



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

**C.P.(CAA) No.34/BB/2022  
(Second Motion)**

U/s. 230-232 and other relevant provisions  
of the Companies Act, 2013

**IN THE MATTER OF:**

M/s. CreditAccess Grameen Limited  
Rep. by its Authorized Representative,  
Mr. M.J.Mahadev Prakash

R/o. at New No.49 (Old No.725),  
46<sup>th</sup> Cross, 8<sup>th</sup> Block, Jayanagar,  
(next to Rajalakshmi Kalyana Mantapa)  
Bengaluru – 560 071 ... Petitioner/Transferee Company

**AND**

M/s. Madura Micro Finance Limited  
R/o. at No.36, II<sup>nd</sup> Main Road,  
Kasturba Nagar, Adyar,  
Chennai,  
Tamil Nadu – 600 020 ... Non-Petitioner/Transferor Company

**Order delivered on: 7<sup>th</sup> February, 2023**

**CORAM:** Hon'ble Tmt. T. Krishnavalli, Member (Judicial)  
Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

**PRESENT:**

For the Petitioner Company : Shri Sharan A Kukreja  
For the ROC & RD : Shri Hemanth Rao, Adv.  
For the IT Dept. : Shri Ganesh R Ghale

**ORDER**

**Per: Manoj Kumar Dubey, Member (Technical)**

1. This is a second motion Petition filed on 04.05.2022 by M/s. CreditAccess Grameen Limited (for brevity, the "Petitioner Company/Transferee Company"), U/s. 230-232 and other relevant provisions of



the Companies Act, 2013 (for short to be referred hereinafter as the 'Act') and by inter alia seeking for the sanction of Scheme of Amalgamation, so as to be binding on all the Shareholders and Creditors of the Petitioner Company, and all other persons, w.e.f. the Appointed Date i.e. 01.04.2020.

2. The Petitioner Company filed First Motion Application bearing C.A(CAA) No.60/BB/2021 before this Tribunal and based on such Application moved U/s.230-232 of the Companies Act, 2013 necessary directions were issued vide order dated 25.02.2022. Details of the First Motion order are as under:

	<b>Transferee Co</b>
<b>Equity Shareholders</b>	Meeting convened
<b>Secured Creditors</b>	Meeting Dispensed (Consent Obtained)
<b>Unsecured Creditors</b>	Meeting Dispensed (Consent Obtained)

3. When the Petition was listed on 10.08.2022, through video conferencing, the following directions were issued:-

*"..3. The Petition be listed for hearing on 21.09.2022. At least 10 days before the date fixed for final hearing, the Petitioner Company shall publish the notice of final hearing of the Company Petition in two local newspaper viz., 'Financial Express' in English Edition and translation thereon in 'Vishwavani' in Kannada Edition, both having circulation in Bangalore as per Rule 16 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.*

*4. Notice be also served upon the Objector(s) or their representative as contemplated under sub-section (4) of Section 230 of the Act who may have made representation and who have desired to be heard in their representation along with a copy of the Petition and the annexures filed therewith at least 15 days before the date fixed for hearing. It is to be specified in the notices that the objections, if any, to the Scheme may be filed within thirty days from the date of the receipt of the notice, failing which it will be considered that there is no objection to the approval of the Scheme on the part of the objectors.*





5. In addition to the above public notice, each of the Petitioner Companies shall serve the notice of the Petition on the following Authorities namely, (a) Regional Director (South East Region) Ministry of Corporate Affairs (b) Registrar of Companies, Karnataka, Bengaluru, (c) Jurisdictional Income Tax Authority (d) the Official Liquidator, Bengaluru (e) the Competition Commission of India and (f) The Reserve Bank of India (g) the Securities and Exchange Board of India (h) National Stock Exchange of India Limited (i) Bombay Stock Exchange Limited along with the copy of this Petition by speed post immediately and to such other Sectoral Regulator(s) who may govern the working of the respective Companies involved in the Scheme as per Rule 8 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016, with a direction that they may submit their representation, if any, within 30 (thirty) days from the date of receipt of such notice, failing which it will be presumed that the said authority has no representation to make to the Scheme.”

4. In pursuant to the aforesaid notice, the learned Counsel for the Petitioner Company has filed copies of proof of service of notices vide Diary Nos.3843 & 3844 dated 09.09.2022, on the aforesaid authorities and also copies of paper publication of notice of hearing.
5. The main objects, dates of Incorporation, authorized, issued and paid-up share capital, rationale of the scheme and interest of employees have been discussed in detail in first motion order dated 25.02.2022.
6. The Board Resolution of the Petitioner Companies approving the Scheme is annexed as Annexure R and S of the Petition.
7. It is further submitted that the Certificate of Statutory Auditors of the Transferee Company, stating that, the proposed accounting treatment in clause 14 of the Scheme and is in conformity with Ind AS, the SEBI Regulations and other generally accepted accounting principles in India. The aforesaid certificate is attached as Annexure V (collectively) of the Petition.
8. The Ld. Counsel for the Petitioner Company has filed Audited Financial Statements as on 31.03.2020 and 31.03.2021 and Unaudited Financial Statement as on 31.12.2021 of the Petitioner/Transferee Company and the same are taken on record.



9. As per the Scheme, the "Appointed Date" means the opening of business hours in Bengaluru, India on April 01, 2020 or such other date as may be identified by the Transferee Company and approved by NCLT or such other competent authority.
10. The consideration for Amalgamation of the Transferor Company with the Transferee Company has been determined under Clause 11 of the Scheme.
11. In pursuant to the notice, the Registrar of Companies (ROC) and RD has filed its Common Report vide Diary No.4535 dated 20.10.2022 and it has raised the following observations vide para 2:
- (i) As per the MCA records, the holding Company of the Transferee Company is CreditAccess India NV, an Amsterdam based Company, which is holding 73.99% shares of the Transferee Company.
  - (ii) The Transferee Company is a listed Company. The Equity Shares of the Transferee Company are listed on both BSE Limited and National Stock Exchange of India Limited. The Transferee Company is required to show the compliance of SEBI (Listing Obligations and Disclosure Requirements), 2015. No Objection Certificate from Securities and Exchange Board of India, BSE Limited and National Stock Exchange of India Limited may be asked to submit for merging of a company with a listed company.
  - (iii) The Transferor Company and Transferee Company are carrying out financial activities and are registered with the Reserve Bank of India. NOC from Reserve Bank of India may be sought. Further, the object clause of the Transferee Company needs to be amended to enable it to carry out the entire activities of the Transferor Company after the Scheme is sanctioned. Also, the Transferee Company needs to change its NIC code to reflect financial/NBFC activities post sanction of the scheme.







- (iv) The Appointed Date of the scheme is 01<sup>st</sup> April, 2020. Being an old date, the scheme if approved, may be allowed from 01.04.2022 as appointed date.
- (v) As per note 12 to the Audited Financial Statement for the financial year 2020-21, the Transferee Company has various outstanding Debentures. The Transferee Company is requested to furnish the list of outstanding debentures and also to state, out of them, how many debenture holders have furnished their consents to the proposed scheme.
- (vi) The Petitioner Companies need to file a certificate by the Auditors with NCLT to the effect that the accounting treatment proposed in the Scheme is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013 as required under the proviso to Section 230(7) of the Companies Act, 2013.
- (vii) The Authorised Share Capital of the Transferee Company may not be adequate to issue shares to the shareholders of the Transferor Company post sanction of the scheme. The Transferee Company to furnish an undertaking that the Company will increase its Authorised Share Capital adequately and to file the relevant forms with Registrar of Companies.
- (viii) Clause 6 of the scheme provides that all the executives, staff, workmen and other employees of the Transferor Company shall be absorbed into the Transferee Company. Since the Transferor Company is situated in Chennai, Tamil Nadu and the Transferee Company in Bangalore, the Petitioner Companies are required to explain before this Tribunal as to what measures are being taken for implementation of this clause.
- (ix) As per Boards report and note 28 to the Financial Statement for the year ending 31.03.2021, the Transferee Company has an unspent CSR amount of above Rs.1.8 crore. The Company is required to deposit the amount in the funds specified in Schedule





VII of the Companies Act, 2013 immediately and file for compounding accordingly.

- (x) As per note no. 16 of the Balance Sheet for the financial year ending 31.03.2021, the Transferee Company has undisputed statutory dues to the tune of Rs. 9.69 crores. The Transferee Company may be directed to furnish an undertaking to the effect that it will settle the statutory dues immediately, if not settled so far.
- (xi) As per the Independent Auditor's Report of Transferee Company for the financial year 2020-21, the Company has outstanding disputed Income Tax dues to the tune of Rs.1.16 crores. The Transferee Company may be directed to furnish an undertaking to the effect that it will settle the dues as and when the claim is crystalized.
- (xii) Since the Transferor and Transferee Companies are in the field of micro finance/finance, amalgamation of these companies may attract the provisions of Competition Commission Laws of the country. The Petitioner Companies are required to explain the position and provide NOC, if as applicable.
- (xiii) The Transferee Company has huge Related Party Transactions during the financial year 2020-21. The Company may be asked to show the compliance of Section 188 of the Companies Act, 2013 read with Rule 15 of Companies (Meetings of Board and its Powers) Rules, 2014. The Transferee Company needs to file supportive documents such as transfer price, Auditors report, if any, invoices etc. to confirm that the transactions are on "arm's length basis" and also show the compliance of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, the Transferee Company being a listed Company.
- (xiv) Clause 13.1 of the Scheme provides for Clubbing of Authorized Share Capital wherein, it is stated that the Authorized Share Capital of the Transferor Company shall stand transferred to the





Authorized Share Capital of the Transferee Company. In this regard, the Transferee Company shall comply with provisions of the section and pay the difference of fee, after setting off the fee already paid by the Transferor Company on its respective Authorized Share Capital. The Transferee Company is requested to furnish an undertaking that it will make a separate request letter to ROC for clubbing of Authorized Share Capital within one month from the order or else interest will be levied as per the provisions of Section 403 of the Companies Act, 2013.

- (xv) Before approving the present Company Petition of the Transferee Company, Tribunal needs to take on record the approval/objections, if any, of the order of the Hon'ble NCLT, Chennai Bench with respect to M/s. Madura Micro Finance Limited (Transferor Company of Tamil Nadu).

**12.** Subsequently, reply affidavit to the report of RD & ROC have been filed by the Petitioner/Transferee Company vide Diary No.4854 dated 14.11.2022, inter alia stating as under:-

- i. **Reply to point 2.(i) to the Common Report of ROC & RD report:** It is stated that the CreditAccess India NV holds 73.99% of the shares of the Transferee Company as on March 31, 2021. However, as on September 30, 2022, CreditAccess India NV holds 73.74% of the shares of the Transferee Company.
- ii. **Reply to point 2.(ii) to the Common Report of ROC & RD report:** The observation letters issued by the BSE have been produced at Annexure AG at Page 588 of Vol. III of the second motion petition and NSE is at Annexure AH at Page 590 of Vol. III of the second motion petition. The observation letters refer to the SEBI Circular No. CFD/DIL3/CIR/2017/21 dated March 10, 2017 and thereafter, these observation letters have been issued. The Transferee Company states that it has complied with SEBI (Listing Obligations and Disclosure Requirements), 2015. The observation letters issued by BSE and NSE will be the no objection certificates



to the Scheme without which the Transferee Company could not have filed the petition seeking dispensation/convening of meetings or the petition seeking sanction of schemes in accordance with the SEBI (Listing Obligations and Disclosure Requirements), 2015.

- iii. **Reply to point 2.(iii) to the Common Report of ROC & RD report:** It is stated that no objection certificate issued by the Reserve Bank of India has been produced as **Annexure A**. Further, the Transferee Company states that the main business activities of the Transferor and Transferee Companies are the same and that in case the Transferee Company intends to carry out any other business activities of the Transferor Company, the Transferee Company will have its Memorandum of Association amended to that effect. Lastly, as there is no change in the business activities of the Transferee Company after the sanction of the Scheme, there is no requirement to change the NIC code of the Transferee Company.
- iv. **Reply to point 2.(iv) to the Common Report of ROC & RD report:** It is stated that the Appointed Date of the Scheme was fixed based on the valuation of Directors of the Transferee Company, its shareholders and the regulators. Any potential change would have implications on the valuation and accounting and hence, the Transferee Company prays that the Appointed Date may not be changed. Moreover, the Appointed Date has already been fixed by the Hon'ble National Company Law Tribunal, Chennai Bench *vide* its order dated October 12, 2022 in CP/CAA/57/CHE/2022, wherein the Scheme was approved.
- v. **Reply to point 2.(v) to the Common Report of ROC & RD report:** A certificate of the Chartered Accountants of the Transferee Company dated May 14, 2021 containing the list of debentures of the Transferee Company, as on March 31, 2021, is produced as **Annexure B**. Out of a total of 20 debenture holders, 16 debenture holders have furnished their consent to the Scheme. Only 4 debenture holders have not provided consent to the







Scheme, i.e., the debenture holders mentioned at Sl. Nos. 42 (WaterCredit Investment Fund 1, LLC), 51 (State Bank of India-TLTRO), 58 (Indian Bank- PCGS) and 61 (MLD- Covered Bonds 25.03.21). Accordingly, the total percentage value of consent received from the debenture holders is 77.23%.

- vi. **Reply to point 2.(vi) to the Common Report of ROC & RD report:** The Transferee Company has already filed a certificate of the Statutory Auditors of the Transferee Company dated December 17, 2019 stating that the accounting treatment specified in the Scheme is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013 at Annexure V (Page 361) of the second motion petition.
- vii. **Reply to point 2.(vii) to the Common Report of ROC & RD report:** The Transferee Company undertakes to increase its Authorized Share Capital in order to issue shares to the shareholders of the Transferor Company.
- viii. **Reply to point 2.(viii) to the Common Report of ROC & RD report:** The Transferee Company has intimated all the employees of the Transferor Company about the proposed Scheme, who, effective the appointed date, will be operating from the same branches or locations of Transferor Company as they stand today, however, they will be on the rolls of the Transferee Company as per transfer policy of the Transferee Company. Further, the Transferee Company is setting up an operations hub at Chennai to accommodate majority of staff of the Transferor Company in Chennai.
- ix. **Reply to point 2.(ix) to the Common Report of ROC & RD report:** In compliance with the provisions of Section 135 of the Companies Act, 2013 read with notification dated January 22, 2021 issued in connection with Section 135 of the Companies Act, 2013, has transferred the unspent CSR funds which is allocated for pre-identified CSR activity amounting to a sum of Rs. 1,81,28,407 to a separate bank account on April 29, 2021. The





Transferee Company is continuing to spend this amount towards pre-identified CSR activity. Therefore, since the Transferee Company is in compliance with Section 135 of the Companies Act, 2013, there arises no requirement to file any application for compounding of offences.

- x. **Reply to point 2.(x) to the Common Report of ROC & RD report:** The statutory dues of Rs.9.69 crores as provided in the Balance Sheet as on March 31, 2021, were related to TDS, GST, workmen welfare fund payable, superannuation fund payable, professional tax payable, service tax and ESI Payable for the month of March 2021, due date of which was in the month of April, 2021. The Transferee Company had settled all the aforesaid mentioned dues by April 20, 2021. An undertaking to that effect is produced herewith as Annexure-E.
- xi. **Reply to point 2.(xi) to the Common Report of ROC & RD report:** The Transferee Company undertakes to settle the outstanding income tax dues presently being adjudicated once it attains finality/crystalizes finally in accordance with law.
- xii. **Reply to point 2.(xii) to the Common Report of ROC & RD report:** In pursuant to Notification S.O. 988(E) dated March 27, 2017, issued by the Ministry of Corporate Affairs, no prior notification to, and approval of, the Competition Commission of India (“CCI”) is required, if the target enterprise does not have a turnover exceeding INR 1,000 crore in India as per the CCI Notification. The Transferor Company does not have turnover exceeding INR 1,000 crores and therefore, the *de minimus* threshold has not been met. However, the notice issued by the Tribunal, along with a copy of the Petition in the captioned matter was served to the office of the CCI on August 22, 2022 through Registered Post and no response has been received from the CCI.
- xiii. **Reply to point 2.(xiii) to the Common Report of ROC & RD report:** The Transferee Company has disclosed all related party transactions as per Section 188 of the Companies Act, 2013 in Form AOC-2 produced in the Annual Report of the Transferee Company for the financial year ended March 31, 2021. For the transactions stated in Form AOC-2, prior approval of the Audit Committee and the Board was obtained in accordance with the Companies Act, 2013 and the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015. Furthermore, considering that no





related party transaction was entered into with a non-resident entity, transfer pricing audit report is not applicable. Except for the transactions disclosed in the AOC-2 of the Annual Report 2020-21, there are no other related party transactions as per Section 188 of the Companies Act, 2013. The related party transactions as disclosed in the Notes to Accounts sections are as per IND-AS 24, which are generally in nature of remuneration/ commission.

- xiv. **Reply to point 2.(xiv) to the Common Report of ROC & RD report:** The provisions of Section 232(3)(i) of the Act, the Transferee Company undertakes to have the differential fees paid, if any, with respect to the increase in the authorized share capital of the Transferee Company.
- xv. **Reply to point 2.(xv) to the Common Report of ROC & RD report:** It is stated that the Hon'ble National Company Law Tribunal, Chennai Bench has sanctioned the Scheme.

13. So far as the reply to point 2(v) to the Common Report of ROC & RD, a Certificate of the Chartered Accountants of the Transferee Company dated 14.05.2021 shows that there are 16 out of 20 debenture holders have furnished their consent, constituting 77.23% in value. However, these Debenture Holders have been included as part of the Secured Creditors as a whole. The first motion order dated 25.02.2022 reflects that as per the Certificate dated 09.02.2022, there were 42 Secured Creditors as on 01.04.2020 constituting 95.74% in value, who had provided the consent, and accordingly dispensation was allowed in the first motion order.

14. Vide Order dated 24.01.2023, this Tribunal had directed the learned Counsel appearing for the Petitioner to file clarification affidavit along with the list of Debenture Holders which were included in the list of Secured Creditors for which dispensation of meeting was allowed in the first motion order dated 25.02.2022. In response to the above observation, the Counsel has produced an Affidavit with regard to



Debenture Holders of the Transferee Company vide Diary No.504 dated 25.01.2023, stating that the total percentage value of the consent obtained from debenture holders as per outstanding amount as on the Appointed Date i.e. 01.04.2020 is 97.36%. Further, it is stated that since the number of debenture holders were increased during the Financial Year 2020-21 due to fresh issuance of debentures, and therefore, there is a difference in total percentage value of the consent obtained from debenture holders as on March 31, 2021 as compared to a year prior on April 1, 2020. The same is taken on record. It is also noticed that these debenture holders have been included in the list of Secured Creditors for which consent affidavit was filed at the stage of first motion Application.

15. The Income Tax Department has filed its report vide Diary No.5512 dated 19.12.2022, the details in respect of the Transferee Company is as under:

(1) Outstanding dues is:			
Sl. No.	A.Y	Section	Outstanding Demand
1	2017-18	143 (3)	1,15,63,000
(2) Proceedings pending is: NIL			
1	2018-19	143 (3) r.w.s.260	
2	2020-21	270A	
3	2021-22	143 (3)	

16. The Reserve Bank of India to whom notice was issued, has filed their reply on 15.09.2022 stating that the companies may have to comply with Foreign Exchange Management Act, 1999, and the Rules and Regulations made there under. It is also submitted as a regulator it will not be ethical on the part of RBI to vet individual cases, as it will preclude it from taking action on contraventions, if any, committed by such Companies.

17. The Petitioner Company/Transferee Company has filed an Affidavit dated 02.05.2022, regarding the Scheme, the Transferee Company has not opted for or undertaken any scheme of Corporate Debt Restructuring and that there is no consequence of the capital of the Transferor or Transferee Company reducing as a result of the Scheme.







18. The Bombay Stock Exchange Limited has filed its report vide Letter No.DCS/AMAL/PB/R37/1950/2021-22 dated 07.05.2021, according to which no objections have been expressed.
19. The National Stock Exchange of India Limited has filed its report vide Letter No.NSE/LIST/25240\_III dated 07.05.2021, according to which no objections have been expressed.
20. On 16.12.2022, heard the Counsel for the Petitioner Company, and the following order was passed:
- “...4. Ld. Counsel for the Petitioner submits that he has filed reply to the report of the IT Department. He is directed to file affidavit regarding pending legal proceedings under all the Acts, within one week.*
- 5. Order Reserved in C.P, subject to making the above compliance.”*
21. In compliance to the above order dated 16.12.2022, the Petitioner Company has filed Affidavit vide Diary No.5610 dated 21.12.2022 and the same is taken on record.
22. The reports of the ROC, RD, BSE, NSE, RBI and IT are taken on record. Similarly, reply filed by the Petitioner Company/Transferee Company to the above mentioned reports are also taken on record. As directed by RBI, necessary compliance under FEMA has to be made by the Petitioner.
23. In relation to the other statutory authorities to whom notices have been issued, neither they have filed any reply nor raised any objections to the Scheme and in the circumstances, this Tribunal presumes that other statutory Departments do not have any objection to the sanction of the Scheme.

24. In view of the above discussion, we conclude that the objections/ observations to the Scheme received from RD, ROC, BSE, NSE, RBI and



IT have been adequately replied by the Petitioner Company and hence there is no impediment in approval of the Scheme.

**25. The Scheme in question as annexed at page no.619 of the Petition is approved** and we hereby declare that the same is to be binding on all the shareholders and creditors of the Transferor as well as Transferee Companies. While approving the Scheme, it is clarified that this order should not be construed as an order in anyway granting exemption from payment of any stamp duty, taxes, or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law.

**AND THIS TRIBUNAL DOES FURTHER ORDER:**

- (i) That the Petitioner Company do, within 30 days after the date of receipt of this Order, cause a certified copy of this Order to be delivered to the Registrar of Companies, Karnataka for registration. The concerned Registrar of Companies shall place all documents relating to the Transferor Company registered with it on the file relating to the said Transferee Company and the files relating to Transferor and Transferee Companies shall be consolidated accordingly, as the case may be; and
- (ii) That the Transferee Company shall deposit an amount of Rs.75,000/- with the Pay & Accounts Office, Chennai in respect of the Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad and Rs.25,000/-in favour of The Prime Minister's National Relief Fund, within a period of four weeks from the date of receipt of certified copy of this Order; and
- (iii) That any person interested shall be at liberty to apply this Tribunal in the above matter for any directions that may be necessary.





(iv) The approval/sanctioning of the Scheme shall not be construed as an exemption from any of the provisions under the Income Tax Act, 1961 or the Companies Act, 2013 and that the Authorities under both the Acts, are at liberty to take appropriate action, in accordance with law, if so advised.

26. As per the directions, Form No.CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, formal orders be issued on the Petitioner Company on filing of the Schedule Property i.e., (i) freehold property of the Transferor Company and (ii) leasehold property of the Transferor Company by way of affidavit of the Transferor Company respectively.

27. Accordingly, **C.P.(CAA) No.34/BB/2022**, is disposed of. Copy of this Order be communicated to the Counsel for the Petitioner Company.

-Sd-

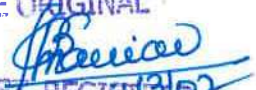
**(MANOJ KUMAR DUBEY)**  
**MEMBER (TECHNICAL)**



-Sd-

**(T. KRISHNAVALLI)**  
**MEMBER (JUDICIAL)**

CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL

  
DEPUTY/ASST. REGISTRAR  
NATIONAL COMPANY LAW TRIBUNAL  
Bengaluru Bench