

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

CP(CAA)47/MB-V/2024

connected with

CA(CAA)129/MB-V/2023

IN THE MATTER OF THE COMPANIES ACT,
2013

AND

IN THE MATTER OF SECTIONS 230 TO 232
OF THE COMPANIES ACT, 2013 AND OTHER
APPLICABLE PROVISIONS OF THE
COMPANIES ACT, 2013

AND

SCHEME OF AMALGAMATION

OF

INFOCREDIT SERVICES PRIVATE LIMITED
(TRANSFEROR COMPANY)

WITH

DREAMPLUG TECHNOLOGIES PRIVATE
LIMITED (TRANSFeree COMPANY)

AND

THEIR RESPECTIVE SHAREHOLDERS AND
CREDITORS

INFOCREDIT SERVICES PRIVATE
LIMITED

...First Petitioner Company / Transferor Company

DREAMPLUG TECHNOLOGIES
PRIVATE LIMITED

...Second Petitioner Company / Transferee Company

Order Dated:15.05.2024

Coram:

Hon'ble Smt. Reeta Kohli, Member (Judicial)

Hon'ble Smt. Madhu Sinha, Member (Technical)

Appearance

For the Petitioners : Mr. Hemant Sethi, Advocate i/b. Ms. Shrutika Kelji-Pednekar, Advocate

For the Regional Director :Mr. Altaf Shaikh – Joint RD, Authorised representative of Regional Director, MCA (WR), Mumbai

ORDER

1. Heard the Learned Counsel for the Petitioner and the representative of the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai. No Objector has come before this

Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petition.

2. The sanction of the Tribunal is sought under Section 230 to 232 and other applicable provisions of the Companies Act, 2013 read with Company (Compromises, Arrangements and Amalgamation) Rules, 2016, to the Scheme of Amalgamation of Infocredit Services Private Limited (Transferor Company) with Dreamplug Technologies Private Limited (Transferee Company) and their respective Shareholders ('Scheme').
3. The First Petitioner Company is engaged in business of providing technology and analytical solutions. The Second Petitioner Company is engaged in business of providing a technology platform to distribute coupons and vouchers of different brands and aggregate credit card payment options for convenience of its users, facilitate rental payments and merchant transactions and other related activity.
4. The Amalgamation of Transferor Company with the Transferee Company would inter alia have the following benefits / synergies:
 - a) Both Companies being under the same management, the amalgamation will result in focused management in the

combined entity thereby resulting in overall efficiency in management of the amalgamated entity.

- b) The amalgamation would enable the management to bring the entire business of both the Companies under one umbrella. Thereby resulting in administrative and operational efficiencies, simplified structure and management efficiencies, eliminate administrative duplications, reduction in administrative overheads and other expenses in maintaining separate entities and optimal utilisation of various resources. All these are expected to make the amalgamated entity more efficient in utilization of resources and create a stronger base for future growth of the amalgamated entity.
- c) Besides the generality of the above, the amalgamation will result in pooling of efficient human resources and ensuring optimum utilisation of such employees for the growth of the amalgamated entity. The amalgamation will also result in attracting efficient manpower for the amalgamated entity.
- d) Cost savings are expected to flow from more focused operational efforts, rationalization and standardization of administrative expenses.

5. The Learned Counsel for the Petitioner Companies submit that the Board of Directors of the Petitioner Companies had approved the Scheme of Amalgamation vide Board Resolution dated 22nd March, 2023. Further, the Appointed Date was modified to 01st April, 2023, by the members in an Extra Ordinary General Meeting held on 23rd October, 2023. The copy of the respective Board Resolutions and Extra Ordinary General Meetings are annexed as Annexure 'E-1 and E- 2' to the Application.
6. The Share Exchange ratio of the Petitioner companies are as follows:

“1 (One) equity share of the Transferee Company of Rs. 10/- each fully paid up for every 8.49 (Eight Decimal Four Nine) equity share held in Transferor Company by the Founders and Equity Shareholders;

“1 (One) Series F1 CCCPS of the Transferee Company of Rs. 100/- each being fully paid up for every 8.49 (Eight Decimal Four Nine) equity shares held in the Transferor Company by Other Shareholders;

“1 (One) Series F1 CCCPS of the Transferee Company of Rs. 100/- each being fully paid up for every 8.49 (Eight Decimal Four Nine)

Preference Shares held in the Transferor Company by Other Shareholders;”

7. The Learned Counsel appearing on behalf of the Petitioner Companies state that the Petition has been filed in consonance with the Order dated 5th September, 2023, passed by this Tribunal in the connected Company Scheme Application bearing CA(CAA)129/MB-V/2023.
8. The Learned Counsel appearing on behalf of the Petitioner Companies state that the Petitioner Companies have complied with all the requirements as per directions of this Tribunal and have filed necessary Affidavits of Service with this Tribunal. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements, if any, as may be required under the Companies Act, 2013 and the Rules made thereunder. The said undertaking is accepted.
9. The Regional Director (Western Region), Ministry of Corporate Affairs, Western Region, Mumbai has filed its Report dated 6th of May, 2024, inter alia stating that, save and except the observations as stated in paragraph 2(a) to (j) of the report, this Tribunal may pass such order or orders as deemed fit and proper

in the facts and circumstances of the case. The observations made by the Regional Director and the clarifications/undertakings given by the Petitioner Companies and the remarks contained in the Supplementary Report are summarized in the table below:

Para No.	Observations of Regional Director	Reply to the RD report
2	<p><i>"2. That the observations of the Central Government on the scheme are submitted as under:</i></p> <p><i>a) That on examination of the report of the Registrar of Companies, Mumbai dated 16.04.2024 (Annexed as Annexure A-1) for Petitioner Companies falls within the jurisdiction of ROC, Mumbai. It is submitted that no complaint and / or representation regarding the proposed scheme of Amalgamation has been received against the Petitioner Companies.</i></p> <p><i>Further, Petitioner Companies has filed</i></p>	<p><i>The Petitioner Companies states that the said para does not contain any observation, instead, it merely states factual information / comments which are positive in nature and does not call for any reply.</i></p> <p><i>The Petitioner Companies state that the said para does not contain any observation, instead, it merely</i></p>

	<p><i>Financial Statements up to 31.03.2023</i></p> <p>i. <i>That the ROC Mumbai in its report dated 16.04.2024 stated that No Inquiry, Inspection, Investigations, Prosecutions and Complaints under Companies Act, 2013 are pending against the Petitioner Companies.</i></p>	<p><i>states factual information / comments which are positive in nature and does not call for any reply.</i></p>
ii	<p><i>Further ROC has mentioned as follows: -</i></p> <p><i>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 any fees payable by the transferee company on its authorized capital subsequent to the</i></p>	<p><i>The Petitioner Companies state that the Transferee Company undertakes that the fee, if any, paid by the Transferor Companies on its Authorized Capital will be set-off against any fees payable by the Transferee Company on its Authorized Capital subsequent to the Merger by Absorption in accordance with the provisions of section 232(3)(i) of Companies</i></p>

	<p><i>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.</i></p>	<p><i>Act, 2013 and affirms that it will comply with the provisions of the section. Further, the Petitioner Companies undertake that the Transferee Company will pay the balance / difference amount of the fees on its increasing Authorized share capital, if any.</i></p>
b)	<p><i>Transferee company should undertake to comply with the provisions of section 232(3) (i) of the Companies Act, 2013 through appropriate affirmation in respect of fees payable by Transferee Company for increase of share capital on account of merger of companies.</i></p>	<p><i>The Transferee Company undertakes to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 in respect of fees payable by Transferee Company for increase of share capital on account of merger of Transferor Company.</i></p>
c)	<p><i>In compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to</i></p>	<p><i>The Petitioner Companies undertake that in compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the Transferee Company will pass such</i></p>

	<i>comply with other applicable Accounting Standards including AS-5 or IND AS-8 etc.</i>	<i>accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 or IND AS-8, etc.</i>
d)	<i>The Hon'ble Tribunal may kindly direct the Petitioner Companies to file an affidavit to the extent that the Scheme enclosed with the Company Application and Company Petition are one and the same and there is no discrepancy, or no change is made.</i>	<i>The Petitioner Companies undertake that the Scheme enclosed to the Company Application and the Company Petition is one change in respect of Appointed Date and the same is approved by the Board of Directors in Board meeting and special resolution was passed by the shareholders in the members meeting and the same is annexed to the Company Scheme Petition except that there is no discrepancy, or no change is made.</i>

e)	<p><i>The Petitioner Companies under provisions of 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 from dealing with any of the issues arising after giving effect to the scheme. The decision of such authorities shall be binding on the Petitioner Companies concerned.</i></p>	<p><i>The Petitioner Companies state that the Petitioner Companies has already served the notices to the concerned authorities as required by Section 230(5) and filed proofs thereof with the NCLT, Mumbai vide Affidavit of Service dated 18th April, 2024. Further, the Petitioner Companies undertake that the approval of the Scheme by this Tribunal will not deter such Authorities to deal with any of the issues arising after giving effect to the scheme and the decision of such Authorities will be binding on the Petitioner Companies in the course of applicable law.</i></p>
f)	<p><i>The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite majority of members and creditors as per</i></p>	<p><i>The Petitioner Companies state that the Hon'ble NCLT vide its order dated 5th September, 2023 conveyed the meeting of</i></p>

	<p><i>Section 230(6) of the Act in meetings duly held in terms of Section 230(1) read with 7 sub-section (3) to (5) of Section 230 of the Act and the Minutes, thereof are duly placed before the Tribunal.</i></p>	<p><i>the Equity Shareholders and Preference Shareholders of both the companies.</i></p> <p><i>The Meeting of the Secured Creditors is dispensed with in view of there are no secured creditors in both the companies.</i></p> <p><i>Further the meeting of the unsecured creditors is dispensed with in view of the consent affidavits obtained from the Unsecured Creditors having value more than 90% and above in both the Companies.</i></p> <p><i>Hence, the meeting of creditors as per Section 230(6) of the Act in terms of Section 230(1) read with subsection (3) to (5) has been dispensed vide</i></p>
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		<i>order dated 5th September, 2023.</i>
g)	<p><i>As per Definition of the Scheme,</i></p> <p><i>"Appointed Date" means 1st April 2023;</i></p> <p><i>"Effective Date" shall mean the last of the dates on which certified copies of the order(s) of NCLT sanctioning the scheme are filed with Registrar of Companies by the Transferor Company and Transferee Company. Any 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;</i></p> <p><i>In this regard, it is submitted that Section 232(6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective, and the scheme shall be deemed to be</i></p>	<p><i>The Petitioner Companies state that the Appointed Date of the Scheme is 1st April, 2023 and the Scheme will be effective from the said Appointed Date. Further, the Petitioner Companies undertake to comply with the requirements as clarified vide Circular No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.</i></p>

	<p><i>effective from such date and not at a date subsequent to the appointed date. However, this aspect may be decided by the Hon'ble Tribunal taking into account of its inherent powers. The Petitioner Companies shall undertake 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.</i></p>	
h)	<p><i>Petitioner Companies shall undertake to comply with the directions of the Income Tax Department & GST Department, if any.</i></p>	<p><i>The Petitioner Companies states the none of the Petitioner Companies have received any direction from Income Tax Department and GST Department. Further, the Petitioner Companies undertake to comply with the directions of the Income Tax Department and GST Department (in the event it is received) in the course of applicable law.</i></p>

i)	<p><i>Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory, if any.</i></p>	<p><i>The Petitioner Companies state that the Transferor Company is not governed by any sectoral regulator. In any case, the Petitioner Companies undertake to comply with the directions of the concerned sectoral regulator, if any.</i></p>								
j)	<p><i>As per shareholding pattern as on 31.03.2023 submitted by the Petitioner company, details of shareholding is as follows:-</i></p> <table border="1" data-bbox="496 1010 967 1771"> <thead> <tr> <th data-bbox="496 1010 616 1182"><i>Petitioner Company</i></th> <th data-bbox="616 1010 730 1182"><i>Name of Shareholders</i></th> <th data-bbox="730 1010 820 1182"><i>%of shares held</i></th> <th data-bbox="820 1010 967 1182"><i>Remarks</i></th> </tr> </thead> <tbody> <tr> <td data-bbox="496 1182 616 1771"><i>Infocedit Services Private Limited</i></td> <td data-bbox="616 1182 730 1771"><i>Dreamplug Technologies Private Limited</i></td> <td data-bbox="730 1182 820 1771"><i>21.09%</i></td> <td data-bbox="820 1182 967 1771"><i>No Form BEN-2 has been filed by any of the Petitioner Companies as per records available at MCA 21 Portal</i></td> </tr> </tbody> </table>	<i>Petitioner Company</i>	<i>Name of Shareholders</i>	<i>%of shares held</i>	<i>Remarks</i>	<i>Infocedit Services Private Limited</i>	<i>Dreamplug Technologies Private Limited</i>	<i>21.09%</i>	<i>No Form BEN-2 has been filed by any of the Petitioner Companies as per records available at MCA 21 Portal</i>	<p><i>The Petitioner Companies state that, in case of First Petitioner Company, the filing of e-Form BEN-2 is not applicable. As per the declaration received from body corporate shareholders of First Petitioner Company, there are no individual shareholder holding majority stake in shareholders of First Petitioner Company pursuant to the Rule 2(d) of the Companies (Significant Beneficial Owners) Rules, 2018. Accordingly, there is no</i></p>
<i>Petitioner Company</i>	<i>Name of Shareholders</i>	<i>%of shares held</i>	<i>Remarks</i>							
<i>Infocedit Services Private Limited</i>	<i>Dreamplug Technologies Private Limited</i>	<i>21.09%</i>	<i>No Form BEN-2 has been filed by any of the Petitioner Companies as per records available at MCA 21 Portal</i>							

	<p>No Form BEN-2 has been filed by any of the Petitioner Company as per records available at MCA21 Portal, hence Petitioner Companies shall undertake to comply with the provisions of section 90 of Companies Act, 2013 r/w. Companies (Significant Beneficial Owners) Amendment.</p>	<p><i>individual qualifying to give declaration in Form BEN-1 and consequently, the filing of e-Form BEN-2 is also ruled out for the First Petitioner Company for its body corporate shareholder. The declarations in this regard as been annexed as "Annexure A". Further, the applicability of filing e-Form BEN-2 by the Second Petitioner Company was only with respect to the declarations received from (a) Mr. Kunal Shah; and (b) Mr. Rohan Shah, designated partners of the LLP and the Second Petitioner Company has duly filed the same for both the designated partners, respectively via e-Form BEN-2 vide (a) SRN: F60562758 dated April 18, 2023; and (b) SRN: F60562733 dated</i></p>
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		<i>April 18, 2023. Enclosed herewith the respective Forms and challans marked as “Annexure A1”.</i>
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10. The Petitioner Companies have provided clarification/undertakings to the observations made by the Regional Director in Para 10 above. The clarifications and undertaking given by the Petitioner Companies are accepted.

11. Para no.6 Of the Official Liquidator’s report dated 25th day of April, 2024, states that “the Official Liquidator humbly submits that the affairs of the Transferor Company have been conducted in a proper manner .”

12. Further in response to the observations made by the Official Liquidator vide para no. 6 Of their report, the Petitioner Companies have given necessary undertakings and clarification as per affidavit in rejoinder dated 3rd May, 2024 which are as follows :

Para no.	Observation by Official Liquidator	Response submitted by the Petitioner Company
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<p>6</p>	<p>In financial statement as at 31.03.2023 & 31.03.2022 of the Petitioner Company No.1, Infocredit Services Private Limited (Transferor Company) that the company owes Rs.5.94 Lakhs and Rs.3.07 Lakhs respectively to MSME. In this respect it is stated that under MSME Act, 2006 the buyer is to make payment within 45 days of it becoming due. In case of failure to pay to the MSME supplier, the company is liable to pay compound interest rate. Hon'ble Tribunal may be 'require the Transferor Company to clarify whether they have paid the said amount to the MSME creditor</p>	<p><i>The First Petitioner Company states that there are 4 (four) MSME creditors in the year 2023 having aggregate outstanding amount of Rs. 9,04,759/ - and the same was paid by the First Petitioner Company on or before 30th April, 2023 (i.e. within 45 days of it becoming due). I say that there are 3 (three) MSME Creditors in the year 2022 having aggregate outstanding amount of Rs. 3,06,750/- and out of them 2 (two) creditors were paid by the First Petitioner Company on or before 30th April, 2023 (i.e., within 45 days of it becoming due) and 1 (one) creditor raised a credit note.</i></p>
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	<p>or whether there is any dispute with respect to payment of such amount. In case of dispute with regard to amount due whether the reference has been made to the MSME facilitation council constituted by the respective Government or not. Company may also be required to produce form MSME-1 filed with the ROC for the above said dues.</p>	<p><i>Further, a new invoiced was raised which was settled within 45 days. Hereto annexed and marked Annexure - "A" is the copy of the details of MSME creditors and the payments made to them.</i></p> <p><i>Hence, the Petitioner Companies submit that as on date there is no outstanding amount is payable to MSME Suppliers / Creditors.</i></p>
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13. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy.
14. Since all the requisite statutory compliances have been fulfilled, Company Petition bearing CP(CAA)47/MB-V/2024 filed by the

Petitioner Companies are made absolute in terms of prayer clauses of the said Company Scheme Petition.

15. The Petitioner Companies are directed to file a certified copy of this order alongwith a copy of the Scheme 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, duly certified by the Deputy Registrar or the Assistant Registrar, as the case may be, of this Tribunal.
16. The Petitioner Companies to lodge a certified copy of this order and the Scheme duly authenticated by the Deputy Registrar of the Assistant Registrar, as the case may be, of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the certified copy of Order.
17. All concerned regulatory authorities to act on a copy of this Order duly certified by the Registry of this Tribunal, along with a copy of the Scheme.
18. Further heard, Mr. Altaf Shaikh, Joint RD, Authorised representative of the Regional Director, MCA (WR), Mumbai, who is present at the time of final hearing. She stated that most of the

objections raised by the RD are routine in nature and they have no serious objections for approving the Scheme by the Tribunal.

19. The appointed date for the Scheme of Amalgamation of the Petitioner Companies is fixed as 1st April, 2023.
20. Ordered accordingly. CP(CAA)47/MB-V/2024 is allowed and disposed off.

Sd/-
Madhu Sinha
Member (Technical)

/Priyanka/

Sd/-
Reeta Kohli
Member (Judicial)