

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

COMPANY SCHEME PETITION NO. 100 OF 2017

(HIGH COURT TRANSFERRED PETITION)

AND

COMPANY SUMMONS FOR DIRECTION NO. 529 OF 2016

The Walt Disney Company (India) Private Limited. **...Petitioner /**
Transferor Company1

AND

COMPANY SCHEME PETITION NO. 98 OF 2017

(HIGH COURT TRANSFERRED PETITION)

AND

COMPANY SUMMONS FOR DIRECTION NO. 530 OF 2016

Indiagames Limited **... Petitioner/Transferor Company2**

AND

COMPANY SCHEME PETITION NO. 97 OF 2017

(HIGH COURT TRANSFERRED PETITION)

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 531 OF 2016

UTV Software Communications Ltd. Petitioner/Transferee Company

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

In the matter of Sections 391 to 394 read with Sections 100 to 104 of the Companies Act, 1956 and Section 52 of Companies Act, 2013 and other applicable provisions of the Companies Act, 1956.

And

In the matter of the Composite Scheme of Amalgamation and Arrangement amongst The Walt Disney Company (India) Pvt. Ltd; Indiagames Ltd. and UTV Software Communications Ltd.

Called for Hearing

Counsel Ms Alpana Ghone i/b. J. Sagar Associates, Advocates for the Petitioner Companies.

Coram: B.S.V. Prakash Kumar, Member (Judicial)

V. Nallasenapthy Member (Technical)

Date: 8th June 2017

1. Heard Counsel for the parties. 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 this Tribunal is sought under Sections 391 to 394 read with Sections 100 to 103 of the Companies Act 1956 and Sections 230 to 232 read with Section 52 of the Companies Act 2013 to a Composite Scheme of Amalgamation and Arrangement amongst The Walt Disney Company (India) Pvt. Ltd. (“Transferor Company1”); Indiagames Ltd. (“Transferor Company2”) and UTV Software Communications Ltd. (“Scheme”).

3. The Transferee Company presently is in the business of production and distribution of content on various media including interactive and digital platforms. The Learned Counsel for the Petitioners states that the existing business of the Transferor Company1 includes licensing and exploitation of original artistic and other creative works on various platforms including digital media and character merchandise. The Transferor Company2, *inter alia*, develops, aggregates and distributes content on interactive media and digital platforms. The Transferor Company 2 is also in the business of creating digital applications including games based on the content developed by the Transferee Company.
4. The proposed Scheme will have the following advantages: The restructuring of the group companies by merger of the business operations of the Transferor Companies into the Transferee Company will lead to consolidation of various intellectual property rights and properties in the appropriate entity, create synergies of operations that would enable the Transferor Companies and the Transferee Company to participate more profitably in the transferred business in an increasingly competitive market. The synergies created by the consolidation would increase operational and management efficiency, integrate business functions and decrease cost of legal compliance with respect to the transferred businesses. Right sizing balance sheet of the Transferee Company by adjusting extant profit and loss debit balance against the identified reserves and securities premium account.
5. The Petitioner Companies have approved the said Scheme by passing board resolutions which are annexed to the respective Company Scheme Petitions.
6. The Learned Counsel for the Petitioners states that the Company Scheme Petitions have been filed in consonance with the orders passed in the

respective Company Summons for Direction by the Hon'ble Bombay High Court. The learned counsel for the Petitioners states that the utilization of Securities premium account of the Transferee Company is being effected as an integral part of the Scheme. The procedure prescribed under Section 101(2) of the erstwhile Companies Act 1956 was dispensed with by an order dated 1st July 2016 read with order dated 12th August, 2016 of the Hon'ble Bombay High Court passed in the above Company Summons for Direction and the special resolution annexed at Exhibit K-2 to the Petition was duly passed as per the undertaking given in the aforesaid order.

7. The Learned Counsel for the Petitioners states that the Petitioner Companies have complied with all requirements as per the directions of this Hon'ble Tribunal and the Hon'ble Bombay High Court and have filed necessary Affidavits of compliance with this Tribunal. Moreover, the Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956 / Companies Act, 2013 and the Rules made thereunder. The said undertaking is accepted.
8. The Regional Director has filed a report dated 31st March 2017 *inter-alia* stating therein that save and except as stated in paragraph IV(1) to (8) of the said report, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said report, the Regional Director has stated that:

1. *The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Court may not deter the Income Tax Authority to securitize the tax return filed by the transferee Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner Company.* ✓

2. *ROC vide report/letter No. ROC/STA/(DG)/Amal./56987/230 to 232/689 dated 06.03.2017, has inter alia mentioned that as per MCA Master data the Paid up capital of the Transferor Company 1 and the Transferee Company do not tally with the Scheme/ Petition* ✓

In this regard the Petitioner has to clarify for the difference.

3. *Auditors in their certificate inter alia mentioned that accounting treatment specified in clause 18.1 in respect of adjustment of any amount upto Rs. 1600 crores representing substantial part of the existing debit balance of P&L account of the Transferee Company as at 31.03.2015 to (a) the balance in Business Restructuring Reserve, (b) the balance in General Reserve, (c) the balance in Capital reserve and (d) the Securities Premium Account is outside the purview of accounting standards as applicable on Appointed Date.*

In this regard the Petitioner in clause 18.2 of the scheme inter alia mentioned that the order of the High Court sanctioning the Scheme shall be deemed to be an order under Section 102 of the Act for the purpose of confirming reduction of share capital.

4. *Petitioner in clause 17 regarding accounting treatment inter alia mentioned that assets and liabilities will be transferred at fair value and excess of fair value of shares issued shall be credited to the Securities Premium Account.*

In this regard the Petitioner has not mentioned the method that would be adopted for accounting treatment.

5. *Petitioner in clause 13 of the scheme inter alia mentioned that with effect from the appointed date and upon the scheme becoming effective the main object of the Memorandum of Association of the Transferee Company shall be deemed to be altered and amended without any further act or deed to include the objects as required for the purpose of carrying on the business activities of the Transferor Company.*

In this regard Petitioner Company has to file form prescribed for change of object clause with the Registrar of Companies.

6. *Petitioner in clause 17.1(iii) has inter alia mentioned that the goodwill shall be amortized over a period of 5 consecutive financial years beginning the financial year ending 31st March, 2016. Such an amortization shall be done both in the stand-alone financials and the consolidated financials if any of the Transferee Company. In this regard it is submitted that Petitioner has not mentioned accounting standard that would be adopted in the clause on accounting treatment.*
7. *As per the list shareholders provided by the Petitioner Companies, there are non resident shareholders in both the Transferor Companies. No notice has been served to RBI.*

In this regard the Petitioner has to submit proof of serving notice to the RBI.

8. *It may be submitted that the Petitioner Companies have submitted the proof of serving notice upon the Income Tax Authorities dated*

07.02.2017 for comments. This Directorate has also issued reminder letter to the Income Tax Department dated 31.03.2017.

9. As far as the observation made in paragraph IV(1) of the report of the Regional Director is concerned, this Tribunal has directed the Petitioner Companies to comply with the said observation. Accordingly, the Petitioner Companies through their Counsel undertakes to comply with all applicable provisions of the Income Tax Act and all income tax issues arising out of the Scheme will be met and dealt with in accordance with law. The said undertaking is accepted by this Tribunal.
10. As far as the observation made in paragraph IV(2) of the report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies states that so far as the Transferor Company¹ is concerned, while the Scheme discloses the correct issued and paid-up share capital i.e. Rs. 2,183,658,250, the MCA Master data is now rectified and shows the correct paid-up share capital based on the return of allotment filed by the Transferor Company¹ with the Registrar of Companies from time to time after the Transferor Company¹ took the requisite steps for rectification of the MCA Master data with the Registrar of Companies, Mumbai. So far as the Transferee Company is concerned the Scheme discloses the issued and paid-up share capital as on December 22, 2015, the date on which the Scheme was approved by the board of directors of the Transferee Company. Further, the Petition discloses the increased issued share capital from Rs. 3,01,56,36,590.00 to Rs. 3,02,73,74,730.00 as on the date of its signing. The Learned Counsel for the Petitioner Companies further states that the MCA Master data correctly reflects the increased issued and paid up share capital of the Transferee Company from Rs. 3,02,73,74,730.00 to Rs.

8,755,884,850.00 which was so increased subsequent to the signing of the Petition. The said explanation is found to be satisfactory.

11. As far as the observation made in paragraph IV(3) of the report of the Regional Director is concerned, Learned Counsel for the Petitioner Companies submits that the auditors have issued their certificate dated March 14, 2017 *inter alia* stating that clause 17 of the Scheme is in accordance with Accounting Standard 14. The Learned Counsel for the Petitioner Companies further submits that since the adjustment of the said reserves including the securities premium account is outside the purview of the applicable accounting standards on the Appointed Date, the auditor has made a statement in the certificate that the question of commenting as to whether such proposed accounting treatment complies with the aforesaid Accounting Standards does not arise. The Learned Counsel for the Petitioner Companies further submits that the utilisation of the securities premium account is governed by Section 52 of the Companies Act, 2013 read with the erstwhile Section 100 of the Companies Act 1956. The Transferee Company has complied with all requirements of the provisions of Section 52 of the Companies Act 2013 read with the erstwhile provisions of Section 100 to 102 of the Companies Act 1956 existing at the time of filing of the above Petition in relation to the adjustment to the securities premium as contemplated in the Scheme. The said explanation is found to be satisfactory.
12. As far as the observation made in paragraph IV(4) of the report of the Regional Director regarding the transfer of assets and liabilities at fair value and the excess of fair value of shares issued over the face value being credited to the securities premium account, the Learned Counsel for the Petitioners submits that the same is in accordance with Section 52 of the Companies Act 2013. Further the same is also covered in auditor's

certificate furnished by the Transferee Company and annexed at Annexure 'F' to the report of the Regional Director certifying that the accounting treatment in the Scheme is in accordance with Accounting Standard-14 as applicable to the Transferee Company as on the Appointed Date.

13. As far as the observation made in paragraph IV(5) of the report of the Regional Director is concerned, this Tribunal has directed the Transferee Company to comply with the said observation. Accordingly, the Transferee Company through its Counsel undertakes to file the requisite form for change of objects clause with the Registrar of Companies. The said undertaking is accepted.
14. As far as the observation made in paragraph IV(6) of the report of the Regional Director is concerned the amortisation of goodwill as stated in clause 17.1(iii) of the Scheme is in accordance with Accounting Standard-14 and the Transferee Company has furnished the requisite auditor's certificate annexed at Annexure 'F' to the report of the Regional Director certifying that the accounting treatment in the Scheme is in accordance with the AS-14 applicable to the Transferee Company as on the Appointed Date. The said explanation is found to be satisfactory.
15. As far as the observation made in paragraph IV(7) of the report of the Regional Director is concerned, the Transferee Company through its Counsel undertakes to comply with the extant provisions of the FDI Policy. The business of the Transferor Company and Transferee Company as stated in paragraph 2 above falls under the automatic route under the provisions of the extant FDI Policy and applicable regulations and 100% foreign direct investment is permitted in the Transferor Company and the Transferee Company. Therefore, no prior approval of the RBI is required.
16. As far as the observations made in paragraph IV(8) of the report of the Regional Director is concerned, the Learned Counsel for the Petitioner

Companies states that the same does not require a response. However, the Petitioner Companies will comply with all applicable provisions of the Income Tax Act and all income tax issues arising out of the Scheme will be met and dealt with in accordance with law.

17. The observations made by the Regional Director, have been explained by the Petitioner Companies in paragraphs 9 to 16 above. The clarifications and undertakings given by the Petitioner Companies are accepted.
18. The Official Liquidator has made his report dated 7th March 2017 in the Company Scheme Petition nos. 100 of 2017 and 98 of 2017 stating therein that the affairs of the Transferor Companies have been conducted in a proper manner.
19. 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.
20. Since all the requisite statutory compliances have been fulfilled, the above Company Scheme Petition Nos. 100 of 2017 and Company Scheme Petition No. 98 of 2017 are made absolute in terms of prayer clauses (a) to (c) and Company Scheme Petition No. 97 of 2017 is made absolute in terms of prayer clauses (a) and (b) .
21. The Petitioner Companies are directed to file certified /authenticated copy of the order and the Scheme 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 order.
22. The Petitioner Companies are directed to file certified /authenticated copy of this order and the Scheme with the concerned Registrar of Companies, electronically, along with E-Form INC-28 in addition to the physical copy, as per the relevant provisions of the Companies Act 2013.

23. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai. The Petitioner Company in Company Scheme Petition Nos. 100 of 2017 and 98 of 2017 to pay sum of Rs. 25,000 each to the Official Liquidator. The Costs to be paid within four weeks from date of receipt of the order.
24. All concerned regulatory authorities to act on a copy of this order and the Scheme duly authenticated by Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

B.S.V. Prakash Kumar, Member (Judicial)

Sd/-

V. Nallasenapthy Member (Technical)