

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

CA (CAA)/178/MB-IV/2023

*In the matter of the Companies Act,
2013;*

AND

In the matter of

*Sections 230 to Section 232 of the
Companies Act, 2013 and other
applicable provisions of the
Companies Act, 2013*

read with Companies

*(Compromises, Arrangements and
Amalgamation) Rules, 2016;*

AND

*In the matter of
The Scheme of Arrangement
of*

**Tata Capital Financial Services
Limited**

("First Applicant Company")

And

Tata Cleantech Capital Limited

("Second Applicant Company")

With

Tata Capital Limited

("Third Applicant Company")

*And their respective Shareholders.
('Scheme' or 'the Scheme')*



Tata Capital Financial Services Limited

[CIN: U67100MH2010PLC210201]

... First Applicant Company/
Transferor Company

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Tata Cleantech Capital Limited
[CIN: U65923MH2011PLC222430]

... Second Applicant Company/
Transferor Company

Tata Capital Limited
[CIN: U65990MH1991PLC060670]

... Third Applicant Company/
Transferee Company

Order delivered on **02.08.2023**

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances :

For the Applicant

: Mr. Mustafa Doctor, Ld. Senior
Counsel a/w Mr. Hemant Sethi,
and Ms. Tanaya Sethi i/b
Hemant Sethi & Co., Advocates.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Bench is convened through Video Conferencing.
2. That the proposed Scheme of Arrangement provides for amalgamation of Tata Capital Financial Services Limited ("First Applicant Company/ Transferor Company No. 1") and Tata Cleantech Capital Limited ("Second Applicant Company/ Transferor Company No. 2") with Tata Capital Limited ("Third Applicant Company/ Transferee Company") and their respective Shareholders ("Scheme" or the "Scheme of Arrangement") under Sections 232 read with Section 230 read with Section 66 of the Companies Act, 2013.



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3. That the registered office of the Applicant Companies is situated in Maharashtra and within the territorial jurisdiction of the Hon'ble Tribunal.
4. Considering the background, circumstances, rationale and benefits of the Scheme, the proposed amalgamation is beneficial, advantageous and not prejudicial to the Shareholders, Creditors and other Stakeholders of the Applicant Companies and is beneficial to the public at large.
5. Ld. Senior Counsel for the Applicant Companies submits that the Applicant Companies have prayed for convening and holding a meeting of the Equity Shareholders of the Third Applicant Company, through Video Conferencing ("VC") or Other Audio-Visual Means ("OAVM") on September 14, 2023 and/or September 15, 2023 or any adjourned dates thereof, for the purpose of considering and if thought fit, approving, with or without modification(s), the proposed Scheme and for issuing appropriate directions incidental for holding of such meeting.
6. Ld. Senior Counsel for the Applicant Companies further submits that the Applicant Companies have prayed for convening and holding a meeting of the Cumulative Redeemable Preference Shareholders of the Third Applicant Company, through Video Conferencing ("VC") or Other Audio-Visual Means ("OAVM") on September 14, 2023 and/or September 15, 2023 or any adjourned dates thereof, for the purpose of considering and if thought fit, approving, with or without modification(s),



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the proposed Scheme and for issuing appropriate directions incidental for holding of such meeting.

7. The Ld. Senior Counsel for the Applicant Companies submits that The First Applicant Company and Second Applicant Company has obtained the Consent Affidavit of all their Equity Shareholders, which is annexed to the Company Scheme Application. Thus, the meeting of the Equity Shareholders of the First Applicant Company and Second Applicant Company is not required to be convened in view of the above-mentioned consents.
8. This Bench hereby dispenses with the convening of meeting of the Equity Shareholders First Applicant Company and Second Applicant Company in view of Affidavit consenting to the Scheme having been placed on record.
9. Accordingly, this Bench hereby directs that a meeting of the Equity Shareholders and the Cumulative Redeemable Preference Shareholders of the Third Applicant Company be convened and held through VC/ OAVM, on September 14, 2023 and/or September 15, 2023 or any adjourned dates thereof, for the purpose of considering and if thought fit, approving, with or without modification(s), the proposed Scheme.

9.1 In light of the circulars issued by the Ministry of Corporate Affairs ("**MCA Circulars**"), it is directed that the voting by the Equity Shareholders and Cumulative Redeemable Preference Shareholders of the Third Applicant Company shall be carried



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out through remote e-voting and e-voting at the time of the VC/ OAVM convened meeting.

9.2 At least 30 (thirty) clear days before the aforesaid meeting of the Equity Shareholders and Cumulative Redeemable Preference Shareholders of the Third Applicant Company be held as aforesaid, a notice convening the said meeting, indicating the date and time, containing instructions with regard to remote e-voting and e-voting at the time of the VC/ OAVM meeting, together with a copy of the Scheme, a copy of the Explanatory Statement required to be sent pursuant to Section 102 read with Sections 230-232 of the Companies Act, 2013, shall be sent through electronic mode to those Equity Shareholders and Cumulative Redeemable Preference Shareholders of the Third Applicant Company whose email ID's are registered with the Registrar and Transfer Agent/ Depositories/ Third Applicant Company and hard copy of the said notice may be sent to those Equity Shareholders and Cumulative Redeemable Preference Shareholders who request for the same.

9.3 At least 30 (thirty) days before the aforesaid VC/ OAVM meeting of the Equity Shareholders and Cumulative Redeemable Preference Shareholders of the Third Applicant Company to be held as aforesaid, an advertisement about convening the said meeting, indicating the date and time, shall be



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published in 'Business Standard' in English and 'Navshakti' in Marathi, both circulated in Maharashtra for the Third Applicant Company. The publication shall indicate the time within which the copies of the Scheme shall be made available to the concerned persons free of charge from the registered office of the Third Applicant Company. The publication shall also indicate that the statement required to be furnished pursuant to Section 102 read with section 230-232 of the Companies Act, 2013 can be obtained free of charge at the registered office of the Third Applicant Company in accordance with the second proviso to sub-section (3) of Section 230 of the Companies Act, 2013 and Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

- 9.4 That the Chairman of Audit Committee of the Third Applicant Company shall act as the Chairperson of the aforesaid meeting of the Equity Shareholders and Cumulative Redeemable Preference Shareholders of the Third Applicant Company. He shall be paid such remuneration, as is payable to him for attending General Meeting of the Shareholders of the Third Applicant Company.
- 9.5 That the scrutinizer for the aforesaid meeting of Equity Shareholders and Cumulative Redeemable Preference Shareholders of the Third Applicant Company shall be Mr. P.N. Parikh (Membership No.



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FCS 327 and CP No. 1228), failing him, Ms. Jigyasa Ved (Membership No. FCS 6488 and CP No. 6018), failing her, Mr. Mitesh Dhaliwala (Membership No. FCS 8331 and CP No. 9511), of M/s. Parikh and Associates, Practicing Company Secretaries with remuneration fixed at Rs. 15,000/- for each meeting plus applicable GST/-.

9.6 The quorum for the aforesaid meeting of the Equity Shareholders and Cumulative Redeemable Preference Shareholders of the Third Applicant Company, shall be as prescribed under Section 103 of the Companies Act, 2013. Equity Shareholders and Cumulative Redeemable Preference Shareholders attending the meeting through VC/OAVM shall be counted for the purpose of reckoning the quorum under Section 103 of the Companies Act, 2013. In case the required quorum as stated above is not present at the commencement of the meeting, the meeting shall be adjourned by 30 (thirty) minutes and thereafter, the persons present shall be deemed to constitute the quorum.

9.7 The Chairperson appointed for the aforesaid meeting of the Equity Shareholders and Cumulative Redeemable Preference Shareholders of the Third Applicant Company shall issue the advertisement and send out the notices of the meetings referred to above and shall have all powers as per the Articles of Association of the



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Third Applicant Company and also under the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the conduct of the meeting, including for deciding procedural questions that may arise at the meeting or at any adjournments thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the aforesaid meeting by any person(s) and to ascertain the outcome of the meeting of the Equity Shareholders and Cumulative Redeemable Preference Shareholders by remote e-voting and e-voting at the VC/ OAVM meeting.

9.8 Remote e-voting and e-voting at the VC/ OAVM meeting by the authorised representative in case of body corporate shall be permitted, provided that the resolution/ authorisation authorising its representative to attend the meeting is duly signed by the person entitled to attend and vote at the aforesaid meeting, and is filed with the Third Applicant Company through electronic mode, not later than 48 hours before start of the aforesaid meeting as required under Rule 10 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

9.9 The voting rights of the Equity Shareholders and Cumulative Redeemable Preference Shareholders of the Third Applicant Company shall be in



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proportion to their share of the paid-up Equity Share Capital and Preference Share Capital respectively, of the Third Applicant Company as on the cutoff date and as per the respective Register of Members of the Third Applicant Company. Further, where the entries in the books/ register/ depository records are disputed, the Chairperson of the meeting shall determine the voting rights for the purposes of the meeting of Equity Shareholders and Cumulative Redeemable Preference Shareholders and his decision in that behalf would be final.

- 10 The Chairperson shall report to this Tribunal, the result of the aforesaid meeting within 30 (thirty) days of the conclusion of the aforesaid meeting, and the said report shall be verified by his Affidavit as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
- 11 The Ld. Senior Counsel for the Applicant Companies submits that since the Scheme is an arrangement amongst the Applicant Companies and their respective Shareholders as contemplated under Section 230 (1) (b) of the Companies Act, 2013 and not in accordance with the provisions of Section 230 (1) (a) of the Companies Act, 2013, as there is no compromise and/or arrangement with the Creditors. The Scheme does not envisage or contain any corporate debt restructuring. The Creditors of the Applicant Companies are being paid in the normal course of business as per the agreed terms and are not



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called upon to make any sacrifices, hence their interests are not getting affected in any way. The assets of the Applicant Company are in excess of and more than sufficient to meet all its external liabilities and the Scheme will not adversely affect the rights and interest of any of its creditors in any manner whatsoever. Pursuant to the amalgamation of the First Applicant Company and Second Applicant Company with the Third Applicant Company, the debt repayment capacity of the Third Applicant Company will not be adversely affected and the post amalgamation net worth of the Third Applicant Company will be positive. Therefore, the Scheme and the amalgamation contemplated thereby will not adversely affect the interests of the Creditors of the Applicant Companies. The strength of the financial position of the Applicant Companies has been set out in its balance sheet annexed to the Company Scheme Application. Post sanctioning of the Scheme, there will not be any dilution in securities provided to the secured lenders who will continue to hold charge over their respective assets post sanctioning of Scheme. Therefore, the meetings of the Secured Creditors (including Non-Convertible Debenture Holders) of the First and Second Applicant Companies and Unsecured Creditors (including Non-Convertible Debenture Holders) of the Applicant Companies are not required to be convened and may be dispensed with.

- 12 The Ld. Senior Counsel for the Applicant Companies further submits that the First and Second Applicant Companies may be allowed to issue individual notices to



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all their respective Secured Creditors and the First Applicant Company may be allowed to issue individual notices to all its Unsecured Creditors having an outstanding of Rs. 1,00,00,000/- and above, (constituting around 94% of the total outstanding debt owed to the Unsecured Creditors as on March 31, 2023), the Second Applicant Company be permitted to issue individual notices to all its Unsecured Creditors having an outstanding of Rs. 2,00,00,000/- and above (constituting around 95% of the total outstanding debt owed to the Unsecured Creditors as on March 31, 2023) and the Third Applicant Company be permitted to issue notices to all its Unsecured Creditors having an outstanding of Rs. 20,00,00,000 /- and above (constituting around 93% of the total outstanding debt owed to the Unsecured Creditors as on March 31, 2023), stating therein that they may submit their representations in relation to the Scheme, if any, to this Tribunal within 30 (thirty) days from the date of receipt of the said notice and a copy of such representation filed by the Creditors of the Applicant Companies shall simultaneously be served upon the respective Applicant Companies. The Notice shall state that *"If no representation / response is received by the Tribunal from Secured / Unsecured Creditor(s), within a period of thirty days from the date of receipt of such notice, it will be presumed that Secured / Unsecured Creditor(s) has no representation / objection to the proposed Scheme as per*



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Rule 8 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016".

12.1 The Notices to be sent to all Secured Creditors of the First Applicant Company and the Second Applicant Company shall draw attention to Clauses 5.1, 5.11 and 5.12 of the Scheme, which are reproduced below:

"5.1 The Transferor Companies along with its Undertaking shall stand merged with and be vested in the Transferee Company, as a going concern, without any further act or instrument and pursuant to the provisions of Sections 230 to 232 of the Act and Section 2(1B) of the IT Act, together with all the properties, assets, rights, liabilities, benefits and interest therein, as more specifically described in the subsequent clauses of this Scheme. The transfer/vesting as aforesaid shall be subject to the existing charges/hypothecation over or in respect of the assets or any part thereof of the Transferor Companies, provided always that this Scheme shall not operate to enlarge the security for any loan, deposit or facility created by the Transferor Companies which shall vest in the Transferee Company by virtue of the amalgamation and the Transferee Company shall not be obliged to create any further or additional security after the amalgamation has become effective or otherwise; it being clarified that (A) charges which are in the nature of floating charges will continue to operate as



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per the terms of the existing security documents (including the ranking thereof) with reference to the applicable assets of the Transferee Company (including those transferred to it as part of the Undertaking) and all such existing charges of the same ranking shall rank pari passu inter se (B) this provision will not preclude the process of replacement or supplementing of assets by the Transferee Company in accordance with the terms of the existing security documents. Further, the Transferee Company shall not be required to create any additional security over assets acquired by it under the Scheme for any loans, deposits or other financial assistance availed /to be availed by the Transferor Companies or the Transferee Company it being clarified that this will not preclude the replacement or supplementing of assets by the Transferee Company in accordance with the terms of the existing security documents.

- 5.11 *All secured and unsecured debts, (whether in rupees or in foreign currency), all liabilities whether provided for or not in the books of the Transferor Companies, duties and obligations of the Transferor Companies along with any charge, encumbrance, lien or security thereon (hereinafter referred to as the "said Liabilities") shall be and stand transferred to and vested in or deemed to have been transferred to and vested in the Transferee Company, so as to become the debts, liabilities, duties and obligations*



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of the Transferee Company, and further that it shall not be necessary to obtain the consent of any third party or other person who is a party to any contract or arrangement by virtue of which such debts, liabilities, duties and obligations have arisen in order to give effect to the provisions of this clause. It is clarified that in so far as the assets of the Transferor Companies are concerned, the security or charge over such assets or any part thereof, relating to any loans, debentures or borrowings of the Transferor Companies shall without any further act or deed continue to relate to such assets or any part thereof, after the Effective Date and shall not relate to or be available as security in relation to any or any part of the assets of the Transferee Company, save to the extent mentioned in Clause 5.1 above.

5.12 Without prejudice to the foregoing provisions of this clause, upon the coming into effect of the Scheme, all non-convertible debentures ("NCDs") (including Listed NCDs), commercial papers ("CPs") (including Listed CPs), external commercial borrowings, bonds or other debt securities and other instruments of like nature ("Debt Securities") taken by the Transferor Companies shall pursuant to the provisions of Sections 230-232 and other relevant provisions of the Act, without any further act, instrument or deed, become the Debt Securities of the Transferee Company on the same terms and conditions (including same rights, interests and benefits) as



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applicable to the Transferor Companies and all rights, powers, duties and obligations in relation thereto shall be and stand transferred to and vested in or be deemed to have been transferred to and vested in and shall be exercised by or against the Transferee Company as if it was the issuer of such Debt Securities, so transferred and vested. Subject to the requirements, if any, imposed or concessions, if any, by the Stock Exchanges, and other terms and conditions agreed with the Stock Exchanges, the Listed NCDs and the Listed CPs shall be vested in the Transferee Company, shall continue to be listed and/or admitted to trading on the relevant Stock Exchanges, where the NCDs, and CPs are currently listed, subject to applicable regulations and prior approval requirements. The Board of Directors of the Companies shall be authorized to take such steps and do all acts, deeds and things in relation to the foregoing. For the sake of completeness, it is clarified that all terms thereof will remain the same for the holders and there will be no transfer, reissue or swap of the security/ instrument from the perspective of the holders thereof."

12.2 Insofar as Debentures Trustees appointed for Non-convertible Debentures, an update shall be sent to them about these notices.

12.3 In view of the above, meetings of Creditors are hereby dispensed with.

