

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-COURT IV

CP (CAA)/ 95/MB-IV/2022
IN
CA (CAA)/69/MB-IV/2022

In the matter of
The Companies Act, 2013

And

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

And

In the matter of
Scheme of Amalgamation of
SP Ports Private Limited
(Transferor Company 1 / Non-Petitioner
Company)

and

Eloise Energy Private Limited
(Transferor Company 2)

with

Shapoorji Pallonji Infrastructure
Capital

Company Private Limited
(“Transferee Company”)

and their respective shareholders
(“Scheme”)

Eloise Energy Private Limited

CIN: U40106MH2018PTC312464

...Petitioner No.1/

Transferor Company 2

**Shapoorji Pallonji Infrastructure Capital
Company Private Limited**

CIN: U65990MH1997PTC108596

...Petitioner No.2/

Transferee Company

(“Collectively referred as Petitioner Companies”)

Order delivered on 02.05.2023

Coram:

Mr. 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. Tanaya Sethi
i/b Hemant Sethi & Co.

For the Regional Director : Ms. Rupa Sutar, Deputy
Registrar, Office of the Regional Director,

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. The Court is convened by videoconference today.
2. Heard the learned counsel for the Petitioner Companies. No objector has come before the Tribunal to oppose the Petition and nor any party has controverted any averments made in the Petition.

3. The sanction of this Tribunal is sought under Section 232 r/w section 230 and other applicable provisions of the Companies Act, 2013 ('Act') and in the matter of Scheme of Amalgamation of **SP Ports Private Limited** ("Transferor Company 1") and **Eloise Energy Private Limited** ("Transferor Company 2") with **Shapoorji Pallonji Infrastructure Capital Company Private Limited** ("Transferee Company") and their respective shareholders ("Scheme").
4. The Petitioner Companies submits that the Petitioner No.1 Company is set up to engage in the business of power generation and Petitioner No.2 is engaged in the business of investing by way of acquisition (by way of purchase, subscription, tender or otherwise) of shares and other securities of or providing long term finance, in the business of trading, civil projects and operation and maintenance of power plant. It is also engaged in acquiring, developing and maintaining infrastructure assets meeting stakeholder requirements on a consistent, sustainable basis in chosen segments and businesses.
5. The Rationale for the Scheme of Amalgamation:

Rationale

"The Non-Petitioner Company and First Petitioner Company are the wholly owned subsidiaries of the Second Petitioner Company. The proposed amalgamation will result in consolidation of the group structure, thereby ensuring more efficient utilization of capital, focused operational efforts, enhancing shareholder value and leveraging on synergies in doing business."

6. The amalgamation is in the interest of the shareholders, creditors and all other stakeholders of the respective companies and is not prejudicial to the interests of the concerned shareholders, creditors or the public at large.
7. The Petitioner No.1 Company has approved the Scheme by passing Board Resolutions dated January 08, 2021 and Petitioner No.2 has approved the Scheme by passing the Board Resolution on November 26, 2020 and have approached the Tribunal for sanction of the Scheme.
8. The Petitioner Companies have complied with all requirements as per directions of the Tribunal.
9. The Company Application and Company Petition for the Non-Petitioner Company has been filed with the NCLT, Ahmedabad Bench. The Company Petition has been admitted by the NCLT, Ahmedabad Bench for the Non-Petitioner Company. The Scheme is sanctioned by the NCLT, Ahmedabad Bench and order is pronounced on 6th July 2021 in the matter C.P.(CAA) No.19/NCLT/AHM/2021
10. The Petitioner Companies stated that the Petitioner Companies have complied with all requirements as per directions of the Tribunal and have filed necessary affidavits of compliance with the Tribunal. Moreover, the Petitioner Companies undertake to comply with all statutory/regulatory requirements, if any, as required under the Act and the Rules made thereunder.
11. The Regional Director has filed his Report dated 24.05.2022 making certain observations. The Petitioner Companies have submitted/undertaken that :-
 - a. The Petitioner Companies shall pass all such accounting entries

- necessary in connection with IND AS-103 and comply with all other applicable Accounting Standards as prescribed under Section 133 of Companies Act, 2013;
- b. The approval of the Scheme by the Hon'ble Tribunal would not deter such authorities to deal with any of the issues arising after giving effect to the Scheme and that such issues arising out of the Scheme will be addressed in accordance with law;
 - c. The provisions set out in Section 232(3)(i) of the Companies Act, 2013 and that the fee, if any, paid by the Transferor Company 1 and Transferor Company 2 on its authorized share capital shall be set off against any fees payable by the Transferee Company on its authorized share capital subsequent to the amalgamation, if applicable;
 - d. The approval of the Scheme by the Hon'ble Tribunal would not deter income-tax authorities to deal with any of the issues arising after giving effect to the Scheme;
 - e. The approval of the Scheme by the Hon'ble Tribunal would not deter income-tax authorities to deal with any of the issues arising after giving effect to the Scheme;
 - f. The Transferee Company will comply with Income Tax Provisions in relation to proceedings/claims under Income Tax Act against the Transferor Company; and
 - g. The interest of the creditors is protected as there is no compromise or arrangement with creditors.
12. The Regional Director, Western Region has filed its supplementary report dated May 27, 2022 and has submitted that the replies/undertakings given by the Petitioner Companies appears to be satisfactory and they have no objection for approval of the scheme.

13. The Official Liquidator has filed his report dated May 6, 2022, *inter alia*, stating therein that the affairs of the First Petitioner Company have been conducted in a proper manner and that the First Petitioner Company may be ordered to be dissolved without winding up by the Tribunal.
14. The entire issued, subscribed and paid-up share capital of the Non-Petitioner Company and First Petitioner Company are held by the Second Petitioner. Upon the Scheme becoming effective, the entire share capital of the Non-Petitioner Company and First Petitioner Company held by the Transferee Company shall stand automatically cancelled and there will not be any issue and allotment of any shares by the Transferee Company.
15. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this scheme and it shall be open to the income tax authorities to take necessary action as possible under the Income Tax Law.
16. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. Since all the requisite statutory compliances have been fulfilled, CP(CAA)/95/MB-IV/2022 filed by the Petitioner Companies is made absolute in terms of prayer clauses of the said Company Scheme Petition.
17. The Scheme is sanctioned hereby, and the Appointed Date of the scheme is opening business hours of 1st April, 2020.

18. The Petitioner Companies are directed to file a certified copy of this Order along with the copy of Scheme with the concerned Registrar of Companies, electronically in e-form INC-28 within 90 days from the date of receipt of the Order duly certified by the designated Deputy/Assistant Registrar of this Tribunal. The Scheme will become effective on filing of the copy of this order with the concerned Registrar of Companies.
19. The Petitioner Companies shall lodge a copy of this Order along with the Scheme duly certified by the Designated Deputy Registrar/Assistant Registrar, of this Tribunal, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, within a period of 60 working days from the date of the receipt of the certified Order from the Registry of this Tribunal.
20. All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai.
21. Ordered accordingly.

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Kishore Vemulapalli
Member (Judicial)