

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

COMPANY SCHEME APPLICATION NO 646 (MAH) OF 2017

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 and Section 234 and other
applicable provisions of the Companies Act, 2013 ;

AND

In the matter of Scheme of Amalgamation of South Asia Ports
Limited, P&O Ports (Kulpi) Pvt. Ltd., DP World Private
Limited, P&O Ports (Mundra) Pvt. Ltd, P&O Ports (Chennai)
Ltd. with Hindustan Ports Private Limited and their respective
shareholders.

DP World Private Limited, a company incorporated }
under the provisions of the Companies Act, 1956 having its }
Registered Office at Darabshaw House, Level 1, Morarji Road, }
Ballard Estate, Mumbai, Maharashtra - 400001 }

..... Applicant Company

Mr. Hemant Sethi i/b. Mr. Hemant Sethi, Advocates for the Applicant Company

Coram: Ina Malhotra, Member (Judicial)

Date: 21st June 2017

MINUTES OF THE ORDER

1. The Counsel for the Applicant Company states that the present Scheme of Amalgamation is an arrangement between South Asia Ports Limited, P&O Ports (Kulpi) Pvt. Ltd., DP World Private Limited (“**Applicant Company**”), P&O Ports (Mundra) Pvt. Ltd and P&O Ports (Chennai) Ltd. (collectively, the “**Transferor Companies**”) and Hindustan Ports Private Limited (“**Transferee Company**”) and their respective shareholders.
2. The Counsel for the Applicant Company further submits that the Applicant Company and the Transferee Company are both engaged in the business of investment and development of port infrastructure.

3. The rationale for the Scheme is the achievement of the following business and commercial objectives:

- (i) DP World Limited, a company incorporated in United Arab Emirates, which is engaged in the construction and development of ports across the world, including in India through entities incorporated therein (including the Applicant Company and the Transferee Company), wishes to consolidate its holdings in entities in India into the Transferee Company.
- (ii) The amalgamation under this Scheme of Amalgamation would result in the rationalization of multiple foreign subsidiaries in the group to ensure optimized legal entity structure more aligned with the business, by reducing the number of legal entities and reorganizing the legal entities in the group structure so as to obtain significant cost savings and /or simplification benefits.
- (iii) The proposed merger will lead to a reduction in the multiplicity of legal and regulatory compliances presently carried out by the Transferor Companies and the Transferee Company.
- (iv) The Scheme of Amalgamation will enable a concentrated focus by senior management to develop the business by eliminating duplicative communication and cumbersome coordination efforts across multiple entities and countries.
- (v) The proposed merger will result in economy of scales and reduction in overheads, administrative, managerial and other expenditure, operational rationalisation, organisational efficiency, and optimal utilisation of various resources.
- (vi) The Scheme of Amalgamation will result in expansion of the capital base and enabling fresh investments in ports and logistics infrastructure within India.

The arrangement will be in the larger interest of the shareholders and all the stakeholders of both the Applicant Company and the Transferee Company.

4. That the meeting of the equity shareholders of the Applicant Company be convened and held at the Registered office of the Applicant Company at Darabshaw House, Level 1, Morarji Road, Ballard Estate, Mumbai, Maharashtra - 400001 on 31st July 2017 at 11AM for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed merger embodied in the Scheme of Amalgamation of South Asia Ports Limited, P&O Ports (Kulpi) Pvt. Ltd., P&O

Ports (Mundra) Pvt. Ltd, P&O Ports (Chennai) Ltd. and the Applicant Company with the Transferee Company and their respective shareholders.

5. That at least one month before the said meeting of the shareholders of the Applicant Company to be held as aforesaid, a notice convening the said meeting at the place date and time as aforesaid, together with a copy of the Scheme of Amalgamation, a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016, notified on 14th December 2016 and the prescribed Form of Proxy, shall be sent by courier / registered post / speed post or through email (to those shareholders whose email addresses are duly registered with the Applicant Company for the purpose of receiving such notices by email), addressed to each of the shareholders of the Applicant Company, at their last known address or email addresses as per the records of the Applicant Company.
6. That at least one month before the meeting of the shareholders of the Applicant Company to be held as aforesaid, a notice convening the said meeting, indicating the place, date and time of meeting as aforesaid be published, stating that copies of the Scheme of Amalgamation and the statement required to be furnished pursuant to Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 and the Form of Proxy can be obtained free of charge at the registered office of the Applicant Company as aforesaid and / or at the office of its Advocates, M/s Hemant Sethi & Co., 1602 Nav Parmanu, Behind Amar Cinema, Chembur, Mumbai – 400071.
7. That the notice of the meeting shall be advertised in two local newspapers viz. “Free Press Journal” in English and “Navshakti” in Marathi, both circulated in Mumbai not less 30 (thirty) days before the date fixed for the meeting.
8. That Mr Devang Mankodi, Director of the Applicant Company, and failing him, Mr Kevin D’Souza also a Director of the Applicant Company shall be the Chairman of the aforesaid meeting of the equity shareholders of the Applicant Company to be held at the Registered office of the Applicant Company at Darabshaw House, Level 1, Morarji Road, Ballard Estate, Mumbai, Maharashtra - 400001 on 31st July 2017 at 11AM or any adjournment or adjournments thereof.
9. That the Chairman appointed for the aforesaid meeting, to issue the advertisement and send out the notices of the meeting referred to above. The said Chairman shall

have all powers as per the articles of association of the Applicant Company and also under the Companies Act, 2013 in relation to the conduct of the meeting, including for deciding procedural questions that may arise or at any adjournment thereof or resolution, if any, proposed at the meeting by any person(s).

10. That the quorum of the aforesaid meeting of the shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
11. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorization duly signed by the person entitled to attend and vote at the meeting, are filed with the Applicant Company at its registered office at Darabshaw House, Level 1, Morarji Road, Ballard Estate, Mumbai, Maharashtra - 400001, not later than 48 (forty eight) hours before the aforesaid meeting.
12. That the value and number of the shares of each equity shareholder shall be in accordance with the books / register of the Applicant Company or depository records and where the entries in the books / register / depository records are disputed, the Chairman of the Meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
13. That Mr. Girish Papat, practicing Company Secretary, is hereby appointed as scrutinizer of the meeting of the equity shareholders of the Applicant Company proposed to be held at the Registered office of the Applicant Company at Darabshaw House, Level 1, Morarji Road, Ballard Estate, Mumbai, Maharashtra - 400001 on 31st July 2017 at 11AM and his remuneration is fixed as Rs.10,000/.
14. That the Chairman to file an affidavit not less than 7 (seven) days before the date fixed for the holding of the meeting and do report this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
15. That the Chairman of the meeting to report to this Tribunal, the results of the aforesaid meeting within 30 (thirty) days of the conclusion of the meeting.
16. The Applicant Company is directed to serve notices along with copy of the Scheme of Amalgamation upon the:- (i) concerned Income Tax Authority in whose jurisdiction the Applicant Company's assessments are made, (ii) Central Government through the office of Regional Director, Western region, Mumbai, (iii)

Registrar of Companies, Mumbai, (iv) Reserve Bank of India with a direction that they may submit their representations, if any, within a period of 30 (thirty) days from the date of receipt of such notice to the Tribunal along with a copy of such representations to be simultaneously served upon the Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.

17. The Counsel for the Applicant Company further submits that since as on date, there are no secured and unsecured creditors in the Applicant Company, and in view thereof, the question of sending notices does not arise.
18. The Petitioner Company is also directed to serve notice along with copy of scheme upon Official Liquidator. M/s S.U Buch & Co, Chartered Accountants are appointed to assist the Official Liquidator to scrutinize books of accounts of the Petitioner Company for the last 5 years. The fees of the Chartered Accountant is fixed at Rs. 2,00,000/- . The Official Liquidator may submit his representations, if any, within a period of thirty days from the date of the receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served to the Applicant Company, failing which, it shall be presumed that the Official Liquidator has no representations to make on the proposal .
19. The Applicant Company to file affidavit of service in the Registry proving dispatch of notices to the shareholders, creditors, publication of notices in newspapers and to the regulatory authorities as stated above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-

Ina Malhotra, Member (Judicial)