

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT IV

CP (CAA)/ 232 /MB/2023 IN

C.A(CAA)/110/MB-IV/2023

In the matter of

The Companies Act, 2013 (18 of 2013)

And

In the matter of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 and Rules framed there under as in force from time to time;

And

In the matter of

Scheme of Merger by Absorption of

Arrina Education Services Private Limited ('Arrina' or 'First Transferor Company' or 'First Petitioner Company')

and

Talentedge Education Ventures Private Limited

('TEV' or 'Second Transferor Company' or 'Second Petitioner Company')

with

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upGrad Education Private Limited
(‘upGrad’ or ‘Transferee Company’ or
‘Third Petitioner Company’)
and their respective shareholders

Arrina Education Services Private Limited,

[CIN: U80301MH2012PTC225975] ... First Transferor Company /
First Petitioner Company

Talentedge Education Ventures Private Limited,

[CIN: U74900MH2015PTC262490] ... Second Transferor Company /
Second Petitioner Company

Upgrad Education Private Limited,

[CIN: U80902MH2012PTC258559] ...Transferee Company /
Third Petitioner Company

Petitioner Company are collectively known as Petitioner Companies

Order pronounced on: **28.03.2024**

Coram:

Ms. Anu Jagmohan Singh
Hon’ble Member (Technical)

Mr. Kishore Vemulapalli
Hon’ble Member (Judicial)

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Appearances:

For the Petitioner: Mr. Hemant Sethi i/b Hemant
Sethi & Co., Advocates
For the Regional Director: Mr. Gauraj Jaiswal, Authorized
Representative.

ORDER

1. Heard the Learned Counsel for the Petitioner Companies. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the said Scheme.
2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 and the rules framed there under for the Scheme of Merger by Absorption of Arrina Education Services Private Limited ('First Transferor Company' or 'First Petitioner Company') and Talentedge Education Ventures Private Limited ('Second Transferor Company' or 'Second Petitioner Company') with upGrad Education Private Limited ('Transferee Company' or 'Third Petitioner Company') and their respective shareholders.

3. The Petitioner Companies further submit that the First Transferor Company / First Petitioner Company, Second Transferor Company / Second Petitioner Company and Transferee Company / Third Petitioner Company form part of the same management and shareholder group.

Consideration:

4. Upon the coming into effect of the Scheme, and in consideration for the transfer of and vesting of the properties, assets and liabilities and Undertaking of the Transferor Companies in the Transferee Company in terms of this Scheme, the Transferee Company shall not be required to issue any shares, since the entire paid up share capital of the Transferor Companies is held directly or indirectly by the Transferee Company along with its nominees. Accordingly, the entire paid up share capital held by the Transferee Company in the Transferor Companies, either individually or through nominee, shall be cancelled.
5. The Petitioner Companies have approved the said Scheme of Merger by Absorption by passing their respective Board Resolutions dated 10th April 2023.

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6. The Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of this Tribunal and they have filed necessary affidavit of compliance.
7. Petitioner Companies submit that the First Transferor Company is a Private Limited Company and is a leading education company engaged in providing education to students & corporates, conducting various IT related tests, providing learning center activities to varied universities for their distance education programs. The Second Transferor Company is a private limited company and is a leading Edutech company engaged in providing services in the context of "online education courses" which include services in relation to admission of students, online counselling of students, dissemination of academic programs/courses among the students and advertisement/online marketing/lead generation. Whereas the Transferee Company is a private company and it is currently engaged, inter alia, in the business of providing higher education programs through its online platform and through collaborations with universities.
8. The rationale for the Scheme is as follows:
“During financial year 2022-2023, the Transferee Company as a part of its business expansion plan, through a share purchase agreement acquired the entire stake of First Transferor Company as a stepping stone towards acquisition of the existing business of the Transferor Companies detailed in

paragraph 1 above, which was completed on 26th April 2022. The Transferee Company and the Transferor Companies are engaged in similar business under the same sector being the education and allied sector. Further, the First Transferor Company is a wholly owned subsidiary of Transferee Company wherein the entire paid up share capital is held by the Transferee Company along with its nominees and the Second Transferor Company is a wholly owned subsidiary of First Transferor Company wherein the entire paid up share capital is held by the First Transferor Company along with its nominees and thus is a step-down wholly owned subsidiary of the Transferee Company. Accordingly, the management of the Transferor Companies and the Transferee Company have decided to consolidate the business of the Transferor Companies in a single entity i.e. the Transferee Company with effect from the Appointed Date by way of amalgamation under this scheme of Merger by Absorption. Further, the amalgamation of the Transferor Companies (as defined hereinafter) with the Transferee Company would inter alia also have the following benefits:

- Consolidation of similar businesses under single entity and achieve simplified corporate structure, eliminate duplicate corporate procedures and facilitate in exploiting the significant potential for growth;*
- Result in optimizing and leveraging existing resources of these Companies for the most beneficial utilization of these factors in the combined entity. Further, it would be advantageous to combine the activities and operations of all these Companies in a single entity and*

build strong capabilities to effectively meet future challenges in the competitive business environment;

- *Result in elimination of duplicate work, reduction in overheads, better and more productive utilization of financial, human and other resource and enhancement of overall business efficiency and also to enable Companies to combine their managerial and operation strength, to build wider capital and financial base and to promote and secure overall growth;*
- *Result in significant reduction in multiplicity of legal and regulatory compliances which at present is required to be made separately by the Transferor Companies and the Transferee Company; and*
- *Greater efficiency in cash management of the Transferee Company and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities. The proposed amalgamation would enhance the shareholders' value of the Transferor Companies and the Transferee Company."*

9. The Regional Director has filed his Report dated 25th January 2024 *inter-alia* making the following observations in Paragraphs 2(a) to (i) which are reproduced hereunder. The Petitioners have filed a Joint Affidavit in response dated 29th January 2024 to the observations made

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by the Regional Director and gave necessary clarifications/undertakings as follows:

Para	Observation by the Regional Director	Undertaking given by Petitioner Company/ Rejoinder
2(a)	<p>That on examination of the report of the Registrar of Companies, Mumbai dated 21.08.2023 (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. Further, the petitioner Companies has filed Financial Statements up to 31.03.2022.</p> <p>The ROC has further submitted that in his report dated 21.08.2023 which are as under:-</p> <p>i. That the ROC Mumbai in its report dated 21.08.2023 has also stated that No Inquiry, Inspection, Investigations, Prosecutions</p>	<p>As regards the observation made in Paragraph 2(a)(i.) of the said Report is concerned, the Petitioner Companies submit that the observation in the said paragraph is merely factual in nature and no further response is required to that extent.</p> <p>As regards the observation made in Para 2(a)(ii.) of the said Report is concerned, the Transferee Company submits that the necessary stamp duty applicable if any on transfer of property / Assets on filing of the Scheme sanctioned by the NCLT will be paid to the respective stamp duty authorities in accordance with the relevant applicable provision of stamp duty laws.</p> <p>As regards the observation made in Para 2(a)(iii) of the said Report is concerned, the</p>

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<p>and complaints under CA, 2013 have been pending against the Petitioner Companies.</p> <p>ii. Necessary Stamp Duty on transfer of property / Assets is to be paid to the respective Authorities before implementation of the Scheme.</p> <p>iii. It is submitted that as per the provisions of Section 232(3)(i) of the Companies Act, 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 authorised 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 the amalgamation.</p>	<p>Transferee Company submits that it undertakes to comply with section 232(3)(i) of Companies Act, 2013, where the First Transferor Company and Second Transferor Company are dissolved, the fee and stamp duty paid by the First Transferor Company and Second Transferor Company on its authorized capital shall be set-off against fees and stamp duty payable by the Transferee Company on its authorized capital subsequent to the amalgamation and therefore, the Transferee Company undertakes that it shall pay, if required, the difference of fees and stamp duty for increase of share capital on account of merger of Transferor Companies into itself.</p> <p>As regards the observation made in Para 2(a)(iv.) of the said Report is concerned, the Petitioner Companies submit that the interest of the creditors of the Petitioner Companies will be protected.</p>
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	<p>iv. The interest of the creditors should be protected.</p> <p>v. May be decided on its merits.</p> <p>Hence, the Petitioner Companies shall undertake to submit detailed reply against observations mentioned above.</p>	
2(b)	<p>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 transfer of companies.</p>	<p>As regards the observation made in Paragraph 2(b) of the said Report is concerned, the Transferee Company submits that it undertakes to comply with section 232(3)(i) of Companies Act, 2013, where the First Transferor Company and Second Transferor Company are dissolved, the fee and stamp duty paid by the First Transferor Company and Second Transferor Company on its authorised capital shall be set-off against fees and stamp duty payable by the Transferee Company on its authorised capital subsequent to the amalgamation and therefore, the Transferee Company undertake that it shall pay, if required, the difference of fees</p>

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		and stamp duty for increase of share capital on account of merger of Transferor Companies into itself.
2(c)	c) In compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the transferee company shall pass such 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.	As regards the observation made in Paragraph 2(c) of the said Report is concerned, it is submitted that the Third Petitioner Company being the Transferee Company shall pass such accounting entries which are necessary to comply with all other applicable Accounting Standards such as IND AS-8 etc. to the extent 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.	So far as the observation in paragraph 2(d) of the said Report is concerned, the Petitioner Companies submit that that the Scheme enclosed in Company Application and Company Petition and filed with regulatory authorities are one and the same and there is no discrepancy or no change is made to the Scheme.
2(e)	The Petitioner Companies under provision of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which	As regards the observation made in Paragraph 2(e) of the said Report is concerned, the Petitioner Companies submit that they have complied with

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	<p>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 such authorities shall be binding on the petitioner companies concerned.</p>	<p>the provisions of section 230(5) of the Companies Act, 2013 and served notices to concerned authorities which are likely to be affected by the Scheme. Further, the Petitioner Companies undertake that the approval of the Scheme by this Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the Scheme and the decision of such authorities shall be binding on the petitioner companies concerned unless otherwise appealable.</p>
2(f)	<p>As per Definition of the Scheme,</p> <p>“Appointed Date” shall mean 26th April 2022 for merger of Arrina and TEV into upGrad;</p> <p>“Effective Date” means the date or last of the dates on which the certified / authenticated copy of the order of the National Company Law Tribunal,</p>	<p>As regards the observation made in Paragraph 2(f) of the said Report is concerned it is submitted that the Company Scheme Application was filed on 15th April, 2023 and the Appointed Date (i.e., 26th April 2022) as mentioned in the Scheme are in compliance with Section 232(6) of the Companies Act, 2013 and are also in compliance of the circular No. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs</p>

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<p>Mumbai (“NCLT”) sanctioning this Scheme is filed with the Registrar of Companies, Mumbai by the Transferor Companies, the Transferee Company;</p> <p>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 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 its inherent powers.</p> <p>The appointed dates should be similar for all the Petitioner Companies.</p> <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</p>	<p>and the Petitioner Companies further submits that the Scheme shall be effective from the Appointed Date as mentioned in Clause 2 of the Scheme.</p>
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	Ministry of Corporate Affairs.	
2(g)	Petitioner Companies shall undertake to comply with the directions of the Income tax department, if any.	As regards the observation made in Paragraph 2(g) of the said Report is concerned, the Petitioner Companies submit to comply with the directions of Income tax department, as to the extent applicable.
2(h)	Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory, if any. The Petitioner Companies may also satisfy the Hon'ble NCLT as to whether education activities like running school can be carried out a company other than non-profit Organization like Section 8 Company.	As regards the observation made in Paragraph 2(h) of the said Report is concerned, the Petitioner Companies submit to comply with the directions of concerned sectoral Regulatory, as to the extent applicable. Further, the Petitioner Companies submit that the Petitioner Companies are not Section 8 companies but registered as a private limited company as per the relevant provisions of Companies Act, 2013 and only undertakes activities which are permissible as per the relevant provisions of the Companies Act, 2013 and as per the main object clause as mentioned in the Memorandum of Association. Further, the activities undertaken by the Petitioner

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		Companies does not include education activities like running school.
2(i)	<p>The Petitioner Company states that the Transferee Company shall be in compliance with provisions of Section 2(1B) of the Income Tax Act, 1961. In this regard, the petitioner company shall ensure compliance of all the provisions of Income Tax Act and Rules thereunder;</p> <p>Further, the Petitioner Companies shall also satisfy 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>As regards the observation made in Paragraph 2(i) of the said Report is concerned, is submitted that Petitioner Companies undertakes to comply with all the provisions of Income Tax Act, 1961 and rules thereunder including the provision of section 2(1B) of the Income Tax Act, 1961.</p> <p>Further, the Petitioner Companies hereby confirm that there are no assessment order u/s 68 r/w other applicable provisions of Income Tax Act, 1961 and there are no notice/procedure carried out by Income Tax Department in this regard.</p>

10. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 9 above through an affidavit in response submitted on 29th January 2024.

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11. Mr. Gauraj Jaiswal, Representative of the Regional Director has submitted that the explanations and clarifications given by the Petitioner companies are found satisfactory. Further, the Representative of the Regional Director has submitted that they have no objection to the Scheme.
12. The Official Liquidator has filed its report dated 23rd January 2024 in the Company Scheme Petition, C.P.(CAA)/232/MB/2023. The observations made in the OL report in paragraph 6, 7 and 8 on the proposed Scheme to be considered by the Hon'ble NCLT on the proposed Scheme are reproduced hereunder. The First Petitioner Company and Second Petitioner Company have filed a Joint Affidavit in response on 29th January 2024 to the observations made by the Official Liquidator and gave necessary clarifications/undertakings as follows:

Para	Observation by the Official Liquidator	Undertaking given by the First Petitioner Company/ Rejoinder
6	With reference to clause No. 15.1 of the scheme it is stated that such clauses override the provision of Companies Act, 2013 namely Section 232(3)(i) which inter-alia provides that, 'if a company is dissolved the fee paid by	As regards the observation made in paragraph 6 of the Official Liquidator's report is concerned, it is submitted that the Transferee Company undertakes to comply with section 232(3)(i) of Companies Act, 2013, where the First

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	<p>such company on its Authorized Capital shall be set-off against any fees payable by the transferee company on its Authorized Capital. Accordingly, clause No. 15.1 may be modified.</p>	<p>Transferor Company and Second Transferor Company are dissolved, the fee and stamp duty paid by the First Transferor Company and Second Transferor Company on its authorized capital shall be set-off against fees and stamp duty payable by the Transferee Company on its authorized capital subsequent to the amalgamation and therefore, the Transferee Company undertake that it shall pay, if required, the difference of fees and stamp duty for increase of share capital on account of merger of Transferor Companies into itself. Accordingly, no modifications are required in the scheme.</p>
7	<p>As per the Financial Statement as at 31.03.2022 the companies have negative networth. Even when the company's net worth is negative, the Financial Statements has been prepared on going concern basis. There may be breach of fundamental principle of</p>	<p>As regards the observation made in paragraph 7 of the Official Liquidator's report is concerned, it is submitted that the entire issued, subscribed and paid-up share capital of the First Transferor Company was acquired by upGrad Education Private Limited i.e., the Transferee Company on</p>

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	<p>accounting. Hon'ble Tribunal may require the companies to explain in this respect.</p>	<p>26th April 2022. As mentioned in Para 3 of Independent Auditors Report for the financial year ended 31st March 2023, the financial statements of Arrina Education Services Private Limited have been prepared on a going-concern basis in accordance with the financial and other commitment provided by their Holding Company i.e. upGrad Education Private Limited, the Transferee Company to fulfil Arrina Education Services Private Limited's obligations as and when they fall due. Accordingly, annexed and marked as Annexure 'B-1' is the copy of Audited Statement of Accounts of First Transferor Company as on 31st March 2023 in the repose submitted to the OL.</p> <p>As regards the Second Transferor Company is concerned, the Second Transferor Company is a wholly-owned subsidiary of First Transferor Company. Hence, it can be said that</p>
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		<p>Second Transferor Company is an indirect wholly owned subsidiary of upGrad Education Private Limited i.e., the Transferee Company. As mentioned in Para 3 of Independent Auditors Report for the financial year ended 31st March 2023, the financial statements of Talentedge Education Ventures Private Limited have been prepared on a going-concern basis for the financial year ended 31 March 2023 in accordance with the financial and other commitment provided by their Holding Company i.e. Arrina Education Services Private Limited, the Transferee Company to fulfil Talentedge Education Ventures Private Limited's obligations as and when they fall due. Accordingly, Hereto annexed and marked as Annexure 'B-2' is the copy of Audited Statement of Accounts of Second Transferor Company as on 31st March 2023 in the repose submitted to the OL.</p>
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8	<p>The Transferor Companies in reply to queries of Official Liquidator has informed that there are several litigations pending before various Courts of India. The details of such cases are enclosed as per Annexure 'A'. Hon'ble Tribunal may be pleased to require the transferor companies to give notice of the instant proposed merger to all who are parties to pending litigations to offer them an opportunity to represent for or against the proposed merger.</p>	<p>As regards the observation made in paragraph 8 of the Official Liquidator's report is concerned, it is submitted that all legal and other proceedings including before any statutory or quasi-judicial authority or tribunal of whatsoever nature by or against the First Transferor Company and Second Transferor Company litigations pending and/or arising at the Appointed Date shall be continued and/or enforced by or against Transferee Company only in the same manner and to the same extent as would have been continued and enforced by or against the First Transferor Company and Second Transferor Company pursuant to the scheme as stated in clause 10 of the Scheme.</p>
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13. The observations made by the Official Liquidator have been explained by the Petitioner Companies in Para 12 above through an affidavit in response submitted on 29th January 2024.

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14. From the material 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.
15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. C.P.(CAA)/232/MB/2023 is made absolute.
16. The First Petitioner Company/First Transferor Company and the Second Petitioner Company/Second Transferor Company be dissolved without winding up.
17. Petitioners are directed to file a copy of this Order along with a copy of the Scheme of Merger by Absorption with the concerned Registrar of Companies, electronically along with E-Form INC-28 within 30 days from the date of receipt of the Order from the Registry.
18. The Petitioner Companies to lodge a copy of this Order and the Scheme duly authenticated by the Designated Registrar of this Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of the Order, if any.
19. All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Designated Registrar.

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20. The Appointed Date for merger of the First Transferor Company (Arrina Education Services Private Limited) and Second Transferor Company (Talentedge Education Ventures Private Limited) into and with the Transferee Company (upGrad Education Private Limited) is 26th April 2022.
21. Ordered Accordingly.

Sd/-

ANU JAGMOHAN SINGH

Member (Technical)

Suresh/28.03.2024

Sd/-

KISHORE VEMULAPALLI

Member (Judicial)