

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

**CP (CAA)/41/MB-IV/2021
In
CA (CAA)/1130/MB-IV/2020**

*In the matter
Of
Sections 230 to 232 and other applicable
provisions of the Companies Act, 2013;*

And

In the matter of

Scheme of Amalgamation

Of

Af-Taab Investment Company Limited

("the First Transferor Company")

With

The Tata Power Company Limited

("the Transferee Company")

their respective Shareholders.

Af-Taab Investment Company Limited

[CIN: U65990MH1979PLC021037]

... First Petitioner Company /

Transferor Company

The Tata Power Company Limited

[CIN: L28920MH1919PLC000567]

...Second Petitioner Company/

Transferee Company

...Collectively referred to as 'Petitioner Companies'

Order delivered on:15.03.2022

Coram:

Mr. Rajesh Sharma

Mr. Kishore Vemulapalli

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicants

:

Mr. Gaurav Joshi, Senior Advocate
a/w Mr. Peshwan Jehangir,
Mr. Mehul Shah, Mr. Haabil
Vahanvaty, Mr. Aman Yagnik,
Mr. Rushabh Gala, Mr. Jamsheed
Dadachanji & Ms. Roselin Sara
Alex i/b Khaitan & Co, Advocates

ORDER

Per: Rajesh Sharma, Member (Technical)

1. The Court is convened through video conferencing today.
2. Heard Learned Counsel for Petitioner Companies. No objector has come before the Tribunal to oppose the Petition and nor has any party controverted any averments made in the Petition.
3. The sanction of this Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 ("**Act**"), to the Scheme of Amalgamation of Af-Taab Investment Company Limited with The Tata Power Company Limited and their respective shareholders ("**Scheme**").
4. The Transferor Company is engaged in the business of issue houses, underwriters and dealers and traders in shares, securities, bonds, debentures and other investments. The Transferee Company is engaged in the business of generation, transmission and distribution of electricity.

5. The registered office of the Petitioner Companies is located in Mumbai, Maharashtra.
6. The learned Counsel for the Petitioner Companies submits that the rationale mentioned in the Scheme is as under:

“The Transferee Company is desirous of consolidating the assets and liabilities of the Transferor Company pursuant to amalgamation. The Scheme provides for the amalgamation of the Transferor Company with the Transferee Company and will result in the following benefits:

- (a) *Streamlining of the corporate structure and consolidation of assets and liabilities of the Transferor Company within the Transferee Company;*
- (b) *Availing easier financial support for the business of the Transferor Company;*
- (c) *More efficient utilization of capital for enhanced development and growth of the consolidated business in one entity;*
- (d) *Enabling opportunities for employees of the Parties (as defined hereinafter) to grow by bringing them in a common pool;*
- (e) *Easier implementation of corporate actions through simplified compliance structure;*
- (f) *Improve management oversight and bring in operational efficiencies;*
- (g) *Cost savings through legal entity rationalisation and consolidation of support functions, business processes, elimination of duplicate expenses, etc.;*
- (h) *Reduction of administrative responsibilities, multiplicity of records and legal & regulatory compliances.*

Thus, the amalgamation is in the interest of the shareholders, creditors and all other stakeholders of the companies and is not prejudicial to the interests of the concerned shareholders, creditors or the public at large.”

7. The Learned Counsel for the Petitioner Companies submits that the Company Petition is filed in consonance with Section 230 to 232 and other applicable provisions of the Companies Act, 2013 and the Order dated 7th December 2020 passed in the CA (CAA) No. 1130/MB/2020 (“**said Order**”) by this Tribunal.
8. The Learned Counsel for the Petitioner Companies submits that on 3rd September 2021, the Company Petition was heard for admission and the date for hearing and final disposal was fixed as 5th October 2021. The Petitioner Companies were directed to cause publication of the advertisement for final hearing of this matter at least 10 (ten) clear days before the date fixed in ‘*Indian Express*’ in English language and Marathi translation thereof in ‘*Loksatta*’ both having circulation in Mumbai, Maharashtra. The Petitioner Companies caused publication in the said newspapers on 18th September 2021. The Petitioner Companies were also directed to issue notices to various statutory authorities indicating the date of final hearing. The Petitioner Companies also caused the said notices to be issued as directed. The Petitioner Companies have filed a Compliance Report on 30th September 2021 evidencing the publication and service of notices.
9. The Second Petitioner Company was directed to file Consent Affidavits of the remaining secured creditors in due course before the final stage of approval of Scheme. The Learned Counsel for the Petitioner Companies were also directed to place a consolidated chart along with NOCs of Secured Creditors before the Bench at the time of final hearing of the

Petition. The Learned Counsel for the Petitioner Companies submits that post admission of the Petition, the Second Petitioner Company has obtained the consent of an additional secured creditor of the Second Petitioner Company, which has been filed on 4th October 2021. The consolidated chart detailing the consents of 95.70% of the total outstanding secured creditors balance as on 30th November 2020 along with the additional consent received from the secured creditor subsequent to admission of the Petition is contained in the Additional Affidavit filed by the Second Petitioner Company on 4th October 2021. Accordingly, since the Second Petitioner Company has obtained consents of secured creditors amounting to over 95% in value, the requirement to obtain consents of the remaining secured creditors, as stipulated in paragraph 7 of the Order dated 3rd September 2021, is dispensed with.

10. Further, pursuant to order dated 24th December 2021, the Petitioner Companies have filed a Further Joint Additional Affidavit dated 8th February 2022, with respect to details in relation to (i) objections or representations from creditors or Regulatory/Government Agency, if any; (ii) conditions of prior NOC/Consent of secured creditors, if any; and (iii) providing the observation of the Regional Director (“**RD**”), reply from the Petitioner Companies and the remarks of RD on replies of the Company; in tabular form.
11. The Learned Counsel for the Petitioner Companies states that the Petitioner Companies have complied with all the requirements as per the directions of this Tribunal.
12. The RD has filed its Report dated 7th October 2021 (“**Report**”) praying that this Tribunal may pass such orders as it thinks fit, save and except as stated in Paragraphs IV (a) to (k). The observations of the RD, the reply

of the Petitioner Companies and the response of the RD in its Supplementary Report are set out in tabular format below:

Sr. no.	Observation in Report filed by RD	Reply of Petitioner Companies	Response of the RD in Supplementary Report dated 9 th December 2021 (“Supplementary Report”)
(a)	<i>In compliance of AS-14 (IND AS-103), the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.</i>	The Petitioner Companies undertake to pass such accounting entries which are necessary in connection with the Scheme to comply with such accounting standards notified under Section 133 of the Companies Act, 2013 as may be applicable to the Petitioner Companies.	The RD has not dealt with this observation in its Supplementary Report. Hence it is submitted that the RD has no further objections and has accepted the submissions of the Petitioner Companies.
(b)	<i>As per Definition of the Scheme, "Appointed Date" means opening business hours of 1 April 2020 or such other date as may be approved by the Board of the Parties; "Effective Date" means the day on which last of the conditions specified in Clause 16 of this Scheme are compiled with or otherwise duly waived.</i>	The Petitioner Companies submit that the present Scheme is in compliance with the requirements of circular no. F. No. 7/12/2019/Cl-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.	The RD has not dealt with this observation in its Supplementary Report. Hence it is submitted that the RD has no further objections and has accepted the submissions of the Petitioner Companies.

	<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 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.</i></p> <p><i>Further, the Petitioners may be asked to comply with the requirements as and clarified vide circular no. F. No. 7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.</i></p>		
(c)	<p><i>Petitioner Company have to undertake to comply with section 232(3)(i) of Companies Act, 2013, where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the</i></p>	<p>The Petitioner Companies undertake to the comply with Section 232(3)(i) of the Companies Act, 2013. The fees payable by the Transferee Company on clubbing of authorized share capital of the Transferor Company shall be set off against the fees already paid by the Transferor Company</p>	<p>The RD has not dealt with this observation in its Supplementary Report. Hence it is submitted that the RD has no further objections and has accepted the submissions of the Petitioner Companies.</p>

	<i>amalgamation and therefore, petitioners to affirm that they comply the provisions of the section.</i>	for its authorized share capital in accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013.	
(d)	<p><i>ROC Mumbai report dated 11.03.2021 inter alia mention that there is an Inquiry ordered vide MCA letter No. 07/193/2019/CI-II(WR) dated 11.10.2019 against the Transferee Company and is under process and there is a complaint with SRN: J00035458 received from Mr. Jayesh Chunilal Nanvati against Transferee Company through MCA Portal and the same is in progress. Further, the ROC Mumbai report made following observations”</i></p> <p><i>1) The Board Resolution passed on 16/01/2020 attached with the Scheme by applicant Companies is under the Provisions of Section 391-394, though the Scheme is filled under the Provisions of Section 230-232 of the Companies Act, 2013 as it is prevailing Act.</i></p> <p><i>2) The Transferor & Transferee Company has not</i></p>	<p>The Petitioner Companies submit that the Transferee Company has not received any communication from Ministry of Corporate Affairs or RoC with regard to the Inquiry ordered vide MCA letter No. 07/193/2019/CI-II(WR) dated 11th October 2019 or any complaint with SRN J00035458. The Transferee Company undertakes that as and when any communication is received, it will take necessary actions as per applicable laws.</p> <p>(1) There is no resolution dated 16th January 2020 passed by either of the Petitioner Companies nor is any such resolution attached to the Scheme. It is submitted that the Transferor Company and the Transferee</p>	<p>With reference to observations in paragraph IV (d) (1), the RD has stated that it has not been clarified whether the said resolution has been passed under the Old Companies Act, 1956.</p> <p>The RD has not dealt with any of the other observations in its Supplementary Report. Hence it is submitted that the RD has no further objections and has accepted the submissions of the Petitioner Companies.</p>

<p><i>filed e-form GNL 1 attaching therewith Scheme & CAA as required within the provisions of the Companies Act, 2013.</i></p> <p><i>3) Interest of the Creditors should be protected. Accordingly, the petitioner Company may be directed to submit clarification regarding the observations made in the ROC report.</i></p>	<p>Company, have passed the board resolutions on 11th August 2020 and 12th August 2020, respectively approving the Scheme. Further, a mere perusal of the same reflects that the same have been passed under Sections 230-232 of the Companies Act 2013 and not under Sections 391-394 of the Companies Act 1956. The Transferor Company and the Transferee Company have filed the aforesaid board resolutions through MGT-14 vide SRN R50303502 dated 18th August 2020 and SRN R51794733 dated 28th August 2020, respectively. Copy of the board resolutions of the Transferor Company and the Transferee Company are enclosed as Exhibit "A" and Exhibit "B" respectively to the Affidavit filed by the Petitioner Companies dated 27th October 2021. Further, copy of the paid challan of form MGT-14 of the</p>	
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		<p>Transferor Company and the Transferee Company are enclosed as Exhibit “C” and Exhibit “D”, respectively to the Affidavit filed by the Petitioner Companies dated 27th October 2021.</p> <p>(2) The Transferor Company and the Transferee Company, have filed form GNL 1 vide SRN R75189977 and SRN R75189159 dated 16th December 2020, respectively as required within the provisions of the Companies Act, 2013. It is further submitted that the said form GNL 1 was also annexed to the notice vide acknowledgement dated 21st December 2020 of the Petitioner Companies, issued to the RoC. Copy of the paid challan of form GNL-1 of the Transferor Company and the Transferee Company are enclosed as Exhibit “E” and Exhibit “F”,</p>	
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		<p>respectively to the Affidavit filed by the Petitioner Companies dated 27th October 2021.</p> <p>(3) The interest of the creditors of the Petitioner Companies are not adversely affected by the present Scheme and their respective dues will be paid in the normal course of business.</p>	
(e)	<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 Section 230(6) of the Act in meetings duly held in terms of Section 230(1) read with subsection (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.</i></p>	<p>The Petitioner Companies submit that the Hon'ble Tribunal was pleased to dispense with the meetings of the shareholders and creditors of the respective Petitioner Companies as set out in the order dated 7th December 2020 ("NCLT Order") passed in the Company Application. Copy of the NCLT Order is enclosed as Exhibit "G" to the Affidavit filed by the Petitioner Companies dated 27th October 2021.</p>	<p>The RD has not dealt with this observation in its Supplementary Report. Hence it is submitted that the RD has no further objections and has accepted the submissions of the Petitioner Companies.</p>

(f)	<i>Transferor Company is a NBFC registered with RBI; therefore, Petitioner Company may be directed to submit NOC from RBI.</i>	The Petitioner Companies state that the notice was issued by the Transferor Company to Reserve Bank of India (“RBI”) and NOC dated 25th September 2020 was received from RBI. Copy of the NOC received from RBI is enclosed as Exhibit “H” to the Affidavit filed by the Petitioner Companies dated 27th October 2021.	The RD has not dealt with this observation in its Supplementary Report. Hence it is submitted that the RD has no further objections and has accepted the submissions of the Petitioner Companies.
(g)	<i>Transferee Company is registered with NSE and BSE, therefore, Petitioner Company may be directed to submit NOC of NSE and BSE.</i>	Since the Transferor Company is a wholly owned subsidiary of the Transferee Company, NOC of BSE Limited and The National Stock Exchange of India Limited is exempted / not required in accordance with Regulation 37(6) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.	The RD has not responded to this observation in its Supplementary Report. Hence it is submitted that the RD has no further objections and has accepted the submissions of the Petitioner Companies.
(h)	<i>Clause-9.1.5. of Accounting Treatment of Scheme; stated that the surplus/deficit, if</i>	The Petitioner Companies submit that the Transferee Company	The RD has stated as follows: “The Company in reply to

<p><i>any arising after taking effect of clause 9.1.1, 9.1.2 and 9.1.4 after giving the effect of the adjustments referred to in clause 9.1.3, shall be adjusted to 'Capital Restructuring Reserve' in the financial statements of the Transferee Company.</i></p> <p><i>In this regard it is submitted that as per Accounting Standard 14, such surplus if any arising out of the scheme should be credited to the Capital Reserve arising out of amalgamation and deficit if any arising out of the same shall be debited to Goodwill Account of the Transferee Company. Such Capital Reserve, arising out of the amalgamation shall not be considered as free reserve and not available for distribution of dividend.</i></p> <p><i>Therefore, Petitioner Company may be directed to alter the Accounting Treatment clause of the Scheme accordingly.</i></p>	<p>is required to follow Ind AS as per the requirements of Section 133 of Companies Act, 2013 and hence, AS 14 is not applicable to the Transferee Company. Further, as per paragraph 9 of the Scheme, upon the Scheme coming into effect, the Transferee Company shall account for the amalgamation in accordance "Pooling of interest method" of accounting laid down in Appendix C of Ind AS 103.</p> <p>As per Appendix C of Ind AS 103, the difference, if any, between the amount recorded as share capital issued plus any additional consideration in the form of cash or other assets and the amount of share capital of the transferor shall be transferred to capital reserve and should be presented separately from other capital reserves with disclosure of its nature and purpose in the notes.</p>	<p><i>the observations Para No. IV(h), has stated that the company is the applicant company is following Ind As as per the requirements of Section 133 of the Companies Act, 2013 and hence, AS 14 is not applicable to the Transferee Company and as per Appendix C of Ind As 103, the difference if any, between the amount recorded as share capital issued plus any additional consideration in the form of cash or other assets and the amount of share capital of the transferor shall be transferred to capital reserve and should be presented separately from other capital reserves with disclosure of its nature and purpose in the notes and therefore alteration in the accounting treatment clause is not required."</i></p>
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		<p>In order to present the reserve separately from the existing Capital reserve of the Transferee Company and to not use it in distribution of dividend the reserve has been named as Capital Restructuring reserve.</p> <p>Hence, the accounting treatment mentioned in the Scheme is in line with the requirement of Ind AS 103 Business Combinations. Copy of the accounting treatment certificate obtained from Statutory auditor of the Transferee Company is enclosed as Exhibit "I" to the Affidavit filed by the Petitioner Companies dated 27th October 2021.</p> <p>Learned Senior Counsel for the Petitioner Companies further undertakes that the Second Petitioner Company will comply with applicable provisions of Ind AS 103 and the capital reserve shall not be used for distribution of dividends.</p>	
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(i)	<i>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.</i>	The Petitioner Companies submit that the Transferee Company undertakes to and will comply with the applicable requirements of the Income Tax Act and Rules thereunder.	The RD has not dealt with this observation in its Supplementary Report. Hence it is submitted that the RD has no further objections and has accepted the submissions of the Petitioner Companies.
(j)	<i>As per MCA master data, it is observed that the Transferor Company have not filed its Balance Sheet for the year 2018- 2019 and 2019-2020. Therefore, Petitioner Company may be directed to file Balance Sheet for the year 2018-2019 and 2019-2020 also file application for compounding the offence for the same before the approval of this Scheme.</i>	The Petitioner Companies submit that the Transferor Company has filed Balance Sheet for the year 2018-19 and 2019-20 through form AOC-4 (NBFC) vide SRN R35500339 dated 16th March 2020 and R67802611 dated 19th October 2020, respectively. Copy of the paid challan of form AOC-4 of the Transferor Company for the year 2018-19 and 2019-20 is enclosed as Exhibit “J” and Exhibit “K”, respectively to the Affidavit filed by the Petitioner Companies dated 27th October 2021.	The RD has not dealt with this observation in its Supplementary Report. Hence it is submitted that the RD has no further objections and has accepted the submissions of the Petitioner Companies.

(k)	<p><i>It is most respectfully submitted that the applicant company has submitted its reply vide letter acknowledgement dated 02.02.2021 and Provided copy the copy of petition admission order vide letter acknowledgement dated 24.09.2021, however it is submitted that in the letter dated 02.02.2021 and 24.09.2021 of the First Petitioner Company, the name, address, membership number of the Person who has signed the letters is not mentioned which is Violation of Rule 7 of the Companies (Registration Offices and Fees) Rules, 2014, therefore, petitioner companies may be directed to submitted application for self-adjudication before respective ROC.”</i></p>	<p>Petitioner Companies submit that in the reply vide letter acknowledgement dated 2nd February 2021 (filed by the Transferee Company) and copy of petition admission order vide letter acknowledgement dated 23rd September 2021 (filed by the respective Petitioner Companies) with the office of the Regional Director, the name, company address and designation of the signatory of the concerned Petitioner Company were mentioned. Further, Petitioner Companies submits that vide their respective letters acknowledgement dated 26th October 2021, the respective Petitioner Companies have also intimated the same to the Regional Director and provided the membership number of the signatories concerned. Copy of the respective letters filed by the Transferor Company and the Transferee</p>	<p>The RD has stated as follows: “The company in reply to the para No. IV(k) to the observations of ROC has not mentioned about the application to be filed before the ROC for filing self-adjudication application before the ROC. The petitioner company to file the same before ROC.”</p>
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		Company, with the office of the Regional Director are enclosed as Exhibit "L" and Exhibit "M", respectively to the Affidavit filed by the Petitioner Companies dated 27th October 2021. The Petitioner Companies submit that if there are any further compliances to be made, the same will be dealt with as per law.	
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13. The RD has not raised any other objections or dealt with any of the responses of the Petitioner Companies other than as set out above. The Counsel for the Petitioner Companies submits that it is apparent that the RD is satisfied with the responses provided.
14. In any case, all enquiries and cases pending against the Transferor Company shall continue with Transferee Company and the Transferee Company will liable to deal with them in due course.
15. Further, the Official Liquidator *vide* his Report dated 12th April 2021 filed with the Hon'ble Tribunal, submits that the affairs of the First Petitioner Company have been conducted in a proper manner. No objections have been raised with respect to the Scheme.
16. From the material on record, the Scheme appears to be fair, reasonable and is not in violation to any provisions of law nor is contrary to public interest/policy.

17. From the material on record, the Scheme annexed as Exhibit A-1 to the Company Petition viz. CP (CAA) No. 41/MB-IV/2021 appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
18. Since all the requisite statutory compliances have been fulfilled, CP (CAA) No. 41/MB-IV/2021 is made absolute in terms of the prayer clauses 33 (a) to 33 (h) of the Company Petition. Hence Ordered.
19. The Scheme is hereby sanctioned, with the Appointed Date fixed as opening business hours of 1 April 2020.
20. In case due to this Scheme of Amalgamation the Authorised Share Capital is required to be increased, the same will be done by the Transferee Company by completing all the formalities including fees to be paid to the Registrar of Companies.
21. The Registrar of this Tribunal shall issue the certified copy of this Order along with the Scheme forthwith. The Petitioner Companies are directed to file a certified copy of this Order along with a copy of the Scheme with the Registrar of Companies concerned, electronically in E-form INC-28 within 30 days from the date of receipt of the Order from the Registry.
22. The Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies, within 30 days from the date of receipt of the certified copy of this Order by the Petitioner Companies.
23. The Transferee Company to lodge a copy of this Order along with the Scheme duly authenticated/certified by the Deputy Director or the Assistant Registrar, National Company Law Tribunal, Mumbai Bench,

with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, within 60 days from the date of receipt of the certified Order from the Registry of this Tribunal.

24. All concerned regulatory authorities to act on a copy of this Order along with Scheme duly certified by the Deputy Director or the Assistant Registrar, National Company Law Tribunal, Mumbai Bench.
25. Any person interested is at liberty to apply to this Tribunal in the above matters for any directions that may be necessary.
26. Any concerned Authorities are at liberty to approach this Tribunal for any further clarification as may be necessary.
27. Ordered Accordingly. Pronounced in open court today. File be consigned to the record.

Sd/-
Kishore Vemulapalli
Member (Judicial)
15.03.2022

Sd/-
Rajesh Sharma
Member (Technical)