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NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

Free Copy

CP(CAA) No. 88/NCLT/AHM/2018
CA(CAA) No. 38/NCLT/AHM/2018

Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, 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 03.08.2018

Name of the Company: Adani Enterprises Limited

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.	PARINI SHAH FOR SINGHI & CO	ADVOCATE	PETITIONER	PARINI K SHAH
2.				

ORDER

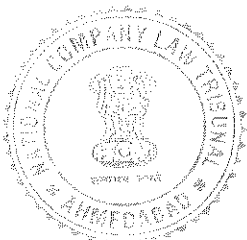
Advocate Ms. Parini Shah on behalf of M/s. Singhi & Co. is present for the petitioner.


The Order is pronounced in the open court, vide separate sheet


MANORAMA KUMARI
(MEMBER JUDICIAL)


HARIHAR PRAKASH CHATURVEDI
(MEMBER JUDICIAL)

Dated this the 3rd of August, 2018.



Certified to be True Copy of the Original

Deputy Registrar
NCLT, Ahmedabad Bench
Ahmedabad

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH**

C.P. (CAA) No. 86/NCLT/AHM/2018
IN
C.A. (CAA) No. 36/NCLT/AHM/2018
AND
C.P. (CAA) No. 87/NCLT/AHM/2018
IN
C.A. (CAA) No. 37/NCLT/AHM/2018
AND
C.P. (CAA) No. 88/NCLT/AHM/2018
IN
C.A. (CAA) No. 38/NCLT/AHM/2018

In the matter of:

Adani Gas Holdings 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 Company
(Transferor Company)**

Adani Gas 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 Company
(Transferee/ Resulting Company)**

Adani Enterprises 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 Company
(Demerged Company)**

Order delivered on 3rd August, 2018

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, (Member Judicial)
Hon'ble Ms. Manorama Kumari, (Member Judicial)**

Chaturvedi

**Appearance: Mr. Sandeep Singhi with Ms. Parini Shah, Advocates
For M/s. Singhi & Co., Advocates for the Petitioner
Companies**

ORDER

[Per: Hon'ble Ms. Manorama Kumari, Member (J)]

1. The present petitions are filed by Adani Gas Holdings Limited and Adani Gas Limited and Adani Enterprises Limited for sanctioning of the Composite Scheme of Arrangement among Adani Gas Holdings Limited and Adani Gas Limited and Adani Enterprises Limited and their respective shareholders and creditors (Scheme).
2. The Petitioner of the C.P. (CAA) No. 86/NCLT/AHM/2018, i.e., Adani Gas Holdings Limited, had filed an application before this Tribunal being C.A. (CAA) No. 36/NCLT/AHM/2018, inter alia, for seeking dispensation from the convening and holding of the meetings of the Equity Shareholders and Preference Shareholders and that separate meetings of the Secured Debenture holders and Unsecured Creditors of the Petitioner Transferor Company be held and convened. This Tribunal vide its order dated 10.5.2018, inter alia, dispensed with the holding and convening of the meetings of the Equity Shareholders and Preference Shareholders and directed convening of separate meetings of the Secured Debenture holders and Unsecured Creditors of the Petitioner Transferor Company.
3. The Petitioner of the C.P. (CAA) No. 87/NCLT/AHM/2018, i.e., Adani Gas Limited, had filed an application before this Tribunal being C.A. (CAA) No. 37/NCLT/AHM/2018 inter alia, for seeking dispensation from the convening and holding of the meeting of the Equity Shareholders and that separate meetings of the Secured Creditors and Unsecured Creditors of the Petitioner Transferee/Resulting Company be held and convened. This Tribunal vide its order dated 10.5.2018, inter alia, dispensed with the holding and convening of the meeting of the Equity Shareholders and directed convening of separate meetings of the Secured Creditors and Unsecured Creditor of the Petitioner Transferee/Resulting Company.



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4. The Petitioner of the C.P. (CAA) No. 88/NCLT/AHM/2018, i.e., Adani Enterprises Limited, had filed an application before this Tribunal being C.A. (CAA) No. 38/NCLT/AHM/2018 for the requisite directions for holding and convening of separate meetings of the Equity Shareholders, Secured Creditors (including debenture holders) and Unsecured Creditors of the Petitioner Demerged Company. This Tribunal vide its order dated 10.5.2018, inter alia, directed convening and holding of the meetings of the Equity Shareholders, Secured Creditors (including debenture holders) and Unsecured Creditors of the Petitioner Demerged Company.
5. Notice of meetings were sent individually to the Secured Debenture holders and Unsecured Creditors of the Petitioner of C.P. (CAA) No. 86/NCLT/AHM/2018, i.e., Adani Gas Holdings Limited, pursuant to the order dated 10.5.2018, 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 10.5.2018 in English daily, "Economic Times", Ahmedabad Edition and in Gujarati daily, "Economic Times", Ahmedabad Edition on 2.6.2018 and 4.6.2018, respectively. Justice J.C. Upadhyaya, the Chairman of the meetings was filed the requisite affidavit dated 22.6.2018 in respect of service of notices and appearance of advertisements of the said notice amongst others. The arrangement embodied in the Scheme was approved (i) unanimously by the Secured Debenture holders; and (ii) unanimously by the Unsecured Creditors of the Petitioner Transferor Company at the meetings held on 3.7.2018. The Chairman's report dated 5.7.2018 was filed before this Tribunal along with the C.P. (CAA) No. 86/NCLT/AHM/2018.
6. Notice of meetings were sent individually to the Secured Creditors and Unsecured Creditors of the Petitioner of C.P. (CAA) No. 87/NCLT/AHM/2018, i.e., Adani Gas Limited, pursuant to the order dated 10.5.2018, 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 meeting was also advertised as directed by this Tribunal vide its order dated 10.5.2018 in English daily, "Economic Times", Ahmedabad Edition and in Gujarati daily, "Economic Times", Ahmedabad Edition on 2.6.2018 and 4.6.2018, respectively. Justice J.C. Upadhyaya, the Chairman of the meetings has already filed the requisite affidavit

J. C. Upadhyaya

dated 22.6.2018 in respect of service of notices and appearance of advertisements of the said notice amongst others. The arrangement embodied in the Scheme was approved (i) unanimously by the Secured Creditors; and (ii) unanimously by the Unsecured Creditors of the said Company at the meetings held on 3.7.2018. The Chairman's report dated 5.7.2018 was filed before this Tribunal along with the C.P. (CAA) No. 87/NCLT/AHM/2018.

7. Notice of meetings were sent individually to the Equity Shareholders, Secured Creditors (including debenture holders) and Unsecured Creditors of the Petitioner of C.P. (CAA) No. 88/NCLT/AHM/2018, i.e., Adani Enterprises Limited, pursuant to the order dated 10.5.2018, 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 10.5.2018 in English daily, "Economic Times", All Editions and in Gujarati daily, "Economic Times", Ahmedabad Edition on 2.6.2018 and 4.6.2018, respectively. Justice Kantilal A. Puj, the Chairman of the meetings has already filed the requisite affidavit dated 22.6.2018 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 majority of persons representing three-fourths in value of the Equity Shareholders either in person or by proxy or by authorized representative, through postal ballot, e-voting and through electronic voting at venue of the meeting; (ii) unanimously by the Secured Creditors (including debenture holders); and (iii) unanimously by the Unsecured Creditors of the said Company at the meetings held on 3.7.2018. The Chairman's report dated 5.7.2018 was filed before this Tribunal along with the C.P. (CAA) No. 88/NCLT/AHM/2018.
8. The Petitioner Companies thereafter filed C.P. (CAA) No. 86/NCLT/AHM/2018, C.P. (CAA) No. 87/NCLT/AHM/2018 and C.P. (CAA) No. 88/NCLT/AHM/2018, seeking sanction of the Scheme. This Tribunal by its orders dated 13.7.2018 admitted the aforesaid Company Petitions and directed issuance of notice of hearing of petition to the (i) Regional Director; (ii) Official Liquidator and (iii) Income Tax Authorities in case of all the aforesaid Petitions. This Tribunal also directed publication of notice of hearing of the petitions in English daily, "Economic Times", Ahmedabad Edition and in Gujarati daily, "Economic Times", Ahmedabad Edition in respect of C.P. (CAA) No. 86/NCLT/AHM/2018 and C.P. (CAA) No. 87/NCLT/AHM/2018 and in English



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daily, "Economic Times", All Editions and in Gujarati daily, "Economic Times", Ahmedabad Edition in respect of C.P. (CAA) No. 88/NCLT/AHM/2018.

9. Pursuant to the order dated 13.7.2018 passed by this Tribunal, the Petitioner of C.P. (CAA) No. 86/NCLT/AHM/2018, i.e. Adani Gas Holdings Limited has published the notice of hearing of the petition in English daily, "Economic Times", Ahmedabad Edition and in Gujarati daily, "Economic Times", Ahmedabad Edition on 19.7.2018. Further, the Petitioner of C.P. (CAA) No. 87/NCLT/AHM/2018, i.e. Adani Gas Limited has also published the notice of hearing of the petition in English daily, "Economic Times", Ahmedabad Edition and in Gujarati daily, "Economic Times", Ahmedabad Edition on 19.7.2018 and the Petitioner of C.P. (CAA) No. 88/NCLT/AHM/2018, i.e. Adani Enterprises Limited has published the notice of hearing of the petition in English daily, "Economic Times", All Editions and in Gujarati daily, "Economic Times", Ahmedabad Edition on 19.7.2018. The affidavits of service, on behalf of all the Petitioner Companies, all dated 25.7.2018, were 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 aforesaid statutory authorities.
10. In response to the notice to the Deputy Commissioner of Income Tax, Ahmedabad ('IT department'), IT department has filed separate representations, all dated 28.5.2018 in the aforesaid Company Petitions.
11. Mr. Singhi, the learned Advocate for the Petitioner Companies stated that all the Petitioner Companies, have filed necessary affidavit in reply dated 25.7.2018 to the representations, all dated 28.5.2018 filed by the IT department, inter alia, stating that Adani Gas Limited is not a private limited company and therefore, the question of any responsibility on the directors of Adani Gas Limited cannot arise at all in law and further, that only those demands pertaining to the Demerged Undertaking, if raised in future by the IT department on Adani Enterprises Limited would be payable by Adani Gas Limited in accordance with law. In view of the aforesaid, this Tribunal is of the view that the observations of the IT department in its representations stand satisfied.
12. In response to the notice to the Official Liquidator in C.A. (CAA) No. 36/NCLT/AHM/2018, the Official Liquidator, Ahmedabad filed his report dated 6.6.2018 to which Adani Gas Holdings Limited filed its affidavit dated 25.7.2018.

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In respect of the observations made by the Official Liquidator, Ahmedabad in paragraph 16 of its report, in paragraph 3 of its reply, it is stated by the Petitioner Companies that the Chairman, appointed for the meetings, has already filed his affidavit of service on 22.6.2018 before this Tribunal. It is further submitted that the Chairman has also filed his report dated 5.7.2018 declaring the results of the meetings convened on 3.7.2018.

In respect of the observations made by the Official Liquidator, Ahmedabad in paragraph 17 of its report, in paragraph 4 of its reply, it is stated by the Petitioner Companies that the Adani Gas Holdings Limited as well as the Adani Gas Limited and Adani Enterprises Limited shall preserve their books of accounts, papers and records and shall not dispose of without the prior permission of the Central Government.

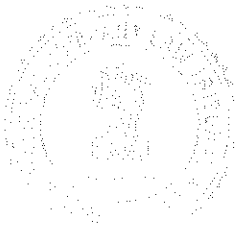
In respect of the observations made by the Official Liquidator, Ahmedabad in paragraph 18 of its report, in paragraph 5 of its reply, it is stated by the Petitioner Companies that contents of said paragraph of the report are general in nature. It is further submitted by the Petitioner Companies that the Scheme nowhere proposes absolving the Adani Gas Holdings Limited or Adani Gas Limited from any of its statutory liabilities, if any.

In respect of the observations made by the Official Liquidator, Ahmedabad in paragraph 20 of its report, in paragraph 7 of its reply, it is stated by the Petitioner Companies that Adani Gas Limited shall file the certified copy of the final order sanctioning the Scheme with the Registrar of Companies within 30 days from the date of passing of such final order.

In light of the aforesaid, this Tribunal is of the view that the observations of the Official Liquidator, Ahmedabad, in its representations stands satisfied.

13. In response to the notice to the Regional Director, North Western Region, Ministry of Corporate Affairs, the Regional Director has filed common representation dated 13.6.2018.

In paragraph 2(d) of the said common representation, it is mentioned by the Regional Director that this Tribunal be pleased to direct the Petitioner Companies to undertake the compliance of Section 232 (3) (i) of the Companies Act, 2013 and to pay the fees accordingly on the enhanced authorized capital.



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In paragraph 2(f) of the said common representation, it is mentioned by the Regional Director that the Petitioner Companies should comply with the guidelines of FEMA and RBI from time to time.

In paragraph 2(g) of the said common representation, it is mentioned by the Regional Director that the Petitioner Companies to disclose the complete list of the assets and liabilities which are proposed to be demerged and transferred through the Scheme.

In paragraph 2(h) of the said common representation, it is mentioned by the Regional Director that this Tribunal be pleased to direct the Petitioner Companies to comply with the requirements of Ind Accounting Standard – 103 and that the excess of assets over liabilities shall be credited to Amalgamation Reserve Account/ Capital Reserve Account on arrangement being of capital nature.

In paragraph 2(i) of the said common representation, it is mentioned by the Regional Director that this Tribunal be pleased to direct the Petitioner Companies to undertake compliance of Section 2(19AA) of the Income Tax Act, 1961.

In paragraph 2(j) of the said common representation, it is mentioned by the Regional Director that this Tribunal be pleased to direct the Petitioner Companies to place on record of this Tribunal that the SEBI Circulars as well as the directions conveyed in the letters of BSE and NSE are complied by the Petitioner Companies.

In paragraph 2(k) of the said common representation, it is mentioned by the Regional Director that this Tribunal be pleased to direct the Petitioner Companies to obtain licenses, approvals and other permissions, if any, from the regulatory authority/concerned Ministry and to follow all the procedures as may be required by the regulatory authorities on payment of fees, if any.

14. Mr. Singhi, the learned Advocate for the Petitioner Companies stated that one of the Petitioner Companies, namely Adani Enterprises, has filed necessary affidavit in reply dated 25.6.2018 to the common representation dated 13.6.2018 filed by the Regional Director.



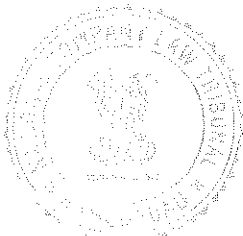


The Petitioner/Demerged Company in paragraph 3 of its reply has, inter alia, stated that Adani Gas Limited, upon the Scheme being effective, shall file necessary forms with the Registrar of Companies, Gujarat, Ahmedabad and shall pay necessary fees, if applicable, in compliance with the provisions of the Companies Act, 2013 and in compliance of the provisions of the Scheme. In view of the aforesaid, this Tribunal is of the view that the observations of the Regional Director at paragraph 2(d) of the common representation stands satisfied.

The Petitioner/Demerged Company in paragraph 5 of its reply has, inter alia, stated that Adani Enterprises Limited and Adani Gas Limited are not required to obtain any approval from RBI or FEMA for the purpose of issuance and allotment of the equity shares by the Adani Gas Limited to the non-resident shareholders of Adani Enterprises Limited upon sanctioning of the Scheme by this Tribunal. However, Adani Gas Limited shall inform RBI once the shares are issued and allotted to the non-resident shareholders. In view of the aforesaid, this Tribunal is of the view that the observations of the Regional Director at paragraph 2(f) of the common representation stands satisfied.

The Petitioner/Demerged Company in paragraph 6 of its reply has, inter alia, stated that there is no requirement to attach the list of assets and liabilities of the Demerged Undertaking along with the Scheme. However, the statement showing assets and liabilities of the Demerged Undertaking of the Adani Enterprises Limited as on 30.6.2018 proposed to be transferred to Adani Gas Limited has been annexed as Annexure-A to the reply. It is further submitted by the Petitioner Demerged Company that the aforesaid demerged undertaking is a going concern and that the said statement would undergo change upon the sanctioning of the Scheme by this Tribunal. In view of the aforesaid, this Tribunal is of the view that the observations of the Regional Director at paragraph 2(g) of the common representation stands satisfied.

The Petitioner/Demerged Company in paragraph 7 of its reply has, inter alia, stated that the accounting treatment proposed in the Scheme is in conformity with the provisions of Section 133 of the Companies Act, 2013. It is further submitted by the Petitioner Demerged Company that the copy of the auditor's certificate dated 19.1.2018 issued by the statutory auditor of Adani Enterprises Limited is already annexed as Annexure "U" at page 283 of the paper book of C.P. (CAA) No. 88/NCLT/AHM/2018. It is also submitted by the Petitioner Demerged Company that the accounting treatment under the Scheme is as per the



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requirement of Ind AS-103. In view of the aforesaid, this Tribunal is of the view that the observations of the Regional Director at paragraph 2(h) of the common representation stands satisfied.

The Petitioner/Demerged Company in paragraph 8 of its reply has, inter alia, submitted that the Scheme is in compliance with the Section 2(19AA) of the Income Tax Act, 1961. In view 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.

The Petitioner/Demerged Company in paragraph 9 of its reply has, inter alia, submitted that in terms of SEBI Circular, Adani Enterprises Limited has received no adverse observation/ no objection letters, from BSE Limited ("BSE") and National Stock Exchange of India Limited ("NSE"), both dated 20.3.2018. The Petitioner Demerged Company stated and submitted that BSE and NSE have issued the aforesaid letters only upon the letter dated 20.3.2018 addressed by SEBI to BSE and NSE, respectively. In the circumstances, the Petitioner Demerged Company submitted that Adani Enterprises Limited has complied with the requirement of SEBI Circular. The Petitioner/Demerged Company further submitted and stated that under the provisions of Section 230(5) of the Companies Act, 2013, Adani Enterprises Limited had sent the notices to NSE, BSE and SEBI, vide its notices dated 4.6.2018 (pages 427-432 of the paper book of C.A. (CAA) No. 38/NCLT/AHM/2018) and that Adani Enterprises Limited has not received any representation from the aforesaid stock exchanges/SEBI. In view of the aforesaid, this Tribunal is of the view that the observations of the Regional Director at paragraph 2 (j) of the common representation stands satisfied.

The Petitioner/Demerged Company in paragraph 10 of its reply has, inter alia, submitted that the Petitioner Companies are not required to obtain any prior permission/ approvals of any regulatory authority or the concerned ministry as stipulated in the paragraph under reply. In view of the aforesaid, this Tribunal is of the view that the observations of the Regional Director at paragraph 2(k) of the common representation stands satisfied.

15. Having heard the learned advocate for the Petitioner Companies and 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 the Companies Act, 2013 are satisfied. The Scheme is genuine and *bona*

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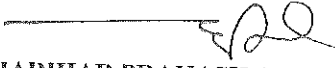
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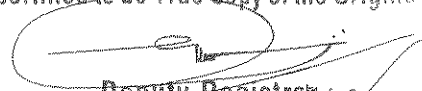
vide and in the interest of the shareholders and creditors, the Scheme is approved and allowed.

16. Fees of Official Liquidator is quantified at Rs. 15,000/- in C.P. (CAA) No. 86/NCLT/AHM/2018. The said fees would be paid by Adani Gas Limited. Further, the fees of Regional Director is quantified at Rs. 25,000/-, each in C.P. (CAA) No. 86/NCLT/AHM/2018, C.P. (CAA) No. 87/NCLT/AHM/2018 and C.P. (CAA) No. 88/NCLT/AHM/2018. The said fees would be paid by Adani Gas Limited.
17. 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 Scheme immediately.

The Company Petitions are disposed of accordingly.


MS. MANORAMA KUMARI
MEMBER JUDICIAL


HARIHAR PRAKASH CHATURVEDI
MEMBER JUDICIAL

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Deputy Registrar
NCLT, Ahmedabad Bench
Ahmedabad

