

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-IV, MUMBAI

CA (CAA) No. 1130/MB/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 WITH THE TATA
POWER COMPANY LIMITED
AND THEIR RESPECTIVE
SHAREHOLDERS

Af-Taab Investment Company)
Limited, a company incorporated)
under the provisions of the)
Companies Act, 1956, having)
corporate identity number)
U65990MH1979PLC021037 and)
its registered office at Corporate)
Centre B, 34 Sant Tukaram Road,)
Carnac Bunder, Mumbai - 400)
009, Maharashtra, India

...First Applicant Company /
Transferor Company

The Tata Power Company)
Limited, a company incorporated)
under the Indian Companies Act,)
VII of 1913 having company)
identity number:)
L28920MH1919PLC000567 and)
its registered office at Bombay)
House, 24 HomiMody Street,) ...Second Applicant
Mumbai - 400001, Maharashtra, Company / Transferee
India Company
Collectively referred to as
'Applicant Companies'

Order pronounced on 07th December, 2020

Coram:

Mr. Rajesh Sharma Mrs. Suchitra
KanuparthiHon'ble Member (Technical) Hon'ble
Member (Judicial)

Appearances (via videoconferencing):

For the Applicants : Ms Mr Gaurav Joshi, Senior
Advocate a/w Mr Peshwan
Jehangir, Mr Mehul Shah,
Mr. HaabilVahanvaty, Mr. Aman
Yagnik, Mr. Rushabh Gala, Mr.
JamsheedDadachanji, Ms. Roselin
Sara Alex i/b Khaitan& Co,

Advocates for the Applicant
Companies

ORDER

Per: Rajesh Sharma, Member (Technical)

1. The Bench is convened by video conference on 3 November 2020.
2. Af-Taab Investment Company Limited (hereinafter referred to as the “**First Applicant Company**” or “**Transferor Company**”) and The Tata Power Company Limited (hereinafter referred to as the “**Second Applicant Company**” or “**Transferee Company**”) are entering into a scheme of amalgamation. By the said Scheme, the First Applicant Company is amalgamating with the Second Applicant Company as a going concern. The Second Applicant Company is desirous of consolidating the assets and liabilities of the First Applicant Company pursuant to the scheme of amalgamation. For the sake of convenience, the First Applicant Company and the Second Applicant Company may be collectively referred to as “**Applicant Companies**” wherever required.
3. The First Applicant Company is a wholly owned subsidiary of the Second Applicant Company. The registered offices of the Applicant Companies are situated in Mumbai, Maharashtra, and hence the subject matter of the Application is within the

jurisdiction of the National Company Law Tribunal, Mumbai Bench.

4. The Learned Counsel for the First Applicant Company submitted that the First Applicant Company has received the consent affidavits from all its Equity Shareholders, whereby they have given their consent and approval to the Scheme. The Consent Affidavits of the Equity Shareholders of the First Applicant Company are annexed to the Company Application at **Exhibit “L-1-L7”** respectively. Accordingly, the requirement to hold meeting(s) of the Equity Shareholders of the First Applicant Company is dispensed with.
5. The Learned Counsel for the Applicant Companies submitted that the First Applicant Company is a wholly owned subsidiary of the Second Applicant Company, no shares are to be issued under the Scheme and thus the rights of the Shareholders of the Second Applicant Company are not adversely affected by the proposed Scheme. The present case is similar to the cases of *Mahaamba Investments Limited V/s. IDI Limited, (2001) 105 Company Cases page 16 to 18, Bon Limited dated March 12, 2010 in Company Scheme Petition No. 123 of 2010, In re Sharat Hardware Industries P. Ltd., reported at (1978) 48 Com Cas 23; In re Santhanalakshmi Investments (P) Ltd., reported at (2005) 129 Company Cases page 789 to 792, In re Nebula Motors Ltd., reported at 45 SCL 143 and Windermere Properties PrivateLtd, Haddock Properties PrivateLtd, Grandeur Properties Private Limited, Winchester*

Properties Private Limited and Pentagram Properties Private Limited with Housing Development Finance Corporation Limited, Company Scheme Application No. 243 of 2017 (order dated 4 September, 2017) and therefore, the Second Applicant Company is not required to convene a meeting or send any notices to its Equity Shareholders for approval of the Scheme. The Applicant Companies have submitted that they will file a company petition with the Tribunal seeking approval of the Scheme and will also issue notices to all regulatory authorities.

6. The Learned Counsel submitted that the Applicant Companies do not have preference shareholders and therefore the question of convening and holding of a meeting of the preference shareholders of the Applicant Companies to consider and approve the Scheme does not arise.
7. The Learned Counsel for the First Applicant Company submitted that there are no Secured Creditors of the First Applicant Company as on the date of hearing of the present Company Application, and therefore the question of convening and holding the meeting(s) of the Secured Creditors of the First Applicant Company does not arise.
8. The Learned Counsel for the Second Applicant Company submitted that the Second Applicant Company has 26 secured creditors amounting to INR 5,557,62,95,012, as on 31st August 2020, details of which are annexed as **Exhibit**

“N” to the Company Application of the Applicant Companies. It is submitted that the First Applicant Company has a positive net-worth and the amalgamation of the First Applicant Company with the Second Applicant Company under the Scheme, will not affect or adversely impact the rights of the secured creditors of the Second Applicant Company, since post Scheme, the assets of Second Applicant Company will be sufficient to discharge its liabilities. Further, the present case is similar to the facts *in CSA No. 243 of 2017 in the matter of Housing Development Finance Corporation Limited* and, therefore the Second Applicant Company (being the Transferee Company) is not required to convene a meeting of its secured creditors for approval of the Scheme. In view of this, the meeting of the Secured Creditors of the Second Applicant Company is not required to be convened. However, the Second Applicant Company shall file consent affidavits of the Secured Creditors of the Second Applicant Company. Accordingly, the consent Affidavits of secured creditors be obtained by sending notices to all its Secured Creditors inviting representations, if any, thereto by post/ courier/ email/ hand-delivery. Representations, if any, shall be filed before this Tribunal with a copy to the Second Applicant Company within 30 (thirty) days from the date of receipt of such notice.

9. The Learned Counsel for the First Applicant Company submitted that as on 30th September 2020, there is only 1 unsecured creditor of the First Applicant Company having

value of INR 40,607, who has accorded its consent and approval to the Scheme in the form of affidavit. The consent affidavit of the sole unsecured creditor is annexed as **Exhibit “P”** to the Company Application of the Applicant Companies. Accordingly, the requirement of convening meeting of the unsecured creditors of the First Applicant Company is dispensed with.

10. The Learned Counsel for the Second Applicant Company submitted that the Second Applicant Company has 5203 unsecured creditors amounting to INR 14,396,01,29,275, as on 31st August 2020, details of which are annexed as **Exhibit “Q”** to the Company Application of the Applicant Companies. As far as the rights of the Unsecured Creditors of the Second Applicant Company are concerned, they will not be affected by the proposed Scheme, since post Scheme, the assets of Second Applicant Company will be sufficient to discharge its liabilities. Further, the present case is similar to the facts in *CSA No. 243 of 2017 in the matter of Housing Development Finance Corporation Limited*, and therefore the Second Applicant Company is not required to hold / convene meeting of its Unsecured Creditors or send any notices to the Unsecured Creditors for approval of the Scheme. In view of this, the meeting of the Unsecured Creditors of the Second Applicant Company is not required to be convened. However, the Second Applicant Company shall send notice to its Unsecured Creditors having value INR 50,00,000 and above inviting representations, if any, thereto by post/ courier/

email/ hand-delivery. Representations, if any, shall be filed before this Tribunal with a copy to the Second Applicant Company, within 30 (thirty) days from the date of receipt of such notice, failing which, it shall be presumed that they have no objection to the proposed Scheme.

11. The Learned Counsel for the Applicant Companies submit that the First Applicant Company is registered with the Reserve Bank of India under Section 45-IA of the Reserve Bank of India Act, 1934 as a non-banking financial institution carrying on the business without accepting public deposits. The First Applicant Company made an application with the Reserve Bank of India seeking prior permission for the proposed amalgamation with the Second Applicant Company. The Reserve Bank of India has granted its No-Objection certificate dated 25 September 2020 thereto, a copy of which is annexed at **“Exhibit R”** to the Company Application of the Applicant Companies.

12. The Applicant Companies to serve notices upon (i) the Central Government through the Regional Director, Western Region, Ministry of Corporate Affairs; (ii) the Registrar of Companies at Mumbai; (iii) the Income Tax Authority at Circle 6(1)(1), Mumbai (for First Applicant Company having PAN No. AAACA4800H) and at Circle 2(3)(1), Mumbai (for the Second Applicant Company having PAN No. AAACT0054A) within whose jurisdiction the respective Applicant Company’s

assessments are made, pursuant to section 230(5) of the Companies Act, 2013 read with rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from such authorities within 30 (thirty) days of the date of receipt of the notice, it will be presumed that they have no objection to the proposed Scheme.

13. Additionally, the First Applicant Company is directed to serve notice along with a copy of the Scheme upon the Official Liquidator, High Court, Bombay, pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. CA. Anjan Bhattacharya (ICAI M.No. 073591), 404, Building No. 37, Avenue D, Rustamjee Global City, Virar West-401303 (Mobile No. 9557539539), email id anjani10@yahoo.com, is appointed to assist the Official Liquidator to scrutinize the books of the First Applicant Company for the last 5 years. The fee of the Chartered Accountant is fixed at Rs. 2,50,000/- plus applicable taxes (@ Rs. 50,000/- per year) which shall be paid by the First Applicant Company. The Official Liquidator shall submit his Report to the Tribunal within 30 (Thirty) days of the date of receipt of such notice, failing which it shall be presumed that the Official Liquidator has no objection to the proposed Scheme. A copy of the Report shall simultaneously be served upon the Transferor Company.

14. Additionally, the Second Applicant Company to service notices upon (i) BSE Limited; (ii) National Stock Exchange of India Limited; and (iii) Securities and Exchange Board of India, pursuant to section 230(5) of the Companies Act, 2013 read with rule 8 of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the concerned sectoral regulators or authorities within thirty days of the date of receipt of the notice, it will be presumed that the concerned sectoral regulators or authorities have no objection to the proposed Scheme.

15. The Applicant Companies to service notices upon any other sectoral authorities, if applicable, pursuant to section 230(5) of the Companies Act, 2013 read with rule 8 of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the concerned sectoral authorities within thirty days of the date of receipt of the notice, it will be presumed that the concerned sectoral regulators or authorities have no objection to the proposed Scheme.

16. The applicant Companies are directed to file an affidavit proving publication in the newspapers and sending notices along with other compliances of conditions as directed here in

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CA(CAA)/1130/MB.IV/2020

at least 3 (Three) days before the date fixed for hearing of the
Company Petition.

Sd/-
Rajesh Sharma
Member (Technical)

Sd/-
Suchitra Kanuparthi
Member (Judicial)