

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CA (CAA) NO. 909/230/HDB/2018
U/s 230 to 232 of the Companies Act, 2013
R/w Rule 3 of Companies (Compromises,
Arrangements and Amalgamations) Rules, 2016.

IN THE MATTER OF

M/s. Bhubaneswar Industrial Waste Management (Orissa) Private Limited
(Transferor Company)

AND

M/s. Ramky Enviro Engineers Limited
(Transferee Company)

AND

Their respective Shareholders


M/s. Bhubaneswar Industrial Waste Management (Orissa)
Private Limited
Having registered office at
13th Floor, Ramky Grandiose,
Ramky Towers, Gachibowli,
Hyderabad – 500032,
Telangana, India
Rep. by its Authorised Signatory,
Mr. Ganesh Pulicherla

First Applicant/
Transferor Company

AND

M/s. Ramky Enviro Engineers Limited
13th Floor, Ramky Grandiose,
Ramky Towers, Gachibowli,
Hyderabad – 500032,
Telangana, India

Second Applicant/
Transferee Company



Date of order: 05.10.2018

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Counsels / Parties Present

For the Applicants : Shri V.S.RAJU,
Advocate

Per: Hon'ble Shri Ratakonda Murali, Member (Judicial)

Heard on: 03.10.2018

ORDER

1. This is a joint Application filed on behalf of Bhubaneswar Industrial Waste Management (Orissa) Private Limited (hereinafter referred to as "the First Applicant Company/Transferor Company") and Ramky Enviro Engineers Limited (hereinafter referred to as "the Second Applicant Company/ Transferee Company") under Section 230-232 of the Companies Act, 2013, by inter-alia seeking to Convening a meeting of the Equity Shareholders, preference shareholders, Secured Creditors, for Unsecured Creditors, of the Second Applicant Company/Transferee Company and dispense with the meeting of the equity shareholders of the Transferor Company/first Applicant company .
2. The averments made in the application are briefly described as under:
 - a. Bhubaneswar Industrial Waste Management (Orissa) Private Limited (hereinafter referred to as "the First Applicant Company/Transferor Company") was incorporated under the Companies Act, 1956 in the then State of Andhra Pradesh on 16th day of August, 2012 and its Corporate Identity Number is U90001TG2012PTC082525. A copy of the Memorandum and Articles of Association of the First Applicant Company is Annexed hereto as **Annexure- A**.

- b. The authorized, issued, subscribed and paid-up share capital of the First Applicant Company as on 31st March, 2017 was as under:

Particulars	Amount (INR)
Authorised Share Capital	
10,000 Equity Shares of INR 10/- each	1,00,000
Issued, Subscribed and Paid-up Share Capital	Amount (INR)
10,000 Equity Shares of INR 10/- each fully paid up	1,00,000

Subsequent to March 31, 2017, the Transferor Company has issued additional equity share capital of INR 1,79,23,59,600 (Rupees One Hundred and Seventy Nine Crores Twenty Three Lakhs Fifty Nine Thousand and Six Hundred only) divided into 17,92,35,960 (Seventeen Crores Ninety Two Lakhs Thirty Five Thousand Nine Hundred and Sixty) shares of INR 10 (Rupees Ten) each. The current share capital structure of the Transferor Company as of August 31, 2018 is as under:

Authorised Capital	Amount (INR)
17,92,50,000 Equity Shares of INR 10 each	1,79,25,00,000
Issued, Subscribed and Paid-up Capital	Amount (INR)
17,92,45,960 Equity Shares of INR 10 each fully paid up	1,79,24,59,600

- c. The main objects of the Transferor Company No.1, as set out in its Memorandum of Association is to carry on the

business of Consultants, Advisors in areas mentioned above and provide training in segregation of wastes and occupational safety and to organise workshops and seminars to provide for identification and implementation of waste reuse/recycle/recovery options and thereby effect conservation of natural resources for overall effective waste management." The First Applicant Company is engaged in the business of collection and treatment of industrial and commercial wastes.


- d. Ramky Enviro Engineers Limited (hereinafter referred to as "the Second Applicant Company") was incorporated under the Companies Act, 1956 in the name of 'Ramky Enviro Engineers Limited' on 28th day of November, 1994 in the then State of Andhra Pradesh and its Corporate Identity Number is U74140TG1994PLC018833. A copy of the Memorandum and Articles of Association of the Second Applicant Company is annexed as **Annexure C**.
- e. The authorized, issued, subscribed and paid-up share capital of the Second Applicant Company as on 31st March, 2017 was as under:

Particulars	Amount (INR)
<u>Authorised Share Capital</u>	
2,59,99,900 Class A Equity Shares of INR 10 each	25,99,99,000
100 Class B Equity Shares of INR 10 each	1,000
1,00,000 0.001%, cumulative compulsorily convertible preference shares of INR 100 each	1,00,00,000
	27,00,00,000
Issued, Subscribed and Paid-up Capital	
4,177,358 Class A Equity Shares of INR 10 each fully paid-up	4,17,73,580
100 Class B Equity Shares of INR 10 each fully paid-up	1,000

71,145 0.001%, cumulative compulsorily convertible preference shares of INR 100 each fully paid up	71,14,500
	4,88,89,080

3. The Board of Directors of the Applicant Companies in their respective Board Meetings held on August 31, 2018 have approved the Scheme of Amalgamation, subject to the approval of their shareholders and this Hon'ble Bench with the appointed date being 01.04.2018. A copy of Board Resolution of the First Applicant Company is marked as **Annexure- E** and the second Applicant Company is marked as **Annexure-F**.
4. The proposed Scheme of Amalgamation of the Transferor Company with the Transferee Company is having the following benefits.
 - A. Greater integration, enhancement of financial strength and flexibility for the combined entities , to capitalize on future expected growth in infrastructure business within and outside the country;
 - B. Greater efficiency in cash management of the combined entity and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund growth opportunities, to further improve shareholder's value;
 - C. Simplification of the group structure by streamlining and restructuring the business operations under a single entity;
 - D. Greater leverage in operations planning and process optimization and enhanced flexibility in its operations;
 - E. Result in reduction in and / or optimization in overheads costs, administrative, managerial and other expenditure, operational rationalization, organizational efficiency, and optimal utilization of

various resources and also benefiting from economies of scale;

- F. Consolidate the managerial expertise of the companies' involved thereby giving additional strength to the operations and management of the Transferee Company resulting into expansion of the combined business; and
- G. 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.
5. It is averred that the First Applicant Company / Transferor Company has **5 (Five) shareholders**. A Certificate dated 01.09.2018 issued by Udaya Bhaskar & Associates, Chartered Accountant, certifying the list of Equity Shareholders and the no. of shares held by them in the First Applicant Company is enclosed along with memo dated 03.09.2018. It is averred that all of them have given their consent Affidavits which are annexed and marked as **Annexure I**.
6. It is averred that there are 3 (three) classes of shares in the Second Applicant Company – Class A equity shares, Class B equity shares and Class A preference shares, having 14 (fourteen), 5 (five) and 3 (three) shareholders respectively, who are interested in the proposed Scheme of Amalgamation and the list of the same duly certified by the Chartered Accountant is annexed herewith as **Annexure J**.
7. There are no secured creditors in the First Applicant Company as on July 31, 2018. Further, there is 1 (One) unsecured creditor in the First Applicant Company. The said unsecured creditor of the First Applicant Company has given the consent affidavit. A copy of the list of unsecured creditors duly certified by the Chartered Accountant and the
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consent affidavits are annexed herewith as **Annexure H and K**. There are 6 (six) secured creditors and 3,982 (Three thousand nine hundred and eighty two) unsecured creditors in the Second Applicant Company who are interested in the proposed scheme of amalgamation and a copy of the list of creditors duly certified by the Chartered Accountant is annexed herewith as **Annexure J**.

8. In the light of above facts, the Applicant Companies prays for the following reliefs:

In case of the First Applicant Company / Transferor Company:

- (i) To dispense with the meetings of the Equity Shareholders and Unsecured Creditors of the First Applicant Company/ Transferor Company and pass such other order or orders as this Hon'ble Bench may deem fit and proper in the circumstances of the case.

In case of the Second Applicant Company / Transferee Company:

- (i) To convene the meeting of the Equity Shareholders, Preference Shareholders, Secured and unsecured creditors of the Second Applicant / Transferee Company at the registered office of the Company or any other place as may be directed, for consideration of the proposed Scheme consequently.
 - (ii) To appoint a Chairperson for convening and conducting the meetings of the Equity Shareholders, Preference Shareholders, Secured and unsecured creditors.
 - (iii) That the quorum be fixed as 5 (five) in equity shareholders, 2 (two) in preference shareholders, 2 (two) creditors personally present in the secured creditors meeting and 10 (ten) creditors personally present in the unsecured creditors meeting.
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- (iv) The equity shareholders, secured creditors and unsecured creditors be permitted to exercise their vote at the meeting either in person or through proxies.
- (v) As to the manner of giving the notices of the said meetings, it is sufficient to serve the notices on the equity shareholders, Preference Shareholders, secured creditors and unsecured creditors of the Second Applicant / Transferee Company by Ordinary Post.
- (vi) That the advertisement be directed to be published once in English Edition of "The Business Standard", Hyderabad Edition and once in Telugu Edition of "Nava Telangana", Hyderabad Edition.
- (vii) As for the time for the Chairperson of the respective meetings to file their report to the Hon'ble Tribunal of the result of the meetings, the time be fixed at least 10 days from the date of the said meetings.
- (viii) Pass such other order or orders as this Hon'ble Bench may deem fit and proper in the circumstances of the case in the interest of justice and equity.

9. I have heard the Counsel and I have seen the consent Affidavits filed by shareholders, of the Applicant Companies. I have also seen the consent given by secured creditors of the Applicant Companies.

Section 230 (i) of Companies Act, 2013 contemplates holding of meeting unless 90% of the Creditors gave consent by way of Affidavits to dispense with meetings. In this case, the Secured, unsecured and trade creditors have given consent by way of Affidavits to dispense with meetings of first applicant company. Section 230(9) of Companies Act, 2013 provides that 90% of the Creditors to give consent for dispensing with convening of meeting. Secured, Unsecured and shareholders in the case 2nd Applicant Company have not given consent by way of Affidavits. Therefore, the request of the 2nd Applicant Company for

conveying meeting of shareholders, secured and unsecured creditors be convene and held in the manner mentioned below.

10. After hearing the Counsel and after perusing the documents filed, I pass the following order:-

- (a) Hereby dispensed with the meeting of the Equity Shareholders & Unsecured Creditor of the First Applicant Company.
- (b) Hereby ordered convening meetings of Equity Shareholders, Preference Shareholders, Secured, Unsecured Creditors of Second Applicant Company.
- (c) Appointed Shri Srikanth.M Advocate #R/o Unit No.12, First Floor, Maitri Arcade, Ranigunj, Secunderabad, (Mob:9885347534) as Chairman and Ms.G.Sumathi, Advocate, R/o. H.No. 9/91/9/1, Prashamsa Nilayam, Ashok Nagar, Road No.2, Boduppall, Hyderabad (Mob. 9603477388) as Scrutinizer for convening the meetings of Equity Shareholders & Preference Shareholders. Fee fixed for Chairperson is Rs. 70,000 and Rs.25,000 for scrutinizer for the above meetings.
- (d) Appointed Ms.Sri latha, Advocate #R/o House No.12-13-528/529, Flat No.204, Sri Sai Nivasam, Street No.14, Nagarjuna Nagar Colony, Tarnaka, Secunderabad- 500 017 (Mob:9849733396) as Chairman and Ms.Lakshmi Sindhura, Advocate, # R/o. H.No 2-2-18/18/4/24/A, d.d.Colony, Bagh Amberpet, Hyderabad-500 013, Advocate (Mob. 9652159595) as Scrutinizer for convening the meetings of Secured, Unsecured Creditors of Second Applicant Company. Fee fixed for Chairperson is Rs. 70,000 and Rs.25,000 for scrutinizer for the above meetings.
- (e) Meeting of Equity Shareholders will be held on 17 th day of November, 2018 at 10 AM on saturday at Hotel Avasa Hi-tec City Road, HUDA Techno Enclave, Sector- I, Hyderabad- 500 081, Telangana. Quorum may be fixed 5

shareholders either in person or proxy. No of equity shareholders is 21.

- (f) Meeting of Preference Shareholders will be held on 17 th day of November, 2018 at 11 AM on Saturday at Hotel Avasa Hi-tec City Road, HUDA Techno Enclave, Sector- I, Hyderabad- 500 081, Telangana. Quorum may be fixed 2 preference shareholders either in person or proxy. No of preference shareholders is 5.
- (g) Meeting of secured creditors will be held on 17 th day of November, 2018 at 12 Noon on saturday at Hotel Avasa Hi-tec City Road, HUDA Techno Enclave, Sector- I, Hyderabad- 500 081, Telangana. Quorum may be fixed 2 secured creditors either in person or proxy. No of secured creditors is 8.
- (h) Meeting of unsecured creditors will be held on 17 th day of November, 2018 at 02.00 PM on saturday at Hotel Avasa Hi-tec City Road, HUDA Techno Enclave, Sector- I, Hyderabad- 500 081, Telangana. Quorum may be fixed 10 unsecured creditors either in person or proxy. There are 3982 unsecured creditors holding to the value of Rs. 110,57,59,394, out of which 643 Unsecured Creditors holding to the value of Rs. 104,08,82,490/- accounting for 94.13% out of total unsecured debt. Notice is ordered to be given to the unsecured creditors whose debt is Rs.1,00,000/- and above.

- (j) The Quorum fixed for the meeting are as under:-

Second Applicant Company:

For Equity Shareholders meeting: 5

For Preference Shareholders meeting: 2

For Secured Creditors (personally) meeting : 2

For Unsecured creditors (personally) meeting: 10

- (k) The equity shareholders, preference shareholders, secured creditors and unsecured creditors be permitted to exercise their vote at the meeting either in person or through proxies.
- (l) The notice of the Meetings of Secured, Unsecured and Equity Shareholders and Preference shareholders of Second Applicant Company shall be published in "Business Standard" (English Daily) and in "Nava Telangana" (Telugu Daily). Notice is ordered to be given to the unsecured creditors whose debt is Rs.1,00,000/- and above.
- (m) The 2nd Applicant Company or its authorized Signatory are directed to issue notices (s) to Secured, Unsecured, Equity Shareholders and Preference shareholders of Second Applicant Company by ordinary post; or Air Mail or email or hand delivery to their last known address 30 clear days before the said meetings as per Form No. CAA2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ensuring convening the said meetings of the Applicant Companies. Further directed to intimate day, date and time, a copy of Explanatory Statement, pursuant to be sent under Section 230 of the Companies Act, 2013 and Proxy as per Form No. MGT-11 (Rule 19) of the Companies (Management and Administration) Rules, 2014.
- (n) The Applicant Company to serve notices upon the Regional Director, South-East Region, Ministry of Corporate Affairs, Hyderabad pursuant to Section 230 (5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 if no response is received by the Tribunal from Regional Director within 30 days of the date of receipt of the notice, it will be presumed that

Regional Director and/or Central Government has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016.

- (o) The Applicant Company to serve the notice upon the Registrar of Companies Hyderabad pursuant to Section 230 (5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises Arrangement and Amalgamations) Rules, 2016 and if no response is received by the Tribunal from Registrar of Companies, Hyderabad within 30 days of the date of receipt of the notice, it will be presumed that Registrar of Companies, Hyderabad has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromise Arrangements and Amalgamations) Rules, 2016.
- (p) The Applicant Company to serve notice upon the Income Tax Authority, within whose jurisdiction that Applicant Company's Assessment are made, pursuant to Section 230 (5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 if no response is received by the Tribunal from Income Tax Authority within 30 days of the date of receipt of the notice, it will be presumed that Income Tax Authority has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromise, Arrangement and Amalgamation) Rules, 2016.
- (q) The Applicant Companies to serve notice upon the Official Liquidator pursuant to Section 230 (5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises Arrangements and Amalgamations) Rules, 2016 if no response is received by the Tribunal from Official Liquidator within 30 days of the date of receipt of the notice it will be presumed that Official Liquidator has no objection to the proposed Scheme as per Rule 8 of the

Companies (Compromise, Arrangement and Amalgamation) Rules, 2016.

- (r) The Chairmen shall have all powers under the Companies (Compromises, Arrangement and Amalgamation) Rules, 2016 in relation to the conduct of the meetings (s) including for deciding procedural questions that may arise before or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meeting by any person (s).
- (s) The voting shall be in person or by proxy or authorized representative in case be permitted, provided that the proxy in the Form No. MGT-11 authorization duly signed by the person entitled to attend and vote at the meeting, is to be filed with the Applicant Company at its Registered office, not later than, forty eight hours before the aforesaid meeting in accordance with Rule 10 of the Companies (Compromise, Arrangement and Amalgamation) Rules, 2016.
- (t) The Chairmen to file affidavit within 7 days from the date of the said meetings to this Tribunal that the direction regarding convening and issuance of notice (s) to all the necessary parties have been duly complied with in conformity with the relevant provisions of the Companies Act, 2013 R/w Companies (Compromise, Arrangement and Amalgamation) Rules, 2016. The Chairman shall report the conclusion of the aforesaid meeting as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.


5/10/18
RATAKONDA MURALI
MEMBER (JUDICIAL)

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