

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

C.P.(CAA)/260/MB/2023
c/w C.A.(CAA)/178/MB/2023

In the matter of
Sections 230 to 232 of the Companies Act, 2013 r/w
Section 66 of the Companies Act, 2013 and other
applicable provisions of the Companies Act, 2013

AND

In the matter of
Scheme of Arrangement between

Tata Capital Financial Services Limited
[CIN: U67100MH2010PLC210201]

... Transferor Company-1/
Petitioner Company-1

and

Tata Cleantech Capital Limited
[CIN: U65923MH2011PLC222430]

... Transferor Company-2/
Petitioner Company-2

with

Tata Capital Limited
[CIN: U65990MH1991PLC060670]

... Transferee Company/
Petitioner Company-3

(Hereinafter collectively referred to as 'the Petitioner Companies')

Order pronounced on: 24.11.2023

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Petitioners

: Mr. Hemant Sethi a/w Ms. Devanshi
Sethi, Ms. Tanaya Sethi i/b Hemant
Sethi & Co., Advocates.

For the Regional Director

: Mr. Bhagwati Prasad, Asst. Director,
Office of the RD (WR), MCA, Mumbai.

ORDER

1. This is a Petition filed under Sections 230 to 232 r/w Section 66 and other applicable provisions of the Companies Act, 2013 (the Act), seeking sanction to the Scheme of Arrangement amongst Tata Capital Financial Services Limited (“Transferor Company-1/Petitioner Company-1”) and Tata Cleantech Capital Limited (“Transferor Company-2/Petitioner Company-2”) with Tata Capital Limited (“Transferee Company / Petitioner Company-3”) and their respective Shareholders.
2. Heard the Ld. Counsel for the Petitioner Companies and the official of the Regional Director (WR), MCA. No objector has come before this Tribunal to oppose the Scheme Petition and nor has any party controverted any averments made in the Petition.
3. The Counsel submits that the Petitioner Companies have approved the said Scheme by passing the Board Resolutions dated 28th March, 2023. He further states that the Petition has been filed in consonance with the Order passed on 02.08.2023 in the Company Scheme Application No. 178 of 2023 of this Tribunal.
4. The Counsel for the Petitioner Companies submits that the Transferor Company 1 is a wholly-owned subsidiary of the Transferee Company and Transferor Company 2 is a joint venture between TCL and International Finance Corporation, with equity holding in the ratio of 80.50:19.50. The Equity Shares of Petitioner Companies are not listed on The National Stock

Exchange of India Limited (“NSE”) and BSE Limited (“BSE”). (both collectively referred to as “the Stock Exchanges”). The non-convertible debentures and commercial papers of Petitioner Company 1 are listed on the Stock Exchanges. The non-convertible debentures and commercial papers of Petitioner Company 2 are listed on the NSE. The non-convertible debentures and commercial papers of Petitioner Company 3 are listed on the NSE.

5. *Rationale:* The Learned Counsel for the Petitioner Companies submit that the rationale of the Scheme is as follows:

- a) *TCL, being a CIC, has four Indian subsidiary companies viz. TCFSL, Tata Capital Housing Finance Limited (“TCHFL”), TCCL and Tata Securities Limited (“TSL”). TCFSL, TCHFL and TCCL are primarily engaged in the business of lending. TCFSL and TCCL are registered with the RBI as a NBFC ND SI and TCHFL is registered with National Housing Bank as a Housing Finance Company. TSL is currently engaged in the business of distribution of Mutual Fund units in the capacity of an AMFI registered distributor. Each of the entities cater to distinct segments and offer different products. It is now proposed to consolidate the businesses of TCFSL and TCCL at the TCL level, for creation of a larger unified entity and, to that extent, reduce the number of registered non-banking financial companies (NBFCs) within the Tata Capital Group to achieve optimal and efficient utilization of capital, enhance operational and management efficiencies and have a simplified organizational structure.*
- b) *Thus, the amalgamation of the Transferor Companies with the Transferee Company pursuant to this Scheme would, inter-alia, have the following*

benefits:

- (i) Consolidation of businesses would help in achieving simplified organizational structure, improve operational and management efficiencies, streamline business operations and decision-making process and enable greater economies of scale;*
- (ii) Lead to the creation of a larger unified entity with a wider and stronger capital and asset base, having greater capacity for conducting its operations more efficiently and competitively;*
- (iii) Reduction in the number of NBFCs within the group, resulting in lesser overheads including administrative, managerial, and other expenditure, optimal utilization of resources, and provide a common governance structure;*
- (iv) Consolidation of the businesses carried on by them is strategic in nature and will generate significant business synergies thereby enhancing stakeholders' value;*
- (v) The Companies have a proven track record in the respective businesses of credit and consolidating those will lead to pooling of knowledge and expertise and align with the business plans which will enable the group to meet its long-term objectives;*
- (vi) Greater financial strength and flexibility for the merged entity.*

6. Consideration:

The Counsel for the Petitioner Companies further submits that upon coming into effect of this Scheme and in consideration of the amalgamation, the Transferee Company shall issue and allot to the equity shareholders of the Transferor Company 2 (except for shares already held by Transferee Company which shall stand extinguished), fully paid up equity shares in the following ratio:

“4 equity shares of face value of Rs. 10/- each of Transferee Company shall be issued and allotted as fully paid up for every 5 equity shares of the face value of Rs. 10/- each fully paid up held in Transferor Company 2”.

As the Transferee Company along with joint shareholders holds the entire equity share capital of the Transferor Company 1, on amalgamation, neither will any consideration be paid nor shall any shares be issued by the Transferee Company in consideration of amalgamation of Transferor Company 1.

7. The Counsel appearing on behalf of the Petitioners has stated that the Petitioner Companies have complied with all requirements as per directions of this Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made thereunder whichever is applicable.
8. The Regional Director has filed its Report dated 27th October, 2023 praying that this Tribunal pass such orders as it thinks fit, save and except as stated

in paragraph 2. The observations of the Regional Director in the Report and the reply of the Petitioner Companies in their Affidavit in Reply dated October 31, 2023 are mentioned hereinbelow:

Para	Observation by the Regional Director	Undertaking of the Petitioner Companies
2(a)	<i>That on examination of the report of the Registrar of Companies, Mumbai dated 19.10.2023 for Petitioner/Transferor Companies and Transferee Company (Annexed as Annexure A-1) that the Petitioner/Transferor Companies and Transferee Company falls within the jurisdiction of ROC, Mumbai. It is submitted that no representation regarding the proposed scheme of Arrangement has been received in the matter of Petitioner/Transferor Companies and Transferee Company. Further, the Petitioner/Transferor Companies and Transferee Company has filed Financial Statements up to 31.03.2023.</i>	So far as the observation in paragraph 2(a) of the Report is concerned, the contents thereof are correct factual observations and thus, does not require any response. I further say that the Petitioner Companies have filed financial statements up to March 31, 2023.

2(a)(i)	<p><i>The ROC MUMBAI has further submitted that in his report dated 19.10.2023 which are as under:-</i></p> <p><i>i. That the ROC Mumbai in his report dated 19.10.2023 has also stated that No Inquiry, Inspection, Investigations, Prosecutions, Technical Scrutiny and Complaints under Companies Act, 2013 are pending against the Petitioner/Transferor Companies and Transferee Company.</i></p>	<p>So far as the observation in paragraph 2(a)(i) of the Report is concerned, the contents thereof are correct factual observations and thus, does not require any response.</p>
2(a)(ii)(a)	<p><i>Further ROC has mentioned as follows:-</i></p> <p><i>As per provisions of section 232(3)(i) of CA, 2013 where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorized capital shall be set off against any fees payable by the transferee company on its authorized capital shall be set off against</i></p>	<p>So far as the observation in paragraph 2(a)(ii)(a) of the Report is concerned, the Transferee Company undertakes that it would comply with the provisions set out in Section 232(3)(i) of the Act and that the fees, if any after setting off the fees already paid by the Transferor Company 1 and Transferor Company 2, i.e. the Transferor Companies, would be paid by the Transferee Company for increase of</p>

	<p><i>any fees payable by the transferee company on its authorized capital shall be set off against any fees payable by the transferee company on its authorized capital subsequent to the amalgamation. Therefore, remaining fee, if any after setting off the fees already paid by the transferor company on its authorized capital, must be paid by the transferee company on the increased authorized capital subsequent to amalgamation.</i></p>	<p>the share capital.</p>
2(a)(ii)(b)	<p><i>Interest of the Creditors should be protected.</i></p>	<p>So far as the observation in paragraph 2(a)(ii)(b) of the Report is concerned, the Transferee Company submits that the Scheme is not prejudicial to the interests of the shareholders and creditors and interest of the creditors will be protected and there is no compromise or arrangement with the creditors.</p>
2(b)	<p><i>Transferee company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013</i></p>	<p>So far as the observation in paragraph 2(b) of the Report is concerned, Transferee Company submits that the Transferee Company</p>

	<i>through appropriate affirmation in respect of fees payable by Transferee Company for increase of share capital on account of merger of transfer of companies.</i>	undertakes to this Hon'ble Tribunal that it would comply with the provisions set out in Section 232 (3) (i) of the Act and that the fees, if any, would be paid by the Transferee Company for increase of share capital on account of merger or transfer of companies, if applicable.
2(c)	<i>In compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the resultant company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards including AS-5 or IND AS-8 etc.</i>	So far as the observation in paragraph 2(c) of the Report is concerned, the Transferee Company undertakes that in compliance of Accounting Standard -14 / IND AS-103, as applicable, it shall pass such accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standards including AS-5 or IND AS-8 etc. as applicable.
2(d)	<i>The Hon'ble Tribunal may kindly direct the Petitioner / Transferor Companies and Transferee Company to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and</i>	So far as the observation in paragraph 2(d) of the Report is concerned, the Transferee Company undertakes that the Scheme enclosed to the Company Application and Company Petition are one and the same and further, there is no discrepancy or no change made

	<i>same and there is no discrepancy, or no change is made.</i>	therein.
2(e)	<i>The Petitioner / Transferor Company and Transferee Company under provisions of section 230(5) of the Companies Act 2013 have to serve notices to concerned authorities which are likely to be affected by the Amalgamation or arrangement. Further, the approval of the scheme by the Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such authorities shall be binding on the Petitioner/Transferor Company and Transferee Company concerned.</i>	So far as the observation in paragraph 2 (e) of the Report is concerned, the Transferee Company submits that Petitioner Companies have served notices under the provisions of Section 230(5) of the Companies Act, 2013 to the concerned authorities as directed by this Hon'ble Tribunal which are likely to be affected by the Scheme. Further, the Transferee Company submits that the approval of the Scheme by this Hon'ble Tribunal would not deter such authorities to deal with any of the issues arising after giving effect to the Scheme. The Transferee Company also submit that the issues, if any, arising out of the Scheme shall in any event, be subject to the final decision of such authorities and the final orders, if any, in any appeals that may be preferred therein. The Transferee Company undertake to this Hon'ble Tribunal that the decision of such

		authorities would be binding on the Petitioner Companies, in accordance with law.
2(f)	<p><i>As per Definition of the Scheme,</i></p> <p><i>“Appointed Date” means opening business hours of 1st of April 2023 or such other later date as the Board may decide.</i></p> <p><i>“Effective Date” means the last of the dates on which all the conditions and matters referred to in Clause 22 of the Scheme occur or have been fulfilled or waived in accordance with this Scheme/Applicable Law. Any references in the Scheme to “upon the Scheme becoming effective” or “effectiveness of the Scheme” shall mean the Effective Date.;</i></p> <p><i>“Record Date” means a mutually agreed date to be fixed by the respective Board of Directors of the</i></p>	<p>So far as the observation in paragraph 2 (f) of the Report is concerned, the Transferee Company submits that it complies with the requirements as clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs by clearly specifying the Appointed Date (i.e. April 1, 2023) in the Scheme and accordingly, the requirements of the said circular have already been complied with.</p>

	<p><i>Transferor Company 2 and the Transferee Company for the purposes of determining the shareholders of the Transferor Company 2 to whom equity shares of Transferee Company would be allotted pursuant to the amalgamation in accordance with Clause 14.1 of this Scheme;</i></p> <p><i>It is submitted that the Petitioner/Transferor Companies and Transferee Company may be asked to comply with the requirements as clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.</i></p>	
2(g)	<p><i>Petitioner / Transferor Companies and Transferee Company shall undertake to comply with the directions of the Income Tax Department and the GST Authorities, if any.</i></p>	<p>So far as the observation in paragraph 2 (g) of the Report is concerned, the Transferee Company submits that Petitioner Companies have served notice under Section 230(5) of the Companies Act, 2013 on the concerned Income Tax Department, Mumbai and have not</p>

		received any representation from the concerned Income Tax Department, Mumbai. The Transferee Company undertakes that Petitioner Companies will comply with the directions of Income Tax Department, if any, in accordance with law. The Petitioner Companies have served notice under Section 230(5) of the Companies Act, 2013 on the concerned GST Authorities and have not received any representation from the concerned GST Authorities. The Transferee Company undertakes that Petitioner Companies will comply with the directions of concerned GST Authorities, if any, in accordance with law.
2(h)	<i>Petitioner/Transferor Companies and Transferee Company shall undertake to comply with the directions of the concerned sectoral Regulatory, if any.</i>	So far as the observation in paragraph 2 (h) of the Report of the Regional Director is concerned, the Transferee Company undertakes that Petitioner Companies will comply with the directions of the concerned sectoral regulators, if any, if so required, in accordance with law.
2(i)	<i>Petitioner/Transferor Companies and Transferee</i>	So far as the observation in paragraph 2(i) of the Report is

	<p><i>Company are registered with the Reserve Bank of India (RBI) also Petitioner/Transferor Companies and Transferee Company obtained NOC from RBI dated 4.07.2023, in that NOC certain compliances to be complied by Petitioner/Transferor Companies and Transferee Company mentioned by RBI, in this regard, Petitioner/Transferor Companies and Transferee Company shall undertake to comply with all the directions mentioned in the RBI letter dated 04.07.2023.</i></p>	<p>concerned, Transferee Company submits that the Transferee Company undertakes that Petitioner Companies will comply with the all directions mentioned by RBI in their No-Objection certificate dated July 04, 2023 as may be applicable.</p>
2(j)	<p><i>Petitioner/Transferor Companies and Transferee Company shall undertake to comply with the observations pointed out BSE & NSE vide their observation letter dated 07.07.2023 & 10.07.2023 also comply with SEBI (Listing Obligations and Disclosure</i></p>	<p>So far as the observation in paragraph 2(j) of the Report is concerned, Transferee Company undertakes that Petitioner Companies will comply with the observations pointed out by the BSE & NSE vide their observation letter dated 07.07.2023 & 10.07.2023, as applicable, and also undertakes to</p>

	<i>Requirements) Regulations, 2015 and Covenants of the Debenture Trust Deeds entered with the Debenture Trustee(s) and any other relevant regulations and circulars.</i>	comply with SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and Covenants of the Debenture Trust Deeds entered with the Debenture Trustee(s) and any other relevant regulations and circulars, as may be applicable.
2(k)	<i>Petitioner Transferee Company shall undertake to comply with the directions of the Hon'ble Courts/ Tribunals while disposing off the ongoing adjudication and recovery proceedings, prosecution initiated and all other enforcement action taken against the Petitioner/Transferor Companies and its promoters and directors.</i>	So far as the observation in paragraph 2 (k) of the Report is concerned, the Transferee company undertakes to comply with the directions of the Hon'ble Courts/ Tribunals while disposing off the ongoing adjudication and recovery proceedings, prosecution initiated and all other enforcement action taken against the Petitioner/Transferor Companies and its promoters and directors
2(l)	<i>As per the list of shareholders of Petitioner/Transferor Company No. 2 and Transferee Company, they have foreign shareholders, hence Petitioner/Transferor Company No. 2 and</i>	So far as the observation in paragraph 2 (l) of the Report is concerned, the Transferee company undertakes that Transferee Company and Transferor Company 2 will comply with the applicable guidelines of Foreign Exchange

	<i>Transferee Company shall undertake to comply with guidelines of RBI, FEMA and FERA.</i>	Management Act, 1999 / Foreign Exchange Regulation Act, 1973 / Reserve Bank of India Act, 1948 and guidelines, as applicable and to the extent required.
2(m)	<p><i>Petitioner/Transferor Companies and Transferee Company have proposed in clause 18 of the scheme that Reduction of Securities Premium of the Transferee Company, which is as follow:-</i></p> <p><i>"18.1 Immediately after Part II of the Scheme becoming effective, the securities premium available with the Transferee Company i.e., after consolidation of the securities premium of the Transferor Companies with the Transferee Company on account of amalgamation, would be reduced against the negative balance in the capital reserve (arising on amalgamation). This consequential capital reduction of the Transferee</i></p>	<p>So far as the observation in paragraph 2 (m) of the Report is concerned, the Transferee company submits that the explanation to Section 230 of the Companies Act, 2013 provides that “for the removal of doubts, it is hereby declared that the provisions of Section 66 shall not apply to the reduction of share capital effected in pursuance of the order of the Tribunal under this Section.” Further, it is submitted that as per Clause 18 of the Scheme, the reduction of securities premium account is being done as an integral part of the Scheme and the order of the NCLT sanctioning the Scheme shall be deemed to be an order under Section 66 of the Act confirming the reduction. Hence, separate approval under Section 66 of the Act is not required.</p>

	<p><i>Company shall be effected as an integral part of this Scheme itself and not under a separate procedure, in terms of Section 52(1) read with Section 66 of the Act, and the order of the NCLT sanctioning this Scheme shall be deemed to be an order under Section 66 of the Act, or any other applicable provisions, confirming the reduction. The consent of the shareholders of the Transferor Companies and the Transferee Company to this Scheme shall be deemed to be the consent of its shareholders for the purpose of effecting the reduction under the provisions of Section 52(1) read with Section 66 of the Act as well and no further compliances would be separately required."</i></p> <p><i>In this regard, the Petitioner/Transferor Companies and Transferee</i></p>	
--	--	--

	<i>Company shall undertake to comply with provision of section 52 read with section 66 of Companies Act. 2013 also applicable Rules.</i>	
--	--	--

9. Mr. Bhagwati Prasad, Asst. Director, Representative of the Regional Director (WR), Mumbai, appeared and submitted that with the above explanations and clarifications given by the Petitioner Company, RD has no objection in approving the Scheme.
10. Further, the Official Liquidator, vide his report dated October 4, 2023, filed with this Tribunal submits that the affairs of the Transferor Companies have been conducted in a proper manner and no objections have been raised with respect to the Scheme.
11. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this scheme and in case it is found that the scheme ultimately results in tax avoidance under the provisions of Income Tax Act, it shall be open to the income tax authorities to take necessary action as possible under the Income Tax Law.
12. 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.
13. Since all the requisite statutory compliances have been fulfilled, Company

Scheme Petition [CP(CAA)/260/MB/2023] is made absolute in terms of prayers of the Petition.

14. In view of the above, the Scheme is hereby **sanctioned**, with the Appointed Date fixed as 1st April 2023. It shall be binding on the Petitioner Companies involved in the Scheme and all concerned including their respective Shareholders, Secured Creditors, Unsecured Creditors/Trade Creditors and Employees.
15. Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy within 30 days from the date of issuance of the Order by the Registry.
16. The Petitioner Companies to lodge a certified copy of this order and the Scheme duly authenticated by the Deputy Registrar or the Assistant Registrar, as the case may be, of this Tribunal, 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 certified copy of order.
17. All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Registrar of this Tribunal.
18. The Petitioner Companies shall comply with all the undertakings given by them.

19. Any person interested, is at liberty to apply to this Tribunal in the above matters for any directions that may be necessary.
20. Any concerned Authorities are at liberty to approach this Tribunal for any further clarification as may be necessary.
21. Accordingly, C.P.(CAA)/260/MB/2023 c/w CA(CAA)/178/MB/2023 is **allowed** and disposed-off. File to be consigned to records.

Sd/-
Anu Jagmohan Singh
Member (Technical)

Sd/-
Kishore Vemulapalli
Member (Judicial)

24.11.2023/pvs