

124

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CP (CAA) No.104/NCLT/AHM/2017
CA (CAA) No.84/NCLT/AHM/2017


Coram: **Hon'ble Mr. BIKKI RAVEENDRA BABU, MEMBER JUDICIAL**
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 03.11.2017**

Name of the Company: Adani Power Ltd.

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

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
-------	------------------------	-------------	----------------	-----------

1.	Pranjal Buch	Advocate	Petitioner	
2.	Parini Shah for Singhi & Co.	"	"	

ORDER

Learned Advocate Mr. Pranjal Buch with Learned Advocate Ms. Parini Shah present for Petitioner.

Common order pronounced in open court. Vide separate sheets.


MANORAMA KUMARI
MEMBER JUDICIAL


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 3rd day of November, 2017.

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

CP(CAA) No. 104/NCLT/AHM/2017

With

CP(CAA) No. 105/NCLT/AHM/2017

In the matter of :-

Adani Power Limited,
a company incorporated under the
provisions of the Companies Act, 1956
and having its registered office at
"Shikhar", Near Adani House,
Mithakhali Six Roads, Navrangpura,
Ahmedabad- 380 009, Gujarat, India.

... Petitioner of CP(CAA) No.104 of 2017
(Transferor Company)

Adani Power (Mundra) 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, Gujarat, India.

... Petitioner of CP(CAA) No.105 of 2017
(Transferee Company)

Order delivered on 3rd November, 2017

Coram: Hon'ble Mr. Bikki Raveendra Babu, Member (J)

And

Hon'ble Ms. Manorama Kumari, Member (J)

Appearance:

Mr. Sandeep Singhi, Mr. Pranjal Buch and Ms. Parini Shah, Advocates, for
M/s. Singhi & Co., Advocates, for the Petitioner Companies.

COMMON ORDER

(Per: Mr. Bikki Raveendra Babu)

1. By these petitions under Sections 230-232 of the
Companies Act, 2013, the petitioner companies are seeking
sanction of a Scheme of Arrangement between Adani Power

Limited (Transferor Company) and Adani Power (Mundra) Limited (Transferee Company) and their respective shareholders and creditors ("Scheme" for short).

2. The Petitioner of the C.P. (CAA) No. 104/NCLT/AHM/2017, i.e., Adani Power Limited, had filed an application before this Tribunal being C.A. (CAA) No. 84/NCLT/AHM/2017 for the requisite directions for holding and convening separate meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors (including debentureholders) of the said Company. This Tribunal vide its order dated 7.8.2017, inter alia, directed convening and holding of the meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors (including debentureholders) of the said Company.

3. The Petitioner of the C.P. (CAA) No. 105/NCLT/AHM/2017, i.e., Adani Power (Mundra) Limited, had filed an application before this Tribunal being C.A. (CAA) 85/NCLT/AHM/2017 for dispensing with the convening and holding of the meetings of the Equity Shareholders and sole Unsecured Creditor of the Petitioner Company. This Tribunal vide its order dated 7.8.2017, inter alia, dispensed with the holding and convening of the meetings of the Equity Shareholders and sole Unsecured Creditor of the said Company.

This Tribunal vide its order dated 7.8.2017 also noted that there were no secured creditors of the said Company as on 15.7.2017.

4. Notices of meetings were sent individually to the Equity Shareholders, Secured Creditors and Unsecured Creditors (including debentureholders) of the Petitioner of C.P. (CAA) No. 104/NCLT/AHM/2017, i.e., Adani Power Limited, pursuant to the order dated 7.8.2017, together with a copy of the Scheme, a copy of the Explanatory Statement required to be furnished under Section 230-232 read with Section 102 of the Companies Act, 2013 and the prescribed Form of Proxy, amongst others. The notice of meetings was also advertised as directed by this Tribunal vide its order dated 7.8.2017 in English daily, "Indian Express", all Editions and in Gujarati daily, "Sandesh", Ahmedabad Edition on 17.8.2017. Mr. Justice K. A. Puj, former Judge of High Court of Gujarat, the Chairman of the meetings has already filed the requisite affidavit dated 2.9.2017 in respect of service of notices and appearance of advertisements of the said notice amongst others. The arrangement embodied in the Scheme was approved by (i) more than the requisite statutory majority in number and more than three-fourths in shareholding by the Equity Shareholders either in person or by proxy or by authorised representative, through ballot paper, e-voting and through voting at the venue; (ii) unanimously by the Secured Creditors; and (iii) more than the requisite statutory majority in number and more than three-fourths in value by the Unsecured

Chaitanya

Creditors (including debentureholders) of the said Company at the meetings held on 20.9.2017. The Chairman's report dated 20.9.2017 has also been filed before this Tribunal along with C.P. (CAA) No. 104/NCLT/AHM/2017.

5. The Petitioner Companies thereafter filed C.P. (CAA) No. 104/NCLT/AHM/2017 and C.P. (CAA) No. 105/NCLT/AHM/2017, seeking sanction of the Scheme. This Tribunal by its orders dated 22.9.2017 admitted the aforesaid Company Petitions and directed issuance of notice of hearing of petition to (i) the Regional Director, (ii) Registrar of Companies, (iii) Income tax authorities and (iv) Official Liquidator in case of C.P. (CAA) No. 104/NCLT/AHM/2017 and to (i) the Regional Director, (ii) Registrar of Companies and (iii) Income tax authorities in case of C.P. (CAA) No. 105/NCLT/AHM/2017. This Tribunal also directed publication of notice of hearing of the petitions in English daily, "Indian Express", All Editions and in Gujarati daily, "Sandesh", Ahmedabad Edition in respect of C.P. (CAA) No. 104/NCLT/AHM/2017 and in English daily, "Indian Express", Ahmedabad Edition and in Gujarati daily, "Sandesh", Ahmedabad Edition in respect of C.P. (CAA) No. 105/NCLT/AHM/2017.

6. Pursuant to the order dated 22.9.2017 passed by this Tribunal, the Petitioner of C.P. (CAA) No. 104/NCLT/AHM/2017, i.e. Adani Power Limited, has published the notice of hearing of

Adani

the petition in English daily, "Indian Express", all Editions and in Gujarati daily, "Sandesh", Ahmedabad Edition on 24.9.2017. Further, the Petitioner of C.P. (CAA) No. 105/NCLT/AHM/2017, i.e. Adani Power (Mundra) Limited has also published the notice of hearing of the petition in English daily, "Indian Express", Ahmedabad Edition and in Gujarati daily, "Sandesh", Ahmedabad Edition on 24.9.2017. The affidavits of service, on behalf of both the Petitioner Companies, both dated 29.9.2017, have been filed confirming the publication of the notice in the newspapers as directed and also the notice of hearing of the petitions being served upon the concerned statutory authorities.

7. Heard learned Advocate Mr. Sandeep Singhi, Advocate for the petitioner companies.

8. In response to the notice to the Regional Director, North Western Region, Ministry of Corporate Affairs, the Regional Director filed common representation dated 12.9.2017. Mr. Singhi, stated that one of the Petitioner Companies, namely Adani Power Limited, filed necessary affidavit in reply dated 29.9.2017 to the common representation dated 12.9.2017 filed by the Regional Director.

9. In paragraph 2(d) of the said common representation it is mentioned by the Regional Director that Adani Power Limited should comply with the guidelines of FEMA and RBI from time to time. The Petitioner/Transferor Company in paragraph 3 of its reply has, inter alia, stated that the Petitioner/Transferor

Uttam

Company is not required to obtain any permission under FEMA or of RBI in the facts of the present case. It is further stated that the shareholders of the Petitioner/Transferor Company will not be allotted any shares by the Transferee Company pursuant to the sanctioning of the Scheme by this Tribunal as the Transferee Company will issue and allot equity shares only to the Petitioner/Transferor Company. In light of the aforesaid, this Tribunal is of the view that the observation of the Regional Director at paragraph 2(d) of the common representation stands satisfied.

10. In paragraph 2(e) of the said common representation it is mentioned by the Regional Director that this Tribunal be pleased to direct the Petitioner Companies to submit the complete list and full details of assets and liabilities that are proposed to be transferred to Adani Power (Mundra) Limited pursuant to the Scheme. The Petitioner/Transferor Company in paragraph 4 of its reply has, inter alia, stated that the Petitioner/Transferor Company is not required to attach the list of assets and liabilities of the Mundra Power Generation Undertaking along with the Scheme. The statement showing assets and liabilities of the Mundra Power Generation Undertaking of the Petitioner/Transferor Company as on 31.3.2017 proposed to be transferred to the Transferee Company has been annexed as Annexure-A to the reply. The Petitioner/Transferor Company has stated that the aforesaid undertaking is a going concern and that the said statement would undergo change upon the sanctioning

Adani

Page 6 | 12

of the Scheme by this Tribunal. In light of the aforesaid, this Tribunal is of the view that the observations of the Regional Director at paragraph 2(e) of the common representation stand satisfied.

11. In paragraph 2(f) of the said common representation it is mentioned by the Regional Director that Adani Power Limited may be directed to place on record the amount of Securities Premium Account which is proposed to be transferred to Adani Power (Mundra) Limited. The Petitioner/Transferor Company in paragraph 5 of its reply has, inter alia, stated that the proposed Securities Premium Account to the extent of Rs. 3273.56 crores (as on 31.3.2017) would be transferred by the Petitioner/Transferor Company to the Transferee Company upon the coming into effect of the Scheme. In light of the aforesaid, this Tribunal is of the view that the observation of the Regional Director at paragraph 2(f) of the common representation stands satisfied.

12. In paragraph 2(g) of the said common representation it is mentioned by the Regional Director that Adani Power Limited should comply with the SEBI Circulars. The Petitioner/Transferor Company in paragraph 6 of its reply has, inter alia, stated that in terms of SEBI Circular dated 10.3.2017, the Petitioner/Transferor Company has received no adverse observation/ no objection letters, from BSE Limited ("BSE") and

Chin

BN Page 7 | 12

National Stock Exchange of India Limited ("NSE"), both dated 14.7.2017. The Petitioner/Transferor Company has also stated that BSE and NSE have issued the aforesaid letters only upon the letter dated 14.7.2017 addressed by Securities and Exchange Board of India ("SEBI") to BSE and NSE, respectively. In the circumstances, it was submitted that the Petitioner/Transferor Company has complied with the requirement of SEBI Circular dated 10.3.2017. It is further stated that under the provisions of Section 230(5) of the Companies Act, 2013, the Petitioner/Transferor Company had sent the notices to NSE, BSE and SEBI, vide its notices dated 16.8.2017 (pages 310 to 312/A of the paper book) and that the Petitioner/Transferor Company has not received any representation from the aforesaid stock exchanges/SEBI. In light of the aforesaid, this Tribunal is of the view that the observation of the Regional Director at paragraph 2(g) of the common representation stands satisfied.

13. In paragraph 2(h) of the said common representation it is observed by the Regional Director that this Tribunal be pleased to direct the Petitioners companies to obtain licenses, approvals and other permissions, if any, from the regulatory authority/concerned ministry on sanctioning of the Scheme by this Tribunal. The Petitioner/Transferor Company in paragraph 7 of its reply has, inter alia, stated that the Transferee Company shall obtain such necessary approvals/ No-objection Certificate from the concerned authority once the Scheme is sanctioned by

Chit

this Tribunal. The petitioner Transferor Company has further stated that under the provisions of Section 230(5) of the Companies Act, 2013, the Petitioner/Transferor Company had sent the notice to Government of India, Ministry of Commerce & Industry, Department of Commerce, vide its notice dated 16.8.2017 (pages 313-314 of the paper book) and that the Petitioner/Transferor Company has not received any representation from the aforesaid regulatory authority. In light of the aforesaid, this Tribunal is of the view that the observation of the Regional Director at paragraph 2(h) of the common representation stands satisfied.

14. In paragraph 2(i) of the said common representation it is mentioned by the Regional Director that this Tribunal be pleased to direct Adani Power Limited to place on record the approvals/NOCs from state governments. The Petitioner/Transferor Company in paragraph 8 of its reply has, inter alia, stated that the Petitioner/Transferor Company or the Transferee Company is not required to obtain any prior permission/approvals of any State Governments. However, the Petitioner/Transferor Company or the Transferee Company, as the case may be, shall intimate the concerned State Governmental Authorities, if required under the law. In light of the aforesaid, this Tribunal is of the view that the observations of the Regional Director at paragraph 2(i) of the common representation stands satisfied.

Adani

BN

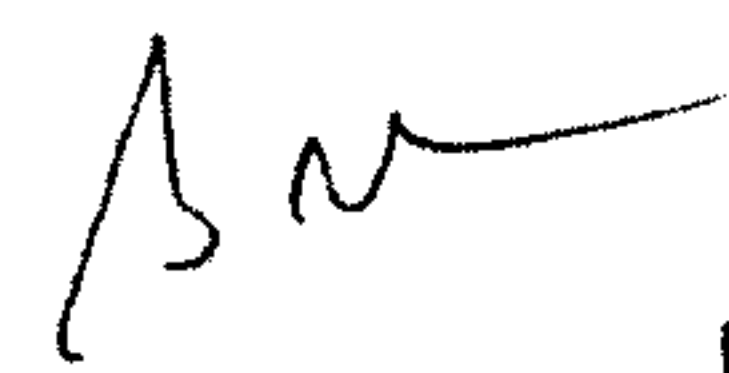
15. The Regional Director in paragraph 2(j) of the representation has stated that as per the report of the Registrar of Companies, Gujarat, there were no complaints against the petitioner companies and there was no complaint/representation against the Scheme of Arrangement of the petitioner companies.

16. In response to the notice to the Official Liquidator in CA(CAA) No. 84 of 2017, the Official Liquidator filed his representation dated 11.9.2017, to which Adani Power Limited has filed its reply affidavit dated 29.9.2017.

17. In respect of the observations made by the official Liquidator in paragraph 12 of its representation, in paragraph 3 of its reply, it is stated that that the Transferee Company, upon the coming into effect of the Scheme, shall comply with Clause 20.2 of the Scheme.

18. In respect of the observations made by the official Liquidator in paragraph 16 of its representation, in paragraph 5 of its reply it is stated that the Chairman appointed for the meetings, which were convened on 20.9.2017, has already filed his affidavit of service on 2.9.2017 (page 231-318 of the paper book) before this Tribunal. It is further stated that the Chairman has also filed his report dated 20.9.2017 (page 319-380 of the paper book) declaring the results of the meetings convened on 20.9.2017.

Adani



19. In respect of the observations made by the Official Liquidator at paragraph 19 of its representation, it is submitted in paragraph 8 of the reply that the provisions of Section 239 of the Companies Act, 2013 are not applicable to the facts of the present case. It is further stated that the Petitioner/Transferor Company as well as the Transferee Company shall preserve their books of accounts, papers and records and shall not be disposed of without the prior permission of the Central Government.

20. In respect of the observations made at paragraph 20 of its representation, it is submitted in paragraph 9 of the reply that the Scheme nowhere proposes absolving the Petitioner/Transferor Company from any of its statutory liability, if any.

21. The petitioner companies have stated in the petitions that the accounting treatment as proposed in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013. In substantiate the say of the petitioner companies, they have produced on record certificates to that effect issued by their Statutory Auditors.

22. Considering the entire facts and circumstances of the case and on perusal of the Scheme and the proceedings, it appears that the requirements of the provisions of sections 230-232 of

Chitew


the Companies Act, 2013 are satisfied. The Scheme is genuine and *bona fide* and in the interest of the shareholders and creditors.


23. In the result, these Company Petitions are allowed. The Scheme, which is at Annexure-G to the petitions, is hereby sanctioned and it is declared that the same shall be binding on the petitioner companies, their equity shareholders, secured creditors, unsecured creditors (including debentureholders) and all persons concerned under the Scheme.

24. The petitions are allowed accordingly. Fees of Official Liquidator are quantified at Rs.15,000/- in C.P. (CAA) No. 104/NCLT/AHM/2017. The said fees shall be paid by Adani Power Limited.

25. Filing and issuance of drawn up orders are dispensed with. All concerned authorities to act on a copy of this order along with the Scheme duly authenticated by the Registrar of this Tribunal. The Registrar of this Tribunal shall issue the authenticated copy of this order along with the Scheme immediately.

26. These Company Petitions are disposed of accordingly.


(Ms. Manorama Kumari)
Member (J)

 3.11.17
(Bikki Raveendra Babu)
Member (J)