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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CA(CAA) No. 53/NCLT/AHM/2017

Coram:

**Present: Hon'ble Mr. BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 18.05.2017**

Name of the Company: Adani Ports and Special Economic Zone Ltd.

Section of the Companies Act: Section 230-232 of the Companies Act, 2013

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	Sandeep Singhi	Advocate	Applicant	}
2.	Pranjal Buch for Singhi & Co.	"	"	

ORDER

Learned Advocate Mr. Sandeep Singhi with Learned Advocate Mr. Pranjal Buch present for Applicant.

Order pronounced in open Court. Vide separate sheet.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 18th day of May, 2017.

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

Date: 18th day of May, 2017

C.A.(CAA) 53/NCLT/AHM/2017

In the matter of: -

Adani Ports and Special Economic Zone Limited,

A company incorporated under the provisions of the Companies Act, 1956 and having its registered office at Adani House, Near Mithakhali Six Roads, Navrangpura, Ahmedabad- 380 009.

... Applicant
(Transferor Company)

Appearance:

Mr. Sandeep Singhi and Mr. Pranjal Buch, advocates, for M/s. Singhi & Co., Advocates, for the Applicant.

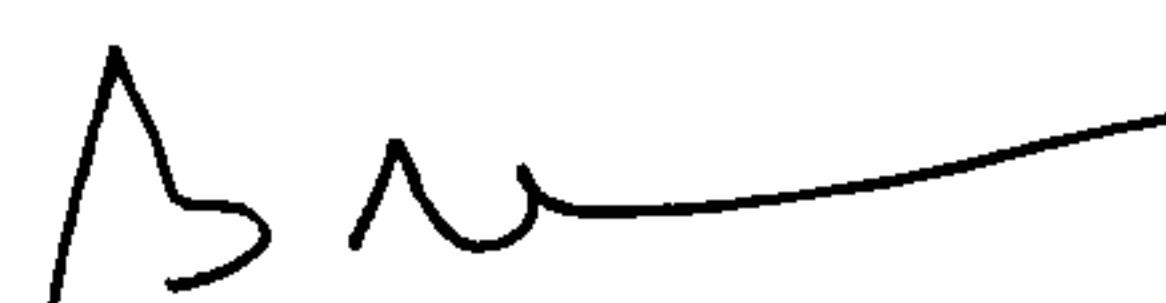
FINAL ORDER
(Date: 18.05.2017)

1. Heard learned Advocates Mr. Sandeep Singhi and Mr. Pranjal Buch for M/s. Singhi & Co., Advocates for the Applicant Company. Perused the application and the supporting affidavit of Mr. Kamlesh Bhagia, Authorised Signatory of the Applicant Company, dated 1st May 2017 and the documents annexed thereto.
2. Adani Ports and Special Economic Zone Limited (hereinafter referred to as the "transferor company") has filed this application seeking directions for convening the meetings of its equity shareholders, preference shareholders, secured creditors (including debenture holders) and unsecured creditors in respect of a scheme of arrangement between the transferor company and The Adani Harbour Services Private Limited (hereinafter referred to as the "transferee company") and their respective shareholders and creditors ("Scheme" for short) in the nature of proposed transfer and vesting of Marine



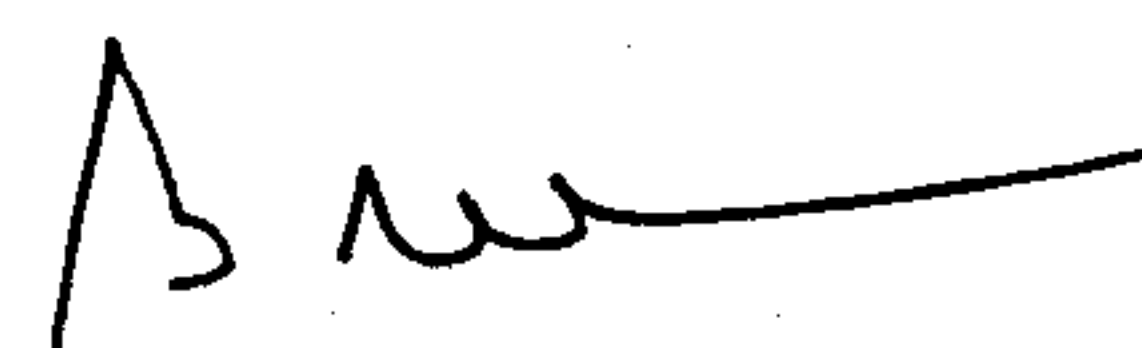
Business Undertaking of the transferor company with effect from the Appointed Date, as a going concern, on Slump Sale basis, for which, a lump sum consideration shall be paid by the transferee company to the transferor company on the agreed terms and conditions as set out in the scheme in accordance with Section 2(42C) of the Income Tax Act, 1961 and under Sections 230 to 232 of the Companies Act, 2013 and other applicable provisions of the Act.

3. The transferor company obtained Valuation Report, Fairness Opinion, report of the Audit Committee vide Annexures H, I, J, respectively.
4. The Board of Directors of the transferor company, in its meeting held on 14th February 2017, passed a resolution approving the proposed Scheme placed before the Board by the Company Secretary vide Annexure K. BSE and NSE issued No Adverse Observations/No Objection letters dated 25th April 2017 and 24th April 2017, respectively to the transferor company vide Annexure "O (Colly)". Statutory Auditor issued certificate dated 14th February 2017 in respect of non-applicability of paragraph 9(a) of SEBI Circular dated 30th November 2015 (Annexure T) basing on the undertaking in relation to non-applicability of requirements prescribed in para (I)(A)(9)(a) of Annexure 1 of SEBI Circular No. CIR/CFD/CMD/16/2015 dated 30th November 2015. It is stated in the application that no investigation has been instituted or pending in relation to the transferor company or the transferee company under Chapter XIV of the Companies Act, 2013. It is also stated in the application that no winding up proceedings are filed or pending either against the transferor company or against the transferee company. The applicant company filed Annual Reports of the transferor company and the



transferee company as on 31st March 2016. The applicant company also filed a certificate issued by the Statutory Auditor of the transferor company issued under Section 133 of the Companies Act, 2013.

5. It is stated in paragraph 40 of the application that as no shares are allotted by the transferee company to the shareholders of the transferor company, no notice under Section 230(5) of the Companies Act, 2013 is required to be issued to the Reserve Bank of India. It is also stated in the said paragraph that no notice under Section 230(5) of the Act is required to be issued to the Competition Commission of India in the facts of the present case. It is further stated that SEBI vide its letter dated 21st April 2017, has stated that "... the company is not required to send notice for representation as mandated under section 230(5) of the Companies Act, 2013 to SEBI again for its comments/observations/ representations."
6. Having considered the entire material on record, this Tribunal passes the following order: -
 - a. A meeting of the equity shareholders of the applicant company shall be convened and held at J.B. Auditorium Ahmedabad management Association, Dr. Vikram Sarabhai Marg, ATIRA, Ahmedabad- 380 015, on Tuesday, on 27th June 2017 at 10.00 A.M., for the purpose of considering and, if thought fit, approving with or without modification(s) the arrangement embodied in the Scheme.
 - b. A meeting of the preference shareholders of the applicant company shall be convened and held at J.B. Auditorium Ahmedabad management

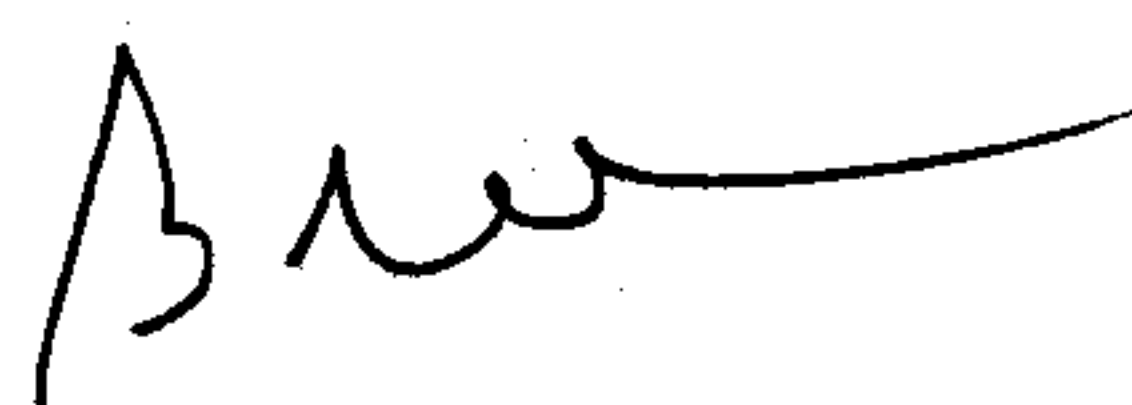


Association, Dr. Vikram Sarabhai Marg, ATIRA, Ahmedabad- 380 015, on Tuesday, on 27th June 2017 at 11.00 A.M., for the purpose of considering and, if thought fit, approving with or without modification(s) the arrangement embodied in the Scheme.

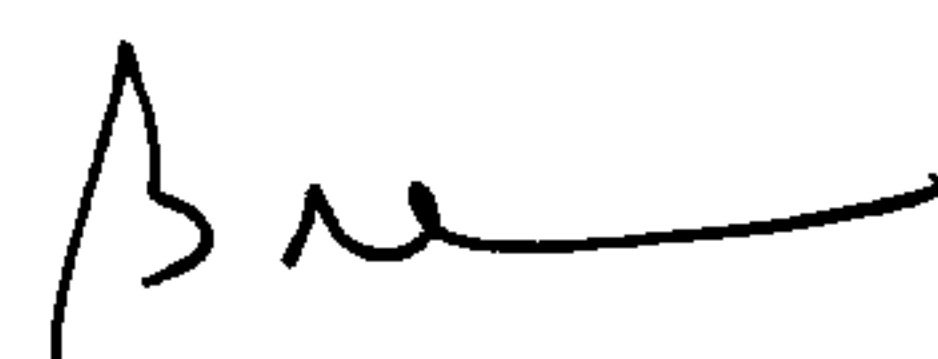
- c. A meeting of the secured creditors (including debenture holders) of the applicant company shall be convened and held at J.B. Auditorium Ahmedabad management Association, Dr. Vikram Sarabhai Marg, ATIRA, Ahmedabad- 380 015, on Tuesday, on 27th June 2017 at 12.00 noon., for the purpose of considering and, if thought fit, approving with or without modification(s) the arrangement embodied in the Scheme.
- d. A meeting of the unsecured creditors of the applicant company shall be convened and held at J.B. Auditorium Ahmedabad management Association, Dr. Vikram Sarabhai Marg, ATIRA, Ahmedabad- 380 015, on Tuesday, on 27th June 2017 at 1.00 P.M., for the purpose of considering and, if thought fit, approving with or without modification(s) the arrangement embodied in the Scheme.
- e. In view of Section 230(4) and 232(1) of the Companies Act, 2013 read with Rule 5 and 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and Rule 20 and 22 of the Companies (Management and Administration) Rules, 2014, the Applicant Company is required to provide the facility of

postal ballot and e-voting to its equity shareholders. Accordingly, voting by the equity shareholders of the applicant company to the Scheme shall be carried out through (i) postal ballot and e-voting; and (ii) ballot/polling paper at the venue of the meeting to be held on 27th June 2017. In case of meetings of preference shareholders, secured creditors (including debenture holders) and unsecured creditors, the voting shall be carried out through ballot/polling paper only.

- f. At least one month before 27th June 2017, i.e. the date of the aforesaid meetings, an advertisement about convening of the said meetings, indicating the day, date, place and time, as aforesaid, shall be published in English daily, Indian Express, All editions and a Gujarati translation thereof in Gujarat Samachar, Ahmedabad edition. The publication shall indicate the time within which copies of the scheme shall be made available to the concerned persons free of charge from the registered office of the company. The publication shall also indicate that the statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 of the Act and the prescribed form of proxy can be obtained free of charge at the registered office of the applicant company or at the office of its advocates, i.e. M/s. Singhi & Co., 1, Magnet Corporate Park, Near Sola Flyover, S.G. Highway, Ahmedabad-380 059 in accordance with second proviso to sub-section (3) of Section 230 and Rule 7 of the Companies (CAA) Rules, 2016.



- g. At least one month before 27th June 2017, i.e. the date of the aforesaid meeting of the equity shareholders (including public shareholders), a notice in Form No. CAA.2 convening the said meeting, indicating the day, date, place and time, as aforesaid, containing instructions with regard to postal ballot and e-voting (in case of equity shareholders) together with a copy of the scheme, a copy of the statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 and Rule 6 of the Companies (CAA) Rules, 2016 and the prescribed form of proxy shall be sent to each of the equity shareholders of the applicant company at their respective registered or last known addresses either by Registered Post or Speed Post or by Courier or e-mail. The aforesaid notice and other documents shall also be placed on the website of the applicant company, if any, and the same shall be sent to SEBI [proviso to section 230(3)]. The notice shall be sent to the equity shareholders of the applicant company with reference to the list of the persons appearing on the record of the applicant company and its register as on 18th May 2017, being the cut-off date as prescribed under Rule 20 of the Companies (Management and Administration) Rules, 2014. The aforesaid cut-off date would be the date determining the eligibility to vote by the equity shareholders.
- h. In addition, at least one month before the date of the meetings of the preference shareholders, secured creditors (including debenture holders)



and unsecured creditors to be held as aforesaid, a notice convening the said meetings, indicating the day, date, place and time, as aforesaid, together with a copy of the scheme, a copy of the statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 and Rule 6 of the Companies (CAA) Rules, 2016 and the prescribed form of proxy shall be sent to each of the preference shareholders, secured creditors (including debenture holders) and unsecured creditors of the applicant company at their respective registered or last known addresses either by Registered Post or Speed Post or by Courier. The notice shall be sent to the preference shareholders, secured creditors (including debenture holders) and unsecured creditors of the applicant company with reference to the list of the persons appearing on the record of the applicant company as on 18th May 2017 so far as in case of preference shareholders and as on 30th April 2017 in case of secured creditors (including debenture holders) and unsecured creditors.

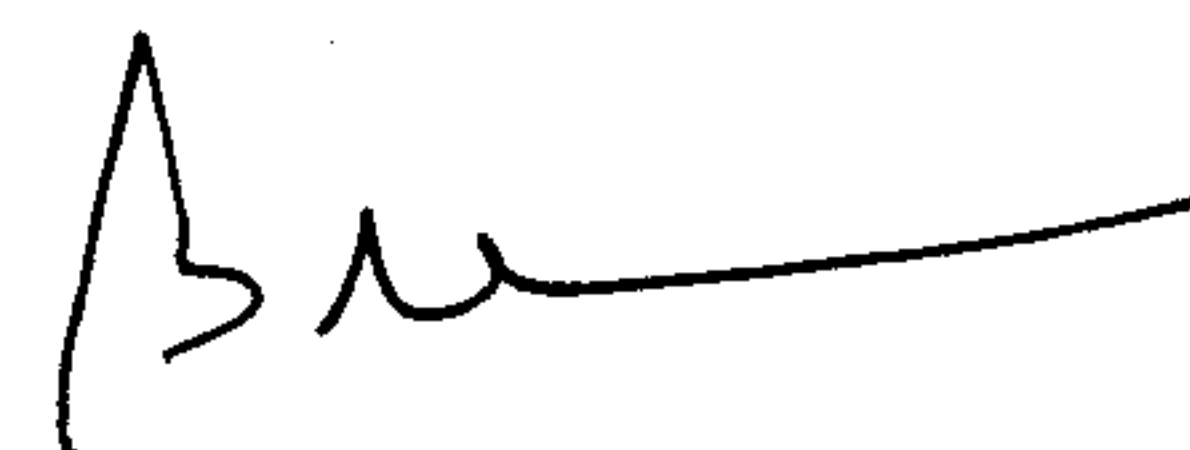
- i. Prof. G. Raghuram, an Independent Director of the applicant company and in his absence Mrs. Radhika Haribhakti, an Independent Director of the applicant company and in her absence Dr. Malay Mahadevia, Whole Time Director of the applicant company shall be the Chairman/Chairperson of the aforesaid meetings to be held on 27th June 2017 and in respect of any adjournment or adjournments thereof.



- j. Mr. Ravi Kapoor, a Practising Company Secretary, is appointed as Scrutinizer for the meetings of the equity shareholders, preference shareholders, secured creditors (including debenture holders) and unsecured creditors of the applicant company.
- k. The Chairman/Chairperson appointed for the aforesaid meetings shall issue the advertisements and send out the notices of the meetings referred to above. The Chairman/Chairperson is free to avail the services of the applicant company or any agency for carrying out the aforesaid directions. The Chairman/Chairperson shall have all powers under the Articles of Association of the applicant company and also under the Articles of Association of the applicant company and also under the Rules in relation to the conduct of meeting, including for deciding any procedural questions that may arise at the meetings or adjournments thereof proposed at the said meetings, amendment(s) to the aforesaid scheme or resolutions, if any, proposed at the aforesaid meetings by any person(s) and to ascertain the decision of the sense of the meeting of equity shareholders by (i) postal ballot and e-voting; and (ii) ballot/polling paper at the venue of the meeting of the equity shareholders and for the preference shareholders, secured creditors (including debenture holders) and unsecured creditors by ballot/polling paper.
- l. The quorum for the meeting of the equity shareholder shall be 30 (thirty) persons present

in person. The quorum for the meeting of the preference shareholder shall be 2 (two) persons present in person. The quorum for the meeting of the secured creditors (including debenture holders) shall be 2 (two) persons present in person and the quorum for the meeting of the unsecured creditors shall be 5 (five) persons present in person.


- m. Voting by proxy/authorised representative is permitted, provided that the proxy in the prescribed form/authorisation duly signed by the person entitled to attend and vote at the aforesaid meeting is filed with the applicant company at its registered office at Adani House, Near Mithakhali Six Roads, Navrangpura, Ahmedabad- 380 009., not later than 48 hours before the meetings vide Rule 10 of Companies (CAA) Rules, 2016 read with Section 105 of the Companies Act.
- n. The number and value of the equity shareholders and preference shareholders or the number and value of secured creditors (including debenture holders) and the unsecured creditors, as the case may be, shall be in accordance with the records or registers of the applicant company and where the entries in the records or registers are disputed, the Chairman/Chairperson of the meetings shall determine the number or value, as the case may be, for purposes of the meetings, subjects to the orders of this Tribunal in the petition seeking sanction of scheme.



- o. The Chairman/Chairperson to file an affidavit not less than 7 (seven) days before the date fixed for the holding of the meeting and to report to this Tribunal that the directions regarding issuance of notices and advertisement of the meeting have been duly complied with as per Rule 12 of the Companies (CAA) Rules, 2016.
- p. It is further ordered that the Chairman/Chairperson shall, report to this Tribunal on the result of the meetings in Form No, CAA.4, verified by his affidavit, as per Rule 14 of the Companies (CAA) Rules, 2016 in Form No. CAA.4 within seven days after conclusion of the meetings. The report of Chairman shall be filed before this Tribunal by the Chairman himself, but not applicant company
- q. In compliance of sub-section (5) of Section 230 and Rule 8 of the Companies (CAA) Rules, 2016, the applicant company shall send a notice of meeting under sub-section (3) of Section 230 read with Rule 6 of the Companies (CAA) Rules, 2016 in Form No, CAA.3 along with a copy of the scheme of arrangement, the explanatory statement and the disclosures mentioned under Rule 6, to (i) the Central Government through the Regional Director, North Western Region, (ii) the Registrar of Companies, Gujarat (iii) the Income-tax authorities, (iv) the Official Liquidator concerned, (v) Securities and Exchange Board of India, (vi) BSE Limited, and (vii) National Stock Exchange of India Limited, stating that representations, if any, to be made by them shall be made within a period of 30 days from the date

of receipt of such notice, failing which it shall be presumed that they have no objection to make on the proposed scheme. The said notice shall be sent forthwith after notice is sent to the members or creditors of the company by registered post or by speed post or by courier or by hand delivery at the office of the authority as required by sub-rule (2) of Rule 8 of the Companies (CAA) Rules, 2016. The aforesaid authorities, who desire to make any representation under sub-section (5) of Section 230, shall send the same to the Tribunal within a period of 30 days from the date of receipt of such notice, failing which it will be deemed that they have no representation to make on the proposed arrangement.

7. This Company Application is disposed of accordingly


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Pronounced by me in open court
on this 18th day of May, 2017

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