

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH -IV**

CP(CAA) No/95/MB-IV/2022

In

CA(CAA)No/69/MB-IV/2021

In the matter of

The Companies Act, 2013

And

In the matter of

Section 230-232 of the Companies Act,
2013 and other applicable provisions of
the Companies Act, 2013

In the matter of

Scheme of Amalgamation
of

SP Ports Private Limited,
the Transferor Company No.1

And

Eloise Energy Private Limited
the Transferor Company No.2

With

Shapoorji Pallonji Infra-structure Capital
Company Private Limited,
the Transferee Company

And

their respective shareholders.

Eloise Energy Private Limited

[CIN: U40106MH2018PTC312464]

... Petitioner Company No. 1

Shapoorji Pallonji Infra-structure

Capital Company Private Limited

[CIN: U65990MH1997PTC108596]

... Petitioner Company No. 2

Order Delivered on: 20.01.2023

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s)

Mr. Hemant Sethi a/w Ms.
Vidisha Poonja i/b Hemant
Sethi & Co. Advocates.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. The Court is convened by videoconference today.
2. Petition Admitted.
3. Petition fixed for hearing and final disposal on 06.03.2023.
4. Learned Counsel for the Petitioner Companies states that in pursuance of the directions contained in Order delivered on 24th December, 2021 passed by this Tribunal in C.A(C.A.A.)/69/MB-IV/2021, the meetings of Equity Shareholders and Unsecured Creditor of the First Petitioner Company were dispensed, in view of Consent Affidavits filed by all the Equity Shareholders and the sole Unsecured Creditor of the First Petitioner Company. There are no Secured Creditors in the First Petitioner Company.
5. Learned Counsel for the Petitioner Companies states that in pursuance of the directions contained in Order delivered on 24th December, 2021 passed by this Tribunal in C.A(C.A.A.)/69/MB-IV/2021, the meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Second Petitioner Company were dispensed as the First Petitioner Company is a wholly owned subsidiary of the Second Petitioner Company.

6. Counsel for the Petitioner Companies further submits that pursuant to the directions contained in the Order passed by this Tribunal in C.A(C.A.A.)/69/MB-IV/2021, Petitioner Companies served notices upon the;
- (i) Central Government through the concerned office of the Regional Director;
 - (ii) concerned Registrar of Companies;
 - (iii) Reserve Bank of India;
 - (iv) Income Tax Authority;
 - (v) Goods and Service Tax Authority;
 - (vi) Central Electricity Regulatory Commission and
 - (vii) The Official Liquidator, as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
7. Counsel for the Petitioner Companies further submits that the First Petitioner Company has not given or received any Corporate Guarantee / Bank Guarantee / Performance Guarantee. The same has been confirmed by way of an Additional Affidavit dated 17th October 2022 which is filed with this Tribunal.
8. Counsel for the Petitioner Companies further submits that the Second Petitioner Company has taken Bank Guarantee and given Corporate Guarantee, which will not have any material impact on the scheme. The Second Petitioner Company has not given or received any

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- Performance Guarantee. Details of the same was filed by way of an Additional Affidavit dated 17th October 2022 with this Tribunal.
9. Counsel for the Petitioner Companies further submits that the First Petitioner Company does not have any ongoing litigation matters and the Second Petitioner Company has few ongoing litigation matters which will not have any material impact on the scheme. Details of the same was filed by way of an Additional Affidavit dated 17th October 2022 with this Tribunal.
10. The Petitioner Companies are directed to serve fresh notice of final hearing in the petition through Registered-Post AD/Speed Post and hand-delivery indicating the date of final hearing upon;
- (i) The Central Government through the concerned office of Regional Director, Ministry of Corporate Affairs;
 - (ii) Concerned Registrar of Companies;
 - (iii) Reserve Bank of India;
 - (iv) concerned Income Tax Authority within whose jurisdiction the Petitioner Company's assessments are made i.e., for the First Petitioner Company - PAN AAFCE1322B, having jurisdiction at Ward – ITO 3(1)(3), Aayakar Bhavan, Maharshi Karve Road, Churchgate, Mumbai – 400020 and for the Second Petitioner Company - PAN AABCS4370B having jurisdiction at Room 609, Ward – DCIT 3(3)(1), Aayakar Bhavan, Maharshi Karve Road, Churchgate, Mumbai – 400020;
 - (v) Goods and Service Tax department (Maharashtra);
 - (vi) The Ministry of Corporate Affairs;

- (vii) The Official Liquidator (in case of First Petitioner Company)
and
- (viii) Central Electricity Regulatory Commission (in case of First
Petitioner Company), informing the date fixed for final hearing.
11. At least 10 (ten) days before the date fixed for hearing, the Petitioner
Companies is directed to publish the notice of final hearing of Petition
in two local newspapers viz. "Business Standard", in English language
and translation thereof in "Navshakti", in Marathi language, both
having circulation in Mumbai as per Rule 16 of the Companies
(Compromises, Arrangements and Amalgamations) Rules, 2016.
12. The petitioner Companies shall host notices along with the copy of the
Scheme on their respective websites, if any.
13. The Petitioner Companies shall file a compliance Affidavit regarding
the issue of advertisement of the notice of the hearing of the Company
Petition stating that the same has been duly complied with the Registry
in regard to the directions of this Tribunal, 3 (three) days before the date
fixed for final hearing.

Sd/-

PRABHAT KUMAR
Member (Technical)

Sd/-

KISHORE VEMULAPALLI
Member (Judicial)