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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CA(CAA) No. 25/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 18.04.2017**

Name of the Company: Adani Petronet (Dahej) Port Pvt 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 April, 2017.

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

Date: 18th day of April, 2017

C.A.(CAA) 25/NCLT/AHM/2017

In the matter of :-

Adani Petronet (Dahej) Port Private 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.

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Applicant
(Transferor Company)

Appearance: -

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

FINAL ORDER

(Date: 18.04.2017)

1. Heard learned Advocates Mr. Sandeep Singhi and Mr. Pranjal Buch for M/s Singhi & Company, Advocates for the Applicant-company. Perused the application and the supporting affidavit of Mr. Kamlesh Bhagia, Company Secretary of the Applicant-company, dated 30th March, 2017 and the documents annexed thereto.
2. Adani Petronet (Dahej) Port Private Limited (hereinafter referred to as the “transferor-company”) filed this application seeking dispensation of the meeting of equity shareholders and seeking directions for convening the meetings of secured creditors 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 and, for which, a lump sum cash 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 Board of Directors of Adani Hazira Port Private Limited, in the meeting held on 22nd March, 2017, passed a resolution approving the proposed Scheme placed before the Board by the Company Secretary. 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 copy of Valuation Report dated 22nd March, 2017 and a certificate issued by the Statutory Auditor of the transferor-company issued under Section 133 of the Companies Act, 2013.

4. The applicant-company stated that there are seven equity shareholders in the transferor-company. The list of equity shareholders is produced at Annexure "Q". The applicant-company filed original consent affidavits of all the equity shareholders vide Annexure "R".

5. In view of the affidavits of the equity shareholders, the meeting of equity shareholders of the applicant-company, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s), deserves to be dispensed with and is hereby dispensed with.

6. It is stated in paragraph 39 of the application that there are no foreign shareholders of the transferor-company and, therefore, 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 as the transferor-company is an unlisted company, no notice under Section 230(5) is required to be issued to (i) the Securities and Exchange Board of India, (ii) the BSE Limited and (iii) the National Stock Exchange of India Limited.

7. It is stated that the applicant-company is having two secured creditors of the value of Rs.161,65,07,417/-, but the applicant-company did not file any consent affidavits of secured creditors. Therefore, this Tribunal is of the view that the meeting of secured creditors of the applicant-company, for the purpose of considering and, if thought fit, approving with or without modification(s), the Scheme cannot be dispensed with.

8. Coming to unsecured creditors, the applicant-company is having 273 unsecured creditors of the value of Rs.562,54,73,517/. Consent affidavits of the unsecured creditors have not been filed by the applicant-company. Therefore, this Tribunal is of the view that meeting of unsecured creditors of the applicant-company, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s), is necessary. Hence, this Tribunal passes the following order :-

- I. A meeting of the secured creditors of the Applicant-company shall be held on 27th May, 2017, at 11.00 A.M., at J.B. Auditorium, Ahmedabad Management Association, Dr. Vikram Sarabhai Marg, ATIRA, Ahmedabad - 380 015, for the purpose of considering and, if thought fit, approving with or without modification(s) the arrangement embodied in the Scheme.
- II. A meeting of the unsecured creditors of the Applicant-company shall be held on 27th May, 2017, at 12.00 P.M., at J.B. Auditorium, Ahmedabad Management Association, Dr. Vikram

Sarabhai Marg, ATIRA, Ahmedabad – 380 015, for the purpose of considering and, if thought fit, approving with or without modification(s) the arrangement embodied in the Scheme.

- III. At least one month before 27th May, 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, Ahmedabad edition and a Gujarati translation thereof in Sandesh, 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 in accordance with second proviso to sub-section (3) of Section 230 and Rule 7 of the Companies (CAA) Rules, 2016.
- IV. In addition, at least one month before the date of the meetings of the secured 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 unsecured creditors of the Applicant-company at their respective registered or last known addresses either by Registered Post or Speed Post/Airmail or by Courier. The notice shall be sent to the secured 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 28th March, 2017.




- V. Mr. Sabyasachi Hajara, an Independent Director of the applicant-company and, in his absence, Mrs. Birva Shah, an Independent Director of the applicant-company and, in her absence, Mr. B. Ravi, a Director of the applicant-company shall be the Chairman/Chairperson of the aforesaid meeting to be held on 20.05.2017 and in respect of any adjournment or adjournments thereof.
- VI. Mr. Chirag Shah, a Practising Company Secretary, is appointed as the Scrutinizer for the meeting of the unsecured creditors of the Applicant-company.
- VII. The Chairman or Chairperson appointed for the aforesaid meeting 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 or Chairperson shall have all powers under the Articles of Association of the Applicant-company and also under the Rules in relation to the conduct of meetings, 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 meeting by any person(s) and to ascertain the decision of the sense of the meetings of the secured and unsecured creditors by polling paper/ballot.
- VIII. The quorum for the meeting of the secured creditors shall be 1 (one) and the quorum for the meeting of the unsecured creditors shall be 5 (five) persons present in person.
- IX. 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.

- X. The number and value of secured and 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 of the meetings shall determine the number or value, as the case may be, for purposes of the meetings.
- XI. The Chairman/Chairperson to file an affidavit not less than 7 (seven) days before the date fixed for the holding of the meetings and to report to this Tribunal that the directions regarding issuance of notices and advertisement of the meetings have been duly complied with as per Rule 12 of Companies (CAA) Rules, 2016.
- XII. It is further ordered that the Chairman or 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.
- XIII. 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 in Form No.CAA.3 along with a copy of the scheme or 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, and (iv) the Official Liquidator concerned 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 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.

9. This Company Application is disposed of accordingly.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Pronounced by me on this
18th day of April, 2017.

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