

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P.(CAA)47/BB/2017

Under Section 230 to 232 of Companies Act, 2013

Orders Delivered on: 31st January 2018

IN THE MATTER OF
SPML INFRASTRUCTURE LIMITED
AND
ADD URBAN ENVIRO LIMITED,
AND
JAMSHEDPUR WASTE PROCESSING COMPANY PRIVATE LIMITED

SPML Infrastructure Limited,
The ICON, No.8, 5th Floor,
80 Feet Main Road, Indiranagar,
HAL III Stage,
Bangalore-560075 - TRANSFEREE COMPANY/PETITIONER No.1

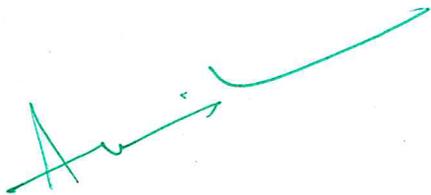
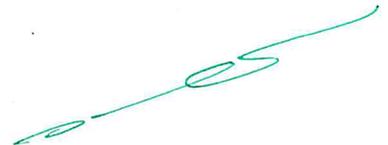
Add Urban Enviro Limited,
The ICON, No.8, 5th Floor,
80 Feet Main Road, Indiranagar,
HAL III Stage,
Bangalore-560075 - TRANSFEROR COMPANY-1/PETITIONER No.2

Jamshedpur Waste Processing Company Limited,
The ICON, No.8, 5th Floor,
80 Feet Main Road, Indiranagar,
HAL III Stage,
Bangalore-560075 - TRANSFEROR COMPANY-2/PETITIONER No.3

Coram: Hon'ble Shri Ratakonda Murali, Member (Judicial)
Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

For the Petitioner (s): Mr. C.S Thirupal Gorige, No.87, 2nd Floor, 21st
Cross, 7th Main, N.S.Palya, BTM 2nd Stage,
Bangalore-560076 - Practicing Company Secretary
and Authorised Representative for the Petitioner.

For the Respondent(s): Smt. Sanchana, M.R. Standing Counsel for RO/ROC.
Per: Hon'ble Shri Ashok Kumar Mishra, Member (Technical) - Author

ORDER

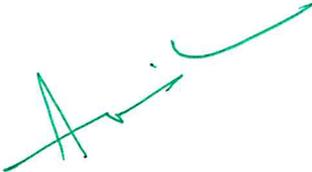
This is a Joint Petition filed by the Petitioner Companies namely SPML Infrastructure Limited (Petitioner / Transferee Company), ADD Urban Enviro Limited (Petitioner No.2/ Transferor Company No.1), and Jamshedpur Waste Processing Company Private Limited (Petitioner No.3/ Transferor Company No.2) under Section 230 to 232 of Companies Act, 2013 read with Rule 3 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, praying to order for sanctioning the Scheme of Amalgamation between Petitioner/Transferor Companies and the Petitioner/Transferee Company and shall be binding upon all the Shareholders and Creditors of the respective Petitioner Companies.

The averments made in the Company Petition are briefly described hereunder:-

The Petitioner Companies seek an order for sanctioning the Scheme of Amalgamation between ADD Urban Enviro Limited (Petitioner No.2/ Transferor Company No.1), and Jamshedpur Waste Processing Company Private Limited (Petitioner No.3/ Transferor Company No.2) under Section 230 to 232 of Companies Act, 2013 read Rule 3(2) of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 which are proposed to be merged with **SPML Infrastructure Limited** (Petitioner / Transferee Company No.1) and shall be binding upon all the Shareholders and Creditors of the Petitioner Companies. The Scheme of Amalgamation is shown as **Annexure A**.

The averments made in the Joint Company Petition are briefly described hereunder:-

It is averred that the Petitioner / Transferee Company No.1 was incorporated on 16th August, 2007 with Registrar of Companies, Karnataka under the name and style of **SPML Infrastructures Limited**. Subsequently on 25th January, 2008 the name of the Petitioner / Transferee Company No.1 was changed to **SPML Infrastructure Limited**. The Registered Office of the Petitioner / Transferee Company No.1 is situated at The Icon, No.8, 5th Floor, 80 Feet Main Road, Indiranagar, HAL III Stage, Bangalore-560075.



The main objects of the Petitioner / Transferee Company No.1 is to carry on either directly and/or as the Holding 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 township, toll plazas, hotels, to carry on the business of promoters, developers, builders, creators, operators, owners, organisers of all primary, secondary and ancillary including key internal, external and any kind of infrastructure facilities and services including cities, towns, all kinds of roads, flyovers, express ways, high ways, ports airports, airways, railways, tramways, mass rapid transport systems etc., The copy of Memorandum and Articles of Association of the Petitioner / Transferee Company No.1 shown as **Annexure-C series**.

The latest authorized share capital of Petitioner / Transferee Company No.1 is Rs.1,00,00,000/- divided into 1,00,00,000 Equity Shares of Rs.1/- each. The issued, subscribed and paid-up share capital is Rs.49,64,800/- divided into 49,64,800 Equity Shares of Rs.1/-each fully paid up.

As per the Audited Balance Sheet of the Petitioner / Transferee Company No.1 as on 31st March, 2017 the Assets and Liabilities is as follows:-

Equity and Liabilities	Amount Rs.	Asset	Amount Rs.
Shareholders' Funds		Non-Current Assets	
Share Capital	49,64,800	Fixed Assets - Tangible	2,825
Reserve and Surplus	334,70,36,118	Non-current investments	37,39,82,740
Non Current Liabilities		Deferred tax Assets (Net)	3,19,259
Long term provisions	6,05,769	Long term loans and advances	5,84,42,882
Current Liabilities		Current Assets	
Short term borrowings	31,59,664	Cash and Bank Balances	3,08,682
Trade Payables	86,16,287	Short term loans and advances	20,30,89,341
Other Current Liabilities	27,11,30,833		
Short Term provisions	6,32,258		
Total	63,61,45,729	Total	63,61,45,729

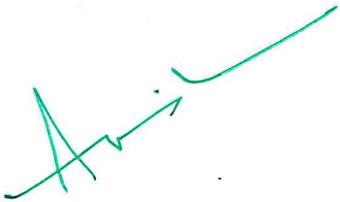
The Copy of Audited Balance Sheet as on 31st March, 2017 is shown as **Annexure-D series.**

It is further stated that Petitioner No.2/ Transferor Company No.1 was incorporated on 17th April, 2008 under the name and style of **SPML Urban Enviro Limited.** Subsequently on 14th April, 2011 the name was changed to **ADD Urban Enviro Limited.** The Registered office of the Petitioner No.2/ Transferor Company No.1 is situated at The Icon, No.8, 5th Floor, 80 feet Main Road, Indiranagar, HAL III Stage, Bangalore-560075.

The main objects of the Petitioner No.2/ Transferor Company No.1 is to carry on either directly and/ or Holding company the business of all kinds of infrastructure projects including municipal solid waste management scheme, waste processing centres, sewage entitlement treatment plans, environmental protection and pollution control system, environmental management technology systems, integrated utility management systems, generation of electricity or other forms of energy from the solid waste and sewage in urban sector and to plan and execute various associated business services as part of above schemes in India and abroad. The copy of Memorandum and Articles of Association of the Petitioner No.2/ Transferor Company No.1 is shown as **Annexure-C series.**

The latest authorised capital of the Petitioner No.2/ Transferor Company No.1 is Rs.1,00,00,000/- divided into 1,00,00,000 equity shares of Rs.1/- each. The issued, subscribed and paid-up capital is Rs.24,67,300/- divided into 24,67,300 equity shares of Rs.1/- each.

As per the Audited Balance Sheet of the Petitioner No.2/ Transferor Company No.1 as on 31st March, 2017 the Assets and Liabilities is as follows:-



Equity and Liabilities	Amount Rs.	Asset	Amount Rs.
Shareholders' Funds		Non-Current Assets	
Share Capital	24,67,300		
Reserve and Surplus	15,90,24,365	Non-current investments	28,21,58,200
Current Liabilities		Current Assets	
Short term borrowings	17,61,64,940	Cash and Bank Balances	1,92,510
Other Current Liabilities	16,93,612		
Total	33.93,50,217	Total	33.93,50,217

The Copy of Audited Balance Sheet as on 31st March, 2017 is shown as **Annexure-D series**.

It is further stated that Petitioner No.3/ Transferor Company No.2 was incorporated on 1st August, 2012 under the name and style of **Jamshedpur Waste Processing Company Private Limited** with the Registrar of Companies, Karnataka. The Registered Office of the Petitioner No.3/ Transferor Company No.2 is situated at The Icon, No.8, 5th Floor, 80 feet Main Road, Indiranagar, HAL III rd Stage, Bangalore-560075.

The main objects of the Petitioner No.3/ Transferor Company No.2 is to carry on to develop Integrated Municipal Solid Waste(MSW) management project by complying with the Municipal Solid waste (Management and Handling) Rules, 2000 which includes but not limited to collection, storage and segregation of MSW involving door to door collection, storage and segregation of MSW, Provisions of moveable covered containers, street sweeping and de-silting of drains, processing facility with multiple product recovery for higher recycling of MSW, etc., The copy of Memorandum and Articles of Association of the Petitioner No.3/ Transferor Company No.2 shown as **Annexure-C series**.

The latest authorised capital of the Petitioner No.3/ Transferor Company No.2 is Rs.1,23,50,000/- divided into 93,00,000 equity shares of Rs.1/- each and 30,50,000 - 9% non-cumulative redeemable preference shares of Rs.1/- each. The issued, subscribed and paid-up capital is Rs.1,23,50,000/- divided into 93,00,000 equity shares of Rs.1/- each and 30,50,000 9% non-cumulative redeemable preference shares of Rs.1/- each.

As per the Audited Balance Sheet of the Petitioner No.2/ Transferor Company No.1 as on 31st March, 2017 the Assets and Liabilities is as follows:-

Equity and Liabilities	Amount Rs.	Asset	Amount Rs.
Shareholders' Funds		Non-Current Assets	
Share Capital	1,23,50,000		
Reserve and Surplus	16,05,912	Fixed Assets	
Current Liabilities		Tangible Assets	638
Short term borrowings	1,71,40,091	Capital work-in-progress	1,19,41,066
Other Current Liabilities	13,71,371	Current Assets	
		Trade Receivable	1,66,00,000
		Cash and Bank Balances	4,07,724
		Short-term loans and advances	3,06,122
Other current assets			
Total	2,92,55,550	Total	2,92,55,550

The Copy of Audited Balance Sheet as on 31st March, 2017 is shown as **Annexure-D series.**

It is further stated that, the Board of Directors of the Transferor Company No.1, Transferor Company No.2 and Transferee Company have approved and adopted a Scheme of Amalgamation at their respective meetings held on 1st March, 2017 by virtue of which ADD Urban Enviro Limited (Petitioner No.2/ Transferor Company No.1), Jamshedpur Waste Processing Company Private Limited (Petitioner No.3/ Transferor Company No.2) are proposed to be merged with SPML Infrastructure Limited (Petitioner No.1/ Transferee Company) subject to confirmation. Copies of the Board Resolution of Transferor Company No.1, Transferor Company No.2 and Transferee Company dated 1st March, 2017 approving and adopting the Scheme of Amalgamation are shown as **Annexure-E Series.**

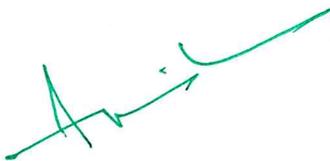
It is further averred in the scheme that the Board of Directors of the Transferor Company No.1, Transferor Company No.2 and Transferee Company are of the opinion that the amalgamation would result in following benefits:



1. Entire shareholding of Transferee Company is held by SPML Infra Limited, Ultimate Holding Company, and its nominee accordingly the Company is a wholly owned subsidiary of SPML Infra Limited. The entire shareholding of Transferor Company-1 is held by SPML Infra Limited and its nominee. Accordingly the Company is a wholly owned subsidiary of SPML Infra Limited. Transferor Company-2 is a subsidiary of SPML Infra Limited, i.e., Transferee Company is indirect subsidiary of SPML Infra Limited. Therefore, Transferee Company, Transferor Company-1 and Transferor Company-2 are the subsidiaries of same holding Company i.e., SPML Infra Limited.
2. To achieve better efficiency and streamlised management control and operation of business and activities, and to enable the combined entity to participate more vigorously and profitability in an increasing competitive market.
3. The amalgamation will enable the Transferee Company to consolidate the businesses and lead to synergies in operation and create a stronger financial base.
4. It would be advantageous to combine the activities and operations of all the mentioned companies into a single company for synergistic linkages and the benefit of combined financial resources. This will be reflected in the profitability of the Transferee Company.
5. Cost savings are expected to flow from more focussed operational efforts, rationalisation, standardization and simplification of business process, improved procurement, and elimination of duplication and rationalization of administrative expenses.

It is further averred that, no investigation proceedings are pending against the Joint Applicants under Section 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.

It is further averred that, the Scheme of Amalgamation does not affect the rights of the Creditors of the Joint Applicants. The Scheme of Amalgamation is contract amongst three companies which will not affect the rights of the creditors of joint applicants.

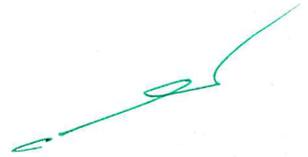


It is further averred that, this Tribunal vide Order dated 6TH September 2017 directed the Petitioner Companies to issue Notice to Regional Director, South-East Region, Ministry of Corporate Affairs, Hyderabad, Registrar of Companies, Karnataka concerned Income Tax Officer and also to the Official Liquidator and also to have an advertisement of Notice of Petition be carried out in the '**Financial Express**', an English daily Newspaper and '**UdayaVani**', a Kannada daily newspaper. In pursuant to this Tribunal Order, the Petitioner Companies served Notices to the Regional Director, South-East Region, Ministry of Corporate Affairs, Hyderabad, Registrar of Companies, Karnataka, Income Tax Officer and Assistant Commissioner of Income Tax and also carried out advertisement of Notice of Meeting on 29th September 2017 in the '**Financial Express**', an English daily Newspaper and '**UdayaVani**', a Kannada daily newspaper.

In pursuant to the same the Counsel for the Petitioner Companies has filed the **Compliance Affidavits dated 29th November 2017** of the respective Authorised Signatories of the Petitioner Companies for carrying out the Advertisement of the Company Petition and issuance of notices to Regional Director, South-East Region, Ministry of Corporate Affairs, Hyderabad; Registrar of Companies, Karnataka, Official Liquidator (in respect of Transferor Companies) and concerned Deputy Commissioner of Income Tax. The Copies of Paper Publication are shown as **Annexure-A** and copies of notice(s) to the above said authorities are shown as **Annexure-B**.

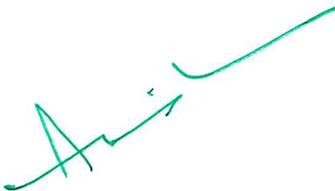
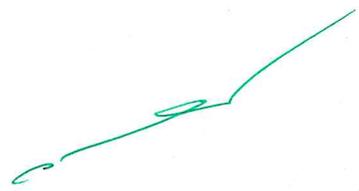
The Official Liquidator has filed Application in O.L.R No.151/17 seeking permission to appoint a Chartered Accountant from among the panel maintained by his office for the purpose of scrutiny of books of accounts and records of the Transferor Company. The Official Liquidator was permitted to appoint a Chartered Accountant from among the panel maintained by his office for the purpose of scrutiny of books of accounts and records of Transferor Companies.

In pursuant to the same the Official Liquidator has submitted his report on 14th December 2017 stating that:



- 1) M/s T.R Chadha & Co LLP, Chartered Accountant was appointed to scrutinize the books of accounts and records of the Transferor Companies, who has submitted his report on 8th December 2017 submitting that:
- a) For the purpose of the report under Sub-section (5) of Section 230 of the Companies Act, 2013, the necessary examination of the books of accounts and records as produced by the company was carried out by us on test-check basis to obtain reasonable assurance that the details produced for our examination for the purpose of report under Section 230 of the Companies Act, 2013 are free of material mis-statement and considering the guideline provided along with the Appointment letter and to the best of our knowledge and belief and also considering the fact of the Scheme of Amalgamation of "M/s ADD Urban Enviro Limited and M/s Jamshedpur Waste Processing Company Private Limited with M/s SMPL Infrastructure Limited" and their respective shareholders, we state as under:
 - b) On the basis of the information and according to the explanations give to us and the review of audited books of accounts produced before us and subject to the remarks made in respective paras, we report that the acts and transactions of the Company were conducted within the objects mentioned in Memorandum of Association of the Company and that the affairs of the company have not been conducted in a manner prejudicial to the interest of its members or to public interest and it would be in order for you to report to the Hon'ble Tribunal in terms of Section 230 (5) of the Companies Act, 2013, or applicable provisions of the Companies Act, 2013 that the Scheme of Amalgamation of "M/s ADD Urban Enviro Limited and M/s Jamshedpur Waste Processing Company Private Limited with M/s SMPL Infrastructure Limited" and their respective shareholders, will be in order.

Copy of the report dated 8th December 2017 is shown as **Annexure-A**.

- 2) Under the circumstances as explained above, the Official Liquidator most respectfully submits that, the petition may be disposed off on its own merit after hearing the objections if any by other sectoral regulator and Transferor Companies may be dissolved without winding up by this Hon'ble Tribunal, and/or any further order/orders as may be deemed fit and proper in the facts and circumstances of the case may kindly be passed.
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The Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad has filed its **Affidavit dated 13th November, 2017** stating that “the Scheme of Amalgamation and other material papers have been examined and that this Deponent has no observations to make. Hence, this Hon’ble Tribunal may be pleased to dispose off the petition on merits and pass such other order or orders as deemed fit and proper in the circumstances”.

The Registrar of Companies, Karnataka, Bangalore vide his letter bearing No. ROCB/Legal/CAA/47/BB/2017 dated 16th October 2017 has submitted his report stating that the Petition may be decided on merits. Since, Regional Director and Registrar of Companies have not raised any comments/observations with respect to the Scheme of Amalgamation of the Petitioner Companies. Therefore, it can be presumed that the Regional Director and Registrar of Companies have no objection.

The Counsel for the Petitioner Companies has also filed the copy of Accounting Treatment Certificate of the Chartered Accountant **dated 11th April, 2017** stating that the Accounting Treatment contained in the Scheme of Amalgamation is in conformity with the Applicable Accounting Standards 14 in the Petition of the Petitioner Companies.

After hearing the Counsel for the Petitioner Companies and considering the material on record,

THIS TRIBUNAL DO FURTHER ORDER

While Approving the Scheme, we make clear that this order should not be construed as an order in any way granting exemption from payment of Stamp Duty, taxes or any other charges, if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specially required under any law.



The Whole of the property, rights and powers of the Transferor Companies be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to section 232 of the Companies Act, 2013, be transferred to and vest in the transferee company for all the state and interest of the Petitioner Companies therein but subject nevertheless to all the charges now affecting the same; and

All the liabilities including taxes and charges, if any, and duties of the Transferor Companies be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to section 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company; and

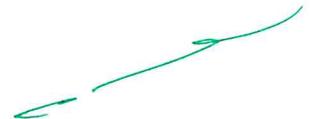
The tax implications, if any, arising out of the scheme is subject to final decision of Concerned Tax Authorities and the decision of the Concerned Tax Authorities shall be binding.

The Petitioner Companies are directed to strictly comply with the Accounting Treatment Standards prescribed under Section 133 of the Companies Act, 2013.

All the proceedings now pending by or against the Transferor Companies be continued by or against the Transferee Company, if any; and

The Petitioner Companies shall within thirty days of the date of the receipt of this order cause a certified copy of this order along with a copy of scheme of Amalgamation to be delivered to the Registrar of Companies for registration in accordance with Rule 25 (7) of Companies (Compromises, Arrangements & Amalgamations) Rules, 2016.

The Scheme shall be effective from the appointed date as mentioned in the Scheme of Amalgamation i.e. 1st April, 2016.



The Transferor Companies or its authorised signatory is directed that after the completion of the process of Amalgamation to handover the possession of the Books of Accounts and other relevant documents of the Transferor Companies to the Transferee Company for the purpose of section 239 of the Companies Act, 2013.

Any person shall be at the liberty to apply the Tribunal in the above matter for any directions that may be necessary.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RATAKONDA MURALI)
MEMBER, JUDICIAL