

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

C.P. (C.A.A.) 1710/MB/2019

IN

C.A (C.A.A.) 1112/MB/2019

In the matter of the Companies Act, 2013;

AND

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

AND

In the matter of Composite Scheme of
Arrangement and Amalgamation between Green
Gene Enviro Protection and Infrastructure
Private Limited ("GGEPIPL" or "First
Petitioner Company") and Gujarat Enviro
Protection and Infrastructure Limited ("GEPIL"
or "Second Petitioner Company"), GEPIL
Infrastructure Private Limited ("GIPL" or
"Third Petitioner Company"), GEPIL Recyclers
(Rajasthan) Private Limited ("GRRPL" or
"Fourth Petitioner Company") and their
respective shareholders and creditors
('Scheme')

Green Gene Enviro Protection and Infrastructure Private Limited	}
a Company incorporated under the provisions of Companies Act,	}
1956 having its registered office at,	}
370, SVP Road, Cigaretwala Building, Opposite,	}
Central Bank of India, Prarthana Samaj, Near,	}



IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

CP (CAA)/1710/MB/2019

Harkishandas Hospital, Mumbai - 400004,

Maharashtra, India

[CIN: U73100MH2005PTC262100]

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..... First Petitioner Company

Gujarat Enviro Protection and Infrastructure Limited

a Company incorporated under the provisions of Companies,

Act, 1956 having its registered office at,

370, SVP Road, Cigaretwala Building, Opposite,

Central Bank of India, Prarthana Samaj, Near,

Harkishandas Hospital, Mumbai - 400004,

Maharashtra, India

[CIN: U74999MH1999PLC285408]

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..... Second Petitioner Company

GEPIL Infrastructure Private Limited

a Company incorporated under the provisions of

Companies Act, 1956 having its registered office at,

370, SVP Road, Cigaretwala Building, Opposite,

Central Bank of India, Prarthana Samaj, Near,

Harkishandas Hospital, Mumbai - 400004,

Maharashtra, India

[CIN: U45202MH2008PTC270032]

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..... Third Petitioner Company

GEPIL Recyclers (Rajasthan) Private Limited

a Company incorporated under the provisions of Companies Act,

2013 having its registered office at,

370, SVP Road, Cigaretwala Building, Opposite,

Central Bank of India, Prarthana Samaj, Near,

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Harkishandas Hospital, Mumbai - 400004,
Maharashtra, India

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[CIN: U37100MH2014PTC256769]

..... Fourth Petitioner Company

Order delivered on: 20.02.2020

Coram:

Hon'ble **Suchitra Kanuparthi**, Member (J)

Hon'ble **Chandra Bhan Singh**, Member (T)

For the Petitioner(s): Mr. Hemant Sethi i/b M/s. Hemant Sethi & Co., Advocates for the Petitioner

For the Regional Director: Ms Rupa Sutar, Deputy Director

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to the Composite Scheme of Arrangement and Amalgamation between Green Gene Enviro Protection and Infrastructure Private Limited ("GGEPIPL" or "First Petitioner Company") and Gujarat Enviro Protection and Infrastructure Limited ("GEPIL" or "Second Petitioner Company") and GEPIL Infrastructure Private Limited ("GIPL" or "Third Petitioner Company") and GEPIL Recyclers (Rajasthan) Private Limited ("GRRPL" or "Fourth Petitioner Company") and their respective shareholders and creditors ('the Scheme'). The Counsel for the Petitioners further submits that



the present Scheme inter alia proposes (i) slump sale of Ranipet Undertaking of Second Petitioner Company and its vesting in First Petitioner Company, (ii) Demerger of waste management undertaking of Second Petitioner Company and its vesting in First Petitioner Company, (iii) Slump Sale of Solid Waste Disposal Undertaking of Third Petitioner Company and its vesting in First Petitioner Company (iv) Amalgamation of Fourth Petitioner with First Petitioner Company.

2. The Board of Directors of the Petitioner Companies have in their respective meetings held on August 27, 2018 approved the Scheme and thereafter they have approached the Tribunal for sanction of the Scheme.
3. The First, Second and Third Petitioner Companies are engaged in the business of developing, operating and maintaining of infrastructure facilities in respect of solid waste management system. The Fourth Petitioner Company has been incorporated to own, operate, set up and manage alternate fuel and resource facilities (AFRF) to carry out handling, collection, reception, transporting, storage, importing, exporting, converting, processing, and recycling of hazardous or non-hazardous waste material.
4. The proposed Scheme would have the following benefits:
 - Consolidation of companies within the Group;
 - Potential synergies and incremental operational efficiencies by combining with similar and related business;
 - Reduction of operating and compliance costs;
 - Pooling of resources; and
 - Simplified organization structure.



5. The Authorised Share Capital of the First Petitioner Company is Rs. 3,00,00,000/- comprising of 30,00,000 Equity Shares of Rs. 10/- each whereas the Issued, Subscribed and Paid-up Share Capital is Rs. 2,00,00,000/- comprising of 20,00,000 Equity Shares of Rs. 10/- each, fully paid up.
6. The Authorised Share Capital of the Second Petitioner Company is Rs. 21,00,00,000/- comprising of 21,00,000 Equity Shares of Rs. 100/- each whereas the Issued, Subscribed and Paid-up Share Capital is Rs. 20,20,00,000/- comprising of 20,20,000 Equity Shares of Rs. 100/- each, fully paid up.
7. The Authorised Share Capital of the Third Petitioner Company is Rs. 4,00,00,000/- comprising of 40,00,000 Equity Shares of Rs. 10/- each whereas the Issued, Subscribed and Paid-up Share Capital is Rs. 4,00,00,000/- comprising of 40,00,000 Equity Shares of Rs. 10/- each, fully paid up.
8. The Authorised Share Capital of the Fourth Petitioner Company is Rs. 1,00,000/- comprising of 10,000 Equity Shares of Rs. 10/- each whereas the Issued, Subscribed and Paid-up Share Capital is Rs. 1,00,000/- comprising of 10,000 Equity Shares of Rs. 10/- each, fully paid up.
9. Pursuant to the order dated February 01, 2019 passed by this Tribunal in Company Scheme Application No. 1112 of 2018, the meetings of the Shareholders of the Petitioner Companies were convened and held on April 12, 2019 and the Scheme was approved by the requisite majority of the shareholders present in their respective meetings without modification.
10. The Counsel for the Petitioners further state that as per clause 10, 20, 30 and 40 of the Scheme, the shareholders of the Second, Third and Fourth Petitioner Companies will be allotted shares / consideration in the following proportion:



"10.1 - In consideration for the transfer of the Ranipet Undertaking by GEPIL to GGEPIPL, pursuant to this Scheme, GGEPIPL shall discharge / pay the lump sum consideration of INR 20,00,00,000 (in words Twenty Crores) to GEPIL upon the effectiveness of the Scheme or on such later date as the respective Companies may mutually agree."

"20.1 - 41,83,564 (fourty one lakh eighty-three thousand five hundred sixty four) 0.01% Non-cumulative Redeemable Preference Shares of Rs. 10 each fully paid up of GGEPIPL shall be issued and allotted to the shareholders of GEPIL in their shareholding proportion"

"30.1 - In consideration for the transfer of the Solid Waste Disposal Undertaking by GIPL to GGEPIPL, pursuant to this Scheme, GGEPIPL shall discharge / pay the lump sum Consideration of INR 1,00,000 (in words One Lakh only) to GIPL upon the effectiveness of the Scheme or on such later date as the respective Board of Directors of GIPL and GGEPIPL may mutually agree."

"40.1 - 10,000 (ten thousand) 0.01% Non-cumulative Redeemable Preference Share of Rs. 10 each fully paid up of GGEPIPL shall be issued and allotted for 10,000 (ten thousand) Equity shares of Rs. 10 each fully paid up to the shareholders of GRRPL"

11. The Official Liquidator has filed his report dated May 21, 2019 stating therein that the affairs of the Fourth Petitioner Company have been conducted in a proper manner and the Scheme is not prejudicial to the interest of the public or the shareholders. Accordingly, the Fourth Petitioner Company may be ordered to dissolve without winding up.
12. The averments made in the Company Scheme Petition and the submissions made by the Counsel for the Petitioners are:



- (i) The Petitioner Companies had complied with all requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance with this Tribunal. Moreover, the Petitioner Companies undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable.
- (ii) The Regional Director has filed his Report dated May 08, 2019 stating therein that save and except the observations as stated in paragraph IV(a) to (i) of the report, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, the Regional Director has stated that:
- a) *The Petitioners under provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by Amalgamation. Further, the approval of the scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such Authorities is binding on the Petitioner Company(s).*
- b) *It is observed that the Petitioner companies have not submitted the Chairman's Report, admitted copy of the Petition, and Minutes of Order for admission of the Petition. In this regard, the Petitioner has to submit the same for the record of Regional Director.*
- c) *The Hon'ble NCLT may kindly direct to the petitioners to file an undertaking to the extent that the Scheme enclosed to the Company*



Application and the scheme enclosed to the Company Petition, are one and same and there is no discrepancy or deviation;

- d) *In compliance of AS-14 (IND AS-103) the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8)etc.;*
 - e) *Petitioner Company have to undertake to comply with section 232(3)(i) of Companies Act, 2013, where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation and thereafter, petitioners to affirm that they comply with the provisions of the section.*
 - f) *As per the Definition of the Scheme, Appointed date means 1st day of April, 2018 or such other date as may be approved by the NCLT or such other competent authority as may be applicable. In this regard, it is submitted that section 232(6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. However this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.*
- (iii) *Apropos the observations made in paragraph IV(a) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner*



Companies has stated that the notices to the concerned authorities was served on all the Regulatory Authorities (i.e. the Registrar of Companies, the Regional Director, the Official Liquidator and the Income Tax Authorities), Mumbai on 14th March, 2019. Further the petitioner Companies through Learned Counsel undertake that the approval of the scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such Authorities is binding on the Petitioner Company (s).

- (iv) Apropos the observations made in paragraph IV(b) of the Report of the Regional Director is concerned the Petitioner Companies submit that a copy of the admitted petition, copy of order, and copy of Chairman's Report has been submitted with the Regional Director as on 17 October 2019.
- (v) Apropos the observations made in paragraph IV(c) of the Report of the Regional Director is concerned, the petitioner companies through Learned Counsel have confirmed that the scheme enclosed in the Company Scheme Application and the Company Scheme Petition are one and same and there is no discrepancy or deviation.
- (vi) Apropos the observations made in paragraph IV(d) of the Report of Regional Director is concerned, the Petitioner Companies through Learned Counsel have submitted that the First Petitioner Company undertakes that in addition to compliance of AS- 14 (corresponding IND AS-103, if applicable) for accounting treatment, the First Petitioner Company shall also pass such accounting entries as may be necessary in



connection with the Scheme to comply with other applicable accounting standards such as AS-5 (corresponding IND AS-8, if applicable).

- (vii) Apropos the observations made in paragraph IV(e) of the Report of Regional Director is concerned, the Transferee Company undertakes that the authorised share capital of the Transferor Company shall be merged with that of Transferor Company and any fees paid by Transferor Company shall on its authorised share capital shall be set off against the fees payable by Transferee Company on its authorised share capital in accordance with the provisions of section 232(3)(i) of the Companies Act, 2013.
- (viii) Apropos the observations made in paragraph IV(e) of the Report of Regional Director is concerned, the petitioner companies state that the "Appointed date" for the purposes of this Scheme and for Income Tax Purposes means 1st day of April, 2018 or such other date as may be approved by the NCLT or such other competent authority as may be applicable. Further, the Petitioner Companies confirm and undertakes that upon the Hon'ble Tribunal, Mumbai Bench approving the Scheme, the Scheme shall take effect from the Appointed date in terms of provisions of section 232(6) of the Companies Act 2013.
13. The observation made by the Regional Director have been explained by the Petitioners in Para 12(iii) to 12(viii) above. The clarifications and undertakings given by the Counsel for the Petitioner Companies to the observations made in the Report of the Regional Director are considered by this Bench and those are hereby accepted. Subsequently, this bench hereby directs the Petitioner Companies to



comply with the provisions / statements which the Petitioner Companies undertakes herein.

14. 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.
15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 1710 of 2019 filed by the Petitioner Companies are made absolute in terms of prayer clause 15 respectively of the said Company Scheme Petitions.
16. The Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with E-form INC 28 in addition to the physical copy, within 30 days from the date of receipt of the order by the Registry, duly certified by the Deputy Director or the Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.
17. The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Deputy Director or Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the order.
18. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. The Fourth Petitioner Company to pay costs of Rs. 25,000/- to the Official Liquidator, Mumbai. These costs to be paid within four weeks from the date of receipt of order.



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CP (CAA)/1710/MB/2019

19. All authorities concerned, to act on the certified copy of this order along with Scheme duly certified by the Deputy Director or the Assistant Registrar, National Company Law Tribunal, Mumbai Bench.
20. Any person interested in this Scheme, is at liberty to apply to the Tribunal in these matters for any directions or modification that may be necessary.
21. The Scheme is sanctioned and the appointed date of the Scheme is fixed as 1st April, 2018.
22. Ordered accordingly.

Sd/-
CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

Date :- 20.02.2020
A.M.



Sd/-
SUCHITRA KANUPARTHI
MEMBER (JUDICIAL)

Certified True Copy
Copy Issued "free of cost"
On 02/07/2020


Assistant Registrar
National Company Law Tribunal Mumbai Bench