

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Through web-based video conferencing platform)

CA (CAA) No. 22/BB/2021
U/s. 230 to 232 of the Companies Act
R/w Companies (CAA) Rules, 2016

In the matter of scheme of amalgamation between:

M/s. SPML Infrastructure Limited

Golden Enclave, Corporate Block,
Tower B1, 5th Floor, HAL Old Airport Road,
Bengaluru – 560 017

... Transferee Company/
Applicant No.1

With

M/s. Doon Valley Waste Management Private Limited

Golden Enclave, Corporate Block,
Tower B1, 5th Floor, HAL Old Airport Road,
Bengaluru – 560 017

... Transferor Company/
Applicant No.2

Order delivered on : 16th November, 2021

Coram: 1. Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
2. Hon'ble Mr. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Applicant Companies : Sh. Rahul Aggarwal, PCS

ORDER

Per: Ajay Kumar Vatsavayi, Member (Judicial)

1. The present Application is jointly filed by the Applicant Companies herein, namely SPML Infrastructure Limited, the Transferee Company, and Doon Valley Waste Management Private Limited, the Transferor Company described in short as "Applicant Companies" under Sections 230

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to 232 of the Companies Act, 2013 for sanction of the proposed Scheme of Amalgamation (for short, the "Scheme") between the Transferor Company and the Transferee Company. The Scheme proposed is at Annexure E. The contents of the Application are supported by the affidavit of Mr. Pukhraj Jain, Director of the Applicant Company No.1 and Mr. Rajesh Kandoi, Director of the Applicant Company No.2 seeking dispensation of convening the meetings of Shareholders and Creditors of Applicant Companies/ directions for calling and convening meetings for all the Shareholders and Creditors of the Applicant Companies.

2. The Board of Directors of the Applicant Companies have unanimously approved the Scheme vide their respective Board Resolutions dated 07.09.2020, subject to sanctioning of the same by this Tribunal. The aforesaid Board Resolution of the Transferee Company and Transferor Company is at Annexure-D.
3. The Transferee Company was incorporated as a Public Company, limited by shares on 16.08.2007 bearing CIN No. U45201KA2007PLC043613. The Copy of Certificate of Incorporation issued by the Registrar of Companies, Karnataka and Memorandum of Association and Articles of Association is found attached as Annexure-A of the Application. As per the Memorandum of Association, the main objects of Transferee Company are as follows:

"To carry on either directly and/or as a holding company the business of all kinds of infrastructure projects including but not limited to development of sea ports, air ports, industrial parks, special economic zones, integrated townships, commercial complexes, toll plazas, hotels, waste processing centres, roads, bridges, tourism, leisure and entertainment, skywalk, urban transport infrastructure, urban utility infrastructure, power."

4. The Transferor Company was incorporated as a Private Company, limited by shares on 15.02.2011 bearing CIN No. U90000DL2011PTC214130. The Copy of Certificate of Incorporation issued by the Registrar of Companies,

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National Capital Territory of Delhi and Haryana is found attached at Page No. 112 of the Application and pursuant to the order of the Regional Director dated 04.10.2018, the registered office of the Transferor Company was shifted to the State of Karnataka and the Registrar of Companies, Bangalore vide its Certificate of Registration dated 09.01.2019 registered the same with CIN No. U90000KA2011PTC120218. The copy of the Certificate of Registration issued by the Registrar of Companies, Bangalore is found attached at Page No. 113 of the Application. As per the Memorandum of Association, the main objects of Transferor Company are as follows:

“To carry out the business of collection segregation and transportation and processing of Municipal solid wastes and land filling of remnants on Design, Procure, renovate, operate, maintain and transfer or on commercial basis for Municipal Corporation/ Local Authority/ Govt. Agency/ Semi Govt. Agency.”

5. The registered office of the Applicant Companies is situated within the State of Karnataka and thereon, the matter falls within the territorial jurisdiction of this Tribunal. It is further represented that the Transferee Company is a Public Company, limited by shares and the Transferor Company is a Private Company, limited by shares.
6. It is stated in Para 6 of the Application that no investigation proceedings are pending against the Joint Applicants under Sections 235 to 251 or any other provisions of the Companies Act, 1956 and/or Sections 206 to 229 or any other provisions of the Companies Act, 2013.
7. The authorized, issued, subscribed and paid up share capital of the Transferee Company as on 31.03.2020 is as under:

PARTICULARS	AMOUNT (Rs.)
AUTHORISED CAPITAL	
293,00,000 Equity shares of Re.1/- each	293,00,000
30,50,000 9% Non-Cumulative Redeemable Preference Shares of Re.1/- each	30,50,000

TOTAL	323,50,000
ISSUED, SUBSCRIBED AND PAID UP CAPITAL	
74,33,042 Equity Shares of Re.1/- each	74,33,042
TOTAL	74,33,042

It is also stated that subsequent to 31.03.2020 and up to the date of approval of the Scheme by the Board of Directors of the Transferee Company, there has been no change in the issued, subscribed and paid up capital of the Transferee Company.

8. The authorized, issued, subscribed and paid up share capital of the Transferor Company as on 31.03.2020 is as under:

PARTICULARS	AMOUNT (Rs.)
AUTHORISED CAPITAL	
10,00,000 Equity shares of Rs.10/- each	100,00,000
400,00,000 Preference Shares of Re.1/- each	400,00,000
TOTAL	500,00,000
ISSUED, SUBSCRIBED AND PAID UP CAPITAL	
96,000 Equity Shares of Rs.10/- each	9,60,000
368,14,000 9% Non-Cumulative Redeemable Preference Shares of Re.1/- each	368,14,000
TOTAL	3,77,74,000

It is also stated that subsequent to 31.03.2020 and up to the date of approval of the Scheme by the Board of Directors of the Transferor Company, there has been no change in the issued, subscribed and paid up capital of the Transferor Company.

9. The instant Application has been filed with prayer for dispensation or to direct that the meetings of the Shareholders and Creditors of the Applicant Companies shall be conducted with the following requirements:

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- I. *Dispense with meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors of Transferee Company/Applicant No.1 as required to be held under section 232 of Companies Act 2013 or alternatively, if Transferee Company/Applicant No.1's prayer for dispensation of the said meeting is rejected, direct that the meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors of Transferee Company/Applicant No.1 be held on such date and time as this Hon'ble Tribunal may deem fit and that a Chairman be appointed for the meeting, and pass necessary directions with regards to issue of notice, convening, holding and conducting of the meeting, and pass order dispensing with the publication of the notice of the meeting in the newspapers, if said meeting is not convened.*
 - II. *Dispense with meeting of Equity Shareholders, Preference Shareholders and Unsecured Creditors of Transferor Company/Applicant No2 as required to be held under section 232 of Companies Act, 2013 or alternatively, if Transferee Company/Applicant No.1's prayer for dispensation of the said meeting is rejected, direct that the meeting of Equity Shareholders, Preference Shareholders and Unsecured Creditors of Transferor Company/Applicant No.2 be held on such date and time as this Hon'ble Tribunal may deem fit and that a Chairman be appointed for the meeting, and pass necessary directions with regards to issue of notice, convening, holding and conducting of the meeting, and pass order dispensing with the publication of the notice of the meeting in the newspapers, if said meeting is not convened.*
 - III. *The Applicant Companies have also sought to allow the Joint Applicants to file joint Petition for Amalgamation.*
10. The learned PCS for the Applicant Companies have submitted that as per the Certificate dated 06.07.2020 (Annexure-G {Colly}) of M/s. Maheshwari & Associates, Chartered Accountants, there are 09 (Nine) Equity Shareholders in the Transferee Company as on 30.06.2020. The details are given below:

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Sl. No	Name	Address	No. of Shares held	% Shareholding
1	SPML Infra Limited	F-27/2, Okhla Industrial Area, Phase-II, New Delhi-110020	74,32,000	99.99%
2	Subhash Chand Sethi	8, Moria Street, 2 nd Floor, Kolkata-700017	200	0.00%
3	Sushil Kumar Sethi	M-231, Greater Kailash-II, New Delhi- 110048	100	0.00%
4	Priti Devi Sethi	Villa No. B-9, Yemalur Homes Owners Association, Epsilon Ventures, Yemalur Main Road, Bangalore- 570037	50	0.00%
5	Deepak Sethi	Villa No. B-9, Yemalur Homes Owners Association, Epsilon Ventures, Yemalur Main Road, Bangalore- 570037	421	0.01%
6	Rishabh Sethi	M-231, Greater Kailash-II, New Delhi- 110048	100	0.00%
7	Anil Kumar Sethi	Villa No. B-9, Yemalur Homes Owners Association, Epsilon Ventures, Yemalur Main Road, Bangalore- 570037	50	0.00%
8	Vineeta Sethi	Villa No. B-9, Yemalur Homes Owners Association, Epsilon Ventures, Yemalur Main Road, Bangalore- 570037	50	0.00%
9	International Constructions Limited	Golden Enclave, Corporate Block, Tower B1 5 th Floor, HAL Old Airport Road, Bengaluru - 560017	71	0.00%
TOTAL			74,33,042	100

All the Equity Shareholders of the Transferee Company have given their consents by way of affidavits to the Scheme. The Consent affidavits are part of Annexure-G (Colly) of the Application.

11. The learned PCS for the Applicant Companies have submitted that as per the Certificate dated 06.07.2020 of M/s. Maheshwari & Associates, Chartered Accountants, there are 02 (Two) Secured Creditors in the Transferee Company as on 30.06.2020. The Secured Creditors constituting 100% in value have given their consent to the Scheme of

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Amalgamation and for the dispensation of meeting of Secured Creditors by way of affidavit and there are (Sixteen) Unsecured Creditors in the Transferee Company as on 30.06.2020. The Unsecured Creditors constituting 98.35% in value have given their consent to the Scheme of Amalgamation and for the dispensation of meeting of Unsecured Creditors by way of affidavit. List of Secured and Unsecured Creditors along with the consent affidavits are attached as Annexure-H (Colly) of the Application.

12. The learned PCS for the Applicant Companies have submitted that as per the Certificate dated 09.09.2020 (Annexure-G {Colly}) of M/s. M O J & Associates, Chartered Accountants, there are 05 (Five) Equity Shareholders in the Transferor Company as on 30.06.2020. The details are given below:

Sl. No	Name	Address	No. of Shares held	% Shareholding
1	SPML Infra Limited	F-27/2, Okhla Industrial Area, Phase-II, New Delhi-110020	25,000	26.04%
2	Master Dev Sethi by F&G Mr. Deepak Sethi	Villa No. B-9, Yemalur Homes Owners Association, Epsilon Ventures, Yemalur Main Road, Bangalore- 570037	100	0.10%
3	Priti Devi Sethi	Villa No. B-9, Yemalur Homes Owners Association, Epsilon Ventures, Yemalur Main Road, Bangalore- 570037	8,200	8.55%
4	Vineeta Sethi	Villa No. B-9, Yemalur Homes Owners Association, Epsilon Ventures, Yemalur Main Road, Bangalore- 570037	3,700	3.85%
5	SPML Infrastructure Limited	Golden Enclave, Corporate Block, Tower B1 5 th Floor, HAL Old Airport Road, Bengaluru - 560017	59,000	61.46%
TOTAL			96,000	100

All the Equity Shareholders of the Transferor Company have given their consents by way of affidavits to the Scheme. The Consent affidavits are part of Annexure-G (Colly) of the Application.

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13. The learned PCS for the Applicant Companies have submitted that as per the Certificate dated 09.09.2020 (Annexure-G {Colly}) of M/s. M O J & Associates, Chartered Accountants, there is 01 (One) Preference Shareholder in the Transferor Company as on 30.06.2020. The details are given below:

Sl. No	Name	Address	No. of Shares held	% Shareholding
1	SPML Infrastructure Limited	Golden Enclave, Corporate Block, Tower B1 5 th Floor, HAL Old Airport Road, Bengaluru - 560017	3,68,14,000	100
TOTAL			3,68,14,000	100

14. The learned PCS for the Applicant Companies have submitted that as per the Certificate dated 09.09.2020 of M/s. M O J & Associates, Chartered Accountants, there are no Secured Creditors in the Transferor Company as on 30.06.2020 and there are 03 (Three) Unsecured Creditors in the Transferor Company as on 30.06.2020. The Unsecured Creditors constituting 100% in value have given their consent to the Scheme of Amalgamation and for the dispensation of meeting of Unsecured Creditors by way of affidavit. List of Secured and Unsecured Creditors along with the consent affidavits are attached as Annexure-H (Colly) of the Application.

15. It is stated in Para 7 of the Application that the Scheme of Amalgamation is contract amongst two Companies which will not affect the rights of the Creditors of the Joint Applicants.

16. We have heard the learned PCS for the Applicant Companies and have perused the records carefully.

17. This Tribunal vide order dated 07.04.2021 directed the Applicant Companies to issue paper notification about seeking dispensation of the meetings of the Applicant Companies. In Compliance of the same the Applicant Companies has filed an affidavit dated 05.07.2021 stating that they had issued paper publication on 09.04.2021 one in Kannada

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Newspaper viz., “Kannada Prabha” and one in English Newspaper viz., “The New Sunday Express”. It is further submitted that no objections were received on seeking dispensation of the meeting of the Applicant Companies.

18. It is represented that the rationale of Scheme is given in preamble of the Scheme. It is stated that the Scheme will benefit both the Transferor and Transferee Company to carry on their business as a combined unit on a larger scale and would be in the interest of shareholders, creditors, employees, customers and all other stakeholders on account of the following reasons:

- (i) *The Transferor Company is one of the key players in the business of solid waste management and provides waste management solutions as per the guidelines issued by Municipal Corporation, local authorities and the Transferee Company, a key player in the business of undertaking infrastructure projects. The amalgamation will enable the consolidation of the business of Transferor and Transferee Companies into one entity and will facilitate growth, operational efficiency, integration of synergies and better supervisions of the combined entity with streamlined management control and operation of businesses and activities, and will enable the combined entity to participate more vigorously and profitably in an increasing competitive market.*
- (ii) *The business of Transferor Company complements the business of Transferee Company. Waste Management forms a significant cost element in the business of Infrastructure development. The amalgamation will enable the combined entity to provide holistic, innovative and unified infrastructure and waste management solutions to the customers in a cost effective and sustainable manner, resulting in stronger consolidated revenue and profitability, with diversification in product portfolio.*
- (iii) *Cost savings are expected to flow from more focussed operational efforts, rationalization, standardization and simplification of business processes, improved procurement, and elimination of duplication and rationalization of administrative expenses.*

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(iv) *The amalgamation of the Transferor Company and the Transferee Company will streamline the group structure by reducing the number of legal entities in the group structure and will reduce the administrative costs of maintaining separate companies and this will further result in pooling of assets, human, financial and technical resources of the companies, thereby contributing to the growth of merged Company.*

19. It is further submitted that the certified true copy of the Valuation Report dated 17.06.2020 issued by CA Avneep L Mehta (Registered Valuer) is attached as Annexure-F. The following Share Exchange Ratio has been proposed:

“10(Ten Only) fully paid up equity share of face value Re.1/- (Rupee One Only) each of SPML Infrastructure Limited, be issued to the Equity shareholders of DOON Valley Waste Management Private Limited for every 228 (Two Hundred and Twenty Eight Only) equity shares of face value Rs.10/- (Rupees Ten only) each held by them”

20. The learned PCS for the Applicant Companies also submitted that the certificate of the statutory auditors has been filed stating therein that the accounting treatment specified in Para 12 under Part D of aforesaid draft Scheme of Amalgamation is in compliance with applicable accounting standard under Section 133 of Companies Act 2013 and other generally accepted accounting principles and circulars issued thereunder and all applicable accounting standards notified by central government under Companies Act, 2013. The aforesaid certificate dated 14.09.2020 is attached as Annexure I.

21. The learned PCS for the Applicant Companies further represented that the Transferee Company and the Transferor Company have filed audited financial statements for year ending on 31.03.2020 and 31.03.2019 as Annexure C (colly) respectively.

22. Clause 8.1 of the Scheme, stated that all staff, workmen and employees of the Transferor Company in service on the Effective Date shall be deemed to have become and engaged as staff, workmen and employees of

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Transferee Company with effect from the Effective Date without any break in their service and the terms and conditions of their employment with the Transferee Company shall not be less favourable than those applicable to them with reference to the Transferor Company on the Effective Date and such of those labour legislations in so far as they are applicable to the Transferor company in relation to their workmen and employees shall be applicable to the Transferee company.

23. Further, Clause 5 of the Scheme, stated that all the legal and other proceedings, including before any statutory or quasi-judicial authority or tribunal of whatsoever nature by or against the Transferor Company pending and/or arising at the Appointed Date, shall be continued and enforced by or against the Transferee Company only. It is further stated that after the appointed date, if any proceedings are taken against the Transferor Company the same shall be defended by and at the cost of the Transferee Company.
24. In view of the aforesaid discussion, the meeting of the Equity Shareholders of Applicant Companies, meeting of the Preference Shareholders of Applicant Company No.2, meeting of the Secured Creditors of the Applicant No.1 and meeting of Unsecured Creditors of the Applicant companies are dispensed with. Since, there are no Secured Creditors in Applicant Company No.2, therefore there is nothing to convene their meetings.
25. In view of the above, the First Motion Application bearing CA (CAA) No. 22/BB/2021 stands allowed giving liberty to the Applicant Companies to file Second Motion petition with the direction that the Applicant Companies shall make specific prayer for sending notice to the (1). Central Government, (2). Registrar of Companies, (3). Competition Commission of India, (4) Official Liquidator, (5). Income Tax Authorities and other relevant statutory authorities by disclosing the PAN numbers of all the Applicant Companies in the title of the Second Motion Petition, so as to provide the

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proper opportunity to the Income Tax Department to respond in respect of the Applicant Companies.

26. A Copy of this order be supplied to the learned PCS for the Applicant Companies.

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(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

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(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)

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