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NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

CP(CAA) No. 39/NCLT/AHM/2017
CA(CAA) No. 163/NCLT/AHM/2017

Coram: Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 16.02.2018

Name of the Company: Adani Enterprise Ltd.

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

| S.NO. | NAME (CAPITAL LETTERS) | DESIGNATION | REPRESENTATION | SIGNATURE |
|-------|------------------------|-------------|----------------|---------------|
| 1. | SANDEEP SINGHI | ADVOCATES | PETITIONER | PARINI K SHAH |
| 2. | PRANJAL BUCH | | | |
| 3. | PARINI SHAH | | | |
| | FOR THE PETITIONER | | | |
| | FOR SINGHI & Co. | | | |

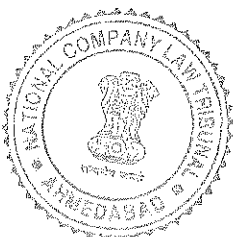
ORDER

Learned Advocate Mr. Sandeep Singhi with Learned Advocate Mr. Pranjali Buch with Learned Advocate Ms. Parini Shah present for Petitioner.

Common order pronounced in open Court. Vide separate sheets.

Manora
MANORAMA KUMARI
MEMBER JUDICIAL

Dated this the 16th day of February , 2018.



Certified as True Copy of Original

Date: 19/02/18
Place: Ahmedabad
NCLT Ahmedabad Bench
Ahmedabad

[Signature]
Dy. Registrar

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

CP(CAA) No.39 of 2018

And

CP(CAA) No.40 of 2018

In the matter of :-

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 of CP(CAA) No.39 of 2018
(Transferor/Demerged Company)

Adani Green Energy Limited,
A company incorporated under the
provisions of the Companies Act,
2013 and having its registered office
at Adani House, Near Mithakhali Six
Roads, Navrangpura, Ahmedabad -
380 009, Gujarat, India.

... Petitioner of CP(CAA) No.40 of 2018
(Transferee/Resulting Company)

Order delivered on 16th February, 2018

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

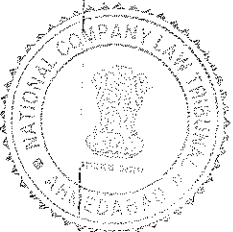
Appearance:

Mr. Rashesh Sanjanwala, Senior Advocate, with Mr. Pranjal Buch and Ms. Parini Shah, Advocates, for M/s. Singhi & Co., Advocates, for the Petitioner Companies.

COMMON ORDER

1. Heard Mr. Rashesh Sanjanwala, Senior Advocate for Singhi & Co, on behalf of the Petitioner Companies.
2. By these petitions under Section 230-232 of the Companies Act, 2013, the Petitioner Companies are seeking

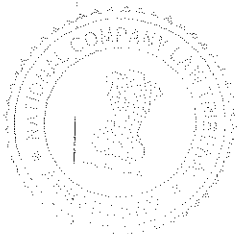
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sanction of a Scheme of Arrangement among Adani Enterprises Limited and Adani Green Energy Limited and their respective shareholders and creditors ("Scheme" for short), which is in the nature of demerger of Renewable Power Undertaking of Adani Enterprises Limited (Transferor/Demerged Company) and transfer of the same to Adani Green Energy Limited (Transferee/Resulting Company) and their respective shareholders and creditors (Scheme).

3. The Petitioner of the C.P. (CAA) No. 39/NCLT/AHM/2018, i.e., Adani Enterprises Limited, had filed an application before this Tribunal, being C.A. (CAA) No. 163/NCLT/AHM/2017, seeking requisite directions for holding and convening separate meetings of the Equity Shareholders, Secured Creditors (including debenture holders) and Unsecured Creditors of the said Company. This Tribunal vide its order dated 1.12.2017, inter alia, directed convening and holding of the meetings of the Equity Shareholders, Secured Creditors (including debenture holders) and Unsecured Creditors of the said Company.

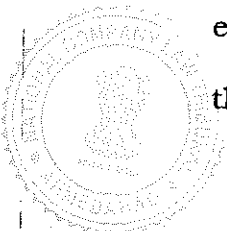
4. The Petitioner of the C.P. (CAA) No. 40/NCLT/AHM/2018, i.e., Adani Green Energy Limited, had filed an application before this Tribunal, being C.A. (CAA) 164/NCLT/AHM/2017, inter alia, seeking dispensation of meeting of the Equity Shareholders of the company and requisite directions for holding separate meetings of the Secured Creditors and Unsecured Creditors of



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the Company for the purpose of considering and, if thought fit, approving the Scheme with or without modification(s). This Tribunal vide its order dated 1.12.2017, inter alia, dispensed with the meeting of the Equity Shareholders and directed convening of separate meetings of the Secured Creditors and Unsecured Creditor of the said Company.

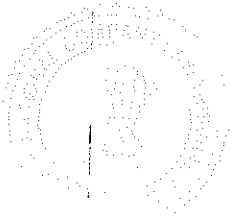
5. Notice of meetings were sent individually to the Equity Shareholders, Secured Creditors (including debenture holders) and Unsecured Creditors of the Petitioner of C.P. (CAA) No. 39/NCLT/AHM/2018, i.e., Adani Enterprises Limited, pursuant to the order dated 1.12.2017, together with a copy of the Scheme, 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. As per order dated 1.12.2017 of the Tribunal, notice of meetings was also published in English daily, "Indian Express", all Editions and in Gujarati daily, "Sandesh", Ahmedabad Edition on 9.12.2017. Mr. V. Subramaniam, the Chairman of the meetings has filed requisite affidavit dated 28.12.2017 in respect of service of notices and appearance of advertisements of the said notice. 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;



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(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 10.1.2018. The Chairman's report dated 11.1.2018 has also been filed before this Tribunal along with C.P. (CAA) No. 39/NCLT/AHM/2018.

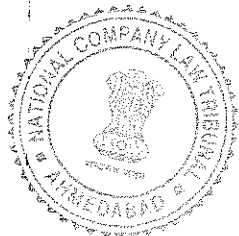
6. Pursuant to the order dated 1.12.2017, notice of meetings were sent individually to the Secured Creditors and Unsecured Creditors of Petitioner of C.P. (CAA) No. 40/NCLT/AHM/2018, i.e., Adani Green Energy Limited, together with a copy of the Scheme, a copy of the Explanatory Statement required to 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 1.12.2017, in English daily, "Indian Express", Ahmedabad Edition and in Gujarati daily, "Sandesh", Ahmedabad Edition on 9.12.2017. Mr. Jayant Parimal, the Chairman of the meetings has filed the requisite affidavit dated 26.12.2017 in respect of service of notices and appearance of advertisements of the said notice. The arrangement embodied in the Scheme was approved unanimously by the Secured Creditor and the Unsecured Creditors of the said Company at the meetings held on 10.1.2018. The Chairman's report dated 11.1.2018 has also been filed before this Tribunal along with C.P. (CAA) No. 40/NCLT/AHM/2018.



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7. The Petitioner Companies thereafter filed the present Company Petitions seeking sanction of the Scheme. The said petition was admitted on 19.1.2018, with direction to issue notice of hearing of the petitions to (i) the Regional Director, and (ii) the Income tax authorities. This Tribunal also directed publication of notice of hearing of the petitions in English daily, "Indian Express", all editions and Gujarati daily, "Sandesh", Ahmedabad edition in respect of C.P. (CAA) No. 39/NCLT/AHM/2018 and in English daily, "Indian Express", Ahmedabad Edition and Gujarati daily, "Sandesh", Ahmedabad Edition in respect of C.P. (CAA) No. 40/NCLT/AHM/2018.

8. Pursuant to the order dated 19.1.2018 passed by this Tribunal, the petitioner of C.P. (CAA) No. 39/NCLT/AHM/2018, i.e. Adani Enterprises Limited, has published notice of hearing of the petition in English daily, "Indian Express", all editions and Gujarati daily, "Sandesh", Ahmedabad Edition on 26.1.2018. Further, the petitioner of C.P. (CAA) No. 40/NCLT/AHM/2018, i.e. Adani Green Energy Limited, has also published notice of hearing of the petition in English daily, "Indian Express", Ahmedabad edition and Gujarati daily, "Sandesh", Ahmedabad edition on 26.1.2018. Affidavits of service, on behalf of both the Petitioner Companies, dated 7.2.2018 have been filed confirming publication of notice in the newspapers as directed and service

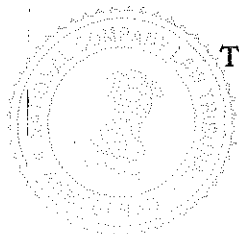


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of notice of hearing of the petitions to the concerned statutory authorities.

9. In response to the notice to the Deputy Commissioner of Income Tax, Ahmedabad (IT department), IT department has filed separate representations, both dated 27.12.2017, in both the Company Petitions, inter alia, stating that the demands raised in future, if any, in the case of the Petitioner/Transferor Company shall be paid by Adani Green Energy Limited. It is further observed that for the outstanding demand prior to the Scheme or become payable due to any of the proceedings related to the Department, in future, in respect of the Petitioner/Transferor Company will be met by the directors of Adani Green Energy Limited.

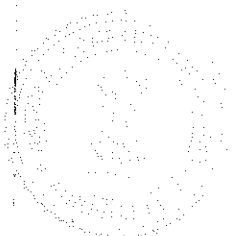
10. Mr. Sanjanwala, stated that both the Petitioner Companies, have filed necessary affidavits in reply dated 7.2.2018 to the representations dated 27.12.2017 filed by the IT department in the respective Company Petitions. In the said replies, it is stated and submitted that the present Scheme is not a scheme of amalgamation. The present Scheme is for the demerger of Renewable Power Undertaking of the Petitioner Transferor Company and transfer of the same to Adani Green Energy Limited. It is, therefore, denied that any demand, if raised in future by the Income Tax Department on the Petitioner Transferor Company would be payable by Adani Green Energy



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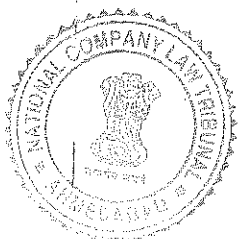
Limited. It is further stated and submitted that only such demand which pertains to the Renewable Power Undertaking would be required to be discharged by Adani Green Energy Limited in accordance with law. It is further denied that there can be any responsibility of the directors of Adani Green Energy Limited in respect of any demand, if raised by the Income Tax Department. It is therefore stated and submitted that neither Adani Energy Limited nor Adani Green Energy Limited are private limited companies. Both the companies since incorporation are public limited companies and, therefore, the question of any responsibility on the directors of Adani Green Energy Limited cannot arise at all in law. In support of this contention, learned counsel for the Petitioner Companies has placed reliance on the following decisions :-

- (i) *Judgments of a Division Bench of the Honourable High Court of Gujarat dated 19.02.2014 and 26.02.2014 in Special Civil Application No.11658 of 2004 with Special Civil Applications No.11659 to 11662 of 2004 and Special Civil Application No.14422 of 2008 with Special Civil Application No. 14423 of 2008, respectively.*
- (ii) *Order of this Tribunal dated 11th October, 2017 in CP(CAA) No.93 of 2017 with CP(CAA) No.102 of 2017.*



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In the decision rendered by the Honourable High Court in Special Civil Application No.14422 of 2008, it is held that directors of a public company are not personally liable for the tax dues. Both the companies in this case are corporate bodies, being independent entities enjoying existence independent of its directors. The assets of the companies are distinct and separate and distinct and distinct from those of its members. Unless the concept of piercing corporate veil is applied by the courts depending upon various situations, the statute, i.e. Section 179 of the Income Tax Act, gives protection to directors of a public limited company from personally liable for the income tax dues. In the present case, the facts do not warrant the concept of piercing of corporate veil. The corporate veil can be pierced or cracked only if it is found that a complex web has been created only with a view to defraud the revenue interest of the State. If it is a case of a corporate entity only to create a smoke screen to defraud the revenue, then the corporate veil can be pierced. The companies involved in the case on hand are both public companies doing business for several years. Therefore, the corporate bodies in this case do not come within the situation where a corporate veil can be pierced. In view of Section 179 of the Income Tax Act and the above said three decisions and, as the facts do not warrant piercing of corporate veil, this Tribunal is of the view that the directors of the transferee company are not personally liable for the tax dues from the transferor company.



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11. In response to the notice to the Regional Director, North Western Region, Ministry of Corporate Affairs, the Regional Director has filed common representation dated 9.1.2018 making the following observations :-

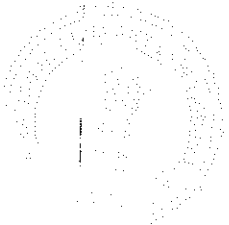
- (i) In paragraph 2(e), it is observed by the Regional Director that the Petitioner Companies should comply with the guidelines of FEMA and RBI from time to time.
- (ii) In paragraph 2(f), it is observed that this Tribunal may be pleased to direct the Petitioner Companies to submit the complete list and full details of assets and liabilities that are proposed to be transferred to Adani Green Energy Limited pursuant to the Scheme.
- (iii) In paragraph 2(f), it is observed that this Tribunal may be pleased to direct the Petitioner Companies to undertake compliance of Section 2(19AA) of the Income tax Act, 1961.
- (iv) In paragraph 2(g), it is observed that the Petitioner Companies should 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.

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- (v) In paragraph 2(g), it is observed by the Regional Director that the Petitioner Company should comply with the SEBI guidelines regarding the issuance of shares and listing of the shares of the Adani Green Energy Limited.
- (vi) In paragraph 2(h), it is observed that Adani Green Energy Limited should comply with the provisions of the Companies Act, 2013 for increase of the Authorised Share Capital pursuant to the Scheme.
- (vii) In paragraph 2(i), it is observed that the Petitioner Companies should justify the decision to keep the future Appointed Date in the Scheme.
- (viii) In paragraph 2(j), it is observed that this Tribunal may 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.

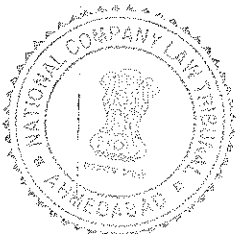
12. In response to the common representation made by the Regional Director, one of the Petitioner Companies, namely Adani Enterprises Limited, has filed an affidavit in reply dated 7.2.2018. It is stated in paragraph 3 of the reply that the Petitioner/Transferor Company is not required to obtain any approval from RBI or FEMA for the purpose of issue and



allotment of the equity shares to the non-resident shareholders upon the sanctioning of the Scheme by this Tribunal. However, Adani Green Energy Limited shall inform RBI once the shares are issued and allotted to the non-resident shareholders. It is further stated that the Petitioner Transferor Company had also sent the notice under Section 230(5) of the Companies Act, 2013 to RBI (Pages 326 to 329 of the paper book of C.A. (CAA) No. 163/NCLT/AHM/2017). It is further stated that the Petitioner Transferor Company has not received any representation from RBI. In light of the aforesaid, this Tribunal is of the view that the observations of the Regional Director in paragraph 2(e) of the common representation stand satisfied.

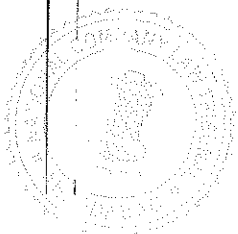
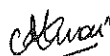
13. In response to the observation made by the Regional Director in paragraph 2(f), in paragraph 4 of the reply, it stated that there is no requirement to attach the list of assets and liabilities of the Renewable Power Undertaking along with the Scheme. However, the Petitioner Transferor Company has annexed the statement showing assets and liabilities of the Renewable Power Undertaking of the Petitioner Transferor Company, as on 31.3.2017, proposed to be transferred to Adani Green Energy Limited. It is further stated that the said undertaking is a going concern and that the said statement would undergo change upon the sanctioning 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(f) of the common representation stands satisfied.

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14. With regard to the observation made by the Regional Director that the Petitioner Company may be directed to ensure compliance of Section 2(19AA) of the Income Tax Act, in paragraph 5 of its reply, the Petitioner Transferor Company has, inter alia, submitted that the Scheme is in compliance with the Section 2(19AA) of the Income Tax Act, 1961. In light of the aforesaid, this Tribunal is of the view that the observation of the Regional Director in second numbered paragraph 2(f) of the common representation stands satisfied.

15. In response to the observations made by the Regional Director in paragraph 2(g) of the representation, in paragraph 6 of the reply, the Petitioner Transferor Company has, inter alia, stated that in terms of SEBI Circular, the Petitioner Transferor Company has received no adverse observation/ no objection letters from BSE Limited ("BSE") and National Stock Exchange of India Limited ("NSE"). It is further stated that BSE and NSE have issued the aforesaid letters only upon the letter dated 20.11.2017 addressed by SEBI to BSE and NSE, respectively. It is submitted that the Petitioner Transferor Company has complied with the requirement of SEBI Circular. 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 8.12.2017 (pages 330-335 of the paper book of C.A. (CAA) No.



163/NCLT/AHM/2017) 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 observations of the Regional Director at paragraph 2(g) of the common representation stand satisfied.

16. The Petitioner Transferor Company in paragraph 7 of its reply has, inter alia, stated and submitted that in terms of SEBI Circular No. CFD/DIL3/CIR/2017/105 dated 21.9.2017, Adani Green Energy Limited undertakes that it shall increase the public shareholding to at least 25% within a period of 1 year from the date of the listing of the new equity shares on the stock exchanges. It is further stated that the same is also reflected in clause 10.13 of the Scheme. It is further stated that neither the stock exchanges nor SEBI has raised any issue in respect of the same while granting no objection letters. In light of the aforesaid, this Tribunal is of the view that the observation of the Regional Director in the second numbered paragraph 2(g) of the common representation stands satisfied.

17. In response to the observation made by the Regional Director in paragraph 2(h), it is stated in paragraph 8 of the reply that Adani Green Energy Limited, upon the Scheme being effective, shall file necessary forms with the Registrar of Companies, Gujarat, Ahmedabad, along with necessary fees, if applicable, in compliance with the provisions of the Companies

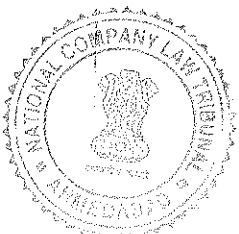


Act, 2013. In light of the aforesaid, this Tribunal is of the view that the observations of the Regional Director in paragraph 2(h) of the common representation stands satisfied.

18. The Petitioner Transferor Company in paragraph 9 of its reply has, inter alia, stated that there is no bar under the Companies Act, 2013 to provide for a prospective Appointed Date. Further, the said Scheme has been sanctioned by the equity shareholders and creditors of the Petitioner Transferor Company and Adani Green Energy Limited. It is submitted that no equity shareholders or creditors have raised any objection in respect of the same. It is further stated that even otherwise the Scheme is to be made effective only on or after the Appointed Date has ensued. In light of the aforesaid, this Tribunal is of the view that the observation of the Regional Director in paragraph 2(i) of the common representation stands satisfied.

19. In response to the observation of the Regional Director in paragraph 2(j), in paragraph 10 of its reply, the Petitioner Transferor Company has that the Petitioner/Transferor Company or Adani Green Energy Limited is not required to obtain any prior permission/ approvals of any regulatory authority or the concerned Ministry. In light of the aforesaid, this Tribunal is of the view that the observation of the Regional Director at paragraph 2(j) of the common representation stands satisfied.

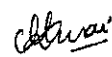
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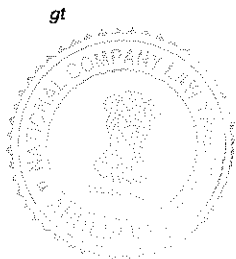


20. Considering the entire facts and circumstances of the case and on perusal of the Scheme and the proceedings, it appears that the requirements of the provisions of sections 230-232 of the Companies Act, 2013 are satisfied. The Scheme is genuine and *bona fide* and in the interest of the shareholders and creditors. I, therefore, accordingly allow the Company Petitions and approve the Scheme. The Scheme, which is at Annexure-G to the petitions, is hereby sanctioned. Prayers made in the respective Company Petitions are hereby granted.

21. 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.


22. These Company Petitions are disposed of accordingly.

Signature.....
Ms. Manorama Kumar, Member (J)



Certified as True Copy of Original

Date: 14/02/18
Place: Ahmedabad



By Registrar
NCLT Ahmedabad Bench
Ahmedabad