

(2003) 07 DEL CK 0096

In the Delhi High Court

Case No : Company Petition No's. 140 and 141 of 2003 and CA No's. 460-461, 565, 647, 662 and 705-708 of 2003

In Re: HCL Infosystems Limited; In Re: HCL Infinet Limited; In Re: HCL Technologies Limited

Date of Decision : 08-07-2003

Acts Referred:

Companies Act, 1956 — Section 172, 372, 372A, 391, 392

Citation : (2004) 121 CompCas 861 : (2003) 106 DLT 274 : (2004) 75 DRJ 699 : (2003) 46 SCL 365

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Shellka Arora, for Bindu Khosla, Objector, Pawan Kumar Dalmia, Objector in person, Rupan Khosla, Objector in person and Dinesh Chand, Deputy Registrar, ROC Regional Director, Deptt.of Co. Affair C.S. Vaidaynath, C. Mukhopadhyay, Ajoy K. Roy and Nishant K. Singh, for the Appellant;

Judgement

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 Infinet 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.

2. HCL Infosystems Limited proposed to enter into a scheme of arrangement with HCL Technologies Limited and HCL Infinet 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 u/s 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.

3. 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 meetings 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 notices 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.

4. The application filed by HCL Infinet 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.

5. 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. PriceWaterhouse 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 appearing for the petitioners, as also Mr. Rupan Khosla and Mr. Pawan Kumar Dalmia, who appeared 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.

6. 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-employees 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. The 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 of the merit of the scheme of arrangement.

7. One of the objections that is raised against grant of sanction to the scheme of 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 there under. 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 stated 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 u/s 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 arguments 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 LJ 46, it as 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.

8. 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.

9. 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 u/s 173 with notice to members of a special resolution is quite different from the statement which is required u/s 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 Comp Cas 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 Comp Cas 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".

10. 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.

11. 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 u/s 172 is quite different than the explanatory statement which is required u/s 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. Vs. United India Credit and Development Company Ltd.,

12. 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 2003 41 SCL 145 (Guj), 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 interests 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."

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

14. 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 there from that a notice containing a copy of the scheme of arrangement, explanatory statement and proxy form 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 objection 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 3/4th 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. "

15. It is, thus, established there from 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 proved 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 meetings 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."

16. 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."

17. 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.

18. 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. Kottiyan was appointed as the other scrutinizer by the Chairperson. It is pointed out by the company that D.C. Kottiyan 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.

19. 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.

20. 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.

21. 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 in the present case satisfies the requirement and the mandate of section 78 of the Rules.

22. 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.

23. 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 favor 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.

24. 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 Cas 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.

25. 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.

26. 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 Industries Ltd, (1996) 87 Comp Cas 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 Chaturanan 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 recognised 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 recognised 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."

27. 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. "

29. 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) Ltd. v. Cold Rollings India Pvt. Ltd.* (1998) 1 Comp. L.J. 36.

30. 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 favor 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 Courts as, "certainly" it is not part of the judicial process to examine entrepreneurial activities to ferret out flaws."

31. 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.

32. 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 a an effort to siphoning of the profitable business of the company in which case the minority shareholders 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.

33. In the light of the aforesaid discussions, the objections that are raised as against the grant of 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. dusty.