

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

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

In the matter of the Companies Act, 2013
(18 of 2013);

and

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

and

In the matter of
Scheme of Amalgamation
of
Af-Taab Investment Company Limited
("Transferor Company")
The Tata Power Company Limited
("Transferee Company")
and their respective Shareholders

Af-Taab Investment Company Limited ...First Transferor Company/
[CIN: U65990MH1979PLC021037] Transferor Company

The Tata Power Company Limited ...Second Applicant Company/
[CIN: L28920MH1919PLC000567] Transferee Company

Order delivered on 03.09.2021

Coram:

Mrs. Suchitra Kanuparthi : Member (Judicial)

Mr. Rajesh Sharma : Member (Technical)

Appearances (via video conference) :

For the Applicant Companies : 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 Bench is convened through video conferencing today.
2. Petition is admitted.
3. Petition fixed for hearing and final disposal on 05.10.2021
4. Af-Taab Investment Company Limited (hereinafter referred to as the “**First Petitioner Company**” or “**Transferor Company**”) and The Tata Power Company Limited (hereinafter referred to as the “**Second Petitioner Company**” or “**Transferee Company**”) are entering into a scheme of amalgamation (“**Scheme**”). By the said Scheme, the First Petitioner Company is amalgamating with the Second Petitioner Company as a going concern. The Second Petitioner Company is

desirous of consolidating the assets and liabilities of the First Petitioner Company pursuant to the scheme of amalgamation. For the sake of convenience, the First Petitioner Company and the Second Petitioner Company may be collectively referred to as “**Petitioner Companies**” wherever required.

5. 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.
6. The Learned Counsel for the Petitioner Companies submits that, as recorded in the said Order, this Tribunal has held that the meetings of the Equity Shareholders, the Secured Creditors and the Unsecured Creditors of the Petitioner Companies were not required and were dispensed with for the reasons more particularly mentioned in the said Order.
7. The Learned Counsel for the Petitioner Companies submitted that the Second Petitioner Company had 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 Petitioner Companies. Further, the Second Petitioner Company was directed to obtain and file consent affidavits of the Secured Creditors of the Second Petitioner Company. Accordingly, basis the total outstanding secured creditors of the Second Petitioner Company as on 31st August 2020, consents of 12 secured creditors having an aggregate outstanding balance of Rs. 5,276,64,45,012 out of INR

5,557,62,95,012 being over 94% of the total outstanding secured creditors balance of the Second Petitioner Company as of 31st August 2020 have been obtained. Copies of consents are annexed as **Exhibit “A1” to “A12”** of the Additional Affidavit dated 1st March 2021. The said Additional Affidavit has been e-filed at the NCLT e-filing portal on 2nd March 2021. The Counsel for the Petitioner Company submits that since 31st August 2020, there has been some change in the list and the number as well as the aggregate outstanding of the Secured Creditors of the Second Petitioner Company in the ordinary course of business. As on 30 November 2020, there were 25 secured creditors having an aggregate outstanding of INR 6,392,91,14,257. The Second Petitioner Company has consents of 11 secured creditors having an aggregate outstanding balance of INR 51,17,92,64,257 being 80.06% of the total outstanding secured creditors of the Second Petitioner Company as on 30 November 2020. The Second Petitioner Company will file Consent Affidavit of left-over Secured Creditors in due course before the final stage of approval of the Scheme. A Consolidated Chart along with NOCs of Secured Creditors is to be placed before the Bench at the time of final hearing of the Petition.

8. The Learned Counsel for the Petitioner Companies submits that as directed by this Tribunal *vide* the said Order, notice shall be served upon the Unsecured Creditors (having a value of Rs 50,00,000 and above) of the Second Petitioner Company, thereby inviting their representations, if any, to the proposed Scheme. The Learned Counsel for the Petitioner Companies submits that the Second Petitioner Company has served the notices to such Unsecured Creditors by courier. The Learned Counsel for the Petitioner Companies submits

that the Second Petitioner Company has filed a Compliance Report showing the service of the notices as directed.

9. The Learned Counsel for the Petitioner Companies submits that as directed by this Tribunal vide its order dated 7th December 2020 passed in the CA (CAA) No. 1130/MB/2020 by this Tribunal, notices have been served upon all the Regulatory Authorities namely, (i) the Central Government through the Regional Director (Western Region), Ministry of Corporate Affairs, (ii) Registrar of Companies, Maharashtra, Mumbai, (iii) the Income Tax Authority concerned within whose jurisdiction the respective Petitioner Companies are assessed to tax, complete with PAN of the company concerned, (iv) Reserve Bank of India (in case of First Petitioner Company), (v) Official Liquidator (in case of First Petitioner Company), (vi) BSE Limited (in case of Second Petitioner Company), (vii) NSE Limited (in case of Second Petitioner Company), and (viii) SEBI (in case of Second Petitioner Company), pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016. The Learned Counsel for the Petitioner Companies submits that the Petitioner Companies have filed Compliance Report showing service of the notices to aforesaid regulatory authorities, as applicable.
10. The Petitioner Companies are directed to serve fresh notices through Registered-Post AD/Speed Post and hand-delivery indicating the date of final hearing upon: - (i) the Central Government through the Regional Director (Western Region), Ministry of Corporate Affairs, (ii) Registrar of Companies, Maharashtra, Mumbai, (iii) the Income Tax Authority concerned within whose jurisdiction the respective

Petitioner Companies are assessed to tax, complete with PAN of the company concerned, (iv) Reserve Bank of India (in case of First Petitioner Company), (v) Official Liquidator (in case of First Petitioner Company), (vi) BSE Limited (in case of Second Petitioner Company), (vii) NSE Limited (in case of Second Petitioner Company), and (viii) SEBI (in case of Second Petitioner Company),.

11. The Petitioner Companies are directed to cause publication of the notice of hearing of Petition, at least 10 (ten) clear days before the date fixed for hearing, in two local newspapers viz. 'Indian Express' in English and translation thereof in 'Loksatta' in Marathi, both having circulation in Mumbai, Maharashtra, as per Rule 16(1) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
12. The Petitioner Companies shall file a compliance report regarding the issue of advertisement of the notice of the hearing of the Company Petition stating that the same has been duly complied with the Registry in regard to the directions of this Tribunal, 3 (three) days before the date fixed for final hearing, in lieu of the customary affidavit of service, keeping in view the Covid-19 pandemic.

Sd/-
Rajesh Sharma
Member (Technical)
03.09.2021

Sd/-
Suchitra Kanuparthi
Member (Judicial)