NCT of Delhi and Haryana at New Delhi, within 30 days from the date Demerger-becomes effective, who will register the same.

2.13 Change or name

- (a) In order to maintain corporate identity amongst the Networking Services business customers, the Board of Directors of the Resulting Company in its meeting held on 25.07.2006 has proposed to change the name of the Resulting Company, upon the Scheme becoming “effective to HCL Infnit Limited. Therefore, with effect from the Effective Date the name of the Resulting Company shall forthwith stand changed to HCL Infnit Limited (the then erstwhile name of the Demerged Company) without any further act or deed. The Resulting Company shall pay to the Registrar or Companies requisite fee, which is required to be paid for effecting change of name.
- (b) The Memorandum and Articles of Association of the Resulting Company shall be suitably amended and the Resulting Company shall file the amended copy of Memorandum and Articles of Association with the Registrar of Companies, NCT of Delhi and Haryana at New De1hi, who shall take the same on record and issue a fresh Certificate of Incorporation consequent upon change in the name of Resulting Company.
- (c) the Resulting Company shall be entitled to carry on the business comprised in the Demerged Undertaking in the name of Demerged Company till the name of the Resulting Company is substituted with the name of Demerged Company pursuant to this Scheme and a fresh Certificate of Incorporation is issued by the Registrar of Companies consequent to change of name.

2.14 Saving of concluded transactions:

- (a) Subject to the other provisions contained in this Scheme, all contracts, deeds, bonds, agreements and other instruments of whatever nature relating to the Demerged Undertaking to which Demerged Company is a party subsisting or having effect immediately before the Demerger Appointed Date shall remain in full force and effect against or in favour of the Resulting Company and may be enforced as fully and effectively as if the Resulting Company instead of Demerged Company, had been a party thereto.
- (b) The Resulting Company shall, wherever necessary, enter into and/or issue and/or execute deeds, writings or confirmations, enter into any tripartite arrangements, confirmations or novations to which Demerged Company will, if necessary, also be a party in order to give formal effect to the provisions of this Clause.
- (c) It is clarified that even after the Demerger Effective Date the Resulting Company shall be entitled to realize all monies and to complete and enforce all pending contracts and transactions in respect of the Demerged Undertaking, in the name of Demerged Company in so far as may be necessary until the transfer of rights and obligations of Demerged Company to the Resulting Company under this Scheme finally stands devolved on the parties concerned.
- (d) It is further clarified that even after the Demerger Effective Date, the Resulting Company shall be entitled to use invoices and other stationery, the labeling, packing, advertising and marketing materials for the Networking Services Business which Demerged Company is entitled to use, till such time such existing invoices, stationery, advertising materials, labels, wrappers, etc. are exhausted.

2.15 Issue of shares:

- (a) Upon Demerger becoming effective, and in consideration of the demerger of the Demerged Undertaking to the Resulting Company pursuant to Part II of the Scheme, the Resulting Company shall, without any further act or deed, issue and allot to HCL Infosystems Limited, (being the only shareholder holding entire share capital of the Demerged Company) 16,96,810 equity shares in the Resulting company of Rs.100/- each

credited as fully paid-up. The said consideration has been determined on the basis of networth of the Demerged Undertaking arrived at as per management certified balance sheet as on 31st March 2006. The statement of net assets of the Demerged Undertaking as on 31st March 2006 is annexed hereto and marked as Annexure-1 to the Scheme. In case there will be any change in the networth of the demerged Undertaking based on the audited accounts of the Demerged Company, the consideration payable by the Resulting Company, as mentioned in para 2.15(a), above shall stand changed accordingly, Any fractional entitlement arising on account of issuance of shares of Rs.100/- each by the Resulting Company in consideration of the Demerger shall be ignored.

- (b) The new equity shares of the Resulting Company to be issued and allotted in terms of clause 2.15 (a) hereinabove, shall rank pari passu in all respects with the existing equity shares of the Resulting Company save and except that the new equity shares allotted to the shareholders of Demerged Company pursuant to clause 2.15(a) of the Scheme shall be entitled to dividend with effect from the Demerger Effective Date.
- (c) The new equity shares to be issued in terms hereof shall be subject to the Memorandum and Articles of Association of the Resulting Company.
- (d) Upon coming into effect of Demerger, the Authorised Equity Share Capital of the Demerged Company shall stand split and reduced by an amount of Rs.35,00,00,000/- (Rupees Thirty Five Crores Only) and such amount by which the authorized share capital has been reduced i.e. Rs.35,00,00,000 (Rupees Thirty Five Crores Only) shall be clubbed with the Authorised Share Capital of the Resulting Company. Consequently the reduced Authorised Share Capital of the Demerged Company shall be Rs.30,00,00,000/- (Rupees Thirty Crores).
- (e) Further, upon Demerger becoming effective, the Authorised Share Capital of the Resulting, Company, consequent to splitting of the Authorised Share Capital of the Demerged Company in terms of sub-clause (d) above, shall, without any further act, deed or action, stand increased by Rs.35,00,00,000/- (Rupees Thirty Five Crores Only). The enhanced Authorised Share Capital of the Resulting Company shall be Rs.35,05,00,000 (Rupees Thirty Five Crores and five Lacs Only) and the Memorandum and Articles of Association of the Resulting Company shall automatically stand amended accordingly and words and figures in Clause V of the Memorandum of Association shall be substituted to-read as follows:

“The Share Capital of the Company is Rs.35,05,00,000/- (Rupees Thirty Five Crores and Five Lacs Only) divided into 35,05,000 (Thirty Five Lacs five Thousand) equity shares of Rs.100/- each.”

Similarly Clause 4 of the Articles of Association of the Resulting Company shall be substituted as under:

“The Share Capital of the Company is Rs.35,05,00,000/- (Rupees Thirty Five Crores and Five Lacs Only) divided into 35,05,000 (Thirty Five Lacs Five Thousand) equity shares of Rs.100/- each with power to increase, reduce, consolidate and sub-divide its capital in accordance with the provisions of the Companies Act, 1956.”

- (f) The filing fee and stamp duty already paid by the Demerged Company on its Authorised Share Capital, which is being transferred to the Resulting Company in terms of sub-clause (e) hereinabove, shall be deemed to have been so paid by the Resulting Company on the combined Authorised Share Capital and accordingly, the Resulting Company shall not be required to pay any fee/stamp duty on the Authorised Share Capital so increased, However, the Resulting Company shall file the amended copy of its Memorandum and Articles of Association with the Registrar of Companies within 30 days from the Demerger Effective Date and the Registrar of Companies shall take the same on record,

2.16 Accounting Treatment in the books of Resulting Company

- (a) Upon Demerger becoming effective, all the assets and liabilities of the Demerged Undertaking shall be transferred and vest in Resulting Company at the values appearing in the books of Demerged Company at the commencement of the Demerger Appointed Date,
- (b) Resulting Company shall credit to its share capital account in its books of account the aggregate face value of the new shares issued by it to the members of Demerged Company pursuant to this Scheme,

- (c) The excess/deficit of the aggregate value of the assets over the aggregate value of the liabilities of Demerged Undertaking recorded by Resulting Company upon their transfer to and vesting in Resulting Company under the Scheme after adjusting the value of the aggregate shares issued and allotted in terms of clause 2,15 above, by Resulting Company, shall be adjusted by Resulting Company in general reserve account.

2.17 Accounting Treatment in the books of Demerged Company

Upon Demerger becoming effective, the amount of difference between the aggregate value of assets over the aggregate value of liabilities of the Demerged Undertaking, as transferred by Demerged Company to Resulting Company, shall be adjusted in the general reserve account and/or credit balance of profit and loss account of the Demerged Company.

2.18 Remaining business:

- (a) The Remaining Business and all the assets, liabilities and obligations pertaining thereto shall continue to belong to the Amalgamating Company.
- (b) All legal, taxation or other proceedings whether civil or criminal (including before any statutory or quasi-judicial authority or tribunal) by or against Demerged Company under any statute, whether pending on the Demerger 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 Demerged Company in respect of the Remaining Business) shall be continued and enforced by or against Demerged Company (or its successor) after the Demerger Effective Date, which shall keep Resulting Company fully indemnified in that behalf. Resulting Company shall in no event be responsible or liable in relation to any such legal or other proceeding against Demerged Company (or its successor).

PART -III

AMALGAMATION

For the sake of clarification, the subject matter of Part-III shall be confined to the Remaining Business.

- 3.1 With effect from the Amalgamation Appointed Date and upon the Scheme becoming effective (i.e. including the Demerger pursuant to this Scheme) and subject to the provisions of the Scheme, including in relation to the mode of transfer/vesting, the Remaining Business of Amalgamating Company including all movable and immovable properties, tangible and intangible properties, assets, buildings, offices, investments of all kinds, lease and hire purchase contracts, licensing arrangements, lending contracts, benefit of any security arrangements, reversions, powers, authorities, allotments, approvals, consents, licenses, registrations including registration with Directorate General of Supplies and Disposals, contracts, agreements, engagements, arrangements of all kind, rights, titles, interests, benefits, easements, and privileges of whatsoever nature and wherever situated belonging to or in the ownership, power or possession and in the control of or vested in or granted in favour of or enjoyed by Amalgamating Company, including but without being limited to patents, trademarks, copyrights and other intellectual property rights of any nature whatsoever, permits, approvals, authorizations, rights to use telephones, telexes, facsimile connections and installations, utilities, electricity and other services, reserves, provisions, funds, benefits of all agreements and all other interests (hereinafter referred to as "said Assets") shall be and stand vested in and/or be deemed to be and stand vested in Amalgamated Company as going concern pursuant to the provisions of Section 394 of the said Act so as to become on and from the Amalgamation Appointed Date, the estate, assets, rights, title and interests of Amalgamated Company.
- 3.2 Without prejudice to Clause 3.1 above, in respect of such of the said Assets of Amalgamating Company as are movable in nature, or incorporeal property, or are otherwise capable of transfer by manual delivery or by endorsement and delivery, the same may be so transferred to Amalgamated Company and shall upon such transfer become the property of Amalgamated Company as an integral part of the Remaining Business. In respect of such of the said Assets other than those referred hereinabove, the same shall, without any further act, instrument or deed, be transferred and vested in and/or be deemed to be transferred to and vested in Amalgamated Company pursuant to an order being made thereof under Section 394 of the Act.
- 3.3 (a) With effect from the Amalgamation Appointed Date and upon the Scheme becoming effective, the land, with the buildings standing thereon, lease hold property belonging to the Remaining Business, if any, held by

Amalgamating Company and any documents of title/rights/membership and easements in relation thereto shall be vested in and transferred to and or be deemed to have been transferred to and vested in the Amalgamated Company and shall belong to the Amalgamated Company.

- (b) With effect from the Amalgamation Appointed Date, the Amalgamated Company shall be liable for ground rent and municipal taxes in relation to properties consisting in the Remaining Business, if any. The mutation of title to the immovable properties comprised in the Remaining Business shall be made and duly recorded by the appropriate authorities pursuant to the sanction of the Scheme and upon the Scheme becoming effective in accordance with terms hereof in favour of the Amalgamated Company.
 - (c) Since the entire issued, subscribed and paid up capital of the Amalgamating Company is held by the Amalgamated Company, the Amalgamated company is not required to issue any shares for such amalgamation either in exchange or otherwise and there shall be no other consideration to be paid or payable by the Amalgamated Company.
- 3.4
- (a) Notwithstanding the generality of clause 3.1 above, with effect from the Amalgamation Appointed Date and upon the Scheme becoming effective, all statutory licenses belonging to the Remaining Business including registrations with Directorate General of Supplies and Disposals, permissions, approvals, or consents issued in the name of the Amalgamating Company shall stand vested in or transferred to the Amalgamated Company without any further act or deed, and shall be appropriately transferred/endorsed/mutated by the authorities concerned therewith in favour of the Amalgamated Company. The benefit of all statutory and regulatory permissions, and consents including the statutory licenses, permissions or approvals or consents required to carry on the operations of Remaining Business of the Amalgamating Company, shall vest in and become available to the Amalgamated Company pursuant to the Scheme.
 - (b) The tax deducted at source (TDS)/advance tax paid by the Amalgamating Company which pertains to the Remaining Business under the provisions of the Income Tax Act, 1961 in respect of income of the Amalgamating Company from the Amalgamation Appointed Date shall be deemed to be the tax deducted from/advance tax paid by and for the benefit of the Amalgamated Company and credit for such TDS/advance tax shall be allowed to the Amalgamated Company notwithstanding that Certificates/challans for TDS/advance tax are in the name of the Amalgamating Company and not in the name of the Amalgamated Company. Without prejudice to any other rights available to the Amalgamated Company under the Income Tax Act, 1961, the Amalgamated Company shall, after the Effective Date, be entitled to revise the income tax returns, if any, filed, by it or the Amalgamating Company for any year if so necessitated pursuant or consequent to the Amalgamation, notwithstanding that the time prescribed for such revision may have elapsed.
 - (c) The wealth tax, if any, paid by the Amalgamating Company in respect of the valuation date under the Wealth Tax Act 1957, as on 31st March, 2007 or thereafter and relating to the remaining Business shall be deemed to have been paid by and for the benefit of the Amalgamated Company. Without prejudice to any other right that may be available to it under Wealth Tax Act, 1957, the Amalgamated Company shall, after the Effective Date, be entitled to file the wealth tax return for the valuation date as on 31st March, 2007 or thereafter notwithstanding that the time prescribed for filing such returns may have lapsed. Further the Amalgamated Company shall, after the Effective Date, be entitled to revise the wealth tax returns if any, filed by the Amalgamating Company for any year, notwithstanding that the time prescribed for such revision may have elapsed.
 - (d) Similarly, any other taxes including but not limited to service tax, fringe benefit tax, banking cash withdrawal tax, value added tax, paid by the Amalgamating Company pertaining to the Remaining Business on or after the Amalgamation Appointed Date shall be deemed to have been paid by or for the benefit of the Amalgamated Company. The Amalgamated Company shall, after the Effective Date, be entitled to file the relevant returns with the authorities concerned for the period after the Amalgamation Appointed Date. Further the Amalgamated Company shall, after the Effective Date, be entitled to revise the relevant returns, if any, filed by the Amalgamating Company for any year, notwithstanding that the time prescribed for such revision may have elapsed.
- 3.5
- (a) Since, each of the permissions, approvals, consents, sanctions, remissions, special reservations, 'incentives, concessions and other authorizations of the Amalgamating Company pertaining to the Remaining Business, shall stand transferred by the order of the High Court to the Amalgamated Company, the Amalgamated

Company shall file the relevant intimations, for the record of the statutory authorities who shall take them on file, pursuant to the vesting orders of the sanctioning courts.

- (b) Without prejudice to generality of the aforesaid, any concessional/statutory forms under the respective Central/State sales/work contract tax/lease tax laws issued/received by the Amalgamating Company pertaining to the Remaining Business in respect of period commencing from the Amalgamation Appointed Date shall be deemed to be issued/received in the name of the Amalgamated Company and benefit of such forms shall be allowable to the Amalgamated Company in the same manner and to the same extent as would have been available to the Amalgamating Company.
- (c) The Amalgamated Company shall, after the Effective Date, be entitled to file the concessional/statutory forms under the respective Central/State sales/work contract tax/lease tax laws with the authorities concerned for the period after the Amalgamation Appointed Date. Further the Amalgamated Company shall, after the Effective Date, be entitled to revise the said forms/returns, filed by the Amalgamating Company for any year, not withstanding that the time prescribed for such revision may have elapsed.

3.6 On the Scheme becoming effective:

- a. all motor vehicles of any nature whatsoever comprised in or relating to the Amalgamating Company, shall vest in the Amalgamated Company and appropriate Governmental and Registration Authorities shall mutate and register the said vehicles in the name of the Amalgamated Company.
 - b. all patents, trademarks, copyrights and other intellectual property rights registered with the authorities concerned of the Amalgamating Company in respect of Remaining Business or applications submitted at any time on or before the Effective Date by the Amalgamating Company in respect of Remaining Business shall stand transferred and vested in the name of the Amalgamated Company without any further act or deed. The Amalgamated Company, however, shall after the Scheme becoming effective file the relevant intimation with the concerned statutory authority(ies) who shall take them on record pursuant to vesting orders of the sanctioning authority.
- 3.7 With effect from the Effective Date, the bank accounts of the Amalgamating Company shall be deemed to 'have been transferred in the name of the Amalgamated Company and the concerned banks shall permit the Amalgamated Company to operate the said bank accounts of the Amalgamating Company in the name of Amalgamated Company.
- 3.8 The Amalgamated Company, at any time after the Effective Date, may execute deeds of confirmation in favour of any party to any contract or arrangement to which the Amalgamating Company is a party or any writings as may be necessary to be executed in order to give formal effect to the above provisions. The Amalgamated Company, through its Board of Directors, shall, under the provisions of this Scheme, be deemed to be authorized to execute any such writings to carry out or perform all such formalities or compliance, referred to above on the part of the Amalgamating Company to be carried out or performed.
- 3.9 Upon the Scheme becoming effective and with effect from the Amalgamation Appointed Date:

- (a) All secured and unsecured debts, liabilities, including contingent liabilities, whether disclosed or undisclosed, duties, taxes and obligations of the Amalgamating Company along with any charge, encumbrance, lien or security thereon (**hereinafter referred to as the "said Liabilities"**) shall also be vested or be deemed to be and stand vested, without any further act, instrument or deed, to the Amalgamated Company, pursuant to the provisions of Section 394 of the said Act so as to become the debts liabilities, duties and obligations of the Amalgamated Company, and further that it shall not be necessary to obtain consent of any third party or other person who is a party to any contract or arrangement by virtue of which such debts, liabilities, duties and obligations have arisen in order to give effect to the provisions of this clause.
- (b) With effect from the Amalgamation Appointed Date and upon the Scheme becoming effective, the Amalgamated Company shall take all steps reasonably necessary to enter into new or amendatory loan or security agreements or instruments and the likes as may be necessary With the creditors, such that the Amalgamated Company shall assume the responsibility for repayment of borrowings allocated to it under the Scheme.
- (c) All debentures, bonds, notes or other securities, other than equity share capital, issued by the Amalgamating Company, if any, either before the Amalgamation Appointed Date or after the Amalgamation Appointed Date

upto the Effective Date (**hereinafter referred to as “Securities”**) shall Without any further act, instrument or deed become securities of the Amalgamated Company and all rights, powers, duties and obligations in relation thereto shall be and stand vested in and shall be exercised by or against the Amalgamated Company as if it were the Amalgamating Company.

- (d) All the loans and advances extended by the Amalgamating Company to the Amalgamated Company and vice versa, if any, shall stand cancelled and the Amalgamating Company and the Amalgamated Company, as the case may be, shall have no further obligation in that behalf.
- (e) Upon the Scheme becoming effective, the borrowing limits of the Amalgamated Company in terms of section 293(1)(d) of the said Act, shall without further act or deed stand enhanced by an amount being the aggregate liabilities of the Amalgamating Company which are being transferred to the Amalgamated Company pursuant to this Scheme and the Amalgamated Company would not be required to pass any fresh resolution in this regard.

3.10 (A) With effect from the Amalgamation Appointed Date up to the Effective Date:

- (a) the Amalgamating Company shall carry on and shall be deemed to have carried on all its business and activities and shall hold and stand possessed of and shall be deemed to have held and stood possessed of the Remaining Business for and on account of, and in trust for, the Amalgamated Company;
- (b) the Amalgamating Company shall carry on its business and activities with reasonable diligence and business prudence,
- (c) All profits or incomes accruing or arising to the Amalgamating Company or expenditure, or losses arising or incurred by the Amalgamating Company on and after the Amalgamation Appointed Date relating to Remaining Business shall, for all purposes, be treated and be deemed to be and accrue as the profits or incomes or expenditure or losses of the Amalgamated Company, as the case may be.

3.11 Upon the Scheme becoming effective,

- a. all suits, actions and, proceedings by or against the Amalgamating Company pending and/ or arising on the Effective Date shall be continued and be enforced by or Against the Amalgamated Company as effectually as if the same had been pending and/or arising by or against the Amalgamated Company.
- b. The Amalgamated Company undertakes to have all legal or other proceedings initiated by or against the Amalgamating Company referred to in sub-clause (a) above transferred to its name and to have the same continued, prosecuted and enforced by or against the Amalgamated Company.

3.12 Upon the Scheme becoming effective, and subject to the provisions of this Scheme, all contracts, deeds, bonds, agreements, arrangements and other instruments of whatsoever nature to which the Amalgamating Company is a party or to the benefit of which the Amalgamating Company may be eligible, and which are subsisting on the Effective Date, shall be in full force and effect against or in favour of the Amalgamated Company, as the case may be and may be enforced as fully and effectually as if, instead of the Amalgamating Company, the Amalgamated Company had been a party or beneficiary or obligee thereto. The Amalgamated Company shall, wherever necessary, enter into and/or issue and/or execute deeds, writings or confirmations, enter into any arrangements, confirmations or novations to which the Amalgamating Company is a party in order to give formal effect to the provisions of this clause.

3.13 The Amalgamating Company and the Amalgamated Company are entitled to declare and pay dividends, whether interim or final in respect of the accounting period prior to the Effective Date to their respective shareholders.

3.14 Upon the Scheme becoming effective,

- a. All the employees in the service of the Amalgamating Company (other than the employees engaged in the Demerged Undertaking and who are being transferred to the Resulting Company pursuant to clause 2.11 hereof) immediately preceding the Effective Date, shall become employees of the Amalgamated Company on the-basis that:

- (i) Their services shall be deemed to have been continuous and not have been interrupted by reasons of the said transfer.
 - (ii) The terms and conditions of service applicable to employees after such transfer shall not in any way be less favourable to them than those applicable to them immediately preceding the transfer.
 - b. It is expressly provided that as far as the provident fund, gratuity scheme, superannuation scheme or any other special scheme(s)/fund(s) created or existing for the benefit of the employees of the Amalgamating Company who are being transferred to the Amalgamated Company pursuant to Part-III of this Scheme, upon the Scheme becoming effective, the Amalgamated Company shall stand substituted for the Amalgamating Company for all purposes whatsoever, related to the administration or operation of such schemes or funds or in relation to the obligation to make contributions to the said funds in accordance with provisions of such schemes/funds as per the terms provided in the respective trust deeds to the end and intent that all the rights, duties, powers and obligation of the Amalgamating Company in relation to such schemes/funds shall become those of the Amalgamated Company. It is clarified that the services of such of the employees of the Amalgamating Company will be treated as having been continuous for the purpose of the aforesaid schemes/funds.
 - c. The Amalgamated Company undertakes to continue to abide by any agreements(s)/settlement(s) that may be entered into with the labour union/employees by the Amalgamating Company.
 - d. The Amalgamated Company will file the relevant intimations to the statutory authorities concerned who shall take the same on record and endorse the name of the Amalgamated Company for the Amalgamating Company.
- 3.15 The resolutions, if any, of the Amalgamating Company which are valid and subsisting on the Effective Date shall continue to be valid and subsisting and be considered as resolutions of the Amalgamated Company to the extent necessary and if any such resolutions have upper monetary or other limits being imposed under the provisions of the Act, or any other applicable provisions of any other statute, then the said limits shall be added and shall constitute the aggregate of the said limits in the Amalgamated Company.

- 3.16 Upon coming into effect of this Scheme the Authorised Share Capital of the Amalgamating Company, after giving effect to the provisions of clause 2.15 (d) of the Scheme, i.e. Rs.30,00,00,000/- (Rupees Thirty Crores), shall stand combined with the Authorised Share Capital of the Amalgamated Company and the Memorandum and Articles of Association of the Amalgamated Company shall automatically stand amended accordingly and words and figures in Clause V of the Memorandum of Association shall be substituted to read as follows:

“The authorized share capital of the company is Rs.115,00,00,000/- (Rupees One hundred fifteen crores only) divided into 55,00,00,000 (Fifty Five crores) Equity Share of Rs.2/- (Rupees Two) each and 5,00,000 (Five Lakh) Preference Share of Rs.100/- (Rupees One Hundred) each.”

Similarly, Clause 5. a. of the Articles of Association of the Amalgamating Company shall be substituted as under:

“The authorised share capital of the company is Rs.115,00,00,000/- (Rupees One hundred fifteen crores) divided into 55,00,00,000 (Fifty Five crores) Equity Share of Rs.2/- (Rupees Two) each and 5,00,000 (Five Lakh) Preference Shares of Rs.100/- (Rupees One Hundred) each with the rights, privileges and condition attached thereto as are provided by the Articles of Association of the Company for the time being and the Company shall have the power to increase or reduce the capital and to divide the shares in the capital for the time being into several classes and to attach thereto respectively such preferential or other rights, privileges and conditions in such manner as may be permitted by the Companies Act, 1956 or provided by the Articles of Association of the Company”.

The filing fee and stamp duty already paid by the Amalgamating Company on its Authorised Share Capital, which is being transferred to the Amalgamated Company in terms of this clause, shall be deemed to have been so paid by the Amalgamated Company on the combined Authorised Share Capital and accordingly, the Amalgamated Company shall not be required to pay any fee/stamp duty on the Authorised Share Capital so increased. However, the Amalgamated Company shall file the amended copy of its Memorandum and Articles of Association with the Registrar of Companies within 30 days from the Effective Date and the Registrar of Companies shall take the same on record.

- 3.17 In view of the fact that the entire share capital of the Amalgamating Company is held by the Amalgamated Company, the share capital of the Amalgamating Company shall stand cancelled upon the Scheme becoming effective and there will be no allotment of shares by the Amalgamated Company consequent to the amalgamation as the company cannot allot shares to itself.
- 3.18 Upon the Scheme being effective, the Amalgamated Company shall account for amalgamation/merger in its books as specified hereunder;
- a. After giving effect to the transfer of the Demerged Undertaking, all the said Assets and the said Liabilities recorded in the books of the Amalgamating Company shall stand transferred to and vested in the Amalgamated Company pursuant to the Scheme and shall be recorded by the Amalgamated Company at their carrying amount as appearing in the books of the Amalgamating Company.
 - b. An amount equal to the balance lying in the "Profit and Loss Account", as appearing in the balance sheet of the Amalgamating Company shall be taken over by the Amalgamated Company and included in the balance of its Profit and loss Account.
 - c. As on the Amalgamation Appointed Date, and subject to any corrections and adjustments as may, in the opinion of the Board of Directors of the Amalgamated Company be required, the reserves of the Amalgamating Company will be merged with those of the Amalgamated Company in the same form as appeared in the financial statements of the Amalgamating Company.
 - d. The excess, if any, of the aggregate value of the said Assets reduced by the aggregate value of the said Liabilities, balance in Profit & Loss Account and reserves of the Amalgamating Company, adjustment of inter-se loans and investments, if any, pursuant to the Scheme, as recorded by the Amalgamated Company upon their transfer to and vesting in the Amalgamated Company under the Scheme shall be credited to an "Amalgamation Reserve Account" and the same shall be treated as free reserve forming part of the net worth of the Amalgamated Company.
 - e. In the event that there is a shortfall of the aggregate value of the said Assets reduced by the aggregate value of the said Liabilities, balance in Profit & Loss account and reserves of the Amalgamating Company recorded by the Amalgamated Company upon their transfer to and vesting in the Amalgamated Company under the Scheme, inter se loans and investments pursuant to the amalgamation, the same shall be adjusted first against the general reserve and thereafter from profit & loss account of the Amalgamated Company.
- 3.19 The Amalgamating Company, upon the Scheme becoming effective, shall be dissolved without winding up, subject to an Order being made by the Hon'ble High Court under section 394 of the Companies Act, 1956.

PART IV

OTHER TERMS & CONDITIONS

4.1 Application to the Hon'ble High Court:

HCL Ininet Limited, HCL Infosystems Limited and Microcomp Limited shall with all reasonable dispatch make applications/petitions to the Hon'ble High Court under Sections 391 and 394 and other applicable provisions of the Act, for sanctioning the Scheme of Arrangement and for dissolution of the Amalgamating Company (after giving effect to Demerger pursuant to Part-II of this Scheme) without winding up and for convening and/or seeking exemption to convene the meeting of the shareholders and/ or of the creditors, and to obtain all other approvals as may be required under law.

4.2 Modifications/ Amendments to the Scheme

- (a) HCL Ininet Limited, HCL Infosystems Limited and Microcomp Limited by their respective Board of Directors either by themselves or by any committee constituted by the Board of Directors or any person(s) authorized by the Board of Directors in this behalf may make or assent from time to time on behalf of all persons concerned to any extension, modification or amendments of this Scheme or any of conditions or limitation which the Hon'ble High Court and/or any authorities/persons may deem fit to approve of or impose or which

may otherwise be considered necessary, desirable or appropriate by the Board of Directors of HCL Infinet Limited and/or HCL Infosystems Limited and/or Microcomp Limited and to resolve all doubts or difficulties that may arise for carrying out the Scheme and to do and execute all acts, deeds, matters and things necessary for putting the Scheme into effect.

- (b) For the purpose of giving effect to this Scheme or to any modification or amendments thereof, the Board of Directors of HCL Infinet Limited, HCL Infosystems Limited and Microcomp Limited or any committee constituted by the Board of Directors or any person(s) authorized by the Board of Directors in this behalf may give and are authorized to give all such directions as are necessary including directions for settling any question or doubt or difficulty that may arise.

4.3 Scheme conditional on Approvals/Sanctions

This Scheme is conditional on and subject to:

- (a) any consent, as may be applicable from the lenders of HCL Infinet Limited, HCL Infosystems Limited and Microcomp Limited, if so mandated under the agreements entered into with the lenders.
 - (b) the consents by the requisite majority of the shareholders/creditors to the Scheme.
 - (c) the sanctions of the Hon'ble High Court being obtained under Sections 391 and 394 and other applicable provisions of the said Act, if so required on behalf of HCL Infinet Limited, HCL Infosystems Limited and Microcomp Limited.
 - (d) the certified copy of the order of the Hon'ble High Court being filed with the Registrar of Companies, NCT of Delhi and Haryana.
- 4.4 There is no likelihood that any creditor of HCL Infinet Limited / HCL Infosystems Limited / Microcomp Limited would lose or be prejudiced as a result of the proposed Scheme being passed. The arrangement will in no way cost any additional burden on the shareholders of any of these companies nor will it prejudicially affect the interests of any of the classes of the creditors.
- 4.5 If any part of this Scheme hereof is ruled illegal or invalid by, or is not sanctioned by the Hon'ble High Court, or is unenforceable under present or future laws, or which otherwise is considered unnecessary, undesirable or inappropriate at any stage by the Board of Directors, then it is the intention of the parties that such part shall be severable from the remainder of the Scheme, and the Scheme shall not be affected thereby, unless the deletion of such part shall cause this Scheme to become materially adverse to any party, in which case the parties shall attempt to bring about a modification in the Scheme, as will best preserve for the parties the benefits and obligations of the Scheme, including but not limited to such part.
- 4.6 Approval of the Scheme under Section 391 & 394 of the Act shall also be deemed to be compliance of the provisions of sections 16, 21, 31, 81(A), 94, 100 to 103 and other applicable provisions of the Act and rules and regulations made there under upon the Scheme becoming effective.
- 4.7 Effect of non-receipt of approvals/sanctions:
- (a) In the event of any of the said sanctions and approvals not being obtained and/or the Scheme not being sanctioned by the Hon'ble High Court and/or the order not being passed as aforesaid on or before 30th September 2007 or within such further period or periods as may be agreed upon, by and among HCL Infinet Limited, HCL Infosystems Limited and Microcomp Limited, this Scheme shall stand revoked and cancelled and become null and void and be of no effect and in that event, no rights and liabilities whatsoever, shall accrue to or be incurred inter se by HCL Infinet Limited and/or HCL Infosystems Limited and/or Microcomp Limited or their shareholders or creditors or employees or any other person.
 - (b) In the event any or the conditions that may be imposed by the Hon'ble High Court and/or competent authority which HCL Infinet Limited and/or HCL Infosystems Limited and/or Microcomp Limited may find unacceptable for any reason or Board of Directors of HCL Infinet Limited or HCL Infosystems Limited or Microcomp Limited decides otherwise, then they are at liberty to withdraw from the Scheme.

- (c) If any part of this Scheme is found to be unworkable for any reason whatsoever the same shall not, subject to the decision of HCL Infinet Limited, HCL Infosystems Limited and Microcomp Limited, affect the validity of or implementation or the other part and/or provisions of this Scheme.

4.8 Expenses Connected with the Scheme:

The Amalgamated Company shall bear all costs, charges and expenses in relation to or in connection with or incidental to this Scheme and of carrying out and completing the terms and provisions of the Scheme and/or incidental to the completion of the terms in pursuance of this Scheme.

HCL INFINET LIMITED

Statement of Net Assets of Networking Division as on 31st March 2006

	Rs. Lacs
ASSETS	
Net Fixed Assets	807.40
INVESTMENTS	1013.44
Current Assets, Loans & Advances	
Debtors	394.30
Inventories	13.51
Cash and Bank Balance	204.25
Other Current Assets	836.60
Total Assets	3269.50
LESS:	
Current Liabilities & Provisions:	1572.69
Net Assets	1696.81

SCHEDULE

PART-I

1. **Short description of the freehold property of the Demerged company (HCL Infinet Limited) being transferred to the Resulting Company (Microcomp Limited)**

Nil

2. **Short description of the freehold property of the Amalgamating company (HCL Infinet Limited) being transferred to the Amalgamated Company (HCL Infosystems Limited)**

Freehold property bearing office No.311, having an area of 428 sq. ft. (build up area) equivalent to 39.78 sq. metres or thereabouts on the third floor of the building known as "Tulsiani Chambers" consisting of ground and 10 upper floor belonging to Tulsiani Chambers Premises Co-operative Society Limited situated, lying and being at Plot No. 212, Block III, Nariman Point, Mumbai -400021

PART- II

1. **Short description of the leasehold property of the Demerged company (HCL Infinet Limited) being transferred to the Resulting Company (Microcomp Limited)**

Nil

2. **Short description of the leasehold property of the Amalgamating company (HCL Infinet Limited) being transferred to the Amalgamated Company (HCL Infosystems Limited)**

Nil

PART- III

1. **Short description of all stocks, shares, debentures and other charges in action of the Demerged company (HCL Infinet Limited) being transferred to the Resulting Company (Microcomp Limited)**

Nil

2. **Short description of all stocks, shares, debentures and other charges in action of the Amalgamating company (HCL Infinet Limited) being transferred to the Amalgamated Company (HCL Infosystems Limited)**

5000 equity shares of Microcomp Ltd. of Rs.100/- each.

600 equity shares of Stermac Engineering Pvt. Limited of Rs.1000/- each.

3. **Indicative list of licence, exemption, certificates and statutory approvals under various applicable laws to be transferred from the Demerged company (HCL Infinet limited) to the Resulting Company (Microcomp limited)**

a) ISP-license no. 820-377/2002-LR dated 9-04-2002

b) NLD-license no.1 0-05/06-B~1 (NLD-07) dated 11.07.2006

c) ITSP-license no. 820-377/2002-LR dated 09-04-2002

d) VPN-license. It is being provided under NLD license.

e) WIRELESS PERMISSION: DPL Licence No. wpc/DPL/O21-027.. D/L no. 1-14037/21103-LR/2548, D/L L-14037/21/03-LR/6495, D/L no. L-14035/03/04-LR/6495

f) CALL CENTRE :Domestic call centre no.10-58/2001-osp dated 06.12.2001

g) BGs 1.07 BG 11460014/03/2000, 2-0007 [REDACTED] 3-0007 BG 000684054-0007 BG 00049906

4. Indicative list of license, exemption, certificates and statutory approvals under various applicable laws to be transferred from the Amalgamating company (HCL Infinet limited) to the Amalgamated Company (HCL Infosystems limited)

- a) DGS&D-RATE CONTRACT-DELHI
- b) UPDI-RATE CONTRACT-U.P.
- c) BOMBAY MANTRALYA RATE CONTRACT-MAHARASHTRA
- d) NIC/NICSI-DELHI-RATE CONTRACT
- e) HILTRON-RATE CONTRACT, DEHRADUN
- f) HATRON-RATE CONTRACT, HARYANA
- g) HPSDC-RATE CONTRACT-HIMACHAL PRADESH
- h) GB PANT UNIVERSITY-RATE CONTRACT
- i) IIT-CHHENAI-RATE CONTRACT
- j) RATE CONTRACT WITH OTHER LOCAL BODIES

Dated this the 20th day of March, 2007
(By order of the Court)

Joint Registrar (Co.)

IN THE HIGH COURT OF DELHI AT NEW-DELHI

COMPANY PETITION NO. 246 OF 2007

CONNECTED WITH

COMPANY APPLICATION (M) NO. 122 OF 2007

IN THE MATTER OF COMPANIES ACT, 1956

AND

IN THE MATTER OF SECTION 391 AND 394

OF THE COMPANIES ACT, 1956

AND

IN THE MATTER OF SCHEME OF AMALGAMATION OF

MEMO OF PARTIES

STELMAC ENGINEERING PRIVATE LIMITED, a company incorporated under the Companies Act 1956 and having its registered office at 806, Siddharth, 96 Nehru Place, New Delhi -110019.

TRANSFEROR COMPANY/

PETITIONER COMPANY-I

WITH

HCL INFOSYSTEMS LIMITED, a company incorporated under the Companies Act, 1956, and having its registered office at 806, Siddharth, 96 Nehru Place, New Delhi – 110019.

TRANSFeree COMPANY/

PETITIONER COMPANY-II

THROUGH

Sd/-

KAVITA JHA

Vaish Associates, Advocates

Advocates for the Petitioners

Flat No.5 - 7,

10, Hailey Road

New Delhi - 110001

Phone No. 011 42492525

E-mail id:kavita@vaishlaw.com

PLACE: New Delhi

DATED: October, 2007

IN THE HIGH COURT OF DELHI AT NEW DELHI

(ORIGINAL JURISDICTION)

IN THE MATTER OF THE COMPANIES ACT, 1956

AND

IN THE MATTER OF SCHEME OF AMALGAMATION

OF

COMPANY PETITION NO. 246/2007

CONNECTED WITH

COMPANY APPLICATION (M) NO. 122/2007

IN THE MATTER OF

M/s. Stelmac Engineering Pvt. Ltd.,
having its Regd. Office at 806, Siddharth,
96, Nehru Place, New Delhi-110019

Petitioner/Transferor Company

WITH

IN THE MATTER OF

M/s. HCL Infosystems Ltd.,
having its Regd. Office at 806, Siddharth,
96, Nehru Place, New Delhi-110019

Petitioner/Transferee Company

**BEFORE HON'BLE MS. JUSTICE REKHA SHARMA
DATED THIS THE 7TH DAY OF DECEMBER, 2007**

ORDER UNDER SECTION 394 OF THE COMPANIES ACT. 1956

The above petition coming up for hearing on 7/12/2007 for sanction of scheme of amalgamation proposed to be made of M/s. Stelmac Engineering Pvt. Ltd. (hereinafter referred to as the Transferor Company) with M/s. HCL Infosystems Ltd. (hereinafter referred to as the Transferee Company), upon reading the said petition, the order dt. 24/7/2007 whereby the requirement of convening and holding the meeting of the equity shareholders and unsecured creditors of the Transferor Company and equity shareholders of the Transferee Company was dispensed with and the meetings of secured and unsecured creditors of the Transferee Company were ordered to be convened for the purpose of considering and if thought fit approving with or without modification, the Scheme of amalgamation annexed to the affidavit of Sh. Sushil Kumar Jain, authorised signatory of the petitioner companies filed on 6th day of July, 2007 and the publication in the newspapers namely (1) Statesman (English) and (2) Veer Arjun (Hindi) both dt. 14/8/2007 each containing the advertisement of the said notice convening the said meetings directed to be held by the said order dt. 24/7/2007, the affidavits of Sh. S.N. Gupta and Sh. S.M. Chopra, Chairpersons filed on 11/9/2007 showing the publication and dispatch of the notices convening the said meetings, the reports of the Chairpersons of the said meetings as to the result of the said meetings and upon hearing Ms. Kavita Jha, Advocate for the petitioners, Ms. Manisha Tyagi, Advocate for the Official Liquidator and Mr. R. D. Kashyap, Dy. Registrar of Companies in person and it appearing from the reports that the proposed scheme of amalgamation has been approved unanimously without any modification by the said secured and unsecured creditors of the Transferee Company present and voting either in person or by proxy and upon reading the affidavit dated 4/12/2007 of Sh. Rakesh Chandra, Regional Director, Northern Region, Ministry of Company Affairs, Noida on behalf of Central Government stating that the scheme provides for Accounting Treatment in detail but there is no mention whether the petitioner companies have complied with the Accounting Standard-14 issued by the Institute of Chartered Accountants of India. Therefore, the petitioner company is required to comply with the Accounting

Treatment as prescribed under the Accounting Standard-14 issued by the Institute of Chartered Accountants of India. Responding to the above, the petitioner company has given an undertaking that it would comply with the Accounting Treatment as prescribed under the Accounting Standard-14 issued by the Institute of Chartered Accountants of India; and considering the affidavit of Sh. A. K. Chaturvedi, Official Liquidator filed on 3/12/2007 stating therein that the affairs of the Transferor Company have not been conducted in a manner prejudicial to the interest of its shareholders or creditors or to public interest; and there being no investigation proceedings pending in relation to the petitioner companies under Section 235 to 251 of the Companies Act, 1956.

THIS COURT DOTH HEREBY SANCTION THE SCHEME OF AMALGAMATION setforth in Schedule-I annexed hereto subject to the compliance of the undertaking given by the petitioner Company and DOTH HEREBY DECLARE the same to be binding on all the shareholders and creditors of the Transferor and Transferee Companies and all concerned and Doth approve the said scheme of amalgamation with effect from the appointed date i.e. 1/4/2007.

AND THIS COURT DOTH FURTHER ORDER:

1. That all the property, rights and powers of the Transferor Company specified in the First, Second and Third parts of the Schedule-II hereto and all other property, rights and powers of the Transferor Company be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 394 (2) of the Companies Act, 1956 be transferred to and vest in the Transferee Company for all the estate and interest of the Transferor Company therein but subject nevertheless to all charges now affecting the same; and
2. That all the liabilities and duties of the Transferor Company be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 394 (2) of the Companies Act, 1956 be transferred to and become the liabilities and duties of the Transferee Company; and
3. That all the proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company; and
4. That there will be no issue and allotment of shares by the Transferee Company in consideration of amalgamation of the Transferor Company with the Transferee Company as the entire issued, subscribed and paid up share capital of the Transferor Company is held by the Transferee Company or its nominees which shall stand cancelled upon the scheme becoming finally effective; and
5. That the Transferor Company do within five weeks after the date of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Transferor Company shall be dissolved without the process of winding up and the Registrar of Companies shall place all documents relating to the Transferor Company and registered with him on the file kept by him in relation to the Transferee Company and the files relating to the said Transferor and Transferee Companies shall be consolidated accordingly. It is clarified that this order will not be construed as an order granting exemption from payment to stamp duty if payable; and
6. That any person interested shall be at liberty to apply to the Court in the above matter for any directions that may be necessary; and
7. That the scheme of amalgamation has been sanctioned and it has been ordered that the cost of Rs.20,000/-has to be paid by the petitioners to the Official Liquidator, which, will be deposited in the Common Pool Fund of the Official Liquidator.

**SCHEME OF AMALGAMATION
OF
STELMAC ENGINEERING PRIVATE LIMITED
WITH
HCL INFOSYSTEMS LIMITED**

PART I - GENERAL

1. This Scheme of Amalgamation (hereinafter referred to as the “**Scheme**”) provides for the Amalgamation of Stelmac Engineering Private Limited with HCL Infosystems Limited. The Scheme is made pursuant to the provisions of Sections 391 to 394 and other relevant provisions of the Companies Act, 1956 (“the Act”).

2. DEFINITIONS

In the Scheme, unless repugnant to the meaning or context thereof, the following expressions shall have the meanings given below;

- (a) “Act” means the Companies Act, 1956 or any statutory amendments thereto or re-enactment thereof.
- (b) “Appointed Date” for the purposes of the Scheme means April 1, 2007 or such other date(s) as the Honorable High Court may direct.
- (c) “Effective Date” shall be the last of the following dates or such other dates as the Court may direct, namely:
 - (i) the date on which certified copies of the Order of the High Court under Section 394 of the Act are filed with the Registrar of Companies, NCT of Delhi and Haryana at New Delhi, or
 - (ii) the date on which last of the consents, approvals, sanctions and/or orders as are hereinafter referred to in Clause 5.3 of this Scheme have been obtained, whichever is later.

References in this Scheme to the date of the “coming into effect of this Scheme” or “effectiveness of this Scheme” shall mean the Effective date.

- (d) “High Court” means the High Court of Delhi at New Delhi or National Company Law Tribunal or any other relevant authority empowered to approve the Scheme.
- (e) “Scheme” means the Scheme of Amalgamation in its present form with any amendment or modifications approved or imposed or directed by the shareholders or creditors and/or by the Honorable High Court or any other relevant authority.
- (f) “Transferor Company” means Stelmac Engineering Private Limited, a company incorporated under the provisions of the Act and having its registered office at 806, Siddharth, 96 Nehru Place, New Delhi – 110019. The Transferor Company is the wholly owned subsidiary of the Transferee Company.
- (g) “Transferee Company” means HCL Infosystems Limited which is a listed public limited company registered under the Companies Act, 1956, and having its registered office at 806, Siddharth, 96 Nehru Place, New Delhi – 110019.
- (h) All terms and words not defined in this Scheme shall, unless repugnant or contrary to the context or meaning thereof, have the same meaning ascribed to them under the Act and other applicable laws, rules, regulations, bye-laws, as the case may be or any statutory amendments thereto or re-enactment thereof.

PART II - SHARE CAPITAL

3. The position of the authorized, issued, subscribed and paid up capital of the Transferor and Transferee Company as on 31st March, 2007 is as follows:

PART III - THE SCHEME

4.1 With effect from the Appointed Date and subject to the provisions of the Scheme, including in relation to the mode of transfer or vesting, the entire business and undertakings of the Transferor Company including all movable and immovable properties, tangible and intangible properties, assets, buildings, offices, investments of all kinds, lease and hire purchase contracts, licensing arrangements, lending contracts, benefit of any security arrangements, reversions, powers, authorities, allotments, approvals, consents, licenses, registrations, contracts, agreements, engagements, arrangements of all kind, rights, titles, interests, benefits, easements, and privileges, if any of whatsoever nature and wherever situated belonging to or in the ownership, power

Name of the Company	Authorized Share Capital	Issued Subscribed and Paid Up Capital
Stelmac Engineering Private Limited. ("Transferor Company")	Rs. 10,00,000/- (Rupees Ten Lacs Only) consisting of 1000 Equity Shares of Rs. 1000/- each.	Rs. 6,00,000/- (Rupees Six Lacs Only) consisting of 600 Equity Shares of Rs. 1000/- each.
HCL Infosystems Limited ("Transferee Company")	Rs. 1,15,00,00,000/- (Rupees One Hundred Fifteen Crore Only) consisting of 55,00,00,000 Equity Shares of Rs. 2/- each aggregating to Rs. 1,10,00,00,000/- and 5,00,000 Preference Shares of Rs. 100/- each aggregating to Rs. 5,00,00,000/-	Rs. 33,81,01,400 (Rupees Thirty Three Crore Eighty One Lac One Thousand Four Hundred Only) consisting of 16,90,50,700 Equity Shares of Rs. 2/- each.

or possession and in the control of or vested in or granted in favour of or enjoyed by the Transferor Company, including but without being limited to intellectual property rights of any nature whatsoever, permits, approvals, authorizations, rights to use telephones, telexes, facsimile connections and installations, utilities, electricity and other services, reserves, provisions, funds, benefits of all agreements and all other interests (hereinafter referred to as "said Assets") shall be and stand vested in and/or be deemed to be and stand vested in the Transferee Company as a going concern pursuant to the provisions of Section 394 of the said Act so as to become on, and from the Appointed Date, the estate, assets, rights, title and interests of the Transferee Company.

- 4.2 All the said Assets that have accrued or which may accrue to the Transferor Company on or after the Appointed Date shall pursuant to the provisions of Section 394 of the Act and without any further act, instrument or deed, be and stand transferred to and vested in and/or be deemed to have been transferred to and vested in and be available to the Transferee Company.
- 4.3 Without prejudice to Clause 4.1 and 4.2 above, after the scheme becomes effective, in respect of such of the said Assets of the Transferor Company as are movable in nature, or incorporeal property, or are otherwise capable of transfer by manual delivery or by endorsement and delivery, the same may be so transferred to the Transferee Company and shall upon such transfer become the property and an integral part of the Transferee company. In respect of such of the said assets other than those referred hereinabove, the same shall, without any further act, instrument or deed, be transferred and vested in and/or be deemed to be transferred to and vested in the Transferee Company pursuant to an order being made thereof under Section 394 of the Act.
- 4.4 With effect from the Appointed Date and upon the Scheme becoming effective, the land, with the buildings standing thereon, if any, held by Transferor Company, and any documents of title or rights and easements in relation thereto shall be vested in and transferred to and/or be deemed to have been transferred to and vested in the Transferee Company and shall belong to the Transferee Company. With effect from the Effective Date, the Transferee Company shall be liable for ground rent and municipal taxes in relation to properties subject to such taxes, if any. The mutation of title to the immovable properties shall be made and duly recorded by the appropriate authorities pursuant to the sanction of the Scheme and upon the Scheme becoming effective in accordance with terms hereof in favour of the Transferee Company.
- 4.5 (a) Notwithstanding the generality of Clause 4.1 and 4.4 above, with effect from the Appointed Date and upon the Scheme becoming effective, all statutory licenses, permissions, approvals, or consents required to carry on operations in the Transferor Company shall stand vested in or transferred to the Transferee Company without any further act or deed, and shall be duly and appropriately mutated or endorsed by the statutory authorities concerned therewith in favour of the Transferee Company. The benefit of all statutory and regulatory permissions, and consents including the statutory licenses, permissions or approvals or consents required to carry on the operations of the Transferor Company shall vest in and become available to the Transferee Company pursuant to the Scheme.

- (b) The tax deducted at source (TDS)/advance tax, if any, paid by the Transferor Company under the Income Tax Act, 1961 or any other statute in respect of income of the Transferor Company assessable for the period commencing from Appointed date shall be deemed to be the tax deducted from/advance tax paid by the Transferee Company and credit for such TDS/advance tax shall be allowed to the Transferee Company notwithstanding that certificates or challans for TDS/advance tax are in the name of the Transferor Company and not in the name of the Transferee Company.
 - (c) The income tax, if any, paid by the Transferor Company on or after the Appointed Date, in respect of income assessable from that date, shall be deemed to have been paid by or for the benefit of the Transferee Company. The Transferee Company shall, after the Effective Date, be entitled to file the relevant returns with the authorities concerned for the period after the Appointed Date notwithstanding that the period for filing such return may have elapsed. Further Transferee Company shall, after the Effective Date, be entitled to revise the relevant returns, if any, filed by the Transferor Company for any year, not withstanding that the time prescribed for such revision may have elapsed.
 - (d) The wealth tax, if any, paid by the Transferor Company in respect of the valuation date under the Wealth Tax Act 1957, as on or after the Appointed date shall be deemed to have been paid by the Transferee Company. The Transferee Company shall, after the Scheme becomes effective, be entitled to file the wealth tax return for the valuation date as on 31st March, 2008 or thereafter notwithstanding that the time prescribed for filing such returns may have lapsed. Further the Transferee Company shall, after the Scheme becomes effective, be entitled to revise the wealth tax returns if any, filed by the Transferor Company in respect of the valuation date 31st March, 2008 or thereafter, notwithstanding that the time prescribed for such revision may have elapsed.
 - (e) Similarly, any other taxes including but not limited to service tax, fringe benefit tax, banking cash transaction tax, value added tax, paid by the Transferor Company on or after the Appointed Date, in respect of the period after such date shall be deemed to have been paid by or for the benefit of the Transferee Company. The Transferee Company shall, after the Effective Date, be entitled to file the relevant returns with the authorities concerned for the period after the Appointed Date, notwithstanding that the time prescribed for filing such return may have elapsed. Further the Transferee Company shall, after the Effective Date, be entitled to revise the relevant returns, if any, filed by the Transferor Company for any year, notwithstanding that the time prescribed for such revision may have elapsed.
- 4.6 Since each of the permissions, approvals, consents, sanctions, remissions, special reservations, incentives, concessions and other authorizations of the Transferor Company shall stand transferred by the order of the Honorable Court to the Transferee Company, the Transferee Company shall file the relevant intimations, for the record of the statutory authorities who shall take them on file, pursuant to the vesting orders of the sanctioning court.
- 4.7 On the coming into effect of the Scheme:
- (a) all motor vehicles of any nature whatsoever comprised in or relating to the Transferor Company as the case may be, shall vest in the Transferee Company and appropriate Governmental and Registration Authorities shall mutate and register the said vehicles in the name of Transferee Company as if the vehicles had originally been registered in the name of Transferee Company.
 - (b) all patents, trademarks, copyrights, if any, registered with the authorities concerned or applications submitted at any time on or before the Effective Date by the Transferor Company shall stand transferred and vested along with the undertaking in the name of Transferee Company without any further act or deed. The Transferee Company, however, shall after the Scheme becoming effective file the relevant intimation with the concerned statutory authority(ies) who shall take them on record pursuant to vesting orders of the sanctioning authority.
- 4.8 With effect from the Effective Date and until such time the names of the bank accounts of the Transferor Company are replaced with that of the Transferee Company, the Transferee Company shall be entitled to operate the bank accounts of the Transferor Company in its name, in so far as may be necessary.
- 4.9 The Transferee Company, at any time after the coming into effect of this Scheme, may execute deeds of confirmation in favour of any party to any contract or arrangement to which the Transferor Company is a party or any writings as may be necessary to be executed in order to give formal effect to the above provisions. The Transferee Company shall, under the provisions of this Scheme, be deemed to be authorized to execute any such writings on behalf of the Transferor Company to carry out or perform all such formalities or compliance, referred to above on the part of the Transferor Company to be carried out or performed.

- 4.10 Upon the coming into effect of the Scheme and with effect from the Appointed Date:
- (a) All secured and unsecured debts, liabilities including contingent liabilities, whether disclosed or undisclosed, duties, taxes and obligations of the Transferor Company along with any charge, encumbrance, lien or security thereon (hereinafter referred to as the "said Liabilities") shall also be vested or be deemed to be and stand vested, without any further act, instrument or deed, to the Transferee Company, pursuant to the provisions of Section 394 of the said Act so as to become the debts, liabilities, duties and obligations of the Transferee Company, and further that it shall not be necessary to obtain consent of any third party or other person who is a party to any contract or arrangement by virtue of which such debts, liabilities, duties and obligations have arisen in order to give effect to the provisions of this clause.
 - (b) With effect from the Appointed Date and upon the Scheme becoming effective, the Transferee Company shall take all steps reasonably necessary to enter into new or amended loan or security agreements or instruments and the likes as may be necessary with the creditors, such that the Transferee Company shall assume the sole responsibility for repayment of borrowings allocated to it under the Scheme.
 - (c) All debentures, bonds, notes or other securities, other than equity share capital, issued by the Transferor Company, if any, either before the Appointed Date or after the Appointed Date until the Effective Date (hereinafter referred to as "Transferor's Securities") shall without any further act, instrument or deed become securities of the Transferee Company and all rights, powers, duties and obligations in relation thereto shall be and stand vested in and shall be exercised by or against the Transferee Company as if it were the Transferor Company in respect of the Transferor's Securities so transferred.
 - (d) In respect of the shares issued by the Transferor Company and held by the Transferee Company, the same shall stand cancelled as of the Effective Date, and shall be of no effect and the Transferor and Transferee Companies, shall have no further obligation outstanding in that behalf. Similarly, all the loans and advances extended by the Transferor Company to the Transferee Company and/or vice versa shall also stand cancelled and the Transferor Company and the Transferee Company, as the case may be, shall have no further obligation in that behalf.
- 4.11 Where any of the liabilities and obligations of the Transferor Company as on the Appointed Date transferred to the Transferee Company have been discharged by the Transferor Company after the Appointed Date and prior to the Effective Date, such discharge shall be deemed to have been for and on account of the Transferee Company.
- 4.12 (A) With effect from the Appointed Date up to and including the Effective Date:
- (a) the Transferor Company shall carry on and shall be deemed to have carried on all its business and activities and shall hold and stand possessed of and shall be deemed to have held and stood possessed of all the said assets for and on account of, and in trust for, the Transferee Company;
 - (b) the Transferor Company shall carry on its business and activities with reasonable diligence and business prudence.
- (B) All profits or incomes accruing or arising to the Transferor Company or expenditure, or losses arising or incurred (including the effect of taxes, if any, thereon) by the Transferor Company on and after the Appointed Date shall, for all purposes, be treated and be deemed to be and accrue as the profits or incomes or expenditure or losses of the Transferee Company, as the case may be.
- 4.13 Upon the coming into effect of this Scheme, all suits, actions and legal proceedings, if any, by or against the Transferor Company pending and/or arising on or before the Effective Date shall be continued and be enforced by or against the Transferee Company as effectually as if the same had been pending and/or arising by or against the Transferee Company.
- 4.14 Upon the coming into effect of this Scheme, and subject to the provisions of this Scheme, all contracts, deeds, bonds, agreements, arrangements and other instruments of whatsoever nature to which the Transferor Company is a party or to the benefit of which the Transferor Company may be eligible, and which are subsisting or having effect immediately before the Effective Date, shall be in full force and effect against or in favour of the Transferee Company as the case may be and may be enforced as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party or beneficiary or obligee thereto. The Transferee Company shall, wherever necessary, enter into and/or issue and/or execute deeds, writings or confirmations, enter into any tripartite arrangements, confirmations or novations to which the Transferor Company will, if necessary, also be a party in order to give formal effect to the provisions of this Clause.

- 4.15 There will be no issue and allotment of shares by the Transferee Company in consideration of amalgamation of the Transferor Company with the Transferee Company as the entire issued, subscribed and paid up share capital of the Transferor Company is held by the Transferee Company or its nominees which shall stand cancelled upon the Scheme becoming finally effective.
- 4.16 The Transferee Company is entitled to declare and pay dividends, whether interim or final in respect of the accounting period prior to the Effective Date.
- 4.17 Upon the coming into effect of this Scheme:
- (a) Employees, if any, in the service of the Transferor Company immediately preceding the Effective Date shall become employees of the Transferee Company on the basis that:
 - (i) their services shall be deemed to have been continuous and not have been interrupted by reasons of the said transfer.
 - (ii) the terms and conditions of service applicable to employees after such transfer shall not in any way be less favourable to them than those applicable to them immediately preceding the transfer.
 - (b) It is expressly provided that as far as the provident fund, gratuity scheme, superannuation scheme or any other special scheme(s) or fund(s) created or existing for the benefit of the employees of the Transferor Company are concerned, upon the coming into effect of this Scheme, the Transferee Company shall stand substituted for the Transferor Company for all purposes whatsoever, related to the administration or operation of such schemes and intent that all the rights, duties, powers and obligation of the Transferor Company in relation to such schemes shall become those of the Transferee Company. It is clarified that the services of the employees of the Transferor Company will be treated as having been continuous for the purpose of the aforesaid schemes.
 - (c) The Transferee Company will file the relevant intimations to the statutory authorities concerned who shall take the same on record and endorse the name of the Transferee Company for the Transferor Company.
- 4.18 The resolutions, if any, of the Transferor Company which are valid and subsisting on the Effective Date shall continue to be valid and subsisting and be considered as resolutions of the Transferee Company
- 4.19 Upon the Scheme being effective, the Transferee Company shall account for amalgamation or merger in its books as specified hereunder;
- (a) All the said Assets, said Liabilities and the reserves recorded in the books of the Transferor Company shall stand transferred to and vested in the Transferee Company pursuant to the Scheme and shall be recorded by the Transferee Company at their book values as appearing in the books of the Transferor Company.
 - (b) The debit balance in the "Profit and Loss Account", as appearing in the balance sheet of the Transferor Company shall be taken over by the Transferee Company and shall be adjusted in the balance of its Profit and loss Account.
 - (c) The excess, if any, of the aggregate value of the said Assets and debit balance in Profit and loss account over the aggregate value of the said Liabilities and reserves of the Transferor Company recorded by the Transferee Company upon their transfer to and vesting in the Transferee Company under the Scheme shall be credited to an "Amalgamation Reserve Account" and the same shall be treated as a free reserve forming part of the net worth of the Transferee Company.
 - (d) The loans and investments given / made by the Transferee Company to / in the Transferor Company shall be cancelled in the books of the Transferee Company and the same shall be adjusted against the Revaluation Reserve Account. The difference, if any, shall be adjusted against the Amalgamation Reserve Account.
- 4.20 The Transferor Company, upon coming into effect of this Scheme, shall be dissolved without winding up, subject to an Order being made by the Honorable High Court under Section 394 of the Companies Act, 1956.

PART IV OTHER CONDITIONS APPLICABLE TO THE SCHEME

5.1 Application to Honorable High Court;

- (a) The Transferor Company and the Transferee Company shall with all reasonable dispatch make the application or petition to the Honorable High Court under Sections 391 and 394 and other applicable provisions of the Act, for sanctioning the Scheme of Amalgamation and for dissolution of the Transferor Company without winding up and for convening and/or seeking exemption to convene the meeting of the shareholders and/or of the creditors, and to obtain all other approvals as may be required under law.

5.2 Modifications or Amendments to the Scheme

- (a) The Transferor Company and the Transferee Company by their respective Board of Directors either by themselves or by any committee constituted by the Board of Directors in this behalf may make or assent from time to time on behalf of all persons concerned to any extension, modification or amendments of this Scheme or any of conditions or limitation which the Court and/or any authorities or persons may deem fit to approve of or impose and to resolve all doubts or difficulties that may arise for carrying out the Scheme and to do and execute all acts, deeds, matters and things necessary for putting the Scheme into effect.
- (b) For the purpose of giving effect to this Scheme or to any modification or amendments thereof, the Board of Directors of the Transferee Company or any committee constituted by the Board of Directors in this regard may give and are authorized to give all such directions as are necessary including directions for settling any question or doubt or difficulty that may arise.

5.3 Scheme conditional on Approvals or Sanctions

This Scheme is conditional on and subject to:

- (a) the consents by the requisite majority of the shareholders and creditors of the Transferor and Transferee Company to the Scheme, if required;
- (b) the sanction of the Honorable High Court being obtained under Sections 391 and 394 and other applicable provisions of the said Act, if so required on behalf of the Transferor Company and the Transferee Company;
- (c) such other sanctions and approvals including sanctions of any government or regulatory authority as may be required by law in respect of the Scheme.
- (d) the certified copies of the orders referred to in this Scheme of the Honorable High Court being filed with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5.4 There is no likelihood that any creditor of the Transferor Company / Transferee Company would lose or be prejudiced as a result of the proposed Scheme being sanctioned. The amalgamation will in no way cost any additional burden on the shareholders of any of these Companies nor will it prejudicially affect the interests of any of the classes of the creditors.

5.5 If any part of this Scheme hereof is ruled illegal or invalid by, or is not sanctioned by the Hon'ble High Court, or is unenforceable under present or future laws, or which otherwise is considered unnecessary, undesirable or inappropriate at any stage by the Board of Directors, then it is the intention of the parties that such part shall be severable from the remainder of the Scheme, and the Scheme shall not be affected thereby, unless the deletion of such part shall cause this Scheme to become materially adverse to any party, in which case the parties shall attempt to bring about a modification in the Scheme, as will best preserve for the parties the benefits and obligations of the Scheme, including but not limited to such part.

5.6 Effect of non-receipt of Approvals or Sanctions:

- (a) In the event of any of the said sanctions and approvals not being obtained and/or the Scheme not being sanctioned by the Honorable High Court and/or the order(s) not being passed as aforesaid on or before 31st march, 2008 or within such further period or periods as may be agreed upon by and between the Board of Directors of Transferor Company and the Transferee Company, this Scheme shall stand revoked and cancelled and become null and void and be of no effect.
- (b) In the event any of the conditions that may be imposed by the Court and/or competent authority which the Transferor Company and/or the Transferee Company may find unacceptable for any reason or Board of Directors of the Transferor Company or Transferee Company decides otherwise, then they are at liberty to withdraw from the Scheme.
- (c) If any part of this Scheme is found to be unworkable for any reason whatsoever the same shall not, subject to the decision of the Transferor Company and the Transferee Company, affect the validity of or implementation of the other part and/or the provisions of this Scheme.

5.7 Expenses Connected with the Scheme:

All costs, charges and expenses of the Transferor Company and Transferee Company respectively in relation to or in connection with the Scheme and of carrying out and completing the terms and provisions of the Scheme and/or incidental to the completion of amalgamation of the terms in pursuance of this Scheme shall be borne and paid by the Transferee Company alone.

IN THE COURT OF JUDICATURE AT DELHI

ORIGINAL COMPANY JURISDICTION

COMPANY APPLICATION NO. 122 OF 2007

In the matter of the Companies Act, 1956

In the matter of Sections 391-394 of the Companies Act, 1956

In the matter of Scheme of Amalgamation of Stelmac Engineering Private Limited having its registered office at 806, Siddharth, 96 Nehru Place, New Delhi - 110 019, with HCL Infosystems Limited, a Company incorporated under the Companies Act, 1956 having its registered office at 806, Siddharth, 96 Nehru Place, New Delhi - 110 019

In the matter of Stelmac Engineering Private Limited)
a Company incorporated under the Companies) Applicant / Transferor Company
Act, 1956 and having its registered office at)
806, Siddharth, 96 Nehru Place, New Delhi.)

SCHEDULE

PART-I

- 1. Short description of the freehold property of the Transferor Company (Stelmac Engineering Private Limited) being transferred to the Transferee Company (HCL Infosystems Limited)**

Freehold property bearing office No. CTS No. 360, Village Marol, Andheri (East), Mumbai Suburban District, Old Military Road, Mumbai-400059 having an area (build up area) equivalent to 3103 sq. metres or thereabouts of the building known as "Stelmac House" consisting of ground and three floors belonging to Stelmac Engineering Private Limited situate, lying and being at CTS No. 360, Village Marol, Andheri (East), Mumbai Suburban District, Old Military Road, Mumbai - 400059

PART- II

- 2. Short description of the leasehold property of the Transferor Company (Stelmae Engineering Private Limited) being transferred to the Transferee Company (HCL Infosystems Limited)**

Nil

PART – III

- 1. Short description of all stocks, shares, debentures and other charges in action of the Transferor Company (Stelmac Engineering Private Limited) being transferred to the Transferee Company (HCL Infosystems Limited)**

All current assets, cash/bank balances and other miscellaneous assets as per the books of accounts of the Transferor Company and other rights, liberties, easements and advantages.

Dated this the 7th day of December, 2007
By order of the Court

Sd/-
Dy. Registrar (Co.)

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR BENCH, JAIPUR
COMPANY JURISDICTION**

COMPANY PETITION NO. 8 OF 2009

CONNECTED WITH

COMPANY APPLICATION NO. 6 OF 2009

IN THE MATTER OF COMPANIES ACT, 1956

AND

**IN THE MATTER OF SECTION 391 AND 394
OF THE COMPANIES ACT, 1956**

AND

IN THE MATTER OF SCHEME OF AMALGAMATION OF

NATURAL TECHNOLOGIES PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its registered office at E-26, Sidharth Nagar, Malviya Nagar, Jaipur, Rajasthan-302017

TRANSFEROR COMPANY

WITH

HCL INFOSYSTEMS LIMITED, a company incorporated under the Companies Act, 1956, and having its registered office at 806, Siddharth, 96, Nehru Place, New Delhi-110019.

TRANSFEEEE COMPANY

NATURAL TECHNOLOGIES PRIVATE LIMITED

...PETITIONER COMPANY

**Before the Hon'ble Acting Chief Justice R. C. Gandhi
Dated 29.5.2009**

ORDER UNDER SECTION 394 OF THE COMPANIES ACT, 1956

Upon the above petition coming on for further hearing on 29.5.2009 and upon reading etc. and upon hearing etc.

THIS COURT DOTH ORDER :

1. That all the property, rights and powers of the Transferor Company specified in the First, Second and Third parts of the Schedule-I hereto and all other property, rights and powers of the Transferor Company be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 394 (2) of the Companies Act, 1956 be transferred to and vest in the Transferee Company for all the estate and interest of the Transferor Company therein but subject nevertheless to all charges now affecting the same; and
2. That all the liabilities and duties of the Transferor Company be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 394 (2) of the Companies Act, 1956 be transferred to and become the liabilities and duties of the Transferee Company; and
3. That all the proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company; and

4. That there will be no issue and allotment of shares by the Transferee Company in consideration of amalgamation of the Transferor Company with the Transferee Company as the entire issued, subscribed and paid up share capital of the Transferor Company is held by the Transferee Company or its nominees which shall stand cancelled upon the scheme becoming effect; and
5. That the Transferor Company do within 14 days after the date of this order cause a certified copy of this to be delivered to the Registrar of Companies for Registration and on such certified copy being so delivered, the Transferor Company shall be dissolved without the process of winding up and the Registrar of Companies of the Transferor Company shall transfer all the documents relating to the Transferor Company to the Registrar of Companies having jurisdiction over the Transferee Company; and
6. That any person interested shall be at liberty to apply to the Court in the above matter for any directions that may be necessary; and

Schedule-I

SCHEDULE OF ASSETS OF TRANSFEROR COMPANY

PART I

(Short description of the freehold property of the transferor companies)

NIL

PART II

(Short description of the leasehold property of the transferor companies)

Sl. No.	PARTICULARS OF LAND AND BUILDING THEREON
1.	Leasehold property bearing plot no. G-215, F-214, Sitapura Industrial Area, Jaipur, 302 022 (INDIA) consisting of ground floor, pantry and store room belonging to Rajasthan State Industrial Development & Investment Corporation Ltd.

PART III

(Short description of all stocks, shares, debentures and other charges in action of the transferor companies)

All movable, tangible and intangible properties, assets, buildings, offices, investments of all kinds, lease and hire purchase contracts, licensing arrangements, lending contracts, benefit of any security arrangements, reversions, powers, authorities, allotments, approvals, consents, licenses, registrations, contracts, agreements, engagements, arrangements of all kind, rights, titles, interests, benefits, easements, and privileges, patents, trademarks, copyrights and other intellectual property rights of any nature whatsoever, permits, approvals, authorizations, rights to use telephones, telexes, facsimile, connections and installations, utilities, electricity and other services, reserves, provisions, funds, benefits of all agreements and all other interests.

Schedule-II
SCHEME OF AMALGAMATION
OF
NATURAL TECHNOLOGIES PRIVATE LIMITED
(Transferor Company)
WITH
HCL INFOSYSTEMS LIMITED
(Transferee Company)

PART I – INTRODUCTION, DEFINITIONS & INTERPRETATION, PURPOSE

1.1 INTRODUCTION

This Scheme of Amalgamation (hereinafter referred to as the “**Scheme**”) provides for the Amalgamation of Natural Technologies Private Limited with HCL Infosystems Limited. The Scheme is made pursuant to the provisions of Sections 391 to 394 and other relevant provisions of the Companies Act, 1956 (“**the Act**”).

1.2 DEFINITIONS AND INTERPRETATION

In the Scheme, unless repugnant to the meaning or context thereof, the following expressions shall have the meanings given below;

- (a) “**Act**” or “**the Act**” means the Companies Act, 1956 or any statutory amendments thereto or re-enactment thereof for the time being in force;
- (b) “**Appointed Date**” for the purposes of this Scheme means July 1, 2008 or such other date as the Honorable High Courts may direct;
- (c) “**Board**” or “**Board of Directors**” means the board of directors of the Transferor Company or the Transferee Company, as the case may be, and shall, unless it is repugnant to the context or otherwise, include a committee of directors or any person authorized by the board of directors or such committee of directors;
- (d) “**Effective Date**” shall mean the date on which certified copies of the orders of the Honorable High Court under Section 394 of the Act are filed with the Registrar of Companies NCT of Delhi and Haryana at New Delhi and the Registrar of Companies, State of Rajasthan, Jaipur (“**ROCs**”).

References in this Scheme to the date of the “coming into effect of this Scheme” or “effectiveness of this Scheme” shall mean the Effective date;

- (e) “**High Court**” means the Honorable High Court of Delhi at New Delhi having jurisdiction in respect of the Transferee Company and Honorable High Court of Judicature of Rajasthan at Jaipur having jurisdiction in respect of the Transferor Company and shall include National Company Law Tribunal or any other appropriate forum or authority empowered to approve the Scheme as per the law for the time being in force.

The term “High Court” shall mean either of the High Courts and the term “High Courts” shall mean both the High Courts as the context may require;

- (f) “**Scheme**” or “**the Scheme**” or “**this Scheme**” means the Scheme of Amalgamation in its present form, with or without any amendment or modifications, as approved for sanction by the High Courts;
- (g) “**Transferor Company**” means Natural Technologies Private Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at E-26, Sidharth Nagar, Malviya Nagar, Jaipur, Rajasthan - 302017. The Transferor Company is the wholly owned subsidiary of the Transferee Company;
- (h) “**Transferee Company**” means HCL Infosystems Limited which is a listed public limited company registered under the Companies Act, 1956, and having its registered office at 806, Siddharth, 96 Nehru Place, New Delhi-110019;

All terms and words not defined in this Scheme shall, unless repugnant or contrary to the context or meaning thereof, have the same meaning ascribed to them under the Act and other applicable laws, rules, regulations, bye-laws, as the case may be including any statutory amendments thereto or re-enactment thereof.

1.3 PURPOSE

The Transferor Company is engaged in the business of developing software products for Indian banking sector, having clients from various PSU, private sector, co-operative sector and regional rural sector banks. The Transferee Company is India's premier information enabling and Information Communication Technology ("ICT") System Integration company offering a wide spectrum of ICT products that includes computing, storage, networking, security, telecom, imaging and retail. The Transferee Company is a one-stop-shop for all the ICT requirements of any organization. The banking software products of Transferor Company are an integral part of solutions offered by Transferee Company to Banking, Financial Service and Insurance ("BFSI") customers and hence it would be more feasible if the Transferor Company is merged into the Transferee Company. Independent operation of Transferor and Transferee Company leads to significant overlaps in the business plans and overheads and the amalgamation would bring the expertise, banking products, technology, facilities under one roof. The amalgamation shall channelise synergies and shall lead to optimum utilisation of the available resources and shall result in economies of scale. Further, the amalgamation would also enable consolidation and further expansion of the Transferee Company. The amalgamation will contribute in furthering and fulfilling the objectives and business strategies of both the companies thereby accelerating growth, expansion and development of the business. The amalgamation will provide the Transferee Company a strong and focused base to undertake the business more advantageously and thereby enabling the increase in its profitability and net worth of its shareholders.

PART II – SHARE CAPITAL

2.1 The position of the authorized, issued, subscribed and paid up capital of the Transferor and Transferee Company as on May 31, 2008 is as follows:

Name of the Company	Authorized Share Capital	Issued Subscribed and Paid Up Capital
Natural Technologies Private Limited. ("Transferor Company")	Rs.50,00,000/- (Rupees Fifty Lacs Only) consisting of 5,00,000 Equity Shares of Rs.10/- each.	Rs.48,48,560/- (Rupees Forty Eight Lacs Forty Eight Thousands Five Hundred Sixty Only) consisting of 4,84,856 Equity Shares of Rs.10/- each.
HCL Infosystems Limited ("Transferee Company")	Rs.1,15,00,00,000/- (Rupees One Hundred Fifteen Crore Only) consisting of 55,00,00,000 Equity Shares of Rs. 2/- each aggregating to Rs. 1,10,00,00,000/- and 5,00,000 Preference Shares of Rs.100/- each aggregating to Rs.5,00,00,000/-	Rs.34,22,47,452 (Rupees Thirty Four Crore Twenty Two Lac Forty Seven Thousand Four Hundred Fifty Two Only) consisting of 17,11,23,726 Equity Shares of Rs.2/- each.

2.2 It is provided that till the Scheme becomes effective both the companies i.e. Transferor and the Transferee Company, are free to increase their share capital as required by respective businesses, including but not limited to enhancement of capital by issuing stock options to their employees, subject to the necessary approvals from their respective Boards and shareholders, if required.

PART III – THE SCHEME

3.1 With effect from the Appointed Date and subject to the provisions of the Scheme, including in relation to the mode of transfer or vesting, the entire business and undertakings of the Transferor Company including all movable and immovable properties, tangible and intangible properties, assets, buildings, offices, investments of all kinds, lease and hire purchase contracts, licensing arrangements, lending contracts, benefit of any security arrangements, reversions, powers, authorities, allotments, approvals, consents, licenses, registrations, contracts, agreements, engagements, arrangements of all kind, rights, titles, interests, benefits, easements, and privileges, if any of whatsoever nature and wherever situated belonging to or in the ownership, power or possession and in the control of or vested in or granted in favour of or enjoyed by the Transferor Company, including but without being limited to intellectual property rights of any nature whatsoever, permits, approvals, authorizations, rights to use telephones, telexes, facsimile connections and installations, utilities, electricity and other services, reserves, provisions, funds, benefits of all agreements and all other interests (hereinafter referred to as "said Assets") shall be transferred to and stand vested in and/or be deemed to be transferred to and stand vested in the Transferee Company as a going concern pursuant to the provisions of Section 391 read with 394 of the said Act and all other applicable provisions of the Act so as to become on, and from the Appointed Date, the estate, assets, rights, title and interests of the Transferee Company.

- 3.2 All the said Assets that have accrued or which may accrue to the Transferor Company on or after the Appointed Date shall pursuant to the provisions of Section 394 of the Act and without any further act, instrument or deed, be transferred to and stand vested in and/or be deemed to have been transferred to and vested in and be available to the Transferee Company.
- 3.3 Without prejudice to Clause 3.1 and 3.2 above, after the Scheme becomes effective, in respect of such of the said Assets of the Transferor Company as are movable in nature, or incorporeal property, or are otherwise capable of transfer by manual delivery or by endorsement and delivery, the same may be so transferred to the Transferee Company and shall upon such transfer become the property and an integral part of the Transferee Company. In respect of such of the said Assets other than those referred hereinabove, the same shall, without any further act, instrument or deed, be transferred and vested in and/or be deemed to be transferred to and vested in the Transferee Company pursuant to an order being made thereof under Section 394 of the Act.
- 3.4 With effect from the Appointed Date and upon the Scheme becoming effective, the land, with the buildings standing thereon, if any, held by Transferor Company, and any documents of title or rights and easements in relation thereto shall be vested in and transferred to and/or be deemed to have been transferred to and vested in the Transferee Company and shall belong to the Transferee Company. With effect from the Effective Date, the Transferee Company shall be liable for ground rent and municipal taxes in relation to properties subject to such taxes, if any. The mutation of title to the immovable properties shall be made and duly recorded by Rajasthan State Industrial Development and Investment Corporation Ltd. (RIICO) and/or such appropriate authorities pursuant to the sanction of the Scheme and upon the Scheme becoming effective in accordance with terms hereof in favour of the Transferee Company.
- 3.5 (a) All the licenses, permits, quotas, approvals, permissions, incentives, sales tax deferrals, loans, subsidies, concessions, grants, rights, claims, leases, tenancy rights, liberties, and other benefits or privileges enjoyed or conferred upon or held or availed of by and all rights and benefits that have accrued, which may accrue to the Transferor Company shall, pursuant to the provisions of Section 394(2) of the Act, without any further act, instrument or deed, be and stand transferred to and vested in and or be deemed to have been transferred to and vested in and be available to the Transferee Company so as to become as and from the Appointed Date the licenses, permits, quotas, approvals, permissions, incentives, sales tax deferrals, loans, subsidies, concessions, grants, rights, claims, leases, tenancy rights, liberties, and other benefits or valid, effective and enforceable on the same terms and conditions to the extent permissible under law and shall be duly and appropriately mutated or endorsed by the authorities concerned therewith in favour of the Transferee Company.
- (b) The tax deducted at source (TDS)/advance tax, if any, paid by the Transferor Company under the Income Tax Act, 1961 or any other statute in respect of income of the Transferor Company assessable for the period commencing from Appointed date shall be deemed to be the tax deducted from/advance tax paid by the Transferee Company and credit for such TDS/advance tax shall be allowed to the Transferee Company notwithstanding that certificates or challans for TDS/advance tax are in the name of the Transferor Company and not in the name of the Transferee Company.
- (c) The income tax, if any, paid by the Transferor Company on or after the Appointed Date, in respect of income assessable from that date, shall be deemed to have been paid by or for the benefit of the Transferee Company. The Transferee Company shall, after the Effective Date, be entitled to file the relevant returns with the authorities concerned for the period after the Appointed Date notwithstanding that the period for filing such return may have elapsed. Further Transferee Company shall, after the Effective Date, be entitled to revise the relevant returns, if any, filed by the Transferor Company for any year, if so necessitated or consequent to this Scheme; notwithstanding that the time prescribed for such revision may have elapsed.
- (d) The wealth tax, if any, paid by the Transferor Company in respect of the valuation date under the Wealth Tax Act, 1957, on or after the Appointed Date shall be deemed to have been paid by the Transferee Company. The Transferee Company shall, after the Scheme becomes effective, be entitled to file the wealth tax return for the valuation date as on March 31, 2009 or thereafter notwithstanding that the time prescribed for filing such returns may have lapsed. Further the Transferee Company shall, after the Scheme becomes effective, be entitled to revise the wealth tax returns if any, filed by the Transferor Company for any year if so necessitated or consequent to this Scheme; notwithstanding that the time prescribed for such revision may have elapsed.
- (e) Similarly, any other taxes including but not limited to service tax, fringe benefit tax, banking cash transaction tax, value added tax, sales tax, paid by the Transferor Company on or after the Appointed Date, in respect of the period after such date shall be deemed to have been paid by or for the benefit of the Transferee Company. The Transferee Company shall, after the Effective Date, be entitled to file the relevant returns with the authorities concerned for the period after the Appointed Date, notwithstanding that the time prescribed for filing such return may have

elapsed. Further the Transferee Company shall, after the Effective Date, be entitled to revise the relevant returns, if any, filed by the Transferor Company for any year, if so necessitated or consequent to this Scheme notwithstanding that the time prescribed for such revision may have elapsed.

- (f) Without prejudice to generality of the aforesaid, any concessional or statutory forms under the laws of the Central or State Sales Tax or Value Added Tax (**VAT**), or local levies issued or received by the Transferor Company, if any, in respect of period commencing from the Appointed Date shall be deemed to be issued or received in the name of the Transferee Company and benefit of such forms shall be allowable to the Transferee Company in the same manner and to the same extent as would have been available to the Transferor Company.
- 3.6 Since each of the permissions, approvals, consents, sanctions, remissions, special reservations, incentives, concessions and other authorizations of the Transferor Company shall stand transferred by the order of the Honorable Courts to the Transferee Company, the Transferee Company shall file the relevant intimations, for the record of the statutory authorities who shall take them on file, pursuant to the vesting orders of the sanctioning court.
- 3.7 On the coming into effect of the Scheme:
- (a) all motor vehicles of any nature whatsoever comprised in or relatable to the Transferor Company as the case may be, shall vest in the Transferee Company and appropriate Governmental and Registration Authorities shall mutate and register the said vehicles in the name of Transferee Company as if the vehicles had originally been registered in the name of Transferee Company.
- (b) all patents, trademarks, copyrights, if any, registered with the authorities concerned or applications submitted at any time on or before the Effective Date by the Transferor Company shall stand transferred and vested along with the undertaking in the name of Transferee Company without any further act or deed. The Transferee Company, however, shall after the Scheme becoming effective file the relevant intimation with the concerned statutory authority(ies) who shall take them on record pursuant to vesting orders of the sanctioning authority.
- 3.8 With effect from the Effective Date and until such time the names of the bank accounts of the Transferor Company are replaced with that of the Transferee Company, the Transferee Company shall be entitled to operate the bank accounts of the Transferor Company in its name, in so far as may be necessary.
- 3.9 The Transferee Company, at any time after the coming into effect of this Scheme, may execute deeds of confirmation in favour of any party to any contract or arrangement to which the Transferor Company is a party or any writings as may be necessary to be executed in order to give formal effect to the above provisions. The Transferee Company shall, under the provisions of this Scheme, be deemed to be authorized to execute any such writings on behalf of the Transferor Company to carry out or perform all such formalities or compliance, referred to above on the part of the Transferor Company to be carried out or performed.
- 3.10 Upon the coming into effect of the Scheme and with effect from the Appointed Date:
- (a) All secured and unsecured debts, liabilities including contingent liabilities, whether disclosed or undisclosed, duties, taxes and obligations of the Transferor Company along with any charge, encumbrance, lien or security thereon (hereinafter referred to as the "said Liabilities") shall also be vested or be deemed to be and stand vested, without any further act, instrument or deed, to the Transferee Company, pursuant to the provisions of Section 394 of the said Act so as to become the debts, liabilities, duties and obligations of the Transferee Company, and further that it shall not be necessary to obtain consent of any third party or other person who is a party to any contract or arrangement by virtue of which such debts, liabilities, duties and obligations have arisen in order to give effect to the provisions of this clause. It is clarified that in so far as the said Assets of the Transferor Company are concerned, the security or charge over said Assets or any part thereof, relating to any loans, debentures or borrowing of the Transferor Company, shall, without any further act or deed continue to relate to such Assets or any part thereof, after the Effective Date and shall not relate to or be available as security in relation to any or any part of the assets of the Transferee Company, save to the extent warranted by the terms of the existing security arrangements to which the Transferor Company and the Transferee Company are party, and consistent with the joint obligations assumed by them under such arrangement.
- (b) With effect from the Appointed Date and upon the Scheme becoming effective, the Transferee Company shall take all steps reasonably necessary to enter into new or amended loan or security agreements or instruments and the likes as may be necessary with the creditors, such that the Transferee Company shall assume the sole responsibility for repayment of borrowings allocated to it under the Scheme.

- (c) All debentures, bonds, notes or other securities, other than equity share capital, issued by the Transferor Company, if any, either before the Appointed Date or after the Appointed Date until the Effective Date (hereinafter referred to as "Transferor's Securities") shall without any further act, instrument or deed become securities of the Transferee Company and all rights, powers, duties and obligations in relation thereto shall be and stand vested in and shall be exercised by or against the Transferee Company as if it were the Transferor Company in respect of the Transferor's Securities so transferred.
 - (d) Loans, advances, including capital advances, and other obligations (including any guarantees, letters of credit, letters of comfort or any other instrument or arrangement which may give rise to a contingent liability in whatever form), if any, due or which may at any time in future become due between the Transferor Company and the Transferee Company shall stand discharged and there shall be no liability in that behalf on either party.
 - (e) In respect of the shares issued by the Transferor Company and held by the Transferee Company, the same shall stand cancelled as of the Effective Date, and shall be of no effect and the Transferor and Transferee Companies, shall have no further obligation outstanding in that behalf. Similarly, all the loans and advances extended by the Transferor Company to the Transferee Company and/or vice versa shall also stand cancelled and the Transferor Company and the Transferee Company, as the case may be, shall have no further obligation in that behalf.
- 3.11 Where any of the liabilities and obligations of the Transferor Company as on the Appointed Date transferred to the Transferee Company have been discharged by the Transferor Company after the Appointed Date and prior to the Effective Date, such discharge shall be deemed to have been for and on account of the Transferee Company.
- 3.12 All loans raised and utilized and all debts, duties, undertakings, liabilities and obligations incurred or undertaken by the Transferor Company in relation to or in connection with the Undertaking after the Appointed Date and prior to the Effective Date shall be deemed to have been raised, used, incurred or undertaken for and on behalf of the Transferee Company and to the extent they are outstanding on the Effective Date, shall, upon the coming into effect of this Scheme, pursuant to the provisions of Section 394(2) of the Act, without any further act, instrument or deed be and stand transferred to or vested in or be deemed to have been transferred to and vested in the Transferee Company and shall become the debt, duties, undertakings, liabilities and obligations of the Transferee Company
- 3.13 (a) With effect from the Appointed Date up to and including the Effective Date:
- (i) the Transferor Company shall carry on and shall be deemed to have carried on all its business and activities and shall hold and stand possessed of and shall be deemed to have held and stood possessed of all the said Assets for and on account of, and in trust for, the Transferee Company;
 - (ii) the Transferor Company shall carry on its business and activities with reasonable diligence and business prudence.
- (b) All profits or incomes accruing or arising to the Transferor Company or expenditure, or losses arising or incurred (including the effect of taxes, if any, thereon) by the Transferor Company on and after the Appointed Date shall, for all purposes, be treated and be deemed to be and accrue as the profits or incomes or expenditure or losses of the Transferee Company, as the case may be.
- 3.14 (a) Upon the coming into effect of this Scheme, all suits, actions and legal proceedings, if any, by or against the Transferor Company pending and/or arising on or before the Effective Date shall be continued and be enforced by or against the Transferee Company as effectually as if the same had been pending and/or arising by or against the Transferee Company.
- (b) The Transferee Company undertakes to have all legal or other proceedings initiated by or against the Transferor Company referred to in sub-clause (a) above transferred to its name and to have the same continued, prosecuted and enforced by or against the Transferee Company.
- 3.15 Upon the coming into effect of this Scheme, and subject to the provisions of this Scheme, all contracts, deeds, bonds, agreements, arrangements and other instruments (including all tenancies, leases, licenses and other assurances in favour of the Transferor Company or powers or authorities granted by or to it) of whatsoever nature to which the Transferor Company is a party or to the benefit of which the Transferor Company may be eligible, and which are subsisting or having effect immediately before the Effective Date, shall be in full force and effect against or in favour of the Transferee Company as the case may be and may be enforced as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party or beneficiary or obligee thereto. The Transferee Company shall, wherever

necessary, enter into and/or issue and/or execute deeds, writings or confirmations, enter into any tripartite arrangements, confirmations or novations to which the Transferor Company will, if necessary, also be a party in order to give formal effect to the provisions of this Clause.

- 3.16 There will be no issue and allotment of shares by the Transferee Company in consideration of amalgamation of the Transferor Company with the Transferee Company as the entire issued, subscribed and paid up share capital of the Transferor Company is held by the Transferee Company or its nominees which shall stand cancelled upon the Scheme becoming finally effective
- 3.17 The Transferee Company may, at any time after the coming into effect of this Scheme in accordance with the provisions hereof, if so required, under any law or otherwise, enter into, or issue or execute deeds, writings, confirmations, novations, declarations, or other documents with, or in favour of any party to any contract or arrangement to which the Transferor Company is a party or any writings as may be necessary to be executed in order to give formal effect to the above provisions. The Transferee Company shall, be deemed to be authorised to execute any such writings on behalf of the Transferor Company to carry out or perform all such formalities or compliances required for the purposes referred to above on the part of the Transferor Company.
- 3.18 Upon the coming into effect of this Scheme:
- (a) All the permanent employees in the service of the Transferor Company immediately preceding the Effective Date shall become employees of the Transferee Company on the basis that:
 - (i) their services shall be deemed to have been continuous and not have been interrupted by reasons of the said transfer.
 - (ii) the terms and conditions of service applicable to employees after such transfer shall not in any way be less favourable to them than those applicable to them immediately preceding the transfer.
 - (b) It is expressly provided that as far as the provident fund, gratuity scheme, superannuation scheme or any other special scheme(s) or fund(s) created or existing, if any, for the benefit of the employees of the Transferor Company are concerned, upon the coming into effect of this Scheme, the Transferee Company shall stand substituted for the Transferor Company for all purposes whatsoever, related to the administration or operation of such schemes and intent that all the rights, duties, powers and obligation of the Transferor Company in relation to such schemes shall become those of the Transferee Company. It is clarified that the services of the employees of the Transferor Company will be treated as having been continuous for the purpose of the aforesaid schemes.
 - (c) The Transferee Company will file the relevant intimations to the statutory authorities concerned who shall take the same on record and endorse the name of the Transferee Company for the Transferor Company.
- 3.19 Upon the Scheme being effective, the Transferee Company shall account for amalgamation or merger in its books as specified hereunder:
- (a) All the said Assets and the said Liabilities recorded in the books of the Transferor Company shall stand transferred to and vested in the Transferee Company pursuant to the Scheme and shall be recorded by the Transferee Company at their carrying amount as appearing in the books of the Transferor Company.
 - (b) An amount equal to the balance lying in the "Profit and Loss Account" as appearing in the balance sheet of the Transferor Company shall be taken over by the Transferee Company and included in the balance of its Profit and Loss Account.
 - (c) As on the Appointed Date, and subject to any corrections and adjustments as may, in the opinion of the Board of the Transferee Company be required, the reserves including the securities premium account, revaluation reserve account of the Transferor Company will be merged with those of the Transferee Company in the same form as appeared in the financial statements of the Transferor Company.
 - (d) Further, in case of any difference in accounting policy between the Transferor Company and the Transferee Company, the impact on account of change in the accounting policy to achieve uniformity on account of amalgamation will be quantified and adjusted in the revenue reserve(s) to ensure that the financial statements of the Transferee Company reflect the financial position on the basis of consistency in the accounting policy.

- (e) The excess, if any, of the aggregate value of the said Assets reduced by the aggregate value of the said Liabilities, balance in Profit & Loss Account and reserves of the Transferor Company after adjustment of inter-se loans and investments, if any, pursuant to the Scheme, recorded by the Transferee Company upon their transfer to and vesting in the Transferee Company under the Scheme shall be credited to an "Amalgamation Reserve Account" and the same shall be treated as reserve forming part of the net worth of the Transferee Company. However, in case of reverse situation, after recording the necessary entries as envisaged in para (a) to (c) hereinabove, the difference shall be first adjusted against the revaluation reserve account and the balance, if any, shall be adjusted from the profit & loss account and free reserve of the Transferee Company.

PART IV – OTHER CONDITIONS APPLICABLE TO THE SCHEME
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- 4.1 (a) With effect from the date of filing of this Scheme with the High Court and upto and including the Effective Date, the Transferor Company and the Transferee Company shall be entitled to declare and pay dividends, whether interim or final, to their respective shareholders in respect of the accounting period after the Appointed Date and prior to the Effective Date.
- (b) Until the coming into effect of this Scheme, the shareholders of the Transferor Company and the Transferee Company shall, save as expressly provided otherwise in this Scheme, continue to enjoy their existing rights under their respective articles of association including the right to receive dividends.
- (c) It is clarified that the aforesaid provisions in respect of declaration of dividends, whether interim or final, are enabling provisions only and shall not be deemed to confer any right on any shareholder of any of the Transferor Company and/or the Transferee Company to demand or claim any dividends which, subject to the provisions of the Act, shall be entirely at the discretion of the respective Boards of Directors of the Transferor Company and the Transferee Company and subject, wherever necessary, to the approval of the shareholders of the Transferor Company and the Transferee Company, respectively.
- 4.2 Upon the coming into effect of this Scheme:
- (a) the resolutions, if any, of the Transferor Company, which are valid and subsisting on the Effective Date, shall be continue to be valid and subsisting and be considered as resolutions of the Transferee Company and if any such resolutions have upper monetary or other limits being imposed under the provisions of the Act, or any other applicable provisions, then the said limits shall be added and shall constitute the aggregate of the said limits in the Transferee Company.
- (b) the borrowing limits of the Transferee Company in terms of Section 293(1)(d) of the said Act, shall without further act or deed stand enhanced by an amount being the aggregate liabilities of the Transferor Company which are being transferred to the Transferee Company pursuant to this Scheme and the Transferee Company will not be required to pass any fresh resolution(s) in this regard.
- 4.3 Transferor Company and the Transferee Company shall with all reasonable dispatch, make all applications/petitions under Sections 391 and 394 and other applicable provisions of the Act to the High Court for sanctioning of this Scheme and for dissolution of the Transferor Company without winding up under the provisions of law, and obtain all approvals as may be required under law.
- 4.4 (a) The Transferor Company and the Transferee Company (acting through their respective Board) may assent from time to time on behalf of all persons concerned to any modifications or amendments or additions to this Scheme or to any conditions or limitations which either the Boards of Directors of the Transferor Company and the Transferee Company deem fit, and/or which the High Court and/or any other authorities under law may deem fit to approve of or impose and which the Transferor Company and the Transferee Company may in their discretion deem fit and to resolve all doubts or difficulties that may arise for carrying out this Scheme and to do and execute all acts, deeds, matters and things necessary for bringing this Scheme into effect, or to review the position relating to the satisfaction of the conditions to this Scheme and if necessary, to waive any of those (to the extent permissible under law) for bringing this Scheme into effect.
- (b) Transferor Company and the Transferee Company shall have the discretion to withdraw their application/petition from the Hon'ble High Court, if any, onerous terms or other terms not acceptable to them are introduced in the Scheme whether at the meetings of shareholders/creditors or at the time of sanction of the Scheme. They shall

also be at liberty to render the Scheme ineffective by not filing the certified order of the sanctions of the Scheme with ROCs. However, the necessary intimation may be filed by both the Transferor and the Transferee Company with Hon'ble High Court of their decision not to file the Scheme and make it effective.

- (c) For the purpose of giving effect to this Scheme or to any modifications or amendments thereof or additions thereto, the Board of the Transferor Company and Transferee Company may give and are authorised to determine and give all such directions as are necessary including directions for settling or removing any question of doubt or difficulty that may arise and such determination or directions, as the case may be, shall be binding on all parties, in the same manner as if the same were specifically incorporated in this Scheme.

4.5 This Scheme is conditional upon and subject to:

- (a) the consents by the requisite majority of the shareholders and creditors of the Transferor and Transferee Company to the Scheme, if required and the requisite orders of the Hon'ble High Court sanctioning the Scheme in exercise of the powers vested in it under the Act;
- (b) such other sanctions and approvals including sanctions of any government or regulatory authority as may be required by law in respect of the Scheme, and
- (b) The certified copies of the High Court order being filed with relevant ROCs.

4.6 In the event of this Scheme failing to take effect finally this Scheme shall become null and void and in that event no rights and liabilities whatsoever shall accrue to or be incurred inter se by the parties or their shareholders or creditors or employees or any other person. In such case each Company shall bear its own costs or as may be mutually agreed.

4.7 If any part of this Scheme hereof is ruled illegal or invalid by, or is not sanctioned by the Hon'ble High Court, or is unenforceable under present or future laws, or which otherwise is considered unnecessary, undesirable or inappropriate at any stage by the Board of Directors of the Transferor Company and the Transferee Company, then it is the intention of the parties that such part shall be severable from the remainder of the Scheme, and the Scheme shall not be affected thereby, unless the deletion of such part shall cause this Scheme to become materially adverse to any party, in which case the parties shall attempt to bring about a modification in the Scheme, as will best preserve for the parties the benefits and obligations of the Scheme, including but not limited to such part.

4.8 The Transferor Company shall be dissolved without winding up with effect from the date on which the certified copy of the Order, under Section 394 of the Act, of the Hon'ble High Court of Delhi sanctioning the Scheme is filed with the ROC.

4.9 The approval to this Scheme under Sections 391 and 394 of the Act by the shareholders and/or creditors of the Transferor and Transferee Companies, shall be deemed to have the approval of the shareholders and/or creditors, as the case may be, under the applicable provisions of the Act, rules and regulations made there under.

4.10 All costs, charges and expenses, including any taxes and duties of the Transferor Company and Transferee Company respectively in relation to or in connection with this Scheme and incidental to the completion of the amalgamation of the Transferor Company in pursuance of this Scheme shall be borne and paid by the Transferee Company.

Dated this 30th day of June, 2009

(By the Court)

Registrar

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

JAIPUR BENCH, JAIPUR

COMPANY JURISDICTION

COMPANY PETITION NO. 8 OF 2009

CONNECTED WITH

COMPANY APPLICATION NO. 6 OF 2009

IN THE MATTER OF COMPANIES ACT, 1956

AND

IN THE MATTER OF SECTION 391 AND 394

OF THE COMPANIES ACT, 1956

AND

IN THE MATTER OF SCHEME OF AMALGAMATION OF

NATURAL TECHNOLOGIES PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its registered office at E-26, Sidharth Nagar, Malviya Nagar, Jaipur, Rajasthan-302017

TRANSFEROR COMPANY

WITH

HCL INFOSYSTEMS LIMITED, a company incorporated under the Companies Act, 1956, and having its registered office at 806, Siddharth, 96, Nehru Place, New Delhi-110019.

TRANSFeree COMPANY

NATURAL TECHNOLOGIES PRIVATE LIMITED

...PETITIONER COMPANY

**PETITION TO SANCTION THE SCHEME OF AMALGAMATION
BETWEEN NATURAL TECHNOLOGIES PRIVATE LIMITED
AND HCL INFOSYSTEMS LIMITED**

To,

S. B. Civil Company Petition No. 8/09
Hon'ble Mr. R. C. Gandhi, Actg. C.J.

Date of Order : 29.5.2009

Mr. Sandeep Taneja } for the petitioner
Mr. Satwinder Singh }
Mr. Kamlakar Sharma for the Regional Director
(Oral)

This petition has been presented under Section 391 to 394 of the Companies Act, 1956 (for short, "the Companies Act"), seeking sanction of the Scheme of Amalgamation by the Court.

The Scheme of Amalgamation proposes merger of the petitioner transferor company into transferee company on the terms and conditions stipulated in it. The Board of Directors of the petitioner transferor company have approved the Scheme in its Meeting held on 13.6.2008.

Petitioner Company filed Company Application No. 6/2009 before this Court under Sections 391 and 393 of the Companies Act seeking holding of meetings of their respective shareholders and creditors. This Court vide order dated 6.2.2009 has directed to convene separate meetings of the shareholders and secured and unsecured creditors of the petitioner company on 28.3.2009 at F-214, G-215, EPIP, Sitapura Industrial Area, Jaipur. The meetings were held by the Chairman appointed by this Court. In their respective meetings, the shareholder, secured and unsecured creditors unanimously approved the Scheme of Amalgamation. It is also stated that no proceedings under Sections 235 to 251 of the Companies Act are pending against the petitioner company.

Notices have been served upon the Official Liquidator and Regional Director, Ministry of Corporate Affairs, Noida and also published in the News-papers. The Official Liquidator has no objection. However, the Regional Director has raised objection that the petitioner company be asked to furnish an undertaking that it shall comply with the Accounting Treatment as prescribed under Accounting Standard 14 i.e. "Accounting for Amalgamation" issued by the Institute of Chartered Accountants of India. It is submitted by the learned counsel of the petitioner company that in its rejoinder it has been undertaken to comply with the Accounting Treatment as prescribed under Accounting Standard 14. Under these circumstances the Scheme of Amalgamation is sanctioned, which shall be binding on the shareholders and Creditors of the Company and on the petitioner Company.

The Registrar is directed to draw formal order in Form No. 42 of the Companies (Court) Rules, 1959.

The petition stands disposed of accordingly.

(R. C. Gandhi), Acting C.J.

IN THE HIGH COURT OF DELHI

COMPANY APPLICATION (MAIN) NO.124/2008

Date of decision: 11th August, 2008.

In the matter of

The Companies Act, 1956:

And

**Applications under Sections 391(1) &
394 of the The Companies Act, 1956**

Scheme of Amalgamation between:

M/s. Natural Technologies Pvt. Ltd.Non-Applicant / Transferor Company

AND

M/s. HCL Infosystems Ltd. Applicant / Transferee Company

**Through Mr. Satwinder Singh with
Mr. NPS Chawla & Ms. Divya Suman,
Advocates for the applicants**

GITA MITTAL, J (Oral)

1. Learned counsel submits that the applicants have, in fact, prayed for dispensation of filling of 2nd Motion under Section 391 of the Companies Act, 1956 for the reason that the scheme of amalgamation is between the applicant-transferee company and its wholly owned subsidiary company and there is no impact on the assets or liabilities of the transferee company or on the rights of the secured and unsecured creditors. He submits that by an oversight the prayer to this effect was not incorporated in the petition as filed and makes an oral request to add this prayer. He is permitted to make the necessary addition in hand in court.
2. The present application has been filed under Section 391(1) & 394 of the Companies Act, 1956 (hereinafter referred to as 'the Act') filed by M/s HCL Infosystems Ltd. (hereinafter referred to as the 'applicant / transferee company'). The parties before this court seek approval of a Scheme of Amalgamation proposed between them.
3. The applicant-transferee company was incorporated on 17th April, 1986 with the Registrar of Companies, NCT of Delhi and Haryana at New Delhi. The registered office of M/s. HCL Infosystems Ltd. Applicant-transferee company is located at New Delhi, which is within the jurisdiction of this court. A copy of the Memorandum & Articles of Association of the company have been placed on record.
4. The registered office of the transferor company is located at Rajasthan, which is outside the jurisdiction of this Court. Learned counsel for the transferee company submits that the appropriate steps have been taken for approval of the scheme of amalgamation from the concerned High Court exercising jurisdiction over the said transferor company.
5. The authorised share capital of the applicant-transferee company as on 30th June, 2008 was Rs. 1,10,00,00,000/- divided into 55,00,00,000 equity shares of Rs. 2/- each and Rs. 5,00,00,000/- divided into 5,00,000 preference shares of Rs.100/- each. The issued subscribed and paid up shares capital of the transferee company is Rs. 34,22,99,312/- consisting of 17,11,49,656 equity shares of Rs. 2/- each. The applicant/transferee company has 30418 shareholders, 1 secured creditor and 4035 unsecured creditors as on 30.06.2008.
6. A copy of the Scheme of Amalgamation has been placed on record. It is submitted that the meetings of the shareholders, secured and unsecured creditors of the transferee company are not necessary in view of the fact that the transferor company is the profit making wholly owned subsidiary of transferee company and the rights of the equity shareholders, secured creditors and the unsecured creditors of the transferee company would not be affected by the proposed Scheme of Amalgamation. It has been submitted that the scheme of Amalgamation is in the best interest of the transferor and transferee companies, their shareholders and secured creditors as well as unsecured creditors and moreover the Scheme does not in any way prejudice the interest of its constituents.
7. The board of directors of the applicant-transferee company in its separate vide Board of Resolution dated 10th June, 2008 have resolved to approve the proposed Scheme of Amalgamation. Copies of the resolutions passed by the transferee company has been placed on record.

8. Learned counsel for the applicant urged that there is non necessary of making a separate application by the transferee company under sections 394 and 391 of the Companies Act for sanction of the Scheme of Amalgamation as the scheme postulates amalgamation of the transferee company with its wholly owned subsidiary. In this behalf, it would be useful to consider the judicial precedents on the subject which would bind adjudication in such a case. In the mater of **Nanglamal Sugar Limited (Nanglamal) Vs. Mawana Sugars Limited** in CA(M) 141/2005 decided by this Court on 27th September, 2005, it has been held thus:-

“CA 1349/05 is filed by along with this petition in which prayer made is to dispense with the holding of the meeting of the shareholders and creditors of the Transferee Company as well as filing of the petition by the transferee company. It is, inter alia, stated that since the transferee company is the 100% holding company of the transferor company, the proposed scheme of amalgamation does not entail or envisage any arrangement with the shareholders of the transferee company. The transferor company is wholly owned subsidiary of the Transferee Company and in any event, neither the shareholders nor the creditors of the Transferee Company are affected. In such a case, there would not be any requirement for the Transferee Company to file any application / petition under Section 391 to 394 of the Companies Act, 1956 and in support of this plea reliance is placed on the following judgments of different High Courts including judgment of this Court:

9. My attention is drawn to the pronouncement in **Andhra Bank Housing Finance Ltd. In re, (2004) 118 Comp Cas.295** (paras 18 & 19), the court has held as under:-

“18. a consistent view has been taken by the Bombay High Court, that if the scheme of amalgamation is in between the subsidiary and holding company, the holding company need not file a separate application. In the first instance, holding company, namely, Andhra Bank obtained the necessary permission from the Reserve Bank of India as it is governed by the provisions of Banking Companies Regulation Act, 1949. The proposed scheme of amalgamation is not in any manner prejudicial to the members of either the subsidiary or holding companies or prejudicial to public interest. It does not affect the rights of the members of the transferee company or its creditors. The scheme to be sanctioned is the self-same scheme either for the transferor company or for the transferee company. The subsidiary company here is the 100% subsidiary of the Andhra Bank. For the above reasons, in my considered view, there is nothing to file a separate application by the holding company seeking sanction of the scheme.

19. For the foregoing reasons, I see no legal impediment for according necessary sanction for the scheme of amalgamation between a subsidiary company and the holding company and the petition is, therefore, ordered.”

10. In **Mahaamba Investments Ltd. Vs. IDI Limited (2001), 105 Comp. Gas.16**, the court has held this:-

“4. in the present case, having regard to the relevant clauses of the proposed scheme and particularly the provisions whereby non new shares are sought to be issued to the members of the transferor-company by the transferee-company, the scheme will not affect the members of the transferee-company. The Creditors of the transferee company are not likely to be affected by the scheme in view of the financial position of the transferee-company. In paragraphs 13 and 14 of the affidavit in support of the company application, the financial position of transferor and transferee-companies has been set out and which would show that in so far as the transferor-company is concerned, it has an excess of assets over liabilities to the extent of Rs. 508 lakhs whereas in the case of the transferee-company, there is an excess of assets over liabilities to the extent of Rs. 6,900 lakhs.

5. In the circumstances, the office objection is accordingly disposed of with the clarification that filing of a separate petition by the transferee-company is not necessary. In the facts and circumstances of the present case.

11. The same issued arose for consideration before the High Court of Andhra Pradesh in the case titled **Nebula Motors Ltd. (CP No. 1/2003) decided on 23.04.2003**. It was held that:-

“7. The Registrar of Companies in his affidavit inter alia, however, mentioned that since the transferor company is at Hyderabad and Transferee Company is at New Delhi, the scheme shall have to be sanctioned by both the High Courts at Hyderabad and Delhi; and that the transferee company has not filed any such application.

9. The only point, therefore, that arises for my determination in this Company Petition is as to whether it is necessary for the transferee company to seek the sanction of the Scheme from the appropriate High Court?

11. A perusal of the said provision (Section 391 of the Companies Act, 1956) shows that where the application is filed before the Court for its sanction of an arrangement proposed between the transferor company and the transferee company and from the arrangement if it is shown that the scheme for the amalgamation of any two or more companies and the properties or liabilities of any company concerned with the scheme are to be transferred. The Company Court in its order make a provision for the transfer of the properties or liability from the transferor company to the transferee company; for the continuation of legal policies, or other like interests; for the continuation of legal proceedings pending by or against the transferor company; for the dissolution without winding up of any transferor company; and such incidental or consequential and supplemental matters that are necessary for the reconstruction of the amalgamation of the companies. Under the two provisos incorporated under Sub-section (1), conditions have been set forth for the consideration of the Court for sanctioning such a scheme, namely, that such a scheme for amalgamation of a company which is being wound up shall not be sanctioned until and unless the Court has received a report from the company Law Board or the Registrar to the effect that the affairs of the company have not been conducted in a manner

prejudicial to the interest of its members or to public interest; and until and unless the Official Liquidator has made a report to the Court that the affairs of the company have not been conducted in a manner prejudicial to the interest of its members or to public interest. No other conditions have been set forth except the two referred to supra for the consideration of the Court before sanctioning the scheme. If those two conditions are satisfied from a perusal of the reports filed by the Registrar of companies and the Official Liquidator, the scheme shall have to be automatically sanctioned. Nothing in this section which shows that an application is got to be made by the transferor company as well as the transferee company separately having regard to the fact that the proposed scheme shall not be prejudicial to the interests of the members of the company or to public interest.

14. It is mentioned in the petition that it is not necessary to file an application by the transferee company. The learned counsel appearing for the petitioner company seeks to place reliance upon a Judgment of the Bombay High Court in *Mahaamba Investments Ltd. V. IDI Ltd.* [2001] 105 Comp. Cas. 16, 33 SCL 383; a Judgment of the Delhi High Court *Sharat Hardware Industries (P.) Ltd., In re* [1978] 48 Comp. Cas. 23, a Judgment of the Bombay High Court in *Bank of India Ltd. V. Ahmedabad Mfg. & Calico Printing Co. Ltd.* [1972] 42 Comp. Cas. 211 and unreported Judgments of the Bombay High Court *Voltas International Ltd., In re;* and *Scheme of Amalgamation of Clique Holdings (P.) Ltd., In re.*
20. Having regard to the parameters enunciated by the Apex Court in *Miheer H. Mafatlal's Vs. Mafatlal Industries Ltd.* (1996) 87 Comp. Cas. 792 the sanctioning Court has to consider that the scheme put up for sanction is backed up by the requisite majority vote as required by Section 391(2) of the Act; and that the said scheme is not violative of any provision of law and is not contrary to public policy; and that the members or creditors of the company have acted bona fide and in good faith and have not coerced the minority in order to promote any interest adverse to the minority; apart from the indicia laid down by the Apex Court as to whether the scheme does affect the members or its creditors either because it involves reorganization of the share capital or otherwise as laid down by the Bombay High Court in *Bank of India Ltd.'s* case (supra). For examining any of these parameters, the facts of the case and the proposed scheme of amalgamation are got to be seen. It is no doubt true that whether the rights of the members or any class of them or the creditors or any class of them of the transferee company would in any way be affected under the proposed scheme, has to be seen by the sanctioning Court within whose territorial jurisdiction the transferee company is situate. However, on an examination of the scheme any of the two Courts in whose territorial jurisdiction the transferor company as well as the transferee company are situate can consider whether the proposed scheme involves reorganization of the share capital or otherwise. Well, in the proposed scheme, if such reorganization of the share capital is not there and when the 100 per cent subsidiary company is seeking to amalgamate with its holding company where the scheme is not detrimental in any manner to the interests of the members or creditors of the transferee company, in my considered view, that there is no need to examine the scheme by the Court within whose territorial jurisdiction the transferee company is situate. In that view of the matter, the sanctioning Court which has been approached by the transferor company can just examine the scheme and see whether it does effect the rights of the members or creditors of the transferee company as it either because it involves reorganization of its share capital or otherwise and in the process the Court can certainly come to the conclusion that whether it is a case where the application is got to be presented before the Court for sanctioning of the scheme insofar as the transferee company is concerned. Having regard to the same, I am of the considered view that it is not trenching upon the jurisdiction of any other Court by the sanctioning Court which has been approached by the transferor company and it is well within its purview.

Coming to the facts of the instant case, the scheme does not involve any reorganization or restructuring of the shares of the members of the transferee company. Therefore, the rights of the members of the transferee company have not been in any manner touched upon. It is nothing but the amalgamation of the subsidiary company with the holding company for the convenience of the business and for efficient administration. Therefore, for the reasons discussed hereinabove, there is no need for the transferee company to approach the Court for necessary sanction of the scheme.”

12. Again ***In the matter of Sharat Hardware Industries Ltd. (1978) 48 Comp. Cas. 23***, it has been held as follows:-

“ I also noticed that the transferor-company (the petitioner) was a wholly-owned subsidiary company of the transferee-company and, therefore, it was not necessary for the transferee-company to approve the scheme. The reason I reached this conclusion was that Section 391 of the Act deals with two special cases: (a) when there is a compromise or arrangement between a company and its creditors or any class of them and (b) where the compromise or arrangement is between a company and its members or any class of members. Considered from the point of view of the petitioner-company there is a scheme affecting the members of the company because as a result of the scheme, the transferor-company will cease to exist and will be fully merged in the transferee-company. When the scheme comes into operation, the shareholders of the petitioner-company will cease to have any shares in the petitioner-company; therefore, there is a compromise between the petitioner-company and its shareholders. Considered from the point of view of the transferee-company, there is no such proposal. The assets and liabilities of the petitioner-company will be appropriated under the scheme by the transferee company, the shareholding and other rights of the members of the transferee-company will be unaffected, because no new shares are being issued and there is not going to be any change in the capital structure of the transferee-company. These are facts which are ascertainable on an analysis of the scheme; therefore, the scheme or arrangement considered from the point of view of the transferee-company is not a scheme or arrangement coming within

the field of operation of Section 391 and does not seem to require the approval of creditors or a subsequent sanction by the court. Now, two other cases have been brought to my notice in which the question whether the transferee-company is also required to approve the scheme, has been considered. Those two cases are in re Carron Tea Co. Ltd. [1966] 2 Com. Lj 278 (Cal) decided by the Calcutta High Court and in re Union Services Private Ltd. [1973] 43 Comp. Case 319 (Mad) decided by the Madras High Court; although both these cases are somewhat different on facts, the decision in both cases was that the scheme does require the approval of the transferee-company under Section 391 of the Act. In both cases there was some change affecting the members or creditors of the transferee-company. That position is not true in the present case. The point that requires analysis is whether, in law, the present scheme requires that approval of the transferee-company, because if it does, it would be pointless approving the scheme which could not be carried into effect qua the transferee-company.

5. For this purpose, it is necessary to keep in view the essential features of a scheme or arrangement. In essence, a scheme is a contract between two or more parties. It requires the necessary approval in accordance with Section 391 of the Act, if it is a scheme covered by that provision, otherwise any other contract entered into by a company does not require such approval. The essential features of the present scheme under consideration are that two companies are merging with each other, therefore, it is a contract between companies. Such a contract does not require the approval of the court. But as one of these companies will merge into the other and will thereafter have to be dissolved under Section 394 of the Companies Act, 1956, considered from the point of view of that company which is to cease to exist, the scheme or arrangement between the two companies is also a scheme or arrangement between the transferor-company and its shareholders and creditors, etc. That is why the scheme requires to be placed for consideration in the manner required by Section 391. It also requires the sanction of the court. Seen from the point of view of the transferee-company, the agreement is essentially a contract which does not affect the creditors or members of the transferee-company in any manner. Therefore, the scheme does not require to be sanctioned from the point of view of the transferee-company under Section 391 of the Act. However, if the scheme had some flaws whereby the rights of the transferee-company were affected, it would require the approval of those persons at a meeting or meetings held in accordance with Section 391 and would also require the sanction of the court having jurisdiction which in this case would be the Calcutta High Court."

The prayer made in this CA is accordingly allowed and it is declared that there is no necessity for the transferee company to file any petition under Section 391 to 394 of the Companies Act."

13. Learned counsel for the transferee company has also placed reliance on an order dated 12th September, 2006 passed by this court in C.A. (M) No. 151/2006 in the matter of HCL Infinet Limited.
14. From the facts placed before this court and an examination of the scheme of amalgamation, it has been pointed out that the transferor company is profit making wholly owned subsidiary of the transferee-company and no arrangement is proposed with the equity shareholders, secured and unsecured creditors of the transferee company. All rights of the equity shareholders and the secured and unsecured creditors would remain the same. As per the scheme, there shall be no issuance or allotment of shares of the transferee company in consideration of the amalgamation of the transferor company with the transferee company as the entire issued / subscribed and paid up share capital of the transferor company is held only by the transferee company or its nominees. Upon the scheme becoming finally effective, the issued / subscribed and paid up share capital of the transferor company shall stand cancelled.
15. So far as the approval of the scheme of amalgamation by the shareholders, secured and unsecured creditors of the transferor company is concerned, the applicant has stated that Natural Technologies Pvt. Ltd. is having its registered office at Jaipur in the State of Rajasthan and a separate application with regard to the proposed amalgamation is being moved before the High Court of Judicature of Rajasthan at Jaipur having jurisdiction with regard to the transferor company.

In view of the settled principles of law noticed hereinabove, inasmuch as upon the scheme being effectuated, the transferor company would cease to exist. It would be necessary to have appropriate sanction of the scheme from the High Court of Rajasthan at Jaipur in respect of the transferor company.

16. So far as the transferee company is concerned, as per the facts noticed hereinabove, nothing prejudicial to the interests of the members of the company or to public interest has been pointed out. In the light of the principles laid down in paras 14 and 20 of Nebula Motors Ltd., nothing further is require to be done by the transferee company.
17. In view of the above discussion, the requirement to convene and hold meetings of the transferee company is consequently dispensed with. The requirement to publish citations in the case of the transferee company is also dispensed with.
18. The resent application is allowed in the above terms.

Dasti

August 11, 2008
rds

Sd/-
GITA MITTAL, J

IN THE HIGH COURT OF DELHI AT NEW DELHI

DASTI

No. 21821/I DHC

Dated 25-09-13

From:

The Registrar
Delhi High Court
New Delhi.

To:

Mr. Rishi Aggarwal, Advocate for the Petitioners

Sub. CP No. 404/2013

In the Matter of : HCL Infosystems Ltd. & Ors.

Sir,

I am directed to forward herewith a copy of order passed by Hon'ble Company Judge on 18.09.2013 for information and necessary compliance.

Please acknowledge receipt.

Yours faithfully

Sd/-
Harish Kumar
24.9.13
for Admn. Officer (J) (CO. Br.)
for Registrar General

IN THE HIGH COURT OF DELHI AT NEW DELHI

CO. PET. No. 404/2013

HCL Infosystems Limited & OrsPetitioners

Through: Mr. S. Ganesh, Sr. Advocate with Mr. Rishi Agrawal and Mr. Rajeev Kumar, Advocates for the Petitioners

Mr. K.S. Pradhan, Dy. Registrar of Companies for the Regional Director

Mr. S. B. Gautam, the Official Liquidator

CORAM:

HON'BLE MR. JUSTICE R.V. EASWAR

**ORDER
18.09.2013**

1. This second motion joint petition has been filed under Section 391 to 394 of the Companies Act, 1956 ('Act') by the Petitioners seeking sanction of the Scheme of Arrangement ('Scheme') between HCL Infosystems Limited (Petitioner company 1), HCL System Integration Limited (Petitioner company 2), HCL Care Limited (Petitioner company 3), HCL Learning Limited (Petitioner company 4) and HCL Infocom Limited (Petitioner company 5) [hereinafter collectively referred to as 'Petitioner companies'] and their respective shareholders and creditors.
2. The registered offices of the Petitioner companies are situated at New Delhi, within the jurisdiction of this Court.
3. The details of the dates of incorporation of the Petitioner companies, their authorized, issued, subscribed and paid up capital have been set out in the petition.
4. The copies of the Memorandum and Articles of Association as well as the latest audited annual accounts for the year ended 30th June 2012 of the Petitioner companies 1 & 5 and unaudited provisional accounts as on 31st March 2013 of the Petitioner companies 2, 3 & 4 have been placed on record.

5. The copies of the resolutions passed by the Boards of Directors ('BoDs') of the Petitioner companies approving the Scheme have also been placed on record with the petition.
6. Learned counsel for the Petitioners submits that no proceedings under Sections 235 to 251 of the Act are pending against the Petitioner companies.
7. The Petitioner companies had earlier filed CA (M) No. 67 of 2013 in this Court seeking directions for dispensation of requirement of convening the meetings of the equity shareholders and unsecured creditors of the Petitioner companies 2, 3, 4 & 5 and for directions for convening the meeting of the equity shareholders, secured creditors and the unsecured creditors of the Petitioner company 1. By order dated 22nd May 2013, this Court allowed the application and dispensed with the requirement of convening the meetings of the equity shareholders and unsecured creditors of the Petitioner company 2, 3, 4 & 5. Further, this Court directed to convene the meeting of the equity shareholders, secured creditors and the unsecured creditors of the Petitioner company 1. Pursuant to the direction of this Court the proposed meetings were convened on 20th July 2013. The chairpersons appointed in the said meeting submitted their report whereby it has been stated that the proposed scheme was approved by the equity shareholder, secured creditors and the unsecured creditors of the Petitioner company 1 with the requisite majority.
8. The Petitioner companies have thereafter filed the present petition seeking sanction of the Scheme. By order dated 6th August 2013, notice of the Petition was directed to be issued to the Registrar of Companies (ROC), Central Government (RD) and the Official Liquidator (OL). Citations were also directed to be published in 'Indian Express' (English) and 'Jansatta' (Hindi). An affidavit of service and publication dated 26th August 2013 has been filed by the Petitioners showing compliance regarding service of the Petition and also regarding publication of citations in the aforesaid newspapers on 16th August 2013. Copies of the newspaper cuttings, in original, containing the publications have also been filed along with the said affidavit.
9. Pursuant to the notices issued, the OL sought information from the Petitioner companies. Based on the information received, the OL has filed his report dated 17th September 2013 wherein he has stated that he has not received any complaint against the proposed Scheme from any person/party interested in the Scheme in any manner and that the affairs of the Petitioner company 5 do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest.
10. The OL in Para no. 16 of his report has observed that the Petitioner company 1 is a listed company, therefore, the Petitioner companies may be directed to comply the provisions of Securities and Exchange Board of India (SEBI).
11. In response to the above said observation the Petitioners has filed rejoinder affidavit dated 18th September 2013, wherein the Petitioner company 1 undertakes to comply with the provisions of the SEBI, as applicable.
12. In response to the notices issued, the RD has filed his affidavit dated 17th September 2013. Relying on Clause 10.1 of Part-II of the Scheme, he has stated that all the staff/employees of the Demerged company (Petitioner company 1) engaged in "Hardware Solutions Business Undertaking, Services Business Undertaking and Learning Business Undertaking" and as per Clause No 22.1 of Part-III of the Scheme all the staff/employees of the Transferor company (Petitioner company 5) shall become the employees of the Transferee company (Petitioner Company I) without any break or interruption in their services upon sanctioning the Scheme.
13. Further, the RD has observed as follows:
 - i. *As there is no mention whether the Petitioner companies have complied with Accounting Standard-14 (AS-14) issue by the Institute of Chartered Accountants of India (ICAI), the Petitioner companies may be asked to comply with/adopt accounting treatment as prescribed under (AS-14) issue by the ICAI.*
 - ii. *As certain charges are proposed to be transferred from the Demerged company (Petitioner company 1) to the Resulting companies (Petitioner companies 2, 3 & 4), the RD submits that a company cannot be substituted in the charge documents as such for satisfaction of charge, the company is required to file form no. 17.*
 - iii. *It is submitted by the RD that Section 391/394 of the Act is made applicable in order to comply with the requirement of Section 2(19AA) of the Income Tax Act, 1961. Further, the conditions levied under section 2(19AA) of the Income Tax Act, 1961 is not complied with. As such the proposed Scheme is not within the purview of Section 391/394 of the Act read with Section 2(19AA) of Income Tax Act, 1961. It is simply a sale of assets of company. In case such approval is given for simple sale & purchase of assets it would put bar on scrutiny of such sale of assets by other regulators under other statute such as Transfer of Property Act, Registration Act, Stamp Act, Income Tax Act etc.*
 - iv. *The name of the companies can be changed/alterd only after following the procedure prescribed under the Act and filing the necessary e-forms, therefore, the Resulting companies (Petitioner companies 2, 3 & 4) may he asked to follow the procedure prescribed under the Act and to file the necessary e-forms.*
 - v. *The Demerged company (Petitioner company I) may be asked to comply with the conditions raised by the National Stock Exchange (NSE) & Bombay Stock Exchange (BSE).*
14. In reply to the above said observation, a rejoinder affidavit dated 17th September 2013 has been filed by Mr. Sushil Kumar Jain, authorized signatory of Petitioners and oral submissions were also made on the point of applicability of the provisions of the Income Tax, 1961:-
 - i. *That the Petitioner companies undertake to comply with the AS-14 issued by the ICAI, wherever applicable.*
 - ii. *That the Petitioner companies undertake to follow the necessary procedure and file the necessary forms as prescribed under the relevant provision of the Act with the Registrar of the Companies (ROC) for the transfer of the charges on approval of the Scheme.*

- iii. *Learned counsel for the Petitioner submits that the observations, pertaining to the conditions levied under Section 2(19AA) of the Income Tax Act, 1961 is not complied with, holds no good as a judgment of this Court in **INDO RAMA TEXTILE LTD in CP No. 4/2003 dated 23rd July 2012**, Para 47 to 49 has the observation that - if the Scheme is not tax compliant, then the tax authority will levy capital gain tax, if any; and compliance under section 2(19AA) of the Income Tax Act, 1961 is relevant only for the purposes for determining whether the Scheme is tax neutral or not; and in view of Section 2(19AA) the Scheme must necessarily comply with Section 2(19AA) which is meant for availing tax concession cannot be read as a mandatory requirement for all schemes of amalgamation/ arrangement/demerger under section 391/392/394 of the Act.*

Further, the Petitioners submitted that provisions of the Income Tax Act are only relevant from the point of view of levy of income tax on a transaction. A scheme of arrangement may not be tax neutral and the arrangement sought to be effected through the Scheme may attract levy of income tax. It was further submitted that the High Court order does not grant exemption from levy of income tax, stamp duty and other charges, which the Petitioner companies may be liable to pay on implementation of the Scheme. My attention was also drawn to the standard clause of the order passed by this Court on sanctioning of Scheme which clearly provides that this order will not be construed as an order granting exemption from payment of stamp duty or any other charges, if payable, in accordance with any law; or permission/compliance with any other requirement which may be specifically required under any law.

- iv. *That the Petitioner companies undertake to follow the necessary procedure and file the necessary forms as prescribed under the relevant provisions of the Act with the ROC to place on record the name change on approval of the Scheme.*
- v. *That the Petitioner company undertakes to comply with all the conditions prescribed by NSE and BSE, while giving their 'No-objection' to the Scheme of Arrangement.*

In view of the above said submission, observations made by the Regional Director no longer survive.

15. No objection has been received to the Scheme from any other party. Mr. Sushil Kumar Jain, authorized signatory of the Petitioner companies, has filed an affidavit dated 16th September 2013, confirming that neither the Petitioner companies nor their counsel has received any objection pursuant to citations published in the newspapers.
16. In view of the approval accorded by the shareholders, secured creditors and the unsecured creditors of the Petitioner companies, affidavit/report filed by the RD and the OL to the proposed Scheme, the rejoinder affidavits filed by the Petitioners and the submissions made by the learned counsel for the Petitioners, there appears to be no impediment to the grant of sanction to the Scheme. Consequently, Sanction is hereby granted to the Scheme under Sections 391 and 394 of the Act. The Petitioner companies will comply with the statutory requirements in accordance with law.
17. The certified copy of the order will be filed with the ROC within 30 days from the date of receipt of the same. In terms of the provisions of Sections 391 and 394 of the Act, and in terms of the Scheme:-
- i the whole of the undertaking, the properties, rights and powers of the Hardware Solutions Business Undertaking, Service Business Undertaking and Learning Business Undertaking of Petitioner company 1 shall be transferred to and vest in the Petitioner company 2, Petitioner company 3 and Petitioner company 4, respectively without any further act or deed. Similarly, in terms of the Scheme, all the liabilities and duties of the Hardware Solutions Business Undertaking, Service Business Undertaking and Learning Business Undertaking of Petitioner company 1 shall be transferred to and vest in the Petitioner company 2, Petitioner company 3 and Petitioner company 4, respectively without any further act or deed.
- ii the whole of the undertaking, the properties, assets, rights and powers of the Petitioner company 5 shall be transferred to and vest in the Petitioner company 1 without any further act or deed. Similarly, in terms of the Scheme, all the liabilities and duties of the Petitioner company 5 shall be transferred to the Petitioner company 1 without any further act or deed. Upon the Scheme coming into effect, the Petitioner company 5 shall stand dissolved without winding up.
18. It is, however, clarified that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable in accordance with any law; or permission/ compliance with any other department which may be specifically required under any law.
19. Learned counsel for the Petitioners submits that the Petitioner companies would voluntarily deposit a sum of Rs. 1,00,000/- in the Common Pool Fund of the OL within three weeks from today. The statement is taken on record.
20. The petition stands allowed in the above terms.

Order be given dasti.

SEPTEMBER 18th, 2013
vld (M)

Sd/-
R. V. EASWAR J.

The Seal of the Delhi High Court, New Delhi

IN THE HIGH COURT OF DELHI AT NEW DELHI

(ORIGINAL COMPANY JURISDICTION)

COMPANY PETITION NO. 404/ 2013

CONNECTED WITH

COMPANY APPLICATION (M): 67/2013

MEMO OF PARTIES

IN THE MATTER OF SCHEME OF ARRANGEMENT OF:

HCL Infosystems Limited, a company incorporated under the Companies Act, 1956 and having its registered office at 806, Siddharth, 96, Nehru Place, New Delhi - 110 019.

PETITIONER COMPANY 1

AND

HCL System Integration Limited, a company incorporated under the Companies Act, 1956 and having its registered office at 806, Siddharth, 96, Nehru Place, New Delhi - 110 019

PETITIONER COMPANY 2

AND

HCL Care Limited, a company incorporated under the Companies Act, 1956 and having its registered office at 806, Siddharth, 96, Nehru Place, New Delhi - 110 019

PETITIONER COMPANY 3

AND

HCL Learning Limited, a company incorporated under the Companies Act, 1956 and having its registered office at 806, Siddharth, 96, Nehru Place, New Delhi - 110 019

PETITIONER COMPANY 4

AND

HCL Infocom Limited, a company incorporated under the Companies Act, 1956 and having its registered office at 806, Siddharth, 96, Nehru Place, New Delhi - 110019.

PETITIONER COMPANY 5

FILED BY
[MAHESH AGARWAL]
AGARWAL LAW ASSOCIATES
34, BABAR LANE, FIRST FLOOR
BENGALI MARKET
NEW DELHI-110 001
PH: 23354330/23738122

PLACE: NEW DELHI

DATE: 31/7/2013

IN THE HIGH COURT OF DELHI AT NEW DELHI

(ORIGINAL JURISDICTION)

IN THE MATTER OF THE COMPANIES ACT, 1956

AND

IN THE MATTER OF SCHEME OF ARRANGEMENT OF

COMPANY PETITION NO. 404 OF 2013

CONNECTED WITH

COMPANY APPLICATION (M) NO. 67 OF 2013

HCL Infosystems Limited,
having its registered office at:
806, Siddharth,
96, Nehru Place,
New Delhi - 110019.

...Petitioner Company 1

AND

HCL System Integration Limited,
having its registered office at:
806, Siddharth,
96, Nehru Place,
New Delhi - 110019.

...Petitioner Company 2

AND

HCL Care Limited,
having its registered office at:
806, Siddharth,
96, Nehru Place,
New Delhi - 110019.

...Petitioner Company 3

AND

HCL Learning Limited,
having its registered office at:
806, Siddharth,
96, Nehru Place,
New Delhi - 110019.

...Petitioner Company 4

AND

HCL Infocom Limited,
having its registered office at:
806, Siddharth,
96, Nehru Place,
New Delhi - 110019.

...Petitioner Company 5

(Hereinafter individually referred to as HIL, HCL SI, HCL Care, HCL Learning and HCL Infocom, respectively and collectively referred to as "Petitioner Companies")

ORDER UNDER SECTION 394 OF THE COMPANIES ACT, 1956

The above petition came up for hearing on 18.09.2013 for sanction of the Scheme of Arrangement proposed to be made amongst HCL Infosystems Limited (hereinafter referred to as Petitioner Company 1), HCL System Integration Limited (hereinafter referred to as Petitioner Company 2), HCL Care Limited (hereinafter referred to as Petitioner Company 3), : HCL Learning Limited (hereinafter referred to as Petitioner Company 4) and HCL Infocom Limited (hereinafter referred to as Petitioner Company 5). The Court examined the Petition, the Order dated 22/05/2013 passed in CA(M) 67/2013, whereby the requirement of convening meetings of Equity Shareholders and Unsecured Creditors of the Petitioner Companies 2, 3, 4 and 5 for the purpose of considering and if thought fit approving with or without modification, the Scheme of Arrangement annexed to the Affidavit dated 17.05.2013 of Sh. Sushil Kumar Jain, Authorized Signatory of the Petitioner Companies were dispensed with and meeting of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Petitioner Company 1 were convened (there being no secured creditors of Petitioner Companies 2,3,4 and 5) and the publication in the newspapers namely 'Indian Express' (English) and 'Jansatta' (Hindi) both dated 20.06.2013 for convening of meetings and the Chairpersons reports dated 26.07.2013 of meeting of equity shareholders and unsecured creditors and report dated 25.07.2013 for the meeting of Secured Creditors and the publication in the newspapers namely 'Indian Express' (English) and `Jansatta' (Hindi) dated 16.08.2013 containing the notice of the Petition.

The Court also examined the affidavit dated 17.09.2013 of the Regional Director, Northern Region, Ministry of Corporate Affairs and approved the proposed scheme of Arrangement.

Upon hearing Mr. S. Ganesh, Sr. Advocate with Mr. Rishi Agarwal, and Mr. Rajeev Kumar, Advocates for the petitioners, Mr. K.S. Pradhan, Dy. Registrar of Companies for Regional Director (Northern Region) and Mr. S.B. Gautam, Official Liquidator and in view of the approval of the Scheme of Arrangement without any modification by the Equity Shareholders and Creditors of the Petitioner Companies and in view of the report dated 17.09.2013 of the Official Liquidator stating therein that the affairs of the Petitioner Companies do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest and there being no investigation proceedings pending in relation to the Petitioner Companies under Section 235 to 251 of the Companies Act, 1956.

THIS COURT DOTH HEREBY SANCTION THE SCHEME OF ARRANGEMENT under Section 391 and 394 of the Act as set forth in Schedule-I annexed hereto and Doth hereby declare the same to be binding on all the Equity Shareholders and Creditors of the Petitioner Companies and all concerned and doth approve the said Scheme of Arrangement with effect from the appointed i.e. 01.01.2013.

THE COURT DOTH FURTHER ORDER:

1. That in terms of the scheme, the whole of the undertaking, the properties, rights and powers of the Hardware Solutions Business Undertaking, Services Business undertaking and Learning Business Undertaking of Petitioner company 1 as specified in Schedule-II shall be transferred to and vest in the Petitioner Company 2, Petitioner Company 3 and Petitioner Company, 4, respectively without any further act or deed.
2. That in terms of the Scheme, all the liabilities and duties of the Hardware Solutions Business Undertaking, Services Business Undertaking and Learning Business Undertaking of Petitioner Company 1 shall be transferred to and vest in the Petitioner Company 2, Petitioner Company 3 and Petitioner Company 4, respectively without any further act or deed and.
3. That in terms of the scheme, the whole of the undertaking, the properties, assets, rights and powers of the Petitioner Company 5 as specified in Schedule -III shall be transferred to and vest in the Petitioner Company 1 without any further act or deed.
4. That in terms of the Scheme, all the liabilities and duties of the Petitioner Company 5 shall be transferred to the Petitioner Company 1 without any further act or deed. Upon the Scheme coming into effect, the Petitioner Company 5 shall stand dissolved without winding up; and
5. That all the proceedings now pending by or against the Hardware Solutions Business Undertaking, Services Business undertaking and Learning Business Undertaking of Petitioner Company 1 be continued by or against the Petitioner Company 2, Petitioner Company 3 and Petitioner Company 4 respectively. Similarly all the proceedings now pending by or against the Petitioner Company 5 be continued by or against the Petitioner Company 1; and;
6. That the Petitioner Companies do within. 30 days after the date of receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Petitioner Company 5 shall be dissolved without undergoing the process of winding up; and
7. It is clarified that this order will not be construed as an order granting exemption from payment of stamp duty that is payable in accordance with law; and
8. That any person interested shall be at liberty to apply to the Court in the above matter for any directions that may be necessary

SCHEME OF ARRANGEMENT**BETWEEN****HCL Infosystems Limited****AND****HCL System Integration Limited****AND****HCL Care Limited****AND****HCL Learning Limited****AND****HCL Infocom Limited****AND****THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS****A. PREAMBLE**

HCL Infosystems Limited ('HIL'), a Company incorporated under the provisions of the Companies Act, 1956 having its Registered Office at 806, Siddharth, 96, Nehru Place, New Delhi - 110 019, India, is engaged in varied businesses such as computing and mobility, system integration, distribution, learning and IT services such as break-fix services, infrastructure management services and application services.

This Scheme of Arrangement (hereinafter referred to as "Scheme") provides for transfer and vesting of the Hardware Solutions Business undertaking of HIL into HCL System Integration Ltd; transfer and vesting of the Services Business Undertaking into HCL Care Ltd; transfer and vesting of the Learning Business Undertaking into HCL Learning Ltd and merger of HCL Infocom Limited into HIL on a going concern basis, pursuant to the provisions of Sections 391-394 read with Sections 100-103 and other applicable provisions of the Companies Act, 1956 and/or Rules/Regulations made thereunder.

This Scheme also provides for various other matters consequential or otherwise integrally connected therewith.

B. RATIONALE FOR THE PROPOSED SCHEME:

HCL System Integration Ltd ('HCL SI'); HCL Care Ltd ('HCL Care'); HCL Learning Ltd ('HCL Learning') and HCL Infocom Limited ('HCL Infocom') are wholly owned subsidiaries of HIL.

The Board of Directors of HIL are of the view that the transfer and vesting of Hardware Solutions Business Undertaking; Services Business Undertaking and Learning Business Undertaking into HCL SI, HCL Care and HCL Learning respectively, is in the interest of all concerned including the shareholders, creditors, employees and general public as it would provide:

1. Focused management orientation to each of the businesses with specialization and leadership vision;
2. Greater transparency and visibility on the operational and financial performance of each business;
3. Higher degree of independence as well as accountability with autonomy for each of the business segments;
4. Potential for strategic partnership for growth of the business by permitting new joint ventures to come into existence in the future in specialized and segregated business; and
5. Flexibility for fund raising capability for each of the companies for future growth and expansion

As a part of the restructuring, HCL Infocom is proposed to be merged with HIL, to achieve the following benefits:

- Reducing administrative cost;
- Removing multiple layer inefficiencies; and
- Achieving operational and management efficiency.

- In consideration of the above mentioned business rationale and related benefits, reciprocal promises and this arrangement, this Scheme between HIL, HCL SI, HCL Care, HCL Learning and HCL Infocom is being proposed in accordance with the terms set out hereunder.

C) PARTS OF THE SCHEME

This Scheme of Arrangement is divided into the following parts:

- PART I** deals with the Definitions and Share Capital
- PART II** deals with transfer and vesting of the Hardware Solutions Business Undertaking, Services Business Undertaking and Learning Business Undertaking of HIL into HCL SI, HCL Care and HCL Learning respectively
- PART III** deals with merger of HCL Infocom with HIL
- PART IV** deals with general terms and conditions applicable to this Scheme

PART I

DEFINITIONS AND SHARE CAPITAL

1 DEFINITIONS

In this Scheme of Arrangement (as defined hereunder), unless inconsistent with the subject or context, the under mentioned expressions shall have the following meaning:

- 1.1 “Act” or “The Act”** means the Companies Act, 1956, or any statutory modification or re-enactment thereof for the time being in force.
- 1.2 “Appointed Date”** means January 1, 2013, or such other date as may be approved by the High Court of Judicature at New Delhi or any other appropriate authority.
- 1.3 “Board of Directors” or “Board”** in relation to HIL, HCL SI, HCL Care, HCL Learning and HCL Infocom means the board of directors of HIL, HCL SI, HCL Care, HCL Learning and HCL Infocom as the case may be, shall include the committee or sub-committee of directors.
- 1.4 “Court”** means the High Court of Delhi at New Delhi, and shall include the National Company Law Tribunal, if applicable.
- 1.5 “Effective Date”** means the date on which the certified copies of the Orders of the Court or any other appropriate authority under Sections 391 to 394 read with Sections 100 to 103 of the Act sanctioning the Scheme are filed with the Registrar of Companies, NCT of Delhi and Haryana by HIL, HCL SI, HCL Care, HCL Learning and HCL Infocom.

Explanation: Any reference in the Scheme to “Upon the Scheme becoming effective” or “effectiveness of the Scheme” shall mean the Effective Date.
- 1.6 “Financial statements”** would include stand alone and consolidated accounts
- 1.7 “Hardware Solutions Business Undertaking”** means the Hardware Solutions business including but not limited to sale of office automation, security, hardware solutions sold to enterprises & government and systems integration business (however excluding the Computing Products Manufacturing and Channel business) carried on by HIL, on a going concern basis, comprising, inter alia, the assets and liabilities relating thereto and which shall mean and include (without limitation):

- All assets (wherever situated), whether movable or immovable, tangible or intangible, leasehold or freehold, including all land, buildings, plant and machinery, offices, capital work in progress, furniture, fixtures, office equipments, investments (including investment in shares of foreign subsidiaries); current assets, loans and advances, deposits, receivables, funds, cash, bank balances, accounts and all other rights, benefits of all agreements, subsidies, grants, incentives, bills of exchange, letters of intent and loans and advances appearing in the books of accounts of HIL pertaining to or relatable to the Hardware Solutions Business.
- All rights, entitlements, approvals, licenses, registrations, certifications, consents, permissions, brands, logos, engagements, arrangements, municipal permissions, cash balances, financial assets, funds belonging to or proposed to be utilized for the Hardware Solutions Business; bank balances, balances with Government, excise department, tax authorities both state and central government bank accounts, security deposits, privileges, recoverable, receivables, advantages, all other rights and benefits, in connection with or relating to the Hardware Solutions Business.
- All secured and unsecured debts, liabilities present or future (including contingent liabilities), duties, undertakings and obligations pertaining to the Hardware Solutions Business of every kind, nature and description whatsoever and howsoever arising in connection with or relating to the Hardware Solutions Business.
- All existing and future contracts, RFPs, bids, responses to EOI, memorandum of understanding, entitlements,

industrial and other licenses, municipal permissions, approvals, consents, tenancies in relation to any joint venture or other arrangement which may be entered into by HIL in respect of business relating or incidental to the Hardware Solutions Business.

- e) All the past track record of HIL relating to the Hardware Solutions Business, including without limitation, the profitability, production volumes, experience, credentials (including awards and accolades), certifications, accreditations and market share pertaining to or relating to the Hardware Solutions Business.
- f) All employees of HIL employed who are substantially engaged in the Hardware Solutions Business as identified by the Board of Directors of HIL.
- g) All records, files, papers, computer programs, manuals, data, catalogues, quotations, sales and advertising materials, labels, lists of present and former customers and suppliers, customer credit information, customer pricing information, and other records, whether in physical form or electronic form in connection with or relating to the Hardware Solutions Business.

Any question that may arise as to whether a specified asset or liability pertains to or does not pertain to the Hardware Solutions Business Undertaking or whether it arises out of the activities or operations or is to be included in the Hardware Solutions Business Undertaking shall be decided by mutual agreement between the Board of Directors of HIL and HCL SI.

1.8 “Services Business Undertaking” means the Services business including but not limited to, IT infrastructure managed services, break-fix services, cloud services, after-sales support services, enterprise application services, software development & support services, office automation maintenance services, managed print services and telecom & consumer electronics support services carried on by HIL, on a going concern basis, comprising, inter alia, the assets and liabilities relating thereto and which shall mean and include (without limitation):

- a) All assets (wherever situated), whether movable or immovable, tangible or intangible, leasehold or freehold, including all land, buildings, plant and machinery, offices, capital work in progress, furniture, fixtures, office equipments, investments (including investments in shares of foreign subsidiaries), current assets, loans and advances, deposits, receivables, funds, cash, bank balances, accounts and all other rights, benefits of all agreements, subsidies, grants, incentives, bills of exchange, letters of intent and loans and advances appearing in the books of accounts of HIL pertaining to or relating to the Services Business.
- b) All rights, entitlements, approvals, licenses, registrations, certifications, warranty service entitlements, consents, permissions, brands, logos, engagements, arrangements, municipal permissions, cash balances, financial assets, funds belonging to or proposed to be utilized for the Services Business; bank balances, balances with Government, excise department, tax authorities both state and central government bank accounts, security deposits, privileges, recoverable, receivables, advantages, all other rights and benefits, in connection with or relating to the Services Business.
- c) All secured and unsecured debts, liabilities present or future (including contingent liabilities), duties, undertakings and obligations pertaining to the Services Business of every kind, nature and description whatsoever and howsoever arising in connection with or relating to the Services Business.
- d) All existing and future contracts, RFPs, bids, responses to EOI, memorandum of understanding, entitlements, industrial and other licenses, municipal permissions, approvals, consents, tenancies in relation to any joint venture or other arrangement which may be entered into by HIL in respect of business relating or incidental to the Services Business.
- e) All employees of HIL employed who are substantially engaged in the Services Business as identified by the Board of Directors of HIL.
- f) All records, files, papers, computer programs, manuals, data, catalogues, quotations, sales and advertising materials, labels lists of present and former customers and suppliers, customer credit information, customer pricing information, and other records, whether in physical form or electronic form in connection with or relating to the Services Business.

Any question that may arise as to whether a specified asset or liability pertains to or does not pertain to the Services Business Undertaking or whether it arises out of the activities or operations or is to be included in the Services Business Undertaking shall be decided by mutual agreement between the Board of Directors of HIL and HCL Care Ltd.

1.9 “Learning Business Undertaking” means the Learning business including but not limited to, training services and educational content software offerings for private schools, colleges and other education institutes and vocational training carried on by HIL, on a going concern basis, comprising, inter alia, the assets and liabilities relating thereto and which shall mean and include (without limitation):

- a) All assets (wherever situated), whether movable or immovable, tangible or intangible, leasehold or freehold,

including all land, buildings, plant and machinery, offices, capital work in progress, furniture, fixtures, office equipments, investments, current assets, loans and advances, deposits, receivables, funds, cash, bank balances, accounts and all other rights, benefits of all agreements, subsidies, grants, incentives, bills of exchange, letters of intent and loans and advances appearing in the books of accounts of HIL pertaining to or relating to the Learning Business.

- b) All rights, entitlements, approvals, licenses, registrations, certifications, consents, permissions, brands, logos, engagements, arrangements, municipal permissions, cash balances, financial assets, funds belonging to or proposed to be utilized for the Learning Business; bank balances, balances with Government, excise department, tax authorities both state and central government bank accounts, security deposits, privileges, recoverable, receivables, advantages, all other rights and benefits, in connection with or relating to the Learning Business.
- c) All secured and unsecured debts, liabilities present or future (including contingent liabilities), duties, undertakings and obligations pertaining to the Learning Business of every kind, nature and description whatsoever and howsoever arising in connection with or relating to the Learning Business.
- d) All existing and future contracts, RFPs, bids, responses to EOI, memorandum of understanding, entitlements, industrial and other licenses, municipal permissions, approvals, consents, tenancies in relation to any joint venture or other arrangement which may be entered into by HIL in respect of business relating or incidental to the Learning Business.
- e) All employees of HIL employed who are substantially engaged in the Learning Business as identified by the Board of Directors of HIL.
- f) All records, files, papers, computer programs, manuals, data, catalogues, quotations, sales and advertising materials, labels lists of present and former customers and suppliers, customer credit information, customer pricing information, and other records, whether in physical form or electronic form in connection with or relating to the Learning Business.

Any question that may arise as to whether a specified asset or liability pertains to or does not pertain to the Learning Business Undertaking or whether it arises out of the activities or operations or is to be included in the Learning Business Undertaking shall be decided by mutual agreement between the Board of Directors of HIL and HCL Learning Ltd.

- 1.10 **“HCL Care”** means HCL Care Limited, a Company incorporated under the Companies Act, 1956 having its Registered Office at 806, Siddharth, 96, Nehru Place, New Delhi - 110 019. HCL Care is a wholly owned subsidiary of HCL Infocom.
- 1.11 **“HCL SI”** means HCL System Integration Limited, a Company incorporated under the Companies Act, 1956 having its Registered Office at 806, Siddharth, 96, Nehru Place New Delhi - 110 019. HCL SI is a wholly owned subsidiary of HCL Infocom.
- 1.12 **“HCL Infocom”** means HCL Infocom Limited, a Company incorporated under the provisions of Companies Act, 1956 having its Registered Office at 806, Siddharth, 96, Nehru Place, New Delhi - 110 019. HCL Infocom is a wholly owned subsidiary of HIL.
- 1.13 **“HCL Learning”** means HCL Learning Limited, a Company incorporated under the Companies Act, 1956 having its Registered Office at 806, Siddharth, 96, Nehru Place, New Delhi - 110 019. HCL Learning is a wholly owned subsidiary of HCL Infocom.
- 1.14 **“HIL”** means HCL Infosystems Limited, a Company incorporated under the Companies Act, 1956 having its at Registered Office at 806, Siddharth, 96, Nehru Place, New Delhi - 110 019.
- 1.15 **“Law”** or **“Applicable Law”** includes all applicable statutes, enactments, acts of legislature or Parliament, laws, ordinances, rules, bye-laws, regulations, notifications, guidelines, policies, directions, directives and orders of any government, statutory authority, tribunal, board, court or recognized stock exchange of India or any other country or jurisdiction as applicable.
- 1.16 **“Parties”** means HIL, HCL SI, HCL Care, HCL Learning and HCL Infocom collectively.
- 1.17 **“Remaining Business”** means and includes all business of HIL other than that comprised in the Hardware Solutions Business Undertaking, Services Business Undertaking and Learning Business Undertaking.
- 1.18 **“Scheme”** or **“the Scheme”** or **“this Scheme”** means this Scheme of Arrangement as set out herein and approved by the Board of Directors of the Parties, subject to such modifications as the Court may impose or the Parties may prefer and the Court may approve.
- 1.19 **“Transferee Companies”** means HCL SI, HCL Care and HCL Learning collectively

1.20 “Transferred Undertakings” means the Hardware Solutions Business Undertaking, Services Business Undertaking and Learning Business Undertaking collectively

All terms and words not defined in this Scheme shall, unless repugnant or contrary to the context or meaning thereof, have the same meaning prescribed to them under the Act and other applicable laws, rules, regulations, bye-laws, as the case may be or any statutory modification or re-enactment thereof from time to time.

2 DATE OF TAKING EFFECT AND OPERATIVE DATE

The Scheme set out herein in its present form or with any modification(s) approved or imposed or directed by the Court or any other appropriate authority shall be operative from the Appointed Date but shall be effective from the Effective Date.

3 SHARE CAPITAL

3.1 The authorized and paid-up share capital of HIL as on June 30, 2012 as per the last audited balance sheet, is as under:

Particulars	Rupees
Authorized Capital	
55,00,00,000 Equity Shares of Rs 2/- each	1,10,00,00,000
5,00,000 Preference Shares of Rs. 100/- each	5,00,00,000
Total	1,15,00,00,000
Issued, Subscribed and Paid-up Capital	
22,28,79,629 Equity Shares of Rs 2/- each, fully paid up	44,57,59,258
Total	44,57,59,258

Subsequent to the above Balance Sheet date and till the date of approval by the Board of Directors to the said Scheme there is no change in the Share Capital Account.

3.2 The authorized and paid-up share capital of HCL SI as on incorporation date September 28, 2012, is as under:

Particulars	Rupees
Authorised Capital	
50,000 Equity Shares of Rs 10/- each	5,00,000
Total	5,00,000
Issued, Subscribed and Paid-up	
50,000 Equity Shares of Rs 10/- each	5,00,000
Total	5,00,000

Post incorporation there has been no additions/changes to the Share Capital account.

3.3 The authorized and paid-up share capital of HCL Care as on incorporation date September 28, 2012, is as under:

Particulars	Rupees
Authorised Capital	
50,000 Equity Shares of Rs 10/- each	5,00,000
Total	5,00,000
Issued, Subscribed and Paid-up	
50,000 Equity Shares of Rs 10/- each	5,00,000
Total	5,00,000

Post incorporation there has been no additions/changes to the Share Capital account.

- 3.4 The authorized and paid-up share capital of HCL Learning as on incorporation date September 28, 2012, is as under:

Particulars	Rupees
Authorised Capital	
50,000 Equity Shares of Rs 10/- each	5,00,000
Total	5,00,000
Issued, Subscribed and Paid-up	
50,000 Equity Shares of Rs 10/- each	5,00,000
Total	5,00,000

Post incorporation there has been no additions/changes to the Share Capital account.

- 3.5 The authorized and paid-up share capital of HCL Infocom as on June 30, 2012, is as under:

Particulars	Rupees
Authorised Capital	
5,00,000 Equity Shares of Rs 10/- each	50,00,000
Total	50,00,000
Issued, Subscribed and Paid-up	
3,30,000 Equity Shares of Rs 10/- each	33,00,000
Total	33,00,000

Subsequent to the above Balance Sheet date, the Company has issued 1,49,500 (One lakh forty nine thousand and five hundred only) fully paid up equity shares of Rs 10 (Rupees Ten only) each at par and thus the paid-up equity share capital has increased to 4,79,500 (Four lakh seventy nine thousand and five hundred) equity shares of Rs 10 (Rupees Ten only) each, fully paid-up aggregating to Rs 47,95,000 (Rupees forty seven lakhs ninety five thousand only).

PART II

TRANSFER OF THE TRANSFERRED UNDERTAKINGS

4 TRANSFER AND VESTING OF TRANSFERRED UNDERTAKINGS IN THE TRANSFEREE COMPANIES

With effect from the appointed date or such other date as may be fixed or approved by the Hon'ble High Court and upon the Scheme becoming effective, the Transferred Undertakings shall be transferred and vested in the Transferee Companies in the following manner:

- 4.1 The whole of the Hardware Solutions Business Undertaking, Services Business Undertaking and Learning Business Undertaking of HIL as defined in Clause 1.7, Clause 1.8 and Clause 1.9, respectively, shall, under the provisions of Sections 391 and 394 and all other applicable provisions, if any, of the Act, and pursuant to the orders of the High Court or any other appropriate authority sanctioning the Scheme and without any further act or deed, be transferred to and vested in and/or deemed to be transferred to and vested in HCL SI, HCL Care and HCL Learning respectively, as a going concern.
- 4.2 In respect of all the movable assets of the Transferred Undertakings, of HIL and the assets which are otherwise capable of transfer by physical delivery or endorsement and delivery, including cash in hand, shall be so transferred to the respective Transferee Companies, and deemed to have been physically handed over by physical delivery or by endorsement and delivery, as the case may be, to the respective Transferee Companies, to the end and intent that the property and benefit therein passes to the respective Transferee Companies with effect from the Appointed Date.
- 4.3 In respect of movables other than those specified in sub-clause 4.2 above, including sundry debtors, outstanding loans and advances, if any, recoverable in cash or in kind or for value to be received, bank balances and deposits, if any, with Government, Semi-Government, local and other authorities and bodies, customers and other persons, the following modus operandi shall, to the extent possible, be followed:

HIL shall give notice in such form as it may deem fit and proper to each person, debtor or depositee that pursuant to the said Scheme, the said debt, loan, advance or deposit pertaining to the Transferred Undertakings shall be paid to or made good to or held on account of the respective Transferee Companies and that the right of the respective Transferee Companies to recover or realise the same is in substitution of the rights of HIL.

- 4.4 With effect from the Appointed Date, the immovable property, if any, relating to the Transferred Undertakings, and any documents of title/rights and easements in relation thereto shall be vested in and transferred to and/or be deemed to have been vested in and stand transferred to and shall belong to the respective Transferee Companies. From the Appointed Date, the respective Transferee Companies shall in relation to the properties of the Transferred Undertakings transferred to it under this Scheme, be liable for ground rent, municipal taxes and any other applicable cess, duties, levies, taxes and the like. The mutation of the title to the said immovable properties shall be made and duly recorded by the appropriate authorities pursuant to the Scheme, in accordance with the terms hereof without any further act or deed whatsoever, in favour of the respective Transferee Companies.
- 4.5 It is clarified that if any assets (estate, claims, rights, title, interest in or authorities relating to such assets) or any contract, deeds, bonds, agreements, schemes, arrangements or other instruments of whatsoever nature in relation to the Transferred Undertakings, which HIL owns or is a party to, cannot be transferred to the respective Transferee Companies for any reason whatsoever, HIL shall hold such assets or contracts, deeds, bonds, agreements, schemes, arrangements or other instruments of whatsoever nature, in trust for the benefit of the respective Transferee Companies, insofar as it is permissible so to do, till such time as the transfer is effected.
- 4.6 All cheques and other negotiable instruments, payment orders received in the name of HIL pertaining to the Transferred Undertakings after the Effective Date shall be accepted by the bankers of the respective Transferee Companies and credited to the account of the respective Transferee Companies. Similarly, the banker of the respective Transferee Companies shall honour cheques issued by HIL pertaining to the Transferred Undertakings for payment after the Effective Date.
- 4.7 All patents, trademarks, copyrights, or any kind of intellectual property, if any, registered with the authorities concerned or applications submitted at any time on or before the Effective Date or being used by HIL pertaining to the Transferred Undertakings shall stand transferred and vested in the name of the respective Transferee Companies without any further act or deed. The respective Transferee Companies, however, shall after the Scheme becoming effective file the relevant intimation with the concerned statutory authority(ies).
- 4.8 Upon the coming into effect of this Scheme on the Appointed Date, the debts, liabilities, contingent liabilities, duties and obligations pertaining to the Transferred Undertakings, shall without any further act or deed be and stand transferred to the respective Transferee Companies, and shall thereupon become the debts, liabilities, contingent liabilities, duties and obligations of the respective Transferee Companies, which shall meet, discharge and satisfy the same.
- 4.9 Upon the coming into effect of this Scheme on the Appointed Date such of the general or multipurpose borrowings of HIL as identified by the Board of Directors of HIL, shall without any further act or deed be and stand transferred to the respective Transferee Companies, and shall thereupon become the debts and liabilities of the respective Transferee Companies, which shall meet, discharge and satisfy the same.
- 4.10 The transfer of the general or multipurpose borrowings in terms of Clause 4.9 above shall be without prejudice to any agreements or arrangements including in respect of security entered into between HIL and the lenders existing on the Appointed Date which shall continue in full force (till such time as the individual agreements are signed between the lenders and the respective Transferee companies) notwithstanding that the liability for repayment of the principal amount and payments of interest or any other dues is taken over by the respective Transferee Companies. HIL shall make repayments of such principal amounts and payments of interest or any other dues thereon on behalf of the respective Transferee Companies, and the respective Transferee Companies shall be under an obligation to place with HIL funds at the relevant time so as to enable HIL to make payments to the lenders on or before their respective due dates.
- 4.11 In respect of any liability mentioned hereinabove, if HIL is required to make payment to satisfy such liability, the respective Transferee Companies shall be obliged to forthwith reimburse to HIL any such payment made.
- 4.12 The existing security or charge in favour of the secured creditors shall remain unaffected and shall continue to remain valid and in full force and effect even after the transfer of the Transferred Undertakings from HIL to the respective Transferee Companies. Restructuring of all such security or charge and reallocation of existing credit facilities granted by the secured creditors shall be given effect to only with the mutual consent of the concerned secured creditors and the Board of Directors of HIL and the respective Transferee Companies.

It is clarified that-

- (a) Existing security, if any, in respect of abovementioned liabilities shall extend to and operate only over the assets comprised in the Transferred Undertakings which have been charged and secured in respect of the abovementioned liabilities. If any of the assets comprised in the Transferred Undertakings have not been charged or secured in respect of the abovementioned liabilities, such assets shall remain unencumbered.

- (b) If any existing security in respect of any part of the abovementioned liabilities extends wholly or partly over the assets of the Remaining Business of HIL, then the respective Transferee Companies shall create adequate security in respect of such part of the abovementioned liabilities over the assets of the Transferred Undertakings to the satisfaction of the respective lenders and upon creation of such security, the assets of the Remaining Business of HIL shall be released and discharged from such encumbrance.
 - (c) If any security or charge exists on the assets comprising the Transferred Undertakings in respect of any loans or liabilities which have not been transferred to the respective Transferee Companies pursuant to this Scheme, HIL shall create adequate security over the assets of its Remaining Business to the satisfaction of the respective lenders and upon creation of such security, the assets of the Transferred Undertakings, as above, shall be released and discharged from such encumbrance.
- 4.13 Upon the coming into effect of the Scheme, all motor vehicles of any nature whatsoever comprised in or relatable to the Transferred Undertakings of HIL shall vest in HCL SI, HCL Care and HCL Learning, as applicable, and the appropriate governmental and registration authorities shall mutate and register the same vehicles in the name of HCL SI, HCL Care and HCL Learning, as applicable, as if the vehicles had originally been registered in the name of HCL SI, HCL Care and HCL Learning, as applicable, without levying or imposing any fees, charges, taxes or levy whatsoever.
- 4.14 Transferee Companies shall be entitled to use all packaging materials relatable to the Transferred Undertakings lying unused and to which HIL is entitled to use under any statutes / regulations as on the Appointed Date and implemented from the Effective Date till such time as all of such packaging materials are exhausted, in such manner as may be determined by the Board of Directors of the Parties.

5 CONSIDERATION

The Scheme is intended to restructure within the group of companies controlled by HIL, the holding of the various businesses in a more efficient manner and consistent with the diverse needs of business and does not involve any movement of assets or liabilities to any company outside the group controlled by HIL.

- 5.1 The Hardware Solutions Business Undertaking is intended to be transferred to HCL SI, a wholly owned subsidiary of HIL, without any consideration and accordingly HCL SI shall not issue any shares or pay any consideration to HIL or to their shareholders.
- 5.2 The consideration payable by HCL Care to HIL for transfer and vesting of the Services Business Undertaking of HIL into HCL Care shall be Rs 61,00,00,000 (Rupees Sixty one crores only).
- 5.3 The consideration payable by HCL Learning to HIL for transfer and vesting of the Learning Business Undertaking of HIL into HCL Learning shall be Rs 1,13,00,00,000 (Rupees One hundred and thirteen crores only).
- 5.4 Upon sanction of the Scheme by the Court, HCL Care and HCL learning shall take necessary steps to discharge the consideration as mentioned in Clause 5.2 and Clause 5.3 at the earliest, and in such mode and manner as may be agreed by the Board of HIL, HCL Care and HCL Learning.
- 5.5 It is clarified that nothing contained in the Scheme shall be construed to imply that the transfer and vesting of the Services Business Undertaking and Learning Business Undertaking shall remain or deemed to have remained suspended or in abeyance till the process of discharge of consideration amount in terms of Clause 5.4 is completed.

6 ACCOUNTING TREATMENT

6.1 IN THE FINANCIAL STATEMENTS OF HIL

- 6.1.1 The values of the assets and liabilities pertaining to the Transferred Undertakings, shall be reduced from the respective assets and liabilities of HIL and the difference, if any, as adjusted by the Consideration as per Clause 5.2 and Clause 5.3 shall be recorded as Business Restructuring Reserve.

6.2 IN THE FINANCIAL STATEMENTS OF HCL SI

- 6.2.1 The assets and liabilities pertaining to the Hardware Solutions Business Undertaking shall be recorded by HCL SI, at the respective fair values as on the Appointed Date. The excess of the value of assets over the value of liabilities so recorded shall be credited as Capital Reserve

6.3 IN THE FINANCIAL STATEMENTS OF HCL CARE

- 6.3.1 HCL Care shall record the assets and liabilities of the Service Business Undertaking by apportioning the consideration stated in Clause 5.2 to the respective assets and liabilities based upon the fair values. In case of any excess of the consideration paid over the aggregate fair values of the assets and liabilities taken over shall be recorded as 'Goodwill'.

6.4 IN THE FINANCIAL STATEMENTS OF HCL LEARNING

- 6.4.1 HCL Learning shall record the assets and liabilities of the Learning Business Undertaking by apportioning the consideration stated in Clause 5.3 to the respective assets and liabilities based upon the fair values. In case of any excess of the consideration paid over the aggregate fair values of the assets and liabilities taken over shall be recorded as 'Goodwill'.

7 CONDUCT OF BUSINESS UNTIL THE EFFECTIVE DATE

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

- 7.1 HIL shall carry on and be deemed to have carried on its business and activities in relation to the Transferred Undertakings and shall be deemed to have held and stood possessed of and shall hold and stand possessed of the said undertaking belonging to it for and on account of and in trust for the respective Transferee Companies.
- 7.2 Any income or profit accruing or arising to HIL in relation to the Transferred Undertakings and all costs, charges, expenses and losses incurred by HIL in relation to the Transferred Undertakings shall for all purposes be treated as the income, profits, costs, charges, expenses and losses, as the case may be, of the respective Transferee Companies.
- 7.3 With effect from the Appointed Date, all debts, liabilities, duties and obligations of the Transferred Undertakings of HIL as on the close of business hours on the date preceding the Appointed Date whether or not provided in the books of the Transferred Undertakings and all other liabilities relating to the Transferred Undertakings which arises or accrues on or after the Appointed Date but which relates to the period on or upto the Appointed Date shall be deemed to be the debt, liabilities, duties and obligations of the respective Transferee Companies.
- 7.4 With effect from the Appointed Date, HIL has carried on and hereafter undertakes to carry on its business with reasonable diligence and utmost business prudence.
- 7.5 Except in the ordinary course of business, HIL shall not, without the prior written consent of the Board of Directors of the respective Transferee Companies or pursuant to any pre-existing obligation, sell, transfer or otherwise alienate, charge, mortgage or encumber or otherwise deal with or dispose of the Transferred Undertakings or any part thereof.
- 7.6 All proceedings of whatsoever nature (legal and other, including any suits, appeals, arbitration, execution proceedings, revisions, writ petitions if any by or against HIL pertaining to the Transferred Undertakings shall not abate, be discontinued or be in any way prejudicially affected by reason of this Scheme, but the said proceedings, shall till the Effective Date be continued, prosecuted and enforced by or against HIL as if this Scheme had not been made and thereafter be continued, prosecuted and enforced by or against the respective Transferee Companies in the same manner and to the same extent as they would or might have been continued, prosecuted and enforced by or against HIL, as if this Scheme had not been made. The respective Transferee Companies shall take steps to have the abovementioned proceedings continued in its name.
- 7.7 Subject to the other provisions of this Scheme, all lawful agreements, arrangements, bonds, contracts, deeds and other instruments of whatsoever nature relating to the Transferred Undertakings and to which HIL is a party to or to the benefit of which it may be eligible and which are subsisting or operative or having effect, shall till the Effective Date, be in full force and effect and may be enforced as fully and effectual, as if the Scheme had not been made and thereafter, shall be in full force and effect against or in favor of the respective Transferee Companies, as the case may be, and may be enforced as fully and effectual as if, instead of HIL, the respective Transferee Companies had been a party or beneficiary thereto, subject to such changes and variations in the terms, conditions and provisions thereof as may be mutually agreed between the respective Transferee Companies and the other parties thereto. The respective Transferee Companies shall enter and/or issue and /or execute deeds, writings or confirmations or enter into any arrangements, confirmations or novation in order to give formal effect to the provisions of this clause, if so required or if it becomes necessary.

8 LEGAL PROCEEDINGS

- 8.1 All legal proceedings of whatsoever nature by or against HIL pending and/or arising before the Appointed Date and relating to Transferred Undertakings, shall not abate or be discontinued or be in any way prejudicially affected by reason of the Scheme or by anything contained in this Scheme but shall be continued and enforced by or against the respective Transferee Companies, as the case may be in the same manner and to the same extent as would or might have been continued and enforced by or against HIL.
- 8.2 After the Appointed Date, if any proceedings are taken against HIL in respect of the matters referred to in Clause 8.1, HIL shall defend the same at the cost of the respective Transferee Companies, and the respective Transferee Companies shall reimburse and indemnify HIL against all liabilities and obligations incurred by HIL in respect thereof.
- 8.3 The respective Transferee Companies undertakes to have all legal or other proceedings initiated by or against HIL referred to in Clauses 8.1 or 8.2, transferred into its name and to have the same continued, prosecuted and enforced by or against the respective Transferee Companies as the case may be, to the exclusion of HIL.

- 8.4 After the Appointed Date, in case the proceedings referred to in Clause 8.1 or Clause 8.2 above cannot be transferred for any reason, HIL shall defend the same at the cost of the respective Transferee Companies, and the respective Transferee Companies shall reimburse, indemnify and hold harmless HIL against all liabilities and obligations incurred by HIL in respect thereof.

9 CONTRACTS, DEEDS, ETC.

- 9.1 Upon the coming into effect the Scheme and subject to the provisions of this Scheme, all contracts, deeds, bonds, agreements and other instruments, if any, of whatsoever nature and relating to the Transferred Undertakings of HIL, shall continue in full force and effect against or in favour of the respective Transferee Companies, and may be enforced effectively by or against the respective Transferee Companies as fully and effectually as if, instead of HIL, the respective Transferee Companies had been a party thereto.
- 9.2 The respective Transferee Companies may, at any time after the coming into effect of this Scheme in accordance with the provisions hereof, if so required, under any law or otherwise, enter into, or issue or execute deeds, writings, confirmations, novation, declarations, or other documents with, or in favour of any party to any contract or arrangement to which HIL is a party or any writings as may be necessary to be executed in order to give formal effect to the above provisions. The respective Transferee Companies shall be deemed to be authorized to execute any such writings on behalf of HIL and to carry out or perform all such formalities or compliances required for the purposes referred to above on the part of HIL.
- 9.3 It is hereby clarified that if any contract, deeds, bonds, agreements, schemes, arrangements or other instruments of whatsoever nature in relation to the Transferred Undertakings to which HIL is a party to, cannot be transferred to the respective Transferee Companies for any reason whatsoever, HIL shall hold such contract, deeds, bonds, agreements, schemes, arrangements or other instruments of whatsoever nature in trust for the benefit of the respective Transferee Companies insofar as it is permissible so to do, till such time as the transfer is effected.
- 9.4 Upon coming into effect of this Scheme, the past track record of HIL relating to the Transferred Undertakings, including without limitation, the profitability, production volumes, experience, credentials and market share, shall be deemed to be the track record of the respective Transferee Companies for all commercial and regulatory purposes including for the purpose of eligibility, standing, evaluation and participation of the respective Transferee Companies in all existing and future bids, tenders and contracts of all authorities, agencies and clients.

10 STAFF, WORKMEN & EMPLOYEES

- 10.1 Upon coming into effect of this Scheme, all staff, workmen and employees of HIL, engaged in or in relation to the Transferred Undertakings and who are in such employment on the Effective Date shall become staff, workmen and employees of the respective Transferee Companies without any break in their service and on the basis of continuity of service, and the terms and conditions of their employment with the respective Transferee Companies shall not be less favourable than those applicable to them with reference to HIL, in relation to the Transferred Undertakings on the Effective Date.
- 10.2 In so far as the existing provident fund trusts, gratuity fund and pension and/or superannuation fund trusts ("Fund/s") created by HIL for its employees are concerned, the part of the Funds referable to the transferred employees shall be continued for the benefit of the transferred employees pursuant to this Scheme in the manner provided hereinafter. In the event that the respective Transferee Companies has set up its own Funds in respect of any of the Funds of HIL referred to above, the amounts in such Funds in respect of contributions pertaining to the transferred employees shall, subject to the necessary approvals and permissions, if any, be transferred to and vested in the relevant Funds of the respective Transferee Companies. Until such time that the respective Transferee Companies creates its own Fund, the respective Transferee Companies may, subject to necessary approvals and permissions, if any, continue to contribute in respect of the transferred employees to the relevant Funds of HIL and at the time that the respective Transferee Companies create its own Fund, the contributions pertaining to the transferred employees shall be transferred to and vested in the Funds created by the respective Transferee Companies. It is clarified that the services of the transferred employees will be treated as having been continuous for the purpose of the said Fund or Funds. This Scheme shall enable the trustees of provident fund trusts, gratuity fund and pension and/or superannuation fund trusts to amend their respective trust deeds so as to be in conformity with the requirements of both the labour laws and the income tax laws, as applicable, consequent upon the vesting and transfer of employees to the respective Transferee Companies as provided herein, on a continuity of employment basis and on same and/or similar terms and conditions of service.
- 10.3 The services of the transferred employees with the HIL prior to the transfer and vesting, as aforesaid, shall be taken into account for the purposes of all benefits to which the transferred employees may be eligible, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans, superannuation plans and any other retirement benefits and accordingly, shall be reckoned therefore from the date of their respective appointment in the HIL.
- 10.4 Upon the Scheme becoming effective, HIL shall communicate to the aforesaid Employees a notice in a form to be mutually agreed between the respective Transferee Companies and HIL.

11 TAX TREATMENT

Upon the Scheme becoming effective:

- 11.1 It is clarified that all the taxes and duties payable by HIL, relating to the Transferred Undertakings, from the Appointed Date onwards including all advance tax payments, tax deducted at source, tax liabilities or any refund and claims shall, for all purposes, be treated as advance tax payments, tax deducted at source, tax liabilities or refunds and claims of the respective Transferee Companies notwithstanding that the certificates, challans or other documents for payments of such taxes are in the name of HIL. Further any tax payments not directly relatable to the Transferred Undertakings shall be apportioned between HIL and the respective Transferee Companies in the proportion of their taxable income or wealth pertaining to the Transferred Undertakings and the Remaining Business respectively or any other appropriate basis as the Board of HIL and the respective Transferee Companies mutually in their discretion deem fit. Accordingly, upon the Scheme becoming effective, HIL is expressly permitted to revise and file and the respective Transferee Companies are expressly permitted to revise and file their respective, income tax returns including tax deducted at source certificates, sales tax/value added tax returns, excise returns, service tax returns and other tax returns, and to claim refunds/credits, pursuant to the provisions of this Scheme.
- 11.2 In so far as the various incentives, subsidies, special status and other benefits or privileges enjoyed, granted by any Government body, local authority or by any other person, or availed of by HIL, in relation to the Transferred Undertakings, are concerned, the same shall vest with and be available to the respective Transferee Companies, on the same terms and conditions. In particular and without prejudice to the generality of the foregoing, benefit of all balances relating to CENVAT or Service Tax or VAT being balances pertaining to the Transferred Undertakings, shall stand transferred to and vested in the respective Transferee Companies as if the transaction giving rise to the said balance or credit was a transaction carried out by the respective Transferee Companies. The assets and properties pertaining to the Transferred Undertakings of HIL, shall not be required to be and shall not be physically transferred from any premises or location relating to the Transferred Undertakings and consequently or otherwise, there shall be no withdrawal of or obligation to pay or refund any CENVAT, VAT, Service Tax or other tax or duty pursuant to transfer and vesting of the Transferred Undertakings in the respective Transferee Companies in accordance with the Scheme.

12 SAVING OF CONCLUDED TRANSACTIONS

The transfer and vesting of properties and liabilities and the continuance of proceedings by or against the respective Transferee Companies shall not affect any transaction or proceedings already concluded by HIL on or after the Appointed Date till the Effective Date in relation to the Transferred Undertakings, to the end and intent that the respective Transferee Companies accepts and adopts all acts, deeds and things done and executed by HIL in respect thereto as done and executed on behalf of itself.

13 INDEMNITY

After the Effective Date, the respective Transferee Companies undertake to keep harmless and indemnify and keep indemnified from time to time HIL from and against any and all debts, duties, liabilities, loans incurred, contingent liabilities and obligations of every kind, nature and description relatable to the Transferred Undertakings including all demands, claims, suits, proceedings and the like (save and except all costs, charges and taxes referred to in Clause 29 and agreed to be borne and paid by HIL in full) which have, shall or may be made or instituted by any person, authority, Government of India, firm, company, body corporate or organisation against HIL, directly relating to the Transferred Undertakings and / or against any financial liability/claim that may arise against HIL by virtue of transfer and vesting of the Transferred Undertakings into the respective Transferee Companies under and pursuant to this Scheme.

14 REMAINING BUSINESS

The Remaining Business and all the assets, liabilities and obligations pertaining thereto shall continue to belong to and be vested in and be managed by HIL.

15 CHANGE OF NAME

With effect from the Effective Date, the name of HCL SI shall stand changed to "HCL Infotech Limited" or such other name as may be approved by the concerned Registrar of Companies. Further, the name of HCL SI wherever it occurs in its Memorandum and Articles of Association be substituted by HCL Infotech Limited

With effect from the Effective Date, the name of HCL Care shall stand changed to "HCL Services Limited" or such other name as may be approved by the concerned Registrar of Companies. Further, the name of HCL Care wherever it occurs in its Memorandum and Articles of Association be substituted by HCL Services Limited

PART III

MERGER OF HCL INFOCOM WITH HIL

16 TRANSFER AND VESTING

- 16.1 The entire undertaking of HCL Infocom after giving effect to Part II of this Scheme shall stand transferred to and vested in or deemed to be transferred to and vested in HIL, as a going concern, in the following manner:
- 16.2 With effect from the Appointed Date, the whole of the undertaking and properties of HCL Infocom, including investments, after giving effect to Part II of this Scheme shall pursuant to the provisions contained in Sections 391 to 394 and all other applicable provisions, if any, of the Act and without any further act, deed, matter or thing, stand transferred to and vested in and / or be deemed to be transferred to and vested in HIL so as to vest in HIL all rights, title and interest pertaining thereto.
- 16.3 For the purposes of giving effect to the vesting and transfer order passed under Section 391 and 394 of the Companies Act in respect of this Scheme, HIL shall at any time pursuant to the orders on this Scheme be entitled to get the recordal of the change in the legal title and rights appurtenant thereto upon the transfer and vesting of the all assets including investments pursuant to the Scheme.
- 16.4 With effect from the Appointed Date, all debts, liabilities, contingent liabilities, duties and obligations of every kind, nature and description of HCL Infocom shall also, under the provisions of Sections 391 to 394 and all other applicable provisions, if any, of the Act, and without any further act or deed, be transferred to or be deemed to be transferred to HIL, so as to become from the Appointed Date the debts, liabilities, contingent liabilities, duties and obligations of HIL and it shall not be necessary to obtain the consent of any third party or other person who is a party to any contract or arrangement by virtue of which such debts, liabilities, contingent liabilities, duties and obligations have arisen in order to give effect to the provisions of this sub-clause.
- 16.5 With effect from the Appointed Date and upon the Scheme becoming effective, any statutory licenses, permissions or approvals or consents held by HCL Infocom required to carry on operations of HCL Infocom shall stand vested in or transferred to HIL without any further act or deed, and shall be appropriately mutated by the statutory authorities concerned therewith in favour of HIL and the benefit of all statutory and regulatory permissions, environmental approvals and consents, registration or other licenses, consents, certificates, authorities (including for the operation of Bank accounts), power of attorneys given by, issued to or executed in favour of HCL Infocom shall vest in and become available to HIL as if they were originally obtained by HIL.
- 16.6 The transfer and vesting of the undertaking of HCL Infocom as aforesaid shall be subject to the existing securities, charges, mortgages and other encumbrances, if any, subsisting over or in respect of the property and assets or any part thereof.
- 16.7 It is clarified that all the taxes and duties payable by HCL Infocom, from the Appointed Date onwards, including all advance tax payments, tax deducted at source, tax liabilities or any refund and claims shall, for all purposes, be treated as advance tax payments, tax deducted at source, tax liabilities or refunds and claims of HIL notwithstanding that the certificates, challans or other documents for payments of such taxes are in the name of HCL Infocom. Accordingly, upon the Scheme becoming effective, HCL Infocom and HIL are expressly permitted to revise and file their respective, income tax returns including tax deducted at source certificates, sales tax/value added tax returns, excise returns, service tax returns and other tax returns, and to claim refunds/credits, pursuant to the provisions of this Scheme.

17 CONSIDERATION

Since the entire share capital of HCL Infocom is held by HIL, no shares are issued as consideration. Upon the Scheme of Arrangement becoming effective, the share capital of HCL Infocom shall stand cancelled, and no shares of HIL shall be issued to HIL, the sole shareholder of HCL Infocom.

18 ACCOUNTING TREATMENT IN THE FINANCIAL STATEMENTS OF HIL

- 18.1 HIL shall record the assets and liabilities pertaining to HCL Infocom including its investment in its subsidiaries at the respective fair values as on the Appointed Date.
- 18.2 The receivables, if any, from HCL Infocom appearing in the books of HIL shall stand cancelled against the payable in the books of HCL Infocom.
- 18.3 Any difference being excess of assets over liabilities recorded by HIL after giving effect to Clause 18.2 above will be credited to Capital Reserve.
- 18.4 The Business Restructuring Reserve as per Clause 6.1.1 above shall be adjusted against Capital Reserve arising in Clause 18.3 above and the balance, if any, of the Business Restructuring Reserve shall be further adjusted with the Securities Premium Account of HIL.

18.5 The reduction, if any, in the Securities Premium Account of HIL pursuant to clause 18.4 above shall be effected as an integral part of the Scheme in accordance with the provisions of Section 78 read with Section 100 to 103 of the Act and the order of the High Court sanctioning the Scheme shall also be deemed to be an order under Section 102 of the Act confirming the reduction in the Securities Premium Account. The reduction would not involve either a diminution of liability in respect of unpaid share capital or payment of paid-up share capital, and the provisions of section 101 (2) of the act shall not apply. The reduction in the Securities Premium Account of HIL shall not require HIL to add the words "and reduced" as a suffix to its name.

19 COMBINATION OF AUTHORISED CAPITAL

19.1 Upon sanction of this Scheme, the authorised share capital of HIL shall automatically stand increased without any further act, instrument or deed on the part of HIL including payment of stamp duty and fees paid to Registrar of Companies, by the authorised share capital of HCL Infocom as on the Effective Date.

19.2 The Memorandum of Association and Articles of Association of HIL (relating to the authorized share capital) shall, without any further act, instrument or deed, be and stand altered, modified and amended, pursuant to Sections 16, 31, 94 and 394 and applicable provisions of the Act, as the case may be and for this purpose the stamp duties and fees paid on the authorized capital of HCL Infocom shall be utilized and applied to the increased authorized share capital of HIL and no payment of any extra stamp duty and/or fee shall be payable by HIL for increase in the authorised share capital to that extent.

19.3 It is clarified that the approval of the members of HIL to the Scheme shall be deemed to be their consent / approval also to the alteration of the Memorandum and Articles of Association of HIL as may be required under the Act.

20 BUSINESS AND PROPERTY IN TRUST

During the period between the Appointed date and the Effective Date:

20.1 HCL Infocom shall carry on its business and activities with reasonable diligence and business prudence and shall not alter or diversify its respective businesses nor venture into any new business, nor alienate, charge, mortgage, encumber or otherwise deal with the assets or any part thereof except in the ordinary course of business without the prior written consent of the Board of Directors of HIL or pursuant to any pre-existing obligation undertaken prior to the date of acceptance of the Scheme.

20.2 HIL shall be entitled, pending the sanction of the Scheme, to apply to the Central/State Government(s) and all other agencies, departments and authorities concerned as are necessary under any law for such consents, approvals and sanctions which HIL, may require to carry on the business of HCL Infocom.

20.3 All profits and dividends accruing to HCL Infocom and all taxes thereof or losses arising or incurred by it shall for all purposes be treated as, profits, dividends, taxes or losses as the case may be of HIL.

21 CONTRACTS, DEEDS AND OTHER INSTRUMENTS

Subject to the other provisions contained in this Scheme, all contracts, deeds, bonds, agreements and other instruments of whatever nature to which, any of HCL Infocom is a party subsisting or having effect immediately before the Scheme coming into effect shall be in full force and effect against or in favour of HIL, and may be enforced as if, instead of HCL Infocom, HIL had been a party thereto.

22 STAFF, WORKMEN & EMPLOYEES

22.1 Upon the coming into effect of this Scheme, all staff, workmen and employees of HCL Infocom engaged in or in service on the Effective Date shall be deemed to have become staff, workmen and employees of HIL without any break in their service and on the basis of continuity of service, and the terms and conditions of their employment with HIL shall not be less favourable than those applicable to them with reference to HCL Infocom respectively on the Effective Date.

22.2 It is expressly provided that, on the Scheme becoming effective, the Provident Fund, Gratuity Fund, Superannuation Fund and/ or Pension Fund or any other Special Fund or Trusts created or existing for the benefit of the staff, workmen and employees (collectively referred to as "Funds") of HCL Infocom shall become the trusts/ funds of HIL for all purposes whatsoever in relation to the administration or operation of such Funds or in relation to the obligation to make contributions to the said Funds in accordance with the provisions thereof as per the terms provided in the respective Trust Deeds, if any, to the end and intent that all rights, duties, powers and obligations of HCL Infocom in relation to such Funds shall become those of HIL. It is clarified that the services of the staff, workmen and employees of HCL Infocom will be treated as having been continuous for the purpose of the said Funds.

23 LEGAL PROCEEDINGS

23.1 If any suit, appeal or other proceeding of whatever nature by or against HCL Infocom is pending, the same shall not abate or be discontinued or in any way be prejudicially affected by reason of or by anything contained in this Scheme, but the said suit, appeal or other legal proceedings may be continued, prosecuted and enforced by or against HIL in the same manner and to the same extent as it would or might have been continued, prosecuted and enforced by or against HCL Infocom as if this Scheme had not been made.

23.2 In case of any litigation, suits, recovery proceedings which are to be initiated or may be initiated against HCL Infocom, HIL shall be made party thereto and any payment and expenses made thereto shall be the liability of HIL.

24 WINDING UP OF HCL INFOCOM

On and from the Effective Date, HCL Infocom shall stand dissolved without being wound up.

PART IV

GENERAL TERMS AND CONDITIONS

25 APPLICATION TO COURT

The Parties shall as may be required make applications and/or petitions under Sections 391 to 394 read with Sections 100 to 103 of the Act and other applicable provisions of the Act to the Court for sanction of this Scheme and all matters ancillary or incidental thereto.

26 MODIFICATION OR AMENDMENTS TO THE SCHEME

The Parties, through their respective Boards (which shall include any committee authorized by the Board in this regard) may assent to any modifications/amendments to the Scheme or to any conditions or limitations that the Court and/or any other authority may deem fit to direct or impose or which may otherwise be considered necessary, desirable or appropriate by them. The Parties, acting through their respective authorized representatives, be and are hereby authorized to take all such steps as may be necessary, desirable or proper to resolve any doubts, difficulties or questions whether by reason of any directive or orders of any other authorities or otherwise howsoever arising out of or under or by virtue of the Scheme and/or any matter concerned or connected therewith.

27 CONDITIONALITY OF THE SCHEME

This Scheme is and shall be conditional upon and subject to:

- 27.1 The Scheme being approved by the requisite majorities in number and value of such classes of persons including the Members and / or Creditors of the Parties as may be directed by the Court or any other competent authority, as may be applicable.
- 27.2 The Scheme being approved by the requisite majority in number and/or value of shareholders of HIL as required under the Circular No. CIR/CFD/DIL/5/2013 dated February 4, 2013 issued by the Securities and Exchange Board of India to the extent applicable, including any modifications or amendments in relation thereto.
- 27.3 The Scheme being sanctioned by the Court or any other authority under Sections 391 to 394 read with Sections 100 to 103 of the Act and to the necessary Order under Section 394 of the said Act being obtained.
- 27.4 Certified copies of the Orders of the Court sanctioning the Scheme being filed with the respective Registrar of Companies by the Parties.
- 27.5 The requisite consent, approval or permission of the Central Government, State Government(s), or any other statutory or regulatory authority, if any, which by law may be necessary for carrying on the business and for the implementation of this Scheme.

28 EFFECT OF NON-RECEIPT OF APPROVALS / SANCTIONS

In the event of any of the said sanctions and approvals referred to in the preceding Clause 27 not being obtained and / or the Scheme not being sanctioned by the Court or such other competent authority, as may be applicable, and / or the Orders not being passed as aforesaid, this Scheme shall stand revoked, cancelled and be of no effect, save and except in respect of any act or deed done prior thereto as is contemplated hereunder or as to any rights and/ or liabilities which might have arisen or accrued pursuant thereto and which shall be governed and be preserved or worked out as is specifically provided in the Scheme or as may otherwise arise in law. In such a case, each party shall bear and pay its respective costs, charges and expenses for and /or in connection with the Scheme.

29 COSTS, CHARGES & EXPENSES

All costs, charges, taxes including duties, levies and all other expenses, if any (save as expressly otherwise agreed) arising out of, or incurred in carrying out and implementing this Scheme and matters incidental thereto, shall be borne by HIL.

HCL Infosystems Limited
Hardware Solutions Business Undertaking
SCHEDULE OF PROPERTY

PART I

(Description of Freehold Property)

NIL

PART II

(Description of the Leasehold Property)

NIL

PART III

(Description of all Stocks, Shares, Debentures and other charges in action)

A. Investments in Shares

S No.	Particulars	Total No. of Shares
1.	Shares held in HCL Investments Pte. Ltd., Singapore - Equity Shares of 1 SGD each - Equity Shares of 1 USD each	1 1775000

B. Investments in Bonds and Debentures

S No.	Particulars	Total No. of Debentures / Bonds
NIL		

C. Investments in Mutual Funds

S No.	Particulars	Amount (Rs.)
NIL		

D. Other Investments – Bank Term Deposits

S No.	Particulars	Amount (Rs.)
NIL		

E. Charges in action

S No.	Particulars	Amount (Rs.) Crores
1	Consortium Limit (Led by SBI) - Hypothecation of current Assets as first charge and by way of second charge on all the immovable and movable assets of the Company. The charge ranks pari-passu amongst Bankers.	2125.00
2.	Axis Bank - Subservient charge on current assets	140.00
3.	IDBI Bank - Subservient charge on current assets	100.00
4	State Bank of Patiala - First pari- passu charge on current assets of the company	86.00
5	Cisco Capital - First and exclusive charge on the specified assets of the company	2.37
6	Cisco Capital - First and exclusive charge on the specified assets of the company	21.23

(AUTHORISED SIGNATORY)

Petitioner Company No. 1

Dated this 9th day of October, 2013

HCL Infosystems Limited
Services Business Undertaking

SCHEDULE OF PROPERTY

PART I

(Description of Freehold Property)

NIL

PART II

(Description of the Leasehold Property)

NIL

PART III

(Description of all Stocks, Shares, Debentures and other charges in action)

A. Investments in Shares

S No.	Particulars	Total No. of Shares
1.2.	<u>Shares held in HCL Insys Pte Ltd., Singapore</u>	
	- Equity Shares of 1 SGD each	6199991
	- Equity Shares of 1 USD each	3800000
	<u>Shares held in HCL Touch Inc., USA</u>	
	- Equity Shares of 0.01 USD each	150

B. Investments in Bonds and Debentures

S No.	Particulars	Total No. of Debentures / Bonds
NIL		

C. Investments in Mutual Funds

S No.	Particulars	Amount (Rs.)
NIL		

D. Other Investments – Bank Term Deposits

S No.	Particulars	Amount (Rs.)
NIL		

E. Charges in action

S No.	Particulars	Amount (Rs.) Crores
1	Consortium Limit (Led by SBI) - Hypothecation of current Assets as first charge and by way of second charge on all the immovable and movable assets of the Company. The charge ranks pari-passu amongst Bankers.	85.00
2.	HDFC Bank - Subservient charge on stock and book debts	153.34

(AUTHORISED SIGNATORY)

Petitioner Company No. 1

Dated this 9th day of October, 2013

HCL Infosystems Limited
Learning Business Undertaking
SCHEDULE OF PROPERTY

PART I

(Description of Freehold Property)

NIL

PART II

(Description of the Leasehold Property)

NIL

PART III

(Description of all Stocks, Shares, Debentures and other charges in action)

A. Investments in Shares

S No.	Particulars	Total No. of Shares
	NIL	

B. Investments in Bonds and Debentures

S No.	Particulars	Total No. of Debentures / Bonds
	NIL	

C. Investments in Mutual Funds

S No.	Particulars	Amount (Rs.)
	NIL	

D. Other Investments – Bank Term Deposits

S No.	Particulars	Amount (Rs.)
	NIL	

E. Charges in action

S No.	Particulars	Amount (Rs.) Crores
1	Consortium Limit (Led by SBI) - Hypothecation of current Assets as first charge and by way of second charge on all the immovable and movable assets of the Company. The charge ranks pari-passu amongst Bankers	40.00
2	IDBI Bank - Subservient charge on current assets	20.00

(AUTHORISED SIGNATORY)

Petitioner Company No. 1

Dated this 9th day of October, 2013

HCL Infocom Limited
SCHEDULE OF PROPERTY

PART I

(Description of Freehold Property)

NIL

PART II

(Description of the Leasehold Property)

NIL

PART III

(Description of all Stocks, Shares, Debentures and other charges in action)

A. Investments in Shares

S No.	Particulars	Total No. of Shares
1.	- Equity Shares of Rs. 5000/- each held in Nokia HCL Mobile Internet Services Limited	490
2.	- Equity Shares of Rs. 10/- each held in HCL System Integration Limited	50000
3.	- Equity Shares of Rs. 10/- each held in HCL Care Limited	50000
4.	- Equity Shares of Rs. 10/- each held in HCL Learning Limited	50000

B. Investments in Bonds and Debentures

S No.	Particulars	Total No. of Debentures / Bonds
NIL		

C. Investments in Mutual Funds

S No.	Particulars	Amount (Rs.)
NIL		

D. Other Investments – Bank Term Deposits

S No.	Particulars	Amount (Rs.)
NIL		

E. Charges in action

S No.	Particulars	Amount (Rs.)
NIL		

(AUTHORISED SIGNATORY)

Petitioner Company No. 5

Dated this 9th day of October, 2013


 Digitally signed
by KOMAL
BATHLA
Date: 2021.09.07
15:58:12 +05'30'

THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-V)

(CAA)-121/ND/2021
Connected with CA (CAA)-90/ND/2020

IN THE MATTER OF SECTIONS 230-232 OF THE COMPANIES ACT, 2013

Sections 230-232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements & Amalgamations) Rules, 2016.

AND

In the matter of Scheme of Arrangements

OF

Digilife Distribution and Marketing Services Limited

R/O: 806, Siddharth 96, Nehru Place,
New Delhi - 110019

...(Petitioner Company- 1/Transferor Company No. 1)

AND

HCL Learning limited

R/O: 806, Siddharth 96, Nehru Place,
New Delhi - 110019

...(Petitioner Company - 2/ Transferee Company No.2)

AND

HCL Infosystems Limited

R/O: 806, Siddharth 96, Nehru Place,
New Delhi - 110019

...(Petitioner Company -3/ Transferee Company)

Order Pronounced on: 10.08.2022

CORAM:

SH. P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)

SH. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Rajeev Kumar, Adv.
For the OL : Hemlata Rawat & Manas Tripathi
For the RD : Shankari Mishra, adv.

ORDER

PER SHRI, RAHUL BHATNAGAR MEMBER (T)

1. This joint petition has been filed under the provisions of Sections 230- 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016 for the purpose of approval of Scheme of Arrangement (for brevity "**the Scheme**") of Transferor Companies into Transferee Company. A perusal of the petition discloses that initially the First Motion application was filed before this Tribunal vide CA(CAA)-90/ND/2020 moved under Sections 230-232 of the Companies Act, 2013 and vide order dated 17.09.2021 read with rectification order dated 24th September 2021 and 7th October 2021 directions were issued by this Tribunal for convening separate meetings of the Equity shareholders of Petitioner Companies, Un-Secured Creditors of both Transferor Company No. 1 and Transferee Company on 30th November 2021. Further the meeting of Unsecured Creditors of the Transferor No. 2 Company was dispensed with.
2. Thereafter the 2nd Motion petition was filed on 09.12.2021 vide (CAA) No. 121 (ND)/2021 within prescribed time limit and vide order dated 18.01.2022 the petitioners were directed to carry out publication in the newspaper namely '**Business Standard**' (English, Delhi Edition) and '**Business Standard**' in (Hindi, Delhi Edition). In addition to the public notices, notices were directed to be served on to the Central government through Regional Director (Northern Region), Registrar of Companies (NCT of Delhi and Haryana), Official Liquidator, the Income Tax Department, New Delhi, Securities and Exchange of India Ltd., Bombay Stock Exchange Ltd., National Stock Exchange Ltd. and to the other relevant sectoral regulators.
3. It is seen from the records that the Transferee Company has filed affidavit dated 31.01.2022, affirming compliance of order dated 18.01.2022 passed by this Tribunal. A perusal of the affidavit discloses that the Petitioner companies have affected newspaper publication as directed in the Business Standard (English Edition) and Business Standard (Hindi Edition) in their issue dated 27th January 2022 respectively. The copy of original cutting of the newspaper was annexed. Further the Petitioner companies have affirmed that the copy of petition have been duly served upon the Registrar of Companies, Regional Director (Northern Region), Official Liquidator, Income Tax Department, SEBI, BSE, NSE and Reserve Bank of India vide email dated 28.01.2022. It was further clarified that there are no other sectoral regulators.
4. The Official Liquidator vide its report dated 11.04.2022 has stated that on receipt of the said notice, the OL department issued an office letter No. OL/Tech/Amal/45/2579 dated 18th October 2021 to furnish certain information/records for the purpose of preparing the reports. Pursuant to information submitted by the Petitioner Companies the Official Liquidator stated that he has not received any complaint against the proposed scheme of amalgamation from any person/party interested in the Scheme. Further it was submitted that the affairs of the transferor companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest. Hence, they do not have any objection if the proposed scheme of amalgamation is allowed as sought by the petitioners.
5. The Regional Director (Northern Region) has filed an affidavit dated 11.04.2022 by setting out facts of the case, the observations received from the ROC vide report dated 11.04.2021 and in terms of the reply dated 07.03.2021 received from the Petitioner companies, stated that the matter be kindly decided on merit.

The relevant extracts of the observations made by the RD in its report dated 11.04.2021 is as stated below:

"11. On Examination of the contents of the Scheme, the reply submitted by the Petitioner Companies, and apart, from the observation given by the ROC as stated in Para-10 above the observation of the Deponent are as under:

As per the content of the scheme, both the Transferor Companies are wholly owned subsidiary companies of the Transferee Company and also the Transferee Company is a listed company whose shares are listed with BSE & NSE. The Petitioner Companies vide their reply dated 07.03.2022 have stated that they have not obtained. 'No objection' in respect of the above scheme of merger from BSE & NSE, since it is not required pursuant to circular 10.0.2017 issued by the SEBI. They also intimated that they have filed due intimation of

the captioned Scheme of merger with BSE & NSE. Apart from the above it appears that the Scheme has been drawn in line with the provisions of Section 230-32 of the Companies Act, 2013."

Accordingly, stated that the Scheme be considered on merits.

6. The Income tax department has failed to file its report in spite of several opportunities. However, the Transferee company has filed an undertaking dated 05.05.2022 stating that that it undertakes, that if any pending or future tax proceedings and liabilities of the Transferor Companies emerges the same may be enforced against the Transferee Company. The petitioners have also stated that no outstanding demands are pending against the Petitioner Companies. Therefore, Section 230(5) of the companies 2013 is applicable in this matter.
7. This tribunal has not received any objections from any third party or public at large against the Scheme of Amalgamation.
8. The petitioner has affirmed that no proceedings for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under the provisions of the Companies Act, 1956 are pending against the Petitioner Companies.
9. In view of the foregoing, upon considering the approval accorded by the members and creditors of all the petitioner companies to the proposed scheme, as well as in terms of the reports filed by the Regional Director (Northern Region) and Official Liquidator and further considering the affidavit of undertaking filed by the Transferee Company, there appears to be no impediment in sanctioning the present scheme. Consequently, sanction is hereby granted to the scheme under section 230 & 232 of the Companies Act, 2013. The petitioners however remain bound to comply with the statutory requirements in accordance with law.
10. 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 scheme, will not come in the way of action being taken, albeit, in accordance with law, against any of the concerned person, director and officials of the petitioners.
11. While approving the scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes, GST, or any other charges, if any, and payment in accordance with law or in respect to any permission/ compliance with any other requirement which may be specifically required under any law.
12. **THIS TRIBUNAL FURTHER ORDER(S):**
 - a) That all the transferor companies shall stand dissolved without following the process of winding up; and
 - b) That all the property, rights and powers of all the transferor companies, be transferred without further act or deed, to the transferee company and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013, be transferred to and vest in the transferee company.
 - c) That all the liabilities and duties of the all the transferor companies, be transferred without further act or deed, to the transferee company and accordingly the same shall, pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the transferee company; and
 - d) That all proceedings now pending by or against the transferor companies, be continued by or against the transferee company; and
 - e) That all the employees of all the transferor companies in service, on the date immediately preceding the date on which the scheme takes effect, (i.e. the effective date) shall become the employees of the transferee company on such date without any break or interruption in services and upon terms and conditions not less favorable than those subsisting in the respective transferor companies on the said date.
 - f) That petitioner companies shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified

copy being so delivered all the transferor companies shall stand dissolved and the Registrar of Company shall place all documents relating to all the transferor companies registered with him on the file kept by him in relation to the transferee company and the files relating to all the petitioner companies shall be consolidated accordingly: and

- g) That any person interested shall be at liberty to apply to the tribunal in the above matter for any directions that may be necessary.

The petition stands disposed of in the above terms.

(RAHUL BHATNAGAR)
Member (T)

(P.S.N PRASAD)
Member (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI

COURT-V

Item No.-101

CP (CAA) No. 121/230/232/ND/2021 (2nd Motion),
New CA/341/2022

IN THE MATTER OF:

Digilife Distribution and Marketing Service Ltd And HCL Infosystems Pvt Ltd

....Applicant

SECTION

U/s 230-232

Order delivered on 12.09.2022

CORAM:

**SHRI P.S.N. PRASAD,
HON'BLE MEMBER (JUDICIAL)**

**SHRI RAHUL BHATNAGAR,
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant : Rajeev Kumar, Adv.

For the OL : Ms. Hemlata Rawat

ORDER

CA/341/2022:

This is an application filed under Rule 154 of NCLT Rules, 2016 and also read with Rule 11 of NCLT Rules, 2016 for modification of the order dated 10.08.2022. Ld. Counsel for Applicant submitted that the present application is filed on behalf of Transferor Company No. 2 seeking correction of typographical error in the order dated 10.08.2022 passed by this Tribunal in CP (CAA) No. 121/ND/2021.

We have heard the submissions made by Ld. Counsel for Petitioner as well as gone through the prayers made in this application. The correct cause title of the order dated 10.08.2022 passed by this Hon'ble Tribunal in CP (CAA) No. 121/ND/2021 mentioning HCL Learning Limited as Transferor Company No. 2 in place of Transferee Company No. 2.

At the request of Ld. Counsel for Petitioner, 30 days' time has been granted for meeting the compliances with RoC and others. The present application is allowed and the order dated 10.08.2022 stands modified as indicated above. Let this order be read as part of the order dated 10.08.2022 in CP (CAA) No. 121/ND/2021 application is **allowed**.

**(RAHUL BHATNAGAR)
MEMBER (T)**

**(P.S.N. PRASAD)
MEMBER (J)**

Md Saddam

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI

COURT-V

Item No.-103

CP (CAA) No. 121/230/232/ND/2021

New CA/220/2022

IN THE MATTER OF:

Digilife Distribution and Marketing Service Ltd And HCL Infosystems Pvt Ltd

....Applicant

SECTION

U/s 230-232

Order delivered on 09.06.2022

CORAM:

**SHRI ABNI RANJAN KUMAR SINHA
HON'BLE MEMBER (JUDICIAL)**

**SHRI HEMANT KUMAR SARANGI,
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant : Rajeev Kumar, Adv

For the Respondent :

ORDER

New CA/220/2022:-

By filing this application, the applicant has prayed to change the appointed date from April 1, 2020 to April 1, 2022 in view of the reasons stated hereinabove. Heard the Ld. Counsel for the petitioner and perused the resolution passed by the Transferor and Transferee Company placed at Page Nos. 29 to 34 of the application.

Ld. Counsel for the Transferor Company vide resolution dated 27.05.2020 and the Transferee Company vide resolution dated 28.05.2022 resolved to take appropriate steps for change the appointed dated from April 1, 2020 to April 1, 2022.

Considering the submissions and the resolution, we hereby allow the prayer. Accordingly, we hereby change the appointed date from April 1, 2020 to April 1, 2022.

With this order, the present applicant i.e. New CA/220/2022 **stands disposed of.**

**(HEMANT KUMAR SARANGI)
MEMBER (T)**

**(ABNI RANJAN KUMAR SINHA)
MEMBER (J)**

Khushboo

SCHEME OF AMALGAMATION
OF
DIGILIFE DISTRIBUTION AND MARKETING SERVICES LIMITED
(TRANSFEROR COMPANY 1)
AND
HCL LEARNING LIMITED
(TRANSFEROR COMPANY 2)
WITH
HCL INFOSYSTEMS LIMITED
(TRANSFEREE COMPANY)
AND
THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS
UNDER SECTIONS 230 TO 232 AND OTHER RELEVANT PROVISIONS OF THE
COMPANIES ACT, 2013

PREAMBLE

1. DESCRIPTION OF THE TRANSFEROR COMPANIES AND THE TRANSFEREE COMPANY

- 1.1 Digilife Distribution and Marketing Services Limited (**hereinafter referred to as "DDMS" or "Amalgamating Company 1" or "Transferor Company 1"**) was incorporated on the 19th day of March 2008 as a company limited by shares. The Corporate Identification Number of the Transferor Company 1 is U72900DL2008PLC175605.

The Registered Office of the Transferor Company 1 is situated at 806, Siddharth 96, Nehru Place, New Delhi - 110019 and having permanent account number ('PAN') as AACCH0076J. Email id of its authorized representative is sushiljain@hcl.com.

Transferor Company 1 is primarily engaged in the business of value-added distribution of technology, mobility and consumer electronic products.

- 1.2 HCL Learning Limited (**hereinafter referred to as "HCL Learning" or "Amalgamating Company 2" or "Transferor Company 2"**) was incorporated on the 28th day of September 2012 as a company limited by shares. The Corporate Identification Number of the Transferor Company 2 is U80900DL2012PLC242907.

The Registered Office of the Transferor Company 2 is situated at 806, Siddharth 96, Nehru Place, New Delhi - 110019 and having PAN as AADCH0304E. Email id of its authorized representative is sushiljain@hcl.com.

Transferor Company 2 is primarily engaged in selling of digitised educational content & learning solutions.

- 1.3 HCL Infosystems Limited (**hereinafter referred to as "HIL" or "Amalgamated Company" or "Transferee Company"**), was incorporated on the 17th day of April 1986 as a company limited by shares. The Corporate Identification Number of the company is L72200DL1986PLC023955. The equity shares of HIL are listed on National Stock Exchange of India Limited (hereinafter called 'NSE') and BSE Limited (hereinafter called 'BSE')

The Registered Office of the Transferee Company is situated at 806, Siddharth 96, Nehru Place, New Delhi 110019 and having PAN as AAACH2420C. Email id of its authorized representative is sushiljain@hcl.com.

Transferee Company is primarily engaged in value-added distribution of technology, mobility and consumer electronic products.

2. PURPOSE AND RATIONALE FOR THE SCHEME OF AMALGAMATION

This scheme of amalgamation ("**Scheme**" or "**the Scheme**" or "**this Scheme**") provides for the amalgamation of Transferor Company 1 and Transferor Company 2 (**Collectively referred to as "Transferor Companies"**) into and with Transferee Company in the manner set out in the Scheme, in accordance with sections 230 to 232 and other applicable provisions of the Companies Act, 2013 and the rules or regulations framed thereunder.

The Transferor Companies are wholly owned subsidiaries of the Transferee Company. The Scheme seeks to undertake the amalgamation and consolidation of DDMS and HCL Learning with HIL.

The proposed amalgamation of Transferor Companies with the Transferee Company is driven by the following objectives and is likely to result, inter alia, in the following advantages:

- (a) Consolidation of businesses into one corporate entity which would result in operational synergies for the group.
- (b) Simplification of the corporate structure and reduction of legal entities; and
- (c) Overall reduction in administrative, managerial and other expenditure and optimum utilization of various resources.

The Scheme would, thus, have beneficial results for Transferor Companies and Transferee Company, their shareholders, and all concerned and will not be prejudicial to the interests of any concerned shareholders or creditors or general public at large.

Accordingly, to achieve the above objectives, the Board of Directors of Transferor Companies and Transferee Company have considered and proposed to make requisite application(s) and/or petition(s) before the National Company Law Tribunal, New Delhi under sections 230 to 232 and other applicable provisions of the Companies Act, 2013 (as may be in force) for the sanction of this Scheme to amalgamate the Transferor Companies into and with Transferee Company.

3. PARTS OF THE SCHEME OF AMALGAMATION

The Scheme is divided into the following parts:

Part I, which deals with the definitions and interpretations of the terms used in the Scheme; the Effective Date of the Scheme; and the Share Capital of the Transferor Companies and the Transferee Company.

Part II, deals with the amalgamation of the Transferor Companies with HIL, by absorption, in accordance with Section 2(1B) of the Income-tax Act, 1961 and Sections 230 to 232 and other applicable provisions of the Companies Act, 2013, as may be applicable.

Part III, which deals with the consideration and matters relating to accounting.

Part IV, which deals with the general terms and conditions that would be applicable to the Scheme.

The Scheme also provides for various other matters consequential or otherwise integrally connected herewith.

PART-I

4. DEFINITIONS

In this Scheme, unless repugnant to the meaning or context thereof, the following words and expressions shall have the following meaning:

- 4.1 **"Accounting Standards"** means the accounting standards as formulated by the Central Government as recommended by the Institute of Chartered Accountants of India.
- 4.2 **"Act"** or **"The Act"** means the Companies Act, 2013, to the extent applicable, including the rules and regulations made thereunder and will include any statutory modifications, re-enactments and/ or amendments thereof for the time being in force.
- 4.3 **"Applicable Laws"** mean any statute, law, regulation, ordinance, rule, judgment, rule of law, order, decree, ruling, bye-law, approval of any governmental authority, directive, guideline, policy, clearance, requirement or other governmental restriction or any similar form of decision of or determination by, or any interpretation or administration having the force of law of any of the foregoing by any governmental authority having jurisdiction over the matter in question, whether in effect as of the date of this Scheme or at any time thereafter.
- 4.4 **"Appointed Date"** means the 1st day of April, 2020 or such other date as may be fixed by the Hon'ble National Company Law Tribunal ("NCLT") of judicature at Delhi, or such other competent authority, as may be applicable.
- 4.5 **"Board of Directors"** or **"Board"** means the Board of Directors of the Transferor Companies or the Transferee Company, as the case may be and includes any committee thereof or persons- authorised by the Board or committee thereof.
- 4.6 **"BSE"** shall mean BSE Limited.
- 4.7 **"Effective Date"** means the later of the dates on which certified copy of the order of the NCLT sanctioning this Scheme is filed with the Registrar of Companies, NCT of Delhi and Haryana by the Transferee Company and the Transferor Companies, as required under the provisions of the Act. Any references in the Scheme to "upon the Scheme becoming effective" or "effectiveness of the Scheme" or "Scheme coming into effect" shall mean the "Effective Date".
- 4.8 **"NCLT"** or **"Tribunal"** means the National Company Law Tribunal, New Delhi or any other Bench of the NCLT having jurisdiction in relation to both the Transferor Companies and the Transferee Company.
- 4.9 **"NSE"** means the National Stock Exchange of India Limited.
- 4.10 **"Scheme of Amalgamation"** or **"Scheme"** means this scheme of amalgamation involving the amalgamation of the Transferor Companies with the Transferee Company as approved, with or without any amendments/ modifications.
- 4.11 **"SEBI"** means Securities and Exchange Board of India.
- 4.12 **"Stock Exchanges"** means BSE Limited and National Stock Exchange of India Limited.
- 4.13 **"Transferee Company"** or **"Amalgamated Company"** or **"HIL"** means HCL Infosystems Limited having its Corporate Identification Number L72200DL1986PLC023955, and registered office situated at 806, Siddharth 96, Nehru Place, New Delhi - 110019 and having PAN as AAACH2420C and Email id of its authorized representative is sushiljain@@hcl.com.
- 4.14 **"Transferor Company 1"** or **"Amalgamating Company 1"** or **"DDMS"** means Digilife Distribution and Marketing Services Limited having its Corporate Identification Number U72900DL2008PLC175605, and registered office situated at 806, Siddharth 96, Nehru Place, New Delhi - 110019 and having PAN as AACCH0076J and Email id of its authorized representative is sushiljain@hcl.com.

- 4.15 **"Transferor Company 2"** or **"Amalgamating Company 2"** or **"HCL Learning"** means HCL Learning Limited having its Corporate Identification Number U80900DL2012PLC242907, and registered office situated at 806, Siddharth 96, Nehru Place, New Delhi - 110019 and having PAN as AADCH0304E and Email id of its authorized representative is sushiljain@hcl.com.
- 4.16 **"Transferor Companies"** or **"Amalgamating Companies"** means DDMS and HCL Learning collectively, which are proposed to be amalgamated into HIL.

EXPRESSIONS NOT DEFINED IN THIS SCHEME

The expressions which are used in this Scheme and not defined in this Scheme, shall, unless repugnant or contrary to the context or meaning hereof, have the same meaning ascribed to them under the Act and other applicable laws, rules, regulations, bye-laws, as the case may be, or any statutory modification or re-enactment thereof from time to time.

5. DATE OF COMING INTO EFFECT

The Scheme set out herein in its present form or with any modification(s) approved or imposed or directed by the Tribunal or any other appropriate authority shall come into legal operation from the Appointed Date, but the same shall become effective on and from the Effective Date.

6. SHARE CAPITAL

- 6.1 The share capital of the Transferor Company 1 as on March 31, 2020 is as under:

Particulars	(Amount in Rs.)
Authorised Share Capital	
60,000,000 Equity Shares of Rs.10/- each	600,000,000
Total	600,000,000
Issued, Subscribed and Paid-up Share Capital	
56,050,000 Equity Shares of Rs.10/- each	560,500,000
Total	560,500,000

Subsequent to March 31, 2020 and till the date of the Scheme being approved by the Board of Directors of the Transferor Company 1, there has been no change in the issued, subscribed or paid up capital of the Transferor Company 1.

- 6.2 The share capital of the Transferor Company 2 as on March 31, 2020 is as under:

Particulars	(Amount in Rs.)
Authorised Share Capital	
100,000 Equity Shares of Rs.10/- each	1,000,000
Total	1,000,000
Issued, Subscribed and Paid-up Share Capital	
75,274 Equity Shares of Rs.10/- each	752,740
Total	752,740

Subsequent to March 31, 2020 and till the date of the Scheme being approved by the Board of Directors of the Transferor Company 2, there has been no change in the issued, subscribed or paid up capital of the Transferor Company 2.

6.3 The share capital of the Transferee Company as on March 31, 2020 is as under:

Particulars	(Amount in Rs.)
Authorised Share Capital	
5,52,500,000 Equity Shares of Rs.2/- each	1,105,000,000
500,000 Preference Shares of Rs. 100/- each	50,000,000
Total	1,155,000,000
Issued and Subscribed Share Capital	
329,210,928 Equity Shares of Rs.2/- each	658,421,856
Total	658,421,856
Paid-up Share Capital	
329,209,928 Equity Shares of Rs.2/- each	658,419,856
Total	658,419,856

Subsequent to March 31, 2020 and till the date of the Scheme being approved by the Board of Directors of the Transferee Company, there has been no change in the issued, subscribed or paid up capital of Transferee Company.

The entire paid up share capital of the Transferor Companies is held by the Transferee Company and its nominees.

PART - II

AMALGAMATION OF DIGILIFE DISTRIBUTION AND MARKETING SERVICES LIMITED AND HCL LEARNING LIMITED WITH AND INTO HCL INFOSYSTEMS LIMITED

7. TRANSFER AND VESTING OF THE TRANSFEROR COMPANIES

7.1 Upon the coming into effect of this Scheme and with effect from the Appointed Date (after giving effect to the clause 7 of this Scheme), the Amalgamated Companies shall, pursuant to the provisions of Sections 230 to 232 of the Companies Act, 2013 and sanction of this Scheme by the Tribunal and other applicable provisions of the law for the time being in force and without any further act, instrument or deed, stand transferred to and vested in or deemed to have been transferred to and vested in the Transferee Company on and from the Appointed Date, on a going concern, in such a way that from the Appointed Date, the assets and liabilities of the Transferor Companies along with all the rights, title, interest or obligations of the Transferor Companies therein become that of the Transferee Company.

7.2 Without prejudice to sub-clause 7.1 above, upon the coming into effect of the Scheme and with effect from the Appointed Date, the transfer and vesting shall be effected as follows

- (a) All the movable assets including investments, cash in hand, bank balances and deposits any, of the Transferor Companies capable of being transferred by delivery, shall be handed over by physical delivery to the Transferee Company along with such other documents as may be necessary towards the end and intent that the property therein passes to the Transferee Company on such delivery, without requiring any deed or instrument of conveyance for the same and shall become the property of the Transferee Company accordingly.
- (b) All debts, loans and advances recoverable in cash or in kind or for value to be received, if any, with Government, Customs. Port, local and other authorities and bodies, customers and other persons,

outstanding and receivables of the Transferor Companies other than the movable assets specified in sub-clause (a) above, shall on and from the Appointed Date stand transferred to and vested in the Transferee Company without any notice or other intimation to the debtors (although the Transferee Company may, if so deems appropriate, give notice to the third party that the debts, outstanding and receivables do stand transferred to and vested in the Transferee Company), and the debtors shall be obliged to make payments to the Transferee Company on and after the Effective Date.

- (c) All immovable properties including land together with the buildings and structures standing thereon or under construction (whether free hold, leasehold, leave and licensed or otherwise, including tenancies in relation to warehouse office space and guest houses and residential premises occupied by the staff and employees of the Transferor Companies), and all documents of title, rights and easements in relation thereto and all rights, covenants, continuing rights, title and interest in connection with the said immovable properties of the Transferor Companies, if any, shall be vested in and transferred to and/or be deemed to have been and stand transferred to and vested in the Transferee Company and shall belong to the Amalgamated Companies in the same and like manner as was entitled to the Transferor Companies. The mutation of the title to the immovable properties shall be made and duly recorded by the appropriate authorities pursuant to the sanction of the Scheme and upon the Scheme becoming effective, in accordance with the terms hereof, in favour of the Transferee Company. Any inchoate title or possessory title of the Transferor Companies shall be deemed to be the title of the Transferee Company.
- (d) All the licenses, permits, approvals, permissions, registrations, incentives (including service tax refunds and accumulated Cenvat credit), tax deferrals and benefits (including income tax, sales tax, customs duty, advance tax, withholding tax receivables, brought forward losses and unabsorbed depreciation both under books and Income Tax Act, other tax exemptions and/or deferments, amount of tax deposited under protest, bonds with the custom authorities), concessions, grants, rights, claims, leases, tenancy rights, special status and other benefits or privileges enjoyed or conferred upon or held or availed of by the Transferor Companies and all rights and benefits that have accrued or which may accrue to the Transferor Companies, whether before or after the Appointed Date, shall, without any further act, instrument or deed, be and stand transferred to and vested in and or be deemed to have been transferred to and vested in and be available to Transferee Company so as to become as and from the Appointed Date licenses, permits, approvals, permissions, registrations, incentives (including service tax refunds and accumulated Cenvat credit), tax deferrals and benefits (including income tax, sales tax, customs duty, advance tax, withholding tax receivables, concessions, rights, claims, leases, tenancy rights, special status and other benefits or privileges) of the Transferee Company and shall remain valid, effective and enforceable on the same terms and conditions.
- (e) All assets and properties including licenses, registrations, copyrights, patents, trade names, trademarks, any other intellectual property, whether registered or otherwise, of the Transferor Companies as on the Appointed Date, whether or not included in the books of the Transferor Companies, shall be deemed to be and shall become the assets and properties of the Transferee Company by virtue of and in the manner provided in this Scheme without any further act, instrument or deed, and stand transferred to and vested in and be deemed to have been transferred to and vested in the Transferee Company upon the coming into effect of this Scheme.
- (f) All debts, liabilities, contingent liabilities, duties, indemnifications given pursuant to any agreement entered into by the Transferor Companies and obligations of every kind, nature and description of the Transferor Companies shall also, without any further act, instrument or deed, be transferred to or be deemed to be transferred to the Transferee Company so as to become as and from the Appointed Date the debts liabilities, contingent liabilities, duties and obligations of the Transferee Company and it shall not be necessary to obtain the consent of any third party or other person who is a party to any contract or arrangement by virtue of which such debts, liabilities, contingent liabilities, duties, indemnifications and obligations have arisen, in order to give effect to the provisions of this subclause.
- (g) The transfer and vesting of the Transferor Companies as aforesaid, shall be subject to the existing securities, charges and mortgages, if any, subsisting over or in respect of the property and assets or any part thereof of the Transferor Companies. Provided however that the securities, charges and mortgages (if any subsisting) over and in respect of the assets or any part thereof of the Transferee Company shall continue with respect to such assets or part thereof and this Scheme shall not operate to

enlarge such securities, charges or mortgages to the end and intent that such securities, charges and mortgages shall not extend or be deemed to extend, to any of the assets of the Transferor Companies vested in the Transferee Company.

Provided further that this Scheme shall not operate to enlarge the security for any loan, deposit or facility created by the Transferor Companies which shall vest in the Transferee Company by virtue of the amalgamation of the Transferor Companies with the Transferee Company and the Transferee Company shall not be obliged to create any further or additional security therefore after the Scheme has become operative.

- 7.3 All assets, of whatsoever nature, acquired by the Transferor Companies after the Appointed Date and prior to the Effective Date shall also stand transferred to and vested in the Transferee Company, upon the Scheme becoming effective without any further act, instrument or deed.
- 7.4 Where any of the liabilities and obligations of the Transferor Companies as on the Appointed Date, deemed to have been transferred to the Amalgamated Companies have been discharged by the Transferor Companies after the Appointed Date and prior to the Effective Date, such discharge shall be deemed to have been for and on account of the Transferee Company and all loans raised and used and all liabilities and obligations incurred by the Transferor Companies for the operation of the Transferor Companies after the Appointed Date and prior to the Effective Date shall be deemed to have been raised, used or incurred for and on behalf of the Transferee Company and to the extent they are outstanding on the Effective Date, shall also without any further act or deed, be and shall stand transferred to the Transferee Company and shall become its liabilities and obligations from such date.

8. BUSINESS AND PROPERTY IN TRUST

Upon the coming into effect of the Scheme and from the Appointed Date and up to and including the Effective Date:

- (a) The Transferor Companies shall carry on and be deemed to have carried on the business and activities and shall stand possessed of all the assets and properties, in trust for the Transferee Company and shall account for the same to the Transferee Company.
- (b) Any income or profit accruing or arising to the Transferor Companies, as the case may be, and all costs, charges, expenses and losses or taxes (including deferred tax balances, if any) incurred by the Transferor Companies shall for all purposes be treated as the income, profits, costs, charges, expenses and losses or taxes (including deferred tax balances, if any), as the case may be, of the Transferee Company.
- (c) Any of the rights, powers, authorities and privileges attached or related or pertaining to and exercised by or available to the Transferor Companies shall be deemed to have been exercised by the Transferor Companies for and on behalf of and as agent for the Transferee Company. Similarly, any of the obligations, duties and commitments attached, related or pertaining to the Transferor Companies that have been undertaken or discharged by the Transferor Companies shall be deemed to have been undertaken or discharged for and on behalf of and as agent for the Transferee Company.

9. CONDUCT OF BUSINESS TILL THE EFFECTIVE DATE

- 9.1 With effect from the Appointed Date and up to and including the Effective Date:
- (a) The Transferor Companies shall carry on their business with reasonable diligence and in the same manner as it had been doing hitherto.
- (b) The Transferor Companies shall not alter or substantially expand the business except with the written concurrence of the Transferee Company.
- (c) The Transferor Companies shall not, without the written concurrence of the Transferee Company, transfer, alienate, charge, mortgage or encumber any of its assets or properties, except in the ordinary course of business or pursuant to any pre-existing obligation undertaken prior to the date of acceptance of the Scheme by the Board of Directors of the Transferor Companies.

- (d) The Transferor Companies shall not undertake any additional financial commitments-of any nature whatsoever, borrow any amounts or incur any other liabilities or expenditure, issue any guarantees, indemnities, letters of comfort or commitment either for itself or on behalf of its group companies or any third party, save and except, in each case, in the following circumstances:
- i. If the same is in the ordinary course of business as carried on by the Transferor Companies as on the date of filing this Scheme with Tribunal; or
 - ii. If the written consent of the Transferee Company, as the case may be, has been obtained.
- (e) The Transferor Companies shall be entitled, pending the sanction of the Scheme by the Tribunal, to apply to the Central Government and all other agencies, departments and authorities concerned as are necessary under any law for such consents, approvals and sanctions which the Transferee Company may require for and carry on the business of the Transferor Companies.

9.2 On the Effective Date but with effect from the Appointed Date, the Transferee Company shall be authorized to carry on the businesses carried on by the Transferor Companies.

9.3 The Transferee Company may be allowed to alter its capital structure, either by fresh issue of shares or convertible securities on a rights basis or otherwise or by any reclassification, sub- division, consolidation, re-organisation or in any other manner with the consent of Board of Directors of the Transferee Company.

10. COMPLIANCE WITH TAX LAWS

This provisions of this Scheme as they relate to the amalgamation of Transferor Companies into and with Transferee Company, have been drawn up to comply with the conditions relating to "Amalgamation" as defined under the income-tax laws, specifically section 2(1B) of the Income- tax Act, 1961. If any terms or provisions of the Scheme are found to be or interpreted to be inconsistent with any of the said provisions at a later date, whether as a result of any amendment of law or any judicial or executive interpretation or for any other reason whatsoever, the aforesaid provisions of the tax laws shall prevail. The Scheme shall then stand modified to the extent determined necessary to comply with the said provisions. Such modification will however not affect other parts of the Scheme. Notwithstanding the other provisions of this Scheme, the power to make such amendments as may become necessary shall vest with the Board of the Transferee Company, which power shall be exercised reasonably in the best interests of the companies and their stakeholders, and which power can be exercised at any time, whether before or after the Effective Date.

11. LEGAL PROCEEDINGS

All legal proceedings of whatsoever nature by or against the Transferor Companies pending and/ or arising on or after the Appointed Date and prior to the Effective Date and relating to the Transferor Companies or its properties, assets, debts, liabilities, duties and obligations, shall be continued and/ or enforced until the Effective Date as desired by the Transferor Companies and as and from the Effective Date shall be continued and enforced by or against the Transferee Company in the same manner and to the same extent as would or might have been continued and enforced by or against the Transferor Companies. On and from the Effective Date, the Transferee Company shall and may, if required, initiate any legal proceedings in its name in relation to the Transferor Companies in the same manner and to the same extent as would or might have been initiated by the Transferor Companies.

12. CONTRACTS AND DEEDS

Subject to the other provisions of this Scheme, all contracts, deeds, bonds, agreements, insurance policies and other instruments, if any, of whatsoever nature to which the Transferor Companies is a party and subsisting or having effect on the Effective Date shall be in full force and effect against or in favour of the Transferee Company, as the case may be, and may be enforced by or against the Transferee Company as fully and effectually as if, instead of the Transferor Companies, the Transferee Company had been a party thereto. The Transferee Company may enter into and/ or issue and/ or execute deeds, writings or confirmations or enter into any tripartite arrangements, confirmations or novations, to which the Transferor Companies , if necessary also be party in order to give formal effect to the provisions of this Scheme, if so required or if so considered necessary. The Transferee Company shall be deemed to be authorised to execute any such deeds, writings or confirmations on behalf of the Transferor Companies and to implement or carry out all formalities required

on the part of the Transferor Companies to give effect to the provisions of this Scheme. It is clarified that any inter-se contracts between the Transferor Companies and the Transferee Company, as on the Effective Date shall stand cancelled and cease to operate in the Transferee Company.

13. STAFF AND EMPLOYEES

- 13.1 On the Scheme coming into effect, all staff and employees of the Transferor Companies in service on such date shall be deemed to have become staff and employees of the Transferee Company without any break, discontinuance or interruption in their service and on the basis of 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 with reference to the Transferor Companies on the Effective Date.
- 13.2 Upon the Scheme coming into effect, the existing balances of Provident Fund, Gratuity Fund, Leave Encashment scheme and/ or other schemes, created by the Transferor Companies for its employees shall be transferred to the Transferee Company. The Transferor Companies shall take all steps necessary for the transfer of balances, where applicable, of the Provident Fund, Gratuity Fund, Leave Encashment scheme and/ or other schemes, to the Transferee Company. All obligations of the Transferor Companies with regard to the said fund or funds as defined in the relevant rules shall be taken over by the Transferee Company from the Effective Date to the end and intent that all rights, duties, powers and obligations of the Transferor Companies in relation to such Fund or Funds shall become those of the Transferee Company and all the rights, duties and benefits of the employees employed in the Transferor Companies under such Funds shall be fully protected, subject to the provisions of law for the time being in force. It is clarified that the services of the staff, workmen and employees of the Transferor Companies will be treated as having been continuous for the purpose of the said Fund or Funds.

14. TREATMENT OF TAXES

- 14.1 Any tax liabilities under the Income-tax Act, 1961, Customs Act, 1962, State Sales Tax laws, Central Sales Tax Act, 1956, Central Excise Act 1944, Service Tax laws or other applicable laws/ regulations dealing with taxes duties/ levies (hereinafter in this Clause referred to as "Tax Laws") allocable or related to the business of the Transferor Companies to the extent not provided for or covered by tax provision in the accounts made as on the date immediately preceding the Appointed Date shall be transferred to the Transferee Company. Any surplus in the provision for taxation/ duties/ levies account including advance tax, withholding tax, service tax and any tax credit entitlements as on the date immediately preceding the Appointed Date will also be transferred to the account of the Transferee Company. Any refund under the Tax Laws due to the Transferor Companies consequent to the assessments made on the Transferor Companies and for which no credit is taken in the accounts as on the date immediately preceding the Appointed Date shall also belong to and be received by the Transferee Company.
- 14.2 All taxes (including income tax, sales tax, customs duty, service tax, VAT, etc) paid or payable by the Transferor Companies in respect of the operations and/or the profits of the business before the Appointed Date, shall be on account of the Transferee Company and, insofar as it relates to the tax payment (including, without limitation, sales tax, custom duty, income tax, service tax, excise, value added tax, etc.), whether by way of deduction at source, advance tax, duty under protest or otherwise howsoever, by the Transferor Companies in respect of the profits or activities or operation of the business after the Appointed Date, the same shall be deemed to be the corresponding item paid by the Transferee Company, and, shall, in all proceedings, be dealt with accordingly.
- 14.3 The Transferee Company is expressly permitted to file revise its income tax, wealth tax, service tax, VAT, sales tax, excise, CENVAT and other statutory returns, consequent to this Scheme becoming effective, notwithstanding that the period for filing/ revising such returns may have lapsed. However, upon the Scheme becoming effective subsequently, the Transferee Company shall have the right to revise and consolidate its financial statements and returns along with prescribed forms, filings and applications/ annexures under the Income Tax Act, 1961, indirect taxes and other tax laws. The Transferee Company is expressly permitted to amend TDS/TCS and other statutory certificates and shall have the right to claim refunds, advance tax credits, foreign tax credits, set offs and adjustments relating to its respective incomes/ transactions from the Appointed Date. It is specifically declared that all the taxes/ duties paid by the Transferor Companies shall be deemed to be the taxes duties paid by the Transferee Company and the Transferee Company shall be entitled to claim credit for such taxes deducted/ paid against its tax/ duty liabilities notwithstanding that the certificates/ challans or other documents for payment of such taxes/ duties are in the name of the Transferor Companies.

- 14.4 All tax assessment proceedings/ appeals of whatsoever nature by or against the Transferor Companies pending and/or arising at the Appointed Date and relating to the Transferor Companies shall be continued and/or enforced until the Effective Date as desired by the Transferee Company. As and from the Effective Date, the tax proceedings shall be continued and enforced by or against the Transferee Company in the same manner and to the same extent as would or might have been continued and enforced by or against the Transferor Companies.

Further, the aforementioned proceedings shall neither abate or be discontinued nor be in any way prejudicially affected by reason of the amalgamation of the Transferor Companies with the Transferee Company or anything contained in the Scheme.

Furthermore, on or after the Effective Date, all rights, entitlements and powers to revise returns and filings of the Transferor Companies under the Tax Laws, and to claim refunds and/ or credits for the taxes paid etc. and for matters incidental thereto, shall be available to and vest with the Transferee Company.

- 14.5 Upon the coming into effect of this Scheme all tax compliances under any tax laws by the Transferor Companies on or after Appointed Date shall be deemed to be made by the Transferee Company.

PART - III

15. CONSIDERATION

- 15.1 Since the Transferor Companies are the wholly owned subsidiaries of the Transferee Company, upon the Scheme becoming effective, all the equity shares held by the Transferee Company and its nominees in the Transferor Companies shall stand cancelled and extinguished as on Appointed Date. Accordingly, there will be no issue and allotment of equity shares of the Transferee Company to the shareholders of the Transferor Companies upon the Scheme being effective.
- 15.2 Upon the coming into effect of this Scheme, the share certificates, if any, and/or the shares in electronic form representing the shares held by Transferee Company in the Transferor Companies shall be deemed to be cancelled without any further act or deed for cancellation thereof by Transferee Company.

16. ACCOUNTING TREATMENT

With effect from the Appointed Date and upon the Scheme becoming effective, the Transferee Company shall account for the amalgamation of the Transferor Company 1 and Transferor Company 2 ("Transferor Companies") in its books of account in accordance with the Indian Accounting Standard 103 'Business Combinations' ('Ind AS 103') specified under Section 133 of the Companies Act 2013 read with the Companies (Indian Accounting Standards) Rules, 2015, and any amendments issued thereunder and in accordance with generally accepted accounting principles such that:

- 16.1 Transferee Company shall record all assets, liabilities and reserves of the Transferor Companies vested in Transferee Company pursuant to this Scheme, at the carrying values as appearing in the books of Transferor Companies, as per Para 9 of Appendix C of Ind AS 103.
- 16.2 The amount of investment, if any, in the Transferor Companies, appearing in the books of the Transferee Company shall stand cancelled.
- 16.3 The inter-company balances, if any, appearing in the books of account of Transferor Companies and Transferee Company shall stand cancelled and there shall be no further obligation/ outstanding in this respect.
- 16.4 The difference, if any, between the carrying value of assets and liabilities including the reserves and surplus of Transferor Companies recorded as per Clause 16.1 above and after effecting adjustments mentioned in Clause 16.2 and Clause 16.3 above shall be adjusted as per Appendix C of Ind AS 103.

17. COMBINATION OF AUTHORISED SHARE CAPITAL

- 17.1 Upon the Scheme becoming effective, the authorized share capital of Transferee Company in terms of its Memorandum of Association and Articles of Association shall automatically stand enhanced without any further

act, instrument or deed on the part of Transferee Company by the authorized share capital of Transferor Companies as on the Effective Date and the Memorandum of Association and Articles of Association of Transferee Company (relating to the authorized share capital) shall, without any further act, instrument or deed, be and stand altered, modified and amended, and consent of the shareholders to the Scheme shall be deemed to be sufficient for the purposes of effecting this amendment and no further resolution(s) under Section 13, 14 and 61 and other applicable provisions of the Companies Act, 2013, would be required to be separately passed and for this purpose the stamp duties and fees paid on the authorized share capital of Transferor Companies shall be utilized and applied to the increased authorized share capital of Transferee Company and no payment of any extra stamp duty and / or fee shall be payable by Transferee Company for increase in the authorized share capital to that extent.

- 17.2 The filing fees and stamp duty already paid by the Transferor Companies on its authorized share capital shall be utilized and applied to increased share capital of the Transferee Company, and shall be deemed to have been so paid by the Transferee Company on such combined authorized share capital. Further, the Transferee Company shall pay the requisite fee, if any, that arises due to the difference in maximum statutory fee as per the Act payable on such combined authorized share capital.
- 17.3 It is hereby clarified that the Transferee Company through its Board, if required, would be entitled to make appropriate reclassification/ combination of its Authorized Share Capital and provide suitable clarifications to the Registrar of Company with regard to the clubbing of the Authorized Share Capital of the Transferor Companies with the Transferee Company.
- 17.4 Pursuant to this Scheme, Transferee Company shall file the requisite forms/documents with the Registrar of Companies, Delhi or any other Applicable Authority for such increase of the authorized share capital.

PART - IV

18. SAVING OF CONCLUDED TRANSACTIONS

The transfer of properties and liabilities under Clause 7 and the continuance of proceedings by or against the Transferee Company under Clause 11 shall not affect any transaction or proceedings already concluded by the Transferor Companies on or before the date when the Transferor Companies adopts the Scheme in its Board meeting, and after the date of such adoption till the Effective Date, to the end and intent that the Transferee Company accepts and adopts all acts, deeds and things done and executed by the Transferor Companies in respect thereto as done and executed on behalf of itself.

19. DISSOLUTION OF THE TRANSFEROR COMPANIES

On the Scheme coming into effect, the Transferor Companies shall, without any further act or deed, stand dissolved without winding up.

20. APPLICATIONS TO THE TRIBUNAL/ OTHER AUTHORITY

- 20.1 The Transferor Companies and the Transferee Company shall, with all reasonable dispatch, make applications to the Tribunal, seeking orders for dispensing with or convening, holding and conducting of the meetings of the shareholders and/ or creditors of the Transferor Companies and the Transferee Company as may be directed by the Tribunal.
- 20.2 The Transferor Companies and the Transferee Company shall, with all reasonable dispatch, apply to the Tribunal for sanctioning the Scheme under the applicable provisions of the Act, and for such other order or orders, as the said Tribunal may deem fit for carrying this Scheme into effect.

21. CONDITIONALITY OF SCHEME

The Scheme is conditional upon and subject to:

- (a) the Scheme being agreed to by the requisite majority in number and value of such classes of persons including the respective shareholders and secured and unsecured creditors of each of the Transferor Companies and the Transferee Company except to the extent exempted by the Tribunal;

- (b) the Scheme being approved by the Tribunal;
- (c) such other sanctions and approvals including sanctions of any statutory or regulatory authority, as may be required in respect of the Scheme, being obtained;
- (d) filing of the certified copies of the Order of the Tribunal sanctioning the Scheme under the applicable provisions of the Act with the Registrar of Companies Delhi and Haryana.

22. EFFECT OF NON-APPROVALS

- 22.1 In the event the Scheme is not sanctioned by the Tribunal for any reason whatsoever or for any other reasons the Scheme cannot be implemented, the Scheme shall become null and void and shall be of no effect and in that event no rights and/or liabilities shall accrue to or be incurred inter-se by the Transferor Companies and the Transferee Company and each of the Transferor Companies and the Transferee Company shall bear and pay its respective costs, charges and expenses for and/or in connection with the Scheme.
- 22.2 It is expressly clarified, for the removal of doubt that if any of the components of this Scheme cannot be implemented or effected for any reason whatsoever, the remaining component(s) shall not in any way be affected or impaired and the Scheme with the remaining component(s) shall be implemented.

23. MODIFICATION OR AMENDMENT TO THE SCHEME

The Board of the Transferor Companies and the Transferee Company may assent to any modification(s) or amendment(s) in this Scheme which the Tribunal and/ or any other authorities may deem fit to direct or impose or which may otherwise be considered necessary or desirable for settling any question or doubt or difficulty that may arise for implementing and/ or carrying out the Scheme and the Board of the Transferor Companies and the Transferee Company and after the dissolution of the Transferor Companies, the Board of Directors of the Transferee Company be and are hereby authorised to take such steps and do all acts, deeds and things as may be necessary, desirable or proper to give effect to this Scheme and to resolve any doubts, difficulties or questions whether by reason of any orders of the Tribunal or of any directive or orders of any other authorities or otherwise howsoever arising out of, under or by virtue of this Scheme and/or any matters concerning or connected therewith. The Board of the Transferor Companies and the Transferee Company may assent to withdrawal of the scheme at any stage even after sanctioning of the scheme.

24. REVOCATION AND SEVERABILITY

- 24.1 In the event of any of the said sanctions and approvals not being obtained and/or complied with and/or satisfied and/or this Scheme not being sanctioned by the Tribunal or such other appropriate authority and/or order or orders not being passed as aforesaid within such period as may be mutually agreed upon by the respective Board of the Transferor Companies and the Transferee Company, this Scheme shall stand revoked, cancelled and be of no effect.
- 24.2 In the event of any of the conditions that may be imposed by the Tribunal or other authorities and which the Transferor Companies and the Transferee Company may find unacceptable for any reason, then the Transferor Companies and the Transferee Company are at liberty to withdraw the Scheme.
- 24.3 The Board of the Transferor Companies and the Transferee Company shall be entitled to withdraw, revoke, cancel and declare the Scheme of no effect they are on view that the coming into effect of the Scheme could have adverse implications on the Transferor Companies and the Transferee Company.
- 24.4 In the event of revocation under Clause 24.1, Clause 24.2 and Clause 24.3 above, no rights and liabilities whatsoever shall accrue to or be incurred inter se to the Transferor Companies and the Transferee Company and their respective shareholders or creditors or employees or any other person save and except in respect of any act or deed done prior thereto as is contemplated hereunder or as to any right, liability or obligation which has arisen or accrued pursuant thereto and which shall be governed and be preserved or worked out in accordance with the applicable law and in such case, each of the Transferor Companies and the Transferee Company shall bear and pay its respective costs, charges and expenses for and/or in connection with the Scheme.

25. COMPLIANCE WITH SEBI REGULATIONS

- 25.1 As the scheme solely provides for amalgamation of wholly owned subsidiaries with its holding company as regards to the listed company, no formal approval, no objection certificate or vetting is required from Stock Exchanges or SEBI for the Scheme, in terms of provisions of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2015, SEBI Circular No. CFD/ DIL3/ CIR/ 2017/ 21 dated 10th March, 2017, SEBI Circular No. CFD/ DIL3/ CIR/ 2018/ 2 dated 3rd January 2018 and other applicable provisions, if any.
- 25.2 In terms of SEBI Regulations, this Scheme is only required to be filed with Stock Exchanges for the purpose of disclosure and dissemination on their website.

26. COSTS, CHARGES AND EXPENSES

Except in the circumstances mentioned in Clause 22 and Clause 24 above, all costs, charges, taxes including duties (including the stamp duty and/ or transfer charges, if any, applicable in relation to this Scheme), levies and all other expenses, if any (save as expressly otherwise agreed) of the Transferor Companies and the Transferee Company arising out of or incurred in carrying out and implementing this Scheme and matters incidental thereto shall be borne and paid by the Transferee Company.