

NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

1. C.P.(CAA)/192(MB)2023 In C.A.(CAA)/117(MB)2023

IN THE MATTER OF

PRIME FOCUS ACADEMY OF MEDIA AND ENTERTAINMENT STUDIES
PRIVATE LIMITED

Section 230-232 of the Companies Act, 2013

Order Delivered on 04.07.2024

CORAM:

SHRI. K. R. SAJI KUMAR
MEMBER (J)

MS. MADHU SINHA
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Petitioner

For the Respondent:

ORDER

Order pronounced. Scheme is allowed.

SD/-
MADHU SINHA
Member (Technical)

SD/-
K. R. SAJI KUMAR
Member (Judicial)

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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH -V**

C.P.(CAA)/192/MB-V/2023

Connected with

C.A.(CAA)/117/MB-V/2023

[Under Sections 230-232 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016]

In the matter of

Scheme of Amalgamation of Prime Focus Academy of Media and Entertainment Studies Private limited (“PFAMESPL” or “**Transferor Company**”) with DNEG India Media Services Limited (“DIMSL” or “**Transferee Company**”) and their respective shareholders (“the Scheme”).

Prime Focus Academy of Media and

Entertainment Studies Private Limited,

... First Petitioner Company

Registered office: 2nd floor, Building - H,

Main Frame IT Park Royal Palms, near

Aarey colony Goregaon (East), Mumbai

400065.

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CIN: U74110MH2016PTC281032

DNEG India Media Services Limited ... Second Petitioner Company

Registered office: 2nd floor, Building - H,
Main Frame IT Park Royal Palms, near
Aarey colony Goregaon (East), Mumbai
400065.

CIN: U70100MH2006PLC160748

Order Dated: 04.07.2024

Coram:

Mr. K. R. Saji Kumar, Member (Judicial)

Ms. Madhu Sinha, Member (Technical)

Appearances (via videoconferencing):

For the Applicants : Mr Ahmed M Chunawala, i/b Rajesh
Shah & Co, Advocates
For the Regional Director : Mr. Altap Shaikh, AD (PH)

ORDER

1. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 and the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (CCAA Rules) for the Scheme of Amalgamation (Scheme) of PRIME FOCUS ACADEMY OF MEDIA AND ENTERTAINMENT STUDIES PRIVATE LIMITED, the **Transferor Company** with DNEG INDIA MEDIA SERVICES LIMITED, the **Transferee Company**.
2. Heard the Learned Counsel for the Petitioner Companies. Neither any objector has come before this Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petitions to the said Scheme.
3. The Petitioner Companies have approved the said Scheme of Amalgamation by passing their respective Board Resolutions dated 4th January 2023 which are annexed to the respective Company Scheme Petitions.
4. The Learned Counsel appearing on behalf of the Petitioners Companies states that the Petitions have been filed in consonance with the Order passed in the Company Scheme Application No. 117 of 2023 by this Tribunal.

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5. The Learned Counsel further states that the Petitioner Companies have complied with all requirements as per the directions of the Tribunal, and that they have filed necessary affidavits of compliance before us.
6. He also states that the First Petitioner Company is a training academy offering specialised courses in visual effects, animation, 3D animation services in the Media and Entertainment Industry and the Second Petitioner Company is engaged in undertaking various post-production activities including providing visual effects, animation and 2D to 3D conversion services in the Media and Entertainment Industry.
7. The **rationale for the proposed Scheme of Amalgamation** is as under:
 - a. The Transferor Company is a wholly owned subsidiary of the Transferee Company. With a view to consolidating its post - production related activities, it is proposed that the Transferor Company be amalgamated with the Transferee Company.
 - b. The amalgamation of the Transferor Company with the Transferee Company will lead to better business synergies, improved overall operational efficiencies and cost savings.

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- c. The amalgamation will also result in reduction in legal and regulatory compliances.
 - d. The proposed amalgamation will reduce managerial overlaps.
 - e. Rationalisation of multiple entities and simplification of the group structure.
8. The Registrar of Companies (ROC) made certain observations in his Report dated 21.07.2023 and also the Regional Director, Western Region, Ministry of Corporate Affairs has filed his Report dated 14th August 2023, *inter-alia*, making the following observations in paragraphs 2 (a) to (i), which are reproduced hereunder:

Para	Observation by the ROC/ Regional Director	Undertaking of the Petitioner Company/Rejoinder
2(a)	That on examination of the report of the Registrar of Companies, Mumbai dated 21.07.2023 for Petitioner Companies (Annexed as Annexure A-1) that the Petitioner Companies falls within the jurisdiction of ROC, Mumbai. It is submitted that	

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<p>no representation regarding the proposed scheme of Arrangement has been received in the matter of the Petitioner Company. Further, the Petitioner Company has filed Financial Statements up to 31.03.2022.</p> <p>The ROC has further submitted that in his report dated 21.07.2023 which are as under:-</p> <p>i. That the ROC Mumbai in his report dated 21.07.2023 has also stated that no Inquiry, Inspection, Investigation Prosecutions, Technical Scrutiny, Complaints under CA, 2013 have been pending against the Petitioner Companies.</p> <p>ii. Further ROC has mentioned as follows:</p> <p>1. There are no secured creditors in the first applicant company.</p> <p>There are 11 unsecured creditors having an</p>	<p>The Petitioner Companies submit that it is the facts of the case.</p> <p>The Transferee Company submits that the Petitioner Companies have obtained and submitted with NCLT consent affidavits from creditors having 90% in value.</p>
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	<p>outstanding balance of approx. Rs 0.17 crore as on 30th November 2022 in the first applicant company.</p> <p>There are 3 secured creditors having an outstanding balance of approx. Rs 161.53 crore as on 30th November 2022 in the second applicant company.</p> <p>There are 777 unsecured creditors having outstanding balance of approx. Rs 1056.20 crore as on 30th November 2022 in the second applicant company.</p> <p>2. As per provisions of section 232(3)(i) of CA, 2013 where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorized capital shall be set off against any fees payable by the transferee company on its authorized capital shall be set off against</p>	<p>The Transferee Company undertakes to comply with provisions of Section 232(3)(i) of the Companies Act, 2013.</p> <p>The fees (if any) payable by the Transferee Company on clubbing of authorised share capital of the Transferor Company shall be set off against the fees already paid by the Transferor Company for their authorised share capital in accordance with the provisions of Section</p>
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	<p>any fees payable by the transferee company on its authorized capital subsequent to the amalgamation. Therefore, remaining fee, if any after setting off the fees already paid by the transferor company on its authorized capital, must be paid by the transferee company on the increased authorized capital subsequent to amalgamation.</p> <p style="text-align: center;">3. Interest of the creditors should be protected</p>	<p>232(3)(i) of the Companies Act, 2013.</p> <p>T The interest of creditors will be protected.</p>
2(b)	<p>Transferee company should undertake to comply with the provisions of section 232(3)(i) of the</p>	<p>The Transferee Company undertakes to comply with</p>

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	<p>Companies Act, 2013 through appropriate affirmation in respect of fees payable by Transferee Company for increase of share capital on account of merger of transferor companies.</p>	<p>the provisions of section 232(3)(i) of the Companies Act, 2013. The fees (if any) payable by the Transferee Company on clubbing of authorised share capital of the Transferor Company shall be set off against the fees already paid by the Transferor Company for their authorised share capital in accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013.</p>
2(c)	<p>In compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the transferee company shall pass such accounting entries which</p>	<p>The Transferee Company undertakes that in addition to compliance of IND AS</p>

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	are necessary in connection with the scheme to comply with other applicable Accounting Standards including AS 5 or IND AS-8 etc.	103 for accounting treatment, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as IND AS-8 as applicable.
2(d)	The Hon'ble Tribunal may kindly direct the Petitioner Companies to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy, or no change is made.	The Scheme enclosed to Company Application & Company Petition, are one and same and there are no discrepancy / any change / changes are made.
2(e)	The Petitioner Companies under provisions of	The Transferee Company

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<p>section 230(5) of the Companies Act 2013 have to serve notices to concerned authorities which are likely to be affected by the Amalgamation or arrangement. Further, the approval of the scheme by the Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of authorities shall be such binding on the petitioner companies concerned.</p>	<p>submits that the Petitioner Companies have served notices under the provisions of section 230(5) of the Companies Act, to all the concerned authorities as directed by the Tribunal which are likely to be affected by the Scheme. Further, the Transferee Company submits that the approval of the Scheme by the Tribunal would not deter such authorities to deal with any of the issues arising after giving effect to the Scheme and the decision of such</p>
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		authorities would be binding on the Petitioner Companies.
2(f)	<p>As per Definition of the Scheme,</p> <p>"Appointed Date" means April 1, 2023 or such other date as the Tribunal may direct/ fix</p> <p>"Effective Date" means last of the dates on which the certified copies of the order / confirmation order sanctioning this Scheme of Amalgamation, passed by the Tribunal or any other competent authority or any other appropriate authority under the applicable provisions of the Act, as may be applicable, are filed with the Registrar of Companies, by the Transferor Companies and the Transferee Company. All references in this Scheme to the date of "coming into effect of this Scheme" or "effectiveness of this Scheme" or "Scheme taking effect" shall mean the Effective Date;</p>	<p>The Transferee Company submits that the Appointed Date is 1st April, 2023. The Transferee Company further submits that they will comply with the requirements as to Appointed Date and clarified <i>vide</i> Circular No. F. No.7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry.</p>

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	<p>It is submitted that the Petitioners may be asked to comply with the requirements as clarified vide circular no. F. No. 7/12/ 2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.</p>	
2(g)	<p>Petitioner Companies shall undertake to comply with the directions of Income tax department and the GST Authorities, if any.</p>	<p>The Transferee Company submits that the Petitioner Companies shall ensure compliance of all the provisions of Income Tax Act and Rules thereunder, as well as the Good and Service Act and Rules thereunder.</p>
2(h)	<p>Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory, if so required.</p>	<p>The Transferee Company submits that the Petitioner Companies are not governed by any sectoral</p>

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		regulatory authority.									
2(i)	<p>It is observed from financial statements as on 31.03.2022 of Petitioner Companies has issued shares at Security Premium and collected total premium as follows:-</p> <table border="1" style="width: 100%; border-collapse: collapse; margin: 10px 0;"> <thead> <tr> <th style="text-align: center;">Sr. No.</th> <th style="text-align: center;">Name of the Company</th> <th style="text-align: center;">Total Amount of Securities Premium Collected</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1.</td> <td>PRIME FOCUS ACADEMY OF MEDIA AND ENTERTAINMENT STUDIES PRIVATE LIMITED</td> <td>Rs. 14,99,00,000/-</td> </tr> <tr> <td style="text-align: center;">2.</td> <td>DNEG INDIA MEDIA SERVICES LIMITED</td> <td>Rs. 36844.62 Lakhs</td> </tr> </tbody> </table> <p>The company may clarify the status of filling of return of allotment.</p> <p>Further, the Petitioner Companies shall also satisfy</p>	Sr. No.	Name of the Company	Total Amount of Securities Premium Collected	1.	PRIME FOCUS ACADEMY OF MEDIA AND ENTERTAINMENT STUDIES PRIVATE LIMITED	Rs. 14,99,00,000/-	2.	DNEG INDIA MEDIA SERVICES LIMITED	Rs. 36844.62 Lakhs	<p>The Transferee Company submits as under:</p> <p>a. The Transferor Company has securities premium of Rs. 14,99,00,000/- which was recorded on issuance 10,000 Equity Shares at a premium of Rs. 14,990/- per share, each having a face value of Rs. 10/- on May 20, 2017. The Transferor Company had complied with the requirement of filing of Form PAS-3. Annexed hereto and marked as</p>
Sr. No.	Name of the Company	Total Amount of Securities Premium Collected									
1.	PRIME FOCUS ACADEMY OF MEDIA AND ENTERTAINMENT STUDIES PRIVATE LIMITED	Rs. 14,99,00,000/-									
2.	DNEG INDIA MEDIA SERVICES LIMITED	Rs. 36844.62 Lakhs									

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<p>the Hon'ble Bench about assessment of share capital u/s. 68 of the Income Tax Act, 1961, for issue of shares at fair value in order to confirm compliance of Income Tax Laws or Hon'ble NCLT may seek the comments from Income Tax department, if any, on this issue</p>	<p>“Exhibit A” is a copy of the Form PAS-3 of the Transferor Company to Affidavit in Rejoinder.</p> <p>b. The Transferee Company has aggregate balance in securities premium of Rs. 3,68,44,62,000/- out of which (i) INR 19,20,00,000/- which was recorded on issuance 8,00,000 Equity Shares at a premium of Rs. 240/- per share, each having a face value of Rs. 10/- on September 27, 2010 (ii) Rs. 1,19,88,00,000/- which was recorded on</p>
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		<p>12,00,000 Redeemable Non-Convertible Preference Shares at a premium of Rs. 999/- per share, each having a face value of Rs. 1/- on December 31, 2011. The Transferee Company had complied with the requirement of filing of Form 2. Annexed hereto and marked as “Exhibit B1 to B2” are copy of the Form 2 of the Transferee Company to Affidavit in Rejoinder.</p> <p>(iii) Further, remaining securities premium of Rs. 2,29,36,62,000/- was</p>
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		<p>transferred to the Transferee Company pursuant to NCLT order dated January 10, 2020, approving Scheme of Merger by Absorption of DNEG Creative Services Limited (“DCSL” or “Transferor Company 1” and Double Negative India Private Limited (“DNIPL” or Transferor Company 2”) with DNEG India Media Services Limited (“DIMSL” or “Transferee Company”) and their respective Shareholders (“the Scheme”). Annexed</p>
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		hereto and marked as “Exhibit B3” is a copy of the order to Affidavit in Rejoinder.
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9. The observations made by the ROC/Regional Director have been explained by the Petitioner Companies in Para 8 above. The Representative of the Regional Director has submitted that the explanations and clarifications given by the Petitioner Companies are found satisfactory and that they have no objection to the Scheme.
10. The Official Liquidator has filed his report on 31st August 2023 in the Company Scheme Petition No. 192 of 2023, *inter alia*, stating therein that the affairs of the Transferor Company have been conducted in a proper manner not prejudicial to the interest of the Shareholders of the Transferor Company and that the Transferor Company may be ordered to be dissolved by this Tribunal.
11. Mr. Altap Shaikh, AD of the Regional Director (WR) MCA, present at the time of hearing has submitted that the explanations and clarifications given by

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the Petitioner Companies are found to be satisfactory and stated that they have no objection for approving the Scheme by this Tribunal.

12. From the materials on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 192 of 2023 is made absolute in terms of clauses 25. (A) to (D) of the said Company Scheme Petition.
14. The First Petitioner Company be dissolved without winding up.
15. Petitioners Companies are directed to file a copy of this Order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically along with E-Form INC-28, in addition to physical copy within 30 days from the date of receipt of the Order from the Registry.
16. The Petitioner Companies to submit a copy of this Order and the Scheme duly authenticated by the Deputy Registrar / Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent

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of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of the Order, if any.

17. All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director / Assistant Registrar, National Company Law Tribunal, Mumbai.
18. The Appointed Date is 1st April, 2023.
19. Ordered Accordingly. C.P.(CAA)/192/MB-V/2023 is **allowed and disposed of.**

SD/-

Madhu Sinha

Member (Technical)

/Abhay/

SD/-

K. R. Saji Kumar

Member (Judicial)