

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2



ITEM No.303
C.A.(CAA)/56(AHM)2023

Order under Section 230-232 r.w of Co. Act, 2013

IN THE MATTER OF:

Gharpure Engineering and Constructions Pvt. Ltd
BEIL Research and Consultancy Pvt. Ltd
BEIL Infrastructure Ltd.

.....Applicants

Order delivered on: 30/01/2024

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

Sd/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)



**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT-2**

CA(CAA)56/(AHM)/2023

[Application under Sections 230-232 and read with other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016].

Scheme of Arrangement in the nature of Amalgamation

of

Gharpure Engineering and Constructions Pvt. Ltd.
(Applicant Company No.1/Transferor Company No.1)

and

BEIL Research and Consultancy Pvt. Ltd.
(Applicant Company No.2/Transferor Company No.2)

with

BEIL Infrastructure Ltd.
(Applicant Company No.3/Transferee Company)

Order Pronounced on : 30.01.2024

CORAM:

**MRS. CHITRA HANKARE
MEMBER (JUDICIAL)**

**DR. VELAMUR G VENKATA CHALAPATHY
MEMBER (TECHNICAL)**



**Gharpure Engineering And
Constructions Pvt. Ltd.**

(CIN: U70200GJ2000PTC141412)
A Company incorporated under the
Companies Act, 1956 and having
its registered office at SF-203,
Concorde Building,
Alkapuri Petrol Pump,
R. C. Dutt Road, Alkapuri,
Vadodara-390007

.....Applicant No.1/
Transferor Company No.1

**BEIL Research and Consultancy
Pvt. Ltd.**

(CIN: U74120GJ2007PTC051689)
A company incorporated under the
Companies Act, 1956 and having
its registered office at Plot No.
9701-16, GIDC Estate,
Ankleshwar-393002

.....Applicant No.2/
Transferor Company No.2

BEIL Infrastructure Ltd

(CIN: U45300GJ1997PLC032696)
A company incorporated under the
Companies Act, 1956 and having
its registered office at
Plot No. 9701/16,
GIDC Estate, Ankleshwar-393002

.....Applicant No.3/
Transferee Company

Appearance :

Mrs. Swati Soparkar, Advocate.

JUDGMENT

1. This is a joint Company Application Viz., (CAA)/56(AHM)/2023) filed by three Applicant Companies, namely Gharpure Engineering and Constructions Private Limited and BEIL Research and Consultancy Private Limited

(Applicant Transferor Companies) and BEIL Infrastructure Limited (Applicant Transferee Company) under Sections 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Arrangement (hereinafter referred to as the “Scheme”) proposed by the Applicant Companies. The said Scheme is also appended as “Annexure – I” to the CA/CAA/56 (AHM) 2023.

2. It is represented that the registered offices of all the applicant companies are situated within the territorial jurisdiction of Registrar of Companies, Ahmedabad, Gujarat, which is falling under the jurisdiction of this Tribunal.
3. The applicant companies in this Company Application have sought for the following reliefs;

	Equity Shareholders	Pref. Shareholders	Secured Creditors	Unsecured Creditors
Transferor Company-1	Dispensation of meeting	Dispensation of meeting	Directions to convene meeting	Directions to convene meeting
Transferor Company-2	Dispensation of meeting	N. A.	Directions to convene meeting	Directions to convene meeting
Transferee Company	Dispensation of meeting Alternatively to convene meeting	N. A.	Directions to convene meeting	Dispensation of meeting Alternatively to convene meeting



4. From the certificate of incorporation filed, it is evident that the Transferor Company No.1 is a Private Limited Company incorporated under the provisions of Companies Act, 1956 on 29.03.2000 with the Registrar of Companies, Pune, Maharashtra as “Gharpure Engineering and Constructions Private Limited”. The registered office of the company was shifted from Pune to Vadodara in the state of Gujarat vide fresh certificate of incorporation on 23.05.2023 and the registered office is currently situated at SF-203, Concorde Building, Alkapuri Petrol Pump, R. C. Dutt Road, Alkapuri, Vadodara 390007 in the State of Gujarat. It is engaged in designing, constructing and executing projects pertaining to water treatment and distribution solutions. It is wholly-owned subsidiary of the Transferee Company.

The details of Share Capital as on 31.03.2023 are as under:-

Particulars	Amount (in Rs.)
Authorized Share Capital	
13,50,000 Equity Shares of Rs.100/- each	13,50,00,000
1,01,50,000 Preference Shares of Rs.100/- each	101,50,00,000
Total	1,15,00,00,000
Issued, subscribed and paid-up share capital	
13,12,608 Equity Shares of Rs.100/- each fully paid up	13,12,60,800
1,00,25,000 Preference Shares of Rs.100/- each fully paid up	1,00,25,00,000
Total	1,13,37,60,800

5. From the certificate of incorporation filed, it is evident that the Transferor Company No.2 was incorporated as Private



Limited Company under Companies Act, 1956 on 07.09.2007, with Registrar of Companies, Ahmedabad, Gujarat, under the name and style of "Bharuch Airport Infrastructure Private Limited". The name was changed to "BEIL Research and Consultancy Private Limited" vide certificate dated 08.12.2014. The Registered Office is situated at Plot No. 9701-16, GIDC Estate, Ankleshwar 393002 in the state of Gujarat. It is engaged in design and project management consultancy services. It is also a wholly-owned subsidiary of the Transferee Company.

The details of Share Capital as on 31.03.2023 are as under:-

Particulars	Amount (in Rs.)
Authorized Share Capital	
50,000 Equity Shares of Rs.10/- each	50,00,000
Total	50,00,000
Issued, subscribed and paid-up share capital	
2,00,000 Equity Shares of Rs.10/- each fully paid up	20,00,000
Total	20,00,000

6. From the certificate of incorporation filed, it is evident that the Transferee Company was incorporated as Public Limited Company under Companies Act, 1956 on 21.07.1997, with Registrar of Companies, Ahmedabad, Gujarat, under the name and style of "Bharuch Enviro Infrastructure Limited ". The name of the company was changed to "BEIL Infrastructure Limited" vide certificate dated 17.05.2019. The registered office is situated at Plot No. 9701-16, GIDC



Estate, Ankleshwar 393002 in the state of Gujarat. It specializes in the management of solid and hazardous waste. It operates a centralized landfill site along with a common incineration and multi effective evaporator system built specifically for the safe and secure disposal of hazardous waste.

The details of Share Capital as on 31.03.2023 are as under:-

Particulars	Amount (in Rs.)
Authorized Share Capital	
3,20,00,000 Equity Shares of Rs.10/- each	32,00,00,000
Total	32,00,00,000
Issued, subscribed and paid-up share capital	
41,43,744 Equity Shares of Rs.10/- each	4,14,37,440
Total	4,14,37,440

7. Affidavit in support of the above application was sworn for and on behalf of the Applicant Companies and has been filed by Mr. Ashok Panjwani in the capacity of Director for the Applicant Companies, duly authorized vide Board Resolutions dated 10.08.2023 for the respective Applicant Companies.
8. **M/s. Gharpure Engineering and Constructions Private Limited (Transferor Company No.1)**
 - (i) There are 2 (Two) Equity Shareholders and 3 (Three) Preference Shareholders. Both the Equity Shareholders and all the Preference Shareholders have




given their written consent on affidavits approving the proposed scheme. The said consent affidavits and C.A. certificate confirming list of shareholders are placed on record.

- (ii) There are 2 (Two) Secured Creditors and more than 300 (Three hundred) Unsecured Creditors as on 31.07.2023. The Chartered Accountant has certified the number and value of the secured and unsecured creditors.

Transferor Company No.1 is seeking dispensation of meeting of its shareholders and sought directions for convening and holding meetings of its secured and unsecured creditors.

9. **BEIL Research and Consultancy Private Limited.
(Transferor Company No.2)**

- (i) There are only 2 (Two) Equity Shareholders and both the Equity Shareholders have given their written consent on affidavits approving the proposed scheme. The said consent affidavits and C.A. certificate confirming list of shareholders are placed on record.
- (iii) There is only 1 (one) Secured Creditor and 30 (thirty) [approx.] Unsecured Creditors as on 31.07.2023. The Chartered Accountant has certified the number and value of the Secured and Unsecured Creditors.




Transferor Company No.2 is seeking dispensation of meeting of its shareholders and sought directions for convening and holding meetings of its secured and unsecured creditors.

10. **BEIL Infrastructure Limited**

(Transferee Company)

- (i) There are 144 (One Hundred and Forty Four) Equity Shareholders. Both the Transferor Companies are wholly owned subsidiaries of Transferee Company, no Equity Shares are required to be issued to the shareholders of the Transferor Companies towards consideration for the proposed amalgamation of the undertakings of the Transferor Companies to Transferee Company. The Scheme does not propose any restructure of capital and no compromise is proposed with the Shareholders of the Applicant Transferee Company. In light of this, the rights and interests of the Equity Shareholders of BEIL are not in any way affected. Hence, the meeting of the equity shareholders of Transferee Company is not required to be convened.

- (ii) There are 2 (Two) Secured Creditors and the certificate issued by the Chartered Accountant is placed on record. Directions are sought to convene a meeting of the Secured creditors in order to obtain their approval to the scheme.

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- (iii) There are more than 650 (Six Hundred Fifty) Unsecured Creditors and the certificate issued by the Chartered Accountants to this effect is placed on record. **It has high positive net worth and the Transferor Companies are profit making companies. The proposed scheme is not likely to have any adverse effect on the Net Worth of the Transferee Company. The net-worth Certificate of the Transferee Company in Pre-Scheme (Rs.387.42 crore) and Post-Scheme (Rs.440.74 crores) as certified by the Statutory Auditors dated 12th September 2023 is placed on record.** Further, the Scheme does not affect the rights and interests of the unsecured creditors.

Reliance is placed by the Transferee Company on order dated 06.04.2021 passed by Hon'ble NCLAT in the matter of **Ambuja Cements Limited** which has been followed by the orders dated 08.02.2023 passed in CA (CAA) No. 2 (AHM) 2023 in the matter of **Torrent Pharmaceuticals Limited** and dated 17.05.2023 passed in CA (CAA) No. 32 (AHM) 2023 in the matter of **The Anup Engineering Limited**; of the Ahmedabad Bench of NCLT. Hence, Transferee Company is seeking dispensation of meeting of its Unsecured Creditors.

11. Rationale of the Scheme

All the three companies belong to the same group of management and are engaged in similar line of activities, viz., waste disposal, recycling, design, and project



management activities for waste management undertaken in different geographical regions of the country.


The key objectives of the Composite Scheme of Arrangement are:

- i) Achieve business synergy through consolidation of activities of all the group companies operating in different regions of the Country.
- ii) Simplification and Consolidation of group structure and reduction in number of entities resulting in greater management focus, control and streamlining of operations and asset utilization;
- iii) Achieve economies in business operations, provide optimal utilization of resources and greater administrative efficiencies and thereby optimize profitability.
- iv) Devise uniform corporate policies for the common business activity and increase the overall effectiveness of the operations including increased market share and allowing the combined entity to become a strong player in the industry.
- v) Have a large based Capital structure and Assets structure to increase the financial leverage.
- vi) Have access to a larger and more diverse talent pool, enabling to attract and retain top talent.
- vii) The Boards of Directors of Transferor Companies as well as Transferee Company believe that this merger will contribute to smooth integration of all the Companies and would benefit the shareholders, employees and other stakeholders of the Transferor Companies and the Transferee Company.

12. The Appointed Date as specified in the Scheme is **01.04.2023**. This application is filed on 03.10.2023.



13. The Statutory Auditors of the Transferor Companies and Transferee Company have examined the Scheme in terms of provisions of Section 232 of Companies Act, 2013 and the rules made thereunder and certified that the Accounting Standards are in compliance with Section 133 of the Companies Act, 2013.
14. Valuation of preference shares was done by M/s. Mukesh Chand Jain, Independent Registered Valuers, having Registration No. IBBI/RV/05/2020/13666. The Transferor Companies being Wholly Owned Subsidiaries of the Transferee Company for the Equity Shares, no Equity Shares are required to be issued towards consideration. The said valuation report has been duly considered by the Board of Directors of the Transferee Company and the Transferor Companies.
15. There are no proceedings / investigation pending against any of the applicant companies under Sections 210-217,219,220,223,224,225, 226 & 227 of the Act and / or Sections 235 to 251 of the Act and the like.
16. There are no winding up petitions and / or any proceedings under the Insolvency and Bankruptcy Code pending against Transferor Company No.2 and Transferee Company. However, one of the Operational Creditors has filed an application against Transferor Company No.1 before NCLT , Mumbai Bench, which is yet to be registered. Applicants filed a clarification affidavit dated 16.12.2023 in which they stated that no notice had been issued by Hon'ble NCLT relating to



the proceeding initiated by the Operational Creditor against Transferor Company No.1. It is further stated that it is envisaged under 4.9 of the proposed Scheme that all the liabilities of the Transferor Companies shall become the liabilities of the Transferee Company.

17. There are no foreign shareholders of any of the applicant companies and the proposed Scheme does not involve Reduction of Share Capital of the Transferee Company.
18. None of the companies are listed companies and hence notice to Stock Exchanges or SEBI is not necessary.
19. The provisions of Competition Act, 2002 are not applicable to the present Scheme and hence no notice is required to be issued to the said authority.
20. Taking into consideration the application filed by the Applicant Companies and the documents along with the further affidavit filed therewith as well as the position of law, this Tribunal propose to issue the following order: -

ORDER

- (i) Company Application No.CA (CAA) 56 / (AHM) / 2023 is allowed.
- (ii) **In relation to the Transferor Company No.1**
 - (a) The meetings of the Equity Shareholders and Preference Shareholders are hereby dispensed



with in view of their consent affidavits.

- (b) The meeting of the Secured Creditors shall be convened on 14th March 2024 at 2.30 p.m.
- (c) The meeting of the Unsecured Creditors shall be convened on 18th March 2024 at 4.00 p.m. at Grand Mercure Vadodara Surya Palace, Opp. Parsi Agiary, Sarod, Sayajiganj, Vadodara, 390020 in the state of Gujarat.

The proceedings under IBC against the Transferor Company No.1 will be binding and decisions, if any, in the application before NCLT, Mumbai Bench, filed under Section 9 of the IBC, by one of the Operational Creditors, will be complied with by the Transferee Company as per provisions of the law. After compliance with this order and before approval of the Scheme by the Tribunal a separate compliance (approved by Board of Directors) be provided by Transferee Company.

(iii) **In relation to the Transferor Company No.2**

- (a) The meeting of the Equity Shareholders is hereby dispensed with in view of their consent affidavits
- (b) Since there are no preference shareholders, the question of convening/holding the meeting does not arise.
- (c) The meeting of the Secured Creditors shall be convened on 14th March 2024 at 3.30 p.m.
- (d) The meeting of the Unsecured Creditors shall be convened on 21st March 2024 at 2.30 p.m. at



Hotel Lords Plaza, C-4/6, GIDC, Old N.H.-8
Ankleshwar 393002 in the State of Gujarat.

(iv) **In relation to the Transferee Company**

- (a) The meeting of the Secured Creditors shall be convened on 14th March 2024 at 4.30 p.m.
- (b) Since there are no preference shareholders, the question of convening/holding the meeting does not arise.
- (c) By placing reliance upon the judgments cited by the applicant companies and keeping in view of the fact that **this is the merger of wholly-owned subsidiaries and there is no new issue of shares and no rights of creditors are affected, the net worth of the Transferee Company continues to remain positive as per affidavit**, the meetings of the Shareholders and Unsecured Creditors are hereby dispensed with.

- (v) Separate meetings of the Secured Creditors of all the applicant companies shall be convened on 14th March 2024, at the Conference Room of BEIL, at Plot No. 9701/16, GIDC Estate, Ankleshwar, 393 002 in the State of Gujarat.

- (vi) Mr. Mukeshkumar D. Rana, Independent Practicing Advocate is appointed as the Chairperson and in his absence Mr. Premchand P. Solanki, Independent Practicing Advocate, is appointed as the alternate Chairperson of the above meetings to be held on 14th



March 2024, 18th March 2024 and 21st March 2024 and in any adjourned meeting(s).

- (vii) Mr. Jagdish Jayantilal Gandhi, Practicing Company Secretary, (Membership No. 3519) is appointed as the Scrutinizer of the aforesaid meetings to be held on 14th March 2024, 18th March 2024 and 21st March 2024 and in any adjourned meeting(s).
- (viii) The quorum for the meetings of the Unsecured Creditors shall be as per Rule 5 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
- (ix) In case the quorum as noted above, for the above meetings of the Applicant Companies is not present at the meetings, then the meetings shall be adjourned by half an hour, and thereafter the person(s) present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the person entitled to attend and vote at the meetings, is filed with the registered office of the applicant companies at least 48 hours before the meetings. The Chairperson appointed herein along with Scrutinizer shall ensure that the proxy registers are properly maintained. However, every endeavour should be made by the applicant companies to attain at least the quorum fixed, if not more in relation to approval of the scheme.



- (x) That individual notices of the above said meetings shall be sent by the Applicant Companies to their respective Secured Creditors and Unsecured Creditors through registered post or speed post or through courier or e-mail, 30 days in advance before the scheduled date of the meetings, indicating the day, date, the place and the time as aforesaid, together with a copy of Scheme, copy of explanatory statement, required to be sent under the Companies Act, 2013 and the prescribed form of proxy shall also be sent along and in addition to the above any other documents as may be prescribed under the Act or rules may also be duly sent with the notice.
- (xi) That the Applicant Companies shall publish advertisement with a gap of at least 30 clear days before the aforesaid meetings, indicating the day, date and the place and time as aforesaid, to be published in the English Daily “Business Standard”, Vadodara Edition, and “Gujarat Samachar” Vadodara Edition in Vernacular language, stating the copies of Scheme, the Explanatory Statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and the form of proxy shall be provided free of charge at the registered office of the respective Applicant Companies. Additionally, publication be made in the English Daily “Business Standard, Pune Edition, and “Loksatta” Pune Edition in Vernacular language (Marathi Edition), only for Transferor Company-1.



- (xii) The Chairperson appointed for the aforesaid meetings shall issue the advertisements and send out the notices of the meetings referred to above. The Chairperson is free to avail the services of the applicant companies or any agency for carrying out the aforesaid directions.
- (xiii) The Chairman to file an affidavit not less than seven (7) days before the date fixed for the holding of the meetings of the applicant company and do report to this Tribunal that the directions regarding the issue of notices and the advertisement of the meetings, have been duly complied with as per Rule 12 of the Rules.
- (xiv) The Chairperson shall have all powers under the Articles of Association of the applicant companies and also under the Rules in relation to the conduct of the meetings, including for deciding any procedural questions that may arise at the meetings or adjournment(s) to the aforesaid scheme or resolution, if any, proposed at the aforesaid meetings by any person(s) and to ascertain the decision of the sense of the meetings of the Secured and Unsecured Creditors of all the applicant companies by polling paper/ballot.
- (xv) The number and value of the vote or the value of debt of the secured and unsecured creditors of all the Applicant Companies, as the case may be, shall be as per the entries in the books of accounts of the



companies for the secured & unsecured Creditors and where the entries in the records are disputed, the Chairperson of the meetings shall determine the value for the purposes of the meetings.

- (xvi) It is further ordered that the Chairman shall report to this Tribunal on the result of the said meetings in Form No. CAA.4, verified by his affidavit as per Rule 14 of the Rules in Form No. CAA.4 within 7 (seven) days after the conclusion of the meetings. The reports of Chairman for the applicant company shall be filed before this Tribunal by the Chairman himself.
- (xvii) We direct the applicant companies to pay a sum of Rs.50,000/- (or in his absence to the substitute mentioned in the order) to the Chairman and a sum of Rs.25,000/- to the Scrutinizer as their fees.
- (xviii) In compliance of sub-section (5) of Section 230 of the Act and Rule 8 of the Companies (CAA) Rules, 2016, the applicant companies shall send notice in Form No.CAA.3 with a copy of the Scheme, the Explanatory Statement and the disclosures mentioned in Rule 6 of the Companies (CAA) Rules, 2016 to (i) the Central Government, through the Regional Director; (ii) the Registrar of Companies, Gujarat; (iii) the Income Tax Department along with full details of the Assessing Officer and PAN numbers of all the applicant companies with copy also to the Principal Chief Commissioner of Income Tax Office; (iv) the Official Liquidator (only by the Transferor Companies) as well



as other sectoral regulators who may have significant bearing on the operation of the applicant companies or the scheme. Representations, if any, to be made by them shall be made within 30 (thirty) days from the date of receipt of such notice, failing which it shall be presumed that they have no objection to make on the proposed scheme.

- (ix) All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 by the Applicants.
- (xx) The applicant companies shall file a compliance affidavit with the Registry with regard to the directions given in this order.

21. Company Application is disposed off accordingly.

Sd/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)

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