

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

COMPANY PETITION NOS.179, 180, 181, 182, 183, 184, 185, 186, 187, 188,
189, 190, 191, 192 and 193 of 2015

DATED:29-9-2015

Between

C.P. No.179 of 2015

M/s. Goman Agro-Farms Private Ltd. ... Petitioner/Transferor Company No.1

C.P. No.180 of 2015

M/s. Himagiri Bio-Tech Private Ltd. ... Petitioner/Transferor Company No.2

C.P. No.181 of 2015

M/s. Himagiri Greenfields Private Ltd. ... Petitioner/Transferor Company No.3

C.P. No.182 of 2015

M/s. Konar Greenlands Private Ltd. ... Petitioner/Transferor Company No.4

C.P. No.183 of 2015

M/s. Medravati Agro-Farms Private Ltd. ... Petitioner/Transferor Company
No.5

... Respondents

C.P. No.184 of 2015

M/s. Nagavali Greenlands Private Ltd. ... Petitioner/Transferor Company
No.6

C.P. No.185 of 2015

M/s. Sindhu Greenlands Private Ltd. ... Petitioner/Transferor Company No.7

C.P. No.186 of 2015

M/s. Swarnagiri Greenfields Private Ltd. ... Petitioner/Transferor Company
No.8

C.P. No.187 of 2015

M/s. Swarnamukhi Greenfields Private Ltd.... Petitioner/Transferor Company
No.9

C.P. No.188 of 2015

M/s. Uttarashada Bio-Tech Private Ltd. ... Petitioner/Transferor Company
No.10

C.P. No.189 of 2015

M/s. Vamsadhara Agro Private Ltd. ... Petitioner/Transferor Company No.11

C.P. No.190 of 2015

M/s. Vindhya Greenlands Private Ltd. ... Petitioner/Transferor Company No.12

C.P. No.191 of 2015

M/s. Wardha Greenfields Private Ltd. ... Petitioner/Transferor Company No.13

C.P. No.192 of 2015

M/s. Yamuna Agro-Farms Private Ltd. ... Petitioner/Transferor Company No.14

All the transferor companies are situated at Hyderabad,
and are represented their Authorized Signatory
Mr. Mohan Krishna Vemuri

And

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C.P. No.193 of 2015

M/s. Hill County Properties Limited, Hyderabad

Represented by its Authorised Signatory

Mr. Neerav Kapasi ... Petitioner/Transferee Company

COUNSEL FOR THE PETITIONERS : Mr. R. Raghunandan, Senior
Counsel

for Mr. T. Vinod Kumar

COUNSEL FOR THE

MINISTRY OF CORPORATE AFFAIRS : Mr. B. Appa Rao,
for Mr. B. Narayana Reddy,
Assistant Solicitor General

COUNSEL FOR THE

OFFICIAL LIQUIDATOR : Mr. M. Anil Kumar

THE COURT MADE THE FOLLOWING:

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COMMON ORDER:

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Company Petition No.179 of 2015 is filed by M/s. Goman Agro-Farms Private Limited (transferor company No.1). Company Petition No.180 of 2014 is filed by M/s. Himagiri Bio-Tech Private Limited (transferor company No.2). Company Petition No.181 of 2015 is filed by M/s. Himagiri Greenfields Private Limited (transferor company No.3). Company Petition No.182 of 2015 is filed by M/s. Konar Greenlands Private Limited (transferor company No.4). Company Petition No.183 of 2015 is filed by M/s.Medravati Agro-Farms Private Limited (transferor company No.5). Company Petition No.184 of 2015 is filed by M/s. Nagavali Greenlands Private Limited (transferor company No.6). Company Petition No.185 of 2015 is filed by M/s.Sindhu Greedlands Private Limited (transferor company No.7). Company Petition No.186 of 2015 is filed by M/s. Swarnagiri Greenfields Private Limited (transferor company No.8). Company Petition No.187 of 2015 is filed by M/s. Swarnamukhi Greenfields Private Limited (transferor company No.9). Company Petition No.188 of 2015 is filed by M/s. Uttarashada Bio-Tech Private Limited (transferor company No.10). Company Petition No.189 of 2015 is filed by M/s. Vamsadhara Agro Private Limited (transferor company No.11). Company Petition No.190 of 2015 is filed by M/s. Vindhya Greenlands Private Limited (transferor company No.12). Company Petition No.191 of 2015 is filed by M/s. Wardha Greenfields Private Limited (transferor company No.13). Company Petition No.192 of

2015 is filed by M/s. Yamuna Agro-Farms Private Limited (transferor company No.14). Company Petition No.193 of 2015 is filed by M/s. Hill County Properties Limited (transferee company). These company petitions have been filed under Sections 391 and 394 of the Companies Act, 1956 (for short, 'the Act') for sanction of the proposed scheme of amalgamation of transferor Company Nos.1 to 14 with the transferee Company.

2. In company petition Nos.179 to 192 of 2015 filed by the petitioners - transferor companies it is averred that they were incorporated under the Act, on 05.06.2000, 08.05.2002, 07.05.2002, 07.07.2000, 13.06.2000, 08.05.2000, 07.05.2002, 07.05.2002, 07.05.2002, 21.07.1999, 24.05.2002, 24.05.2002, 23.05.2002 and 29.06.2002 respectively; that their respective authorized share capital is Rs.25,00,000/- each divided into 25,000 equity shares of Rs.100/- each; and that their respective issued, subscribed and paid-up share capital is Rs.25,00,000/- each divided into 25,000 equity shares of Rs.100/- each.

3. It is further averred that main objects of the petitioners in Company Petition Nos.179, 182, 183 and 192 are to raise, farm, cultivate, multiply, buy, sell, trade and deal in all kinds of agriculture, horticulture, sericulture, seeds, vegetables, fruits and other allied production and to carry on the business of agriculture in all their branches etc; that the main objects of the petitioners in Company Petition Nos.180, 186 and 188 are to plant, cultivate, produce, raise make marketable, import, export, sell, buy, act as agent, stock distributors or otherwise deal in oil palms, food grains, oil seeds, oil cakes, tea, coffee, sugar, sugarcane, cocoa, coconut and all other types of produce of land to manufacture, process, import, buy sell otherwise deal in fertilizers of all varieties of pesticides, insecticidal and fungicidal sprays etc.; and that the main objects of the petitioners in Company Petition Nos.181, 184, 185, 187, 189, 190 and 191 of 2015 are to carry on in India or elsewhere the business to deal in acquisition and development of agriculture lands, other lands, properties and to plant grow, cultivate, produce, raise, process, store, grind, clean, mix, grade, polish, can, import, export, buy, sell warehouse, and to act as an agent, broker, stockiest, indenter, consignor, merchant, farmer, or otherwise to

deal in all types of seeds, grains, vegetables, foods, cereals, herbals, flowers, fruits, edibles, non-edibles, commercial, non-commercial crops etc.

4. In Company Petition No.193 of 2015, the petitioner – transferee company averred that it was originally incorporated under the Act on 20.05.2005 as Maytas Rajeshwari Development Private Limited; that its name was further changed as Maytas Hill Country Private Limited on 28.12.2005, as Maytas Hill County Limited on 20.12.2007, as Maytas Properties Limited on 31.12.2007, and finally as Hill County Properties Limited, vide certificate of incorporation, dated 16.08.2013; that its authorized share capital is Rs.75,00,00,000/- divided into 75,00,000 equity shares of Rs.100/- each; that its issued, subscribed and paid-up share capital is Rs.25,00,000/- divided into 25,000 equity shares of Rs.100/- each; and that its main objects are to construct, erect, build, repair, remodel, demolish, develop, improve, grade, curve, pave, macadamize, cement and maintain buildings, structures, houses, apartments, townships, multi storied complexes, landscapes, hospitals, schools, places of worship, highways, roads, paths, streets, side ways, sea ports, air ports, bridges, flyovers, subways alleys, pavements, and to do other similar constructions and to carry on the business of builders, constructors, developers, contractors, or otherwise deal in houses, land buildings, sheds or any other property etc.

5. The transferor companies and the transferee company pleaded that they are engaged *inter alia* in the business of development of lands; that majority equity shareholding of the transferor companies is held by the transferee company; that the transferor companies possess lands and they have given the same to the transferee company for development in consideration for a share in the development; that the proposed amalgamation will (i) enable appropriate consolidation of the activities of the transferor companies and the transferee company with pooling and more utilization of their resources; (ii) achieve synergistic integration and consolidation of the businesses of the transferor companies and the transferee company; (iii) achieve consolidation, greater integration and

financial strength and flexibility, greater efficiency in cash management and unfettered access to cash flows generated by the combined business, reduction of multiplicity of entities, and that therefore it is beneficial to the shareholders, creditors and employees of the transferor companies and the transferee company. That the objects and business of the transferor companies and the transferee company are in synchronization with each other, and by the proposed amalgamation, the business of the transferor companies and the transferee company would be streamlined and the expenditure would be reduced.

6. That the Boards of Directors of all the transferor companies in their meetings held on 27.09.2014 resolved to approve the proposed scheme of amalgamation, vide Annexure A-5 in C.P.Nos.179 to 192 of 2015, to be operative from the appointed date i.e., 01.04.2014, and the Board of Directors of the transferee company in their meeting held on 16.10.2014 resolved to approve the proposed scheme of amalgamation, vide Annexure-31 in C.P. No.193 of 2015, to be operative from the appointed date, i.e., 01.04.2014.

7. (i) In Company Petition No.179 of 2015, the petitioner averred that it has no secured and unsecured creditors. That it has two share holders out of whom the transferee company is holding 24,999 shares (99.99% shareholding) and that one Mr. G. Venkateswar Reddy (Nominee of the transferee company is holding 1 share (0.01% shareholding).

(ii) In Company Petition No.180 of 2015, the petitioner averred that it has no secured and unsecured creditors. That it has three shareholders out of whom the transferee company is holding 24,449 shares (97.99% shareholding), that one Mr. B. Suryanarayana Raju is holding 500 shares (2.00% shareholding) and that one Mr. G. Venkateswar Reddy (Nominee of the transferee company) is holding 1 share (0.004% shareholding).

(iii) In Company Petition No.181 of 2015, the petitioner averred that it has no secured and unsecured creditors. That it has three shareholders out of whom the transferee company is holding 24,449 shares (97.99% shareholding), that one Mr. B. Suryanarayana Raju is holding 500 shares (2.00% shareholding) and that one Mr. G. Venkateswar Reddy (Nominee of the transferee company) is holding 1 share (0.004% shareholding).

(iv) In Company Petition No.182 of 2015, the petitioner averred that it has no secured creditors, but it has four unsecured creditors for a total amount of Rs.20,80,804/- i.e., (i) Audit Fee Payable (Potnuru & Associates) (Rs.11,236/-); (ii) Chandrabhaga Agro Farms Private Limited (Rs.41,945/-); (iii) Nallamala Agro Farms (Rs.8,953/-) and (iv) Vindhya Bio-tech Private Limited (Rs.20,18,670/-). That it has three shareholders out of whom the transferee company is holding 24,959 shares (99.83% shareholding), that one Mr. B. Nandini Raju is holding 40 shares (0.16% shareholding) and that one Mr. G. Venkateswar Reddy (Nominee of the transferee company) is holding 1 share (0.004% shareholding).

(v) In Company Petition No.183 of 2015, the petitioner averred that it has no secured creditors, but it has four unsecured creditors for a total amount of Rs.17,61,523/-, i.e., (i) Audit Fee Payable (Potnuru & Associates) (Rs.11,236/-); (ii) Chandrabhaga Agro Farms Private Limited (Rs.65,957/-); (iii) Nallamala Agro Farms (Rs.8,751/-) and (iv) Vindhya Bio-tech Private Limited (Rs.16,75,569/-). That it has three shareholders out of whom the transferee company is holding 24,049 shares (96.196% shareholding), that one Mr. B. Nandini Raju is holding 950 shares (3.80% shareholding) and that one Mr. G. Venkateswar Reddy (Nominee of the transferee company) is holding 1 share (0.004% shareholding).

(vi) In Company Petition No.184 of 2015, the petitioner averred that it has no secured and unsecured creditors. That it has three shareholders out of whom the transferee company is holding 24,449 shares (97.99% shareholding), that one Mr. B. Nandini Raju is holding 500 shares (2.00% shareholding) and that one Mr. G. Venkateswar Reddy (Nominee of the transferee company) is holding 1 share (0.004% shareholding).

(vii) In Company Petition No.185 of 2015, the petitioner averred that it has no secured and unsecured creditors. That it has three shareholders out of whom the transferee company is holding 24,449 shares (97.99% shareholding), that one Ms. B. Jhansi Rani is holding 500 shares (2.00% shareholding) and that one Mr. G. Venkateswar Reddy (Nominee of the transferee company) is holding 1 share (0.004% shareholding).

(viii) In Company Petition No.186 of 2015, the petitioner averred

that it has no secured creditors, but it has four unsecured creditors for a total amount of Rs.17,34,235/-, i.e., (i) Audit Fee Payable (Potnuru & Associates) (Rs.11,236)]; (ii) Chandrabhaga Agro Farms Private Limited (Rs.77,143/-); (iii) Nallamala Agro Farms (Rs.9,113/-) and (iv) Vindhya Bio-tech Private Limited (Rs.16,36,743/-). That it has two shareholders out of whom the transferee company is holding 24,999 shares (99.99% shareholding) and that one Mr. Neerav Kapasi (Nominee of the transferee company) is holding 1 share (0.01% shareholding).

(ix) In Company Petition No.187 of 2015, the petitioner averred that it has no secured and unsecured creditors. That it has two shareholders out of whom the transferee company is holding 24,999 shares (99.99% shareholding) and that one Mr. Neerav Kapasi (Nominee of the transferee company) is holding 1 share (0.01% shareholding).

(x) In Company Petition No.188 of 2015, the petitioner averred that it has no secured creditors, but it has seven unsecured creditors for a total amount of Rs.2,13,46,454/-, i.e., (i) Chandrabhaga Agro Farms Private Limited (Rs.15,41,945/-); (ii) Continental Thermits Private Limited (Rs.414/-); (iii) JRB Agro Private Limited (Rs.12,000/-); (iv) Nallamala Agro Farms Private Limited (Rs.8,985/-); (v) Vindhya Bio-Tech Private Limited (Rs.20,18,670/-); (vi) B. Radha (Rs.1,77,53,204); and (vii) Audit Fee Payable (Potnuru & Associates) (Rs.11,236/-). That it has three shareholders out of whom the transferee company is holding 24,449 shares (99.79% shareholding), that one Mr. B. Rama Raju is holding 50 shares (0.20% shareholding) and that one Mr. Neerav Kapasi (Nominee of the transferee company) is holding 1 share (0.01% shareholding).

(xi) In Company Petition No.189 of 2015, the petitioner averred that it has no secured creditors, but it has three unsecured creditors for a total amount of Rs.21,83,672/-, i.e., (i) Nallamala Agro Farms Private Limited (Rs.9,592/-); (ii) Vindhya Bio-tech Private Limited (Rs.21,62,844/-) and (iii) Audit Fee Payable (Potnuru & Associates) (Rs.11,236/-). That it has three share holders out of whom the transferee company is holding 24,499 shares (99.79% shareholding), that one Mr. B. Teja Raju is holding 500 shares (2.00% shareholding) and that one Mr. Neerav Kapasi (Nominee of the transferee company) is holding 1 share (0.01% shareholding).

(xii) In Company Petition No.190 of 2015, the petitioner averred that it has no secured creditors, but it has four unsecured creditors for a total amount of Rs.5,07,700/-, i.e., (i) Chandrabhaga Agro Farms Private Limited (Rs.13,982/-); (ii) Nallamala Agro Farms (Rs.9,592/-); (iii) Vindhya Bio-tech. Private Limited (Rs.4,72,890/-); and (iv) Audit Fee Payable (Potnuru & Associates) Rs.11,236/-. That it has three shareholders out of whom the transferee company is holding 24,449 shares (97.99% shareholding), that one B. Teja Raju is holding 500 shares (2.00% shareholding) and that one Mr. Neerav Kapasi (Nominee of the transferee company) is holding 1 share (0.01% shareholding).

(xiii) In Company Petition No.191 of 2015, the petitioner averred that it has no secured creditors and unsecured creditors. That it has two shareholders out of whom the transferee company is holding 24,999 shares (99.99% shareholding) and that one Mr. Neerav Kapasi (Nominee of the transferee company) is holding 1 share (0.001% shareholding).

(xiv) In Company Petition No.192 of 2015, the petitioner averred that it has no secured creditors, but it has four unsecured creditors for a total amount of Rs.72,59,333/-, i.e., (i) Transferee company (Rs.22,39,144/-); (ii) Maytas Hill County Developers (Rs.50,00,000/-); (iii) Nallamala Agro Farms Private Limited (Rs.8,953/-); and (iv) Audit Fee Payable (Potnuru & Associates) (Rs.11,236/-). That it has four shareholders out of whom the transferee company is holding 24,049 shares (96.196% shareholding), that one Mr. B. Rama Raju is holding 900 shares (3.80% shareholding), that Ms. Nandini Raju is holding 50 shares (0.20% shareholding) and that Mr. Neerav Kapasi (Nominee of the transferee company) is holding 1 share (0.001%).

With regard to the issue of shares by the transferee company, in Company Petition Nos.179, 186, 187 and 191 of 2015 it is averred that since the entire equity share capital of these transferor companies is being held by the transferee company and its nominee, there would be no issue of equity shares of the transferee company to the shareholders of the transferor companies and that pursuant to the vesting of the undertaking in the transferee company, the investment in the shares of the transferor

companies appearing in the books of account of the transferee company will stand cancelled. However, in Company petition Nos.180, 181, 182, 183, 184, 185, 188, 189, 190 and 192 of 2015 it is averred that upon this scheme being effective, the transferee company shall without any further application, act, instrument or deed, issue and allot to the shareholders of the transferor companies (except to the transferee company and its nominee shareholder) such number of redeemable preference shares of Rs.100/- each in lieu of the equivalent number of equity shares held by such a shareholder, that the said preference shares shall be redeemable after ten years or with an option to redeem earlier than the redemption period by providing two months' notice to the concerned shareholders and that pursuant to the vesting of the undertaking in the transferee company, the investment in the shares of the transferor companies appearing in the books of account of the transferee company will stand cancelled.

8. The petitioners – transferor companies have filed company applications (C.A. Nos.574, 577, 580, 585 & 586, 591 & 592, 595, 598, 603 & 604, 607, 610 & 611, 618 & 619, 625 & 624, 628, and 633 & 634 respectively) before this Court for appointment of Chairpersons for convening the meeting of their unsecured creditors and/or shareholders. This Court by orders dt.15.4.2015 appointed separate Chairpersons for convening the meetings of their un-secured creditors and/or shareholders for consideration of the proposed scheme of arrangement. That the Chairpersons have filed their reports dt.21/22.5.2015 *inter alia* stating that pursuant to the orders of this Court, after issuing individual notices to the unsecured creditors and/or shareholders and causing publication of the advertisement in two daily newspapers, they have conducted the meetings on 21/22.5.2015, that the quorum of the members was fulfilled, that the proposed scheme of arrangement was read out and explained to the members attended the meeting and that they have voted in favour of the proposed scheme of arrangement. By orders dt.9.6.2015, this Court has taken the reports of the Chairpersons, on record.

9. (i) In Company Petition No.193 of 2015, the petitioner averred that it has six secured creditors for a total amount of Rs.8,680.75 millions, i.e., (i) State Bank of India (Rs.302.34 millions); (ii) IDBI Bank (Rs.771.14

millions); (iii) IL&FS Engineering & Construction Company Limited (Rs.2,406.24 millions); (iv) IL&FS Financial Services Limited (Rs.2,575.63 millions); (v) Infrastructure Leasing & Financial Services Limited (Rs.2,359.35 millions); and (vi) Phoenix ARC Private Limited (Rs.266.05 millions). That it has four unsecured creditors for a total amount of Rs.10,051.04 millions, i.e., (i) IL&FS Engineering & Construction Company Limited (Rs.970.17 millions); (ii) Maytas Estates Private Limited (Rs.7.93 millions); (iii) Unsecured compulsory convertible debenture holders (Rs.6,000 millions) and (iv) Trade Creditors (Rs.3,072.94 millions). That it has sixteen shareholders – in that (i) Infrastructure Leasing and Financial Services Limited is holding 2,250 shares (9% shareholding); (ii) IL&FS Townships and Urban Assets Limited - 10,000 shares (40%); (iii) IL&FS Engineering and Construction Company Limited - 7,744 shares (30.97%); (iv) Maytas Estates Private Limited - 4,400 shares (17.6%); (v) Ms. B. Divya – 100 shares (0.4%); (vi) Ms. B. Teja Raju – 100 shares (0.4%); (vii) Mr. B. Rama Raju – 100 shares (0.4%); (viii) Ms. B. Nandini Raju – 100 shares (0.4%); (ix) Ms. B. Appala Narasamma – 100 shares (0.4%); (x) Ms. B. Sri Sandhya – 100 shares (0.4%); (xi) Mr. Maharudra Wagle (Nominee of IL&FS Engineering and Construction Company Limited) – 1 share (0.004%); (xii) Mr. Jignesh Ramesh Shah (Nominee of IL&FS Engineering and Construction Company Limited) – 1 share (0.004%); (xiii) Mr. Neerav Yashwant Kapasi (Nominee of IL&FS Engineering and Construction Company Limited) – 1 share (0.004%); (xiv) Mr. Gogireddy Venkateswar Reddy - (Nominee of IL&FS Engineering and Construction Company Limited) – 1 share (0.004%); (xv) Mr. Mohan Krishna Vemuri (Nominee of IL&FS Engineering and Construction Company Limited) – 1 share (0.004%); and (xvi) Ms. Suguna Mudundi (Nominee of IL&FS Engineering and Construction Company Limited) is holding – 1 share (0.004% shareholding). That upon this scheme being effective, the transferee company shall without any further application, act, instrument or deed, issue and allot to the shareholders of the transferor company (except to the transferee company and its nominee shareholder) a total of 4,900 redeemable preference shares of Rs.100/- each in lieu of

the equivalent number of equity shares held by such a shareholder, that the said preference shares shall be redeemable after ten years or with an option to redeem earlier than the redemption period by providing two months' notice to the concerned shareholders. That the details of the shareholders of the transferor companies who will be issued redeemable preference shares equivalent to the number of equity shares held by them are as under:

Sl. No.	Name of the company	Shareholder Ms./Mr.	No. of Equity shares
1.	Himagiri Bio-Tech Pvt. Ltd.	B. Suryanarayana Raju	500
2.	Himagiri Greenfileds Pvt. Ltd.	B. Suryanarayana Raju	500
3.	Konar Greenlands Pvt. Ltd.	B. Nandini Raju	40
4.	Medravati Agro Farms Pvt. Ltd.	B. Nandini Raju	950
5.	Nagavali Greenlands Pvt. Ltd.	B. Jhansi Rani	500
6.	Sindhu Greenlands Pvt. Ltd.	B. Jhansi Rani	500
7.	Uttarashada Biotech Pvt. Ltd.	B. Rama Raju Sr.	50
8.	Vamsadhara Agro Pvt. Ltd.	B. Teja Raju	500
9.	Vindhya Greenlands Pvt. Ltd.	B. Teja Raju	500
10.	Yamuna Agro Farms Pvt. Ltd.	B. Nandini Raju B. Rama Raju	50 900
		Total	4990

(ii) That the petitioner – transferee company has filed company application Nos.641, 642 and 643 of 2015 before this Court for convening the meetings of its secured creditors, unsecured creditors and shareholders respectively. That this Court by order dt.15.4.2015 appointed a Chairperson to conduct the meetings of the secured creditors, unsecured creditors and shareholders of the transferee company and that the Chairperson filed his reports dt.21.5.2015.

(iii) In the report relating to the meeting of the secured creditors of the transferee company, the Chairperson has stated that pursuant to the order of this Court, after issuing individual notices to the secured creditors of the transferee company and causing publication of the advertisement in two daily newspapers, he has conducted the meeting of the secured creditors on 21.5.2015 at 1.00 p.m., that as the said meeting was attended by five members, the quorum of two members was fulfilled, that the scheme of arrangement was read out and explained to them, and that they

have voted in favour of the proposed scheme of arrangement.

(iv) In the report relating to the meeting of the unsecured creditors of the transferee company, the Chairperson has stated that pursuant to the order of this Court, after issuing individual notices to the unsecured creditors of the transferee company and causing publication of the advertisement in two daily newspapers, he has conducted the meeting of the unsecured creditors on 21.5.2015 at 11.30 a.m., that as the said meeting was attended by 33 unsecured creditors, the quorum of 15 members was fulfilled, that the scheme of arrangement was read out and explained to them, and that they have voted in favour of the proposed scheme of arrangement.

(v) In the report relating to the meeting of the shareholders of the transferee company, the Chairperson has stated that pursuant to the order of this Court, after issuing individual notice to the shareholders of the transferee company and causing publication of the advertisement in two daily newspapers, he has conducted the meeting of the shareholders on 21.5.2015 at 10.00 a.m., that as the said meeting was attended by 13 shareholders, the quorum of 5 members was fulfilled, that the scheme of arrangement was read out and explained to them, and that they have voted in favour of the proposed scheme of arrangement.

By Order dt.9.6.2015 this Court has taken the reports of the Chairperson on record.

10. In response to the notices issued by this Court on 7.7.2015, the Official Liquidator and the Regional Director have submitted their respective reports.

11. The Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad, has filed a common report. The Official Liquidator In-charge has also filed separate reports.

12. In his separate reports, the Official Liquidator (In-charge) has *inter alia* stated that basing on the information made available by the transferee company, he is of the opinion that its affairs appeared to have not been conducted in a manner prejudicial to the interest of the members or to public interest.

13. However, the Regional Director in his report stated that in pursuance of General Circular No.1/2014, dt.15.1.2014 issued by the Ministry of Corporate Affairs, New Delhi, comments of the Income Tax Department were called for and that accordingly the Additional Commissioner of Income Tax (Central), Central Range-3, Hyderabad, has sent his letter in F.No.Addl.CIT/CR-3/Merger/Amalgamation/2015-16, dt.20.8.2015, wherein he has expressed the following views:

"M/s. Hill County Properties Limited (hereafter referred to as HCPL) is a company incorporated under the Companies Act. M/s. HCPL is in the business of real estate and property development. All the transferor companies are formed with the objective of farming, cultivating, trading of all kinds of agriculture, seeds, fruits, vegetables and other allied products. However, from the details available in this office it is seen that there was never any agricultural activity or any such trading activity in agricultural produce by any of these Transferor companies. The only activity that was undertaken by these transferor companies was entering into development agreement with the transferor company. M/s. HCPL entered into a development agreement with all these transferor companies for commercial exploitation of the so called agricultural lands, acquired by all these transferor companies. The scheme for arrangement was that after the project is developed and sold to various customers, a proportion of the sale proceeds would be given to each these entities (transferor companies) in the respective proportion of their contribution of land. In the petition filed by the assessee-company before the Hon'ble High Court it was mentioned that all these transferor companies are 96% subsidiary companies of M/s.HCPL. In other words the flagship company M/s.HCPL entered into development agreements with its own subsidiary companies. Since these transferor companies acquired the lands at very low cost and there being no cost of construction being incurred by these companies, these transferor companies would end up with huge profits as and when their share of constructed property is sold.

It may not be out of place to mention here that the real estate sector has witnessed a down fall in the past few years and the developers i.e, M/s.HCPL ended up with losses owing to increase in cost of construction, increase in interest burden on the loans raised, coupled with fall in sale realizations. Such loss incurred by M/s. HCPL would be allowed to be carried forwarded as business loss for a period of 8 years which can be set off only against any profits that may arise from construction activity in the subsequent period. Till such time of any profits accruing to M/s.HCPL, the already incurred losses would be of no practical utility. However, as mentioned earlier, there is a simultaneous case of profits accruing in the transferor companies, since, the cost of acquisition of land is very low and the sale proceeds received by them is relatively high. It appears from the entire scheme that the single most reason behind the proposed amalgamation is that the profits of the transferor companies (which are otherwise taxable), would be set off with losses already accrued in the hands of HCPL. In other words, it would be a case of cumulative profits of the amalgamating entities being set off against the cumulative losses of the

amalgamated company, resulting in almost zero taxation. This is certainly prejudicial to the public interest. Further, there is no public purpose that would be met by the proposed amalgamation.”

The Regional Director has also stated that Serious Fraud Investigation Office has investigated into the affairs of Satyam Computers Services Limited (SCSL), whose promoters have promoted the transferee company, following confessions/disclosures made by Mr. B. Ramalinga Raju, the Promoter/Director of SCSL, about large scale manipulation of SCSL accounts. That the transferee company was shown as subsidiary of MAYTAS Estates Private Limited, which was holding 4,400 equity shares of Rs.100/- each and that the Company Law Board vide its order dt.13.1.2011 has allowed IL & FS Group (Infrastructure Leasing and Financial Services Limited and IL & FS Engineering & Construction Company Limited) to acquire 80% of its shareholding in the transferee company and that both IL & FS Financial Services Limited and IL & FS Engineering & Construction company were allotted 10,000 equity shares of Rs.100/- each. It is further stated that the project ‘Hill Residency’ has been developed by the transferee company in the land registered in the name of the 14 transferor companies and that the investment in equity capital of land owning companies are concluded to be in violation of Section 372A(1)(c) of the Act and the inspection report has recommended prosecution of the company and its officer in default during the commission of offence and the same is under consideration before the Ministry of Corporate Affairs. The Regional Director, however, stated that the Registrar of Companies, Hyderabad, has reported that the transferor companies and the transferee company involved in the scheme of amalgamation are regular in filing the statutory returns and that no complaints, no investigations and no inspection are pending against the transferor companies and that inspection against the transferee company is pending.

14. In substance, the main objection raised by the Regional Director is based on the letter addressed by the Income Tax Department, wherein a view has been expressed that the scheme is intended only to offset the losses being suffered by the transferee company against profits that are

being made by the transferor companies which acquired agricultural land at cheaper cost and are receiving huge profits from out of the development of the lands provided by the transferee company with a view to evade payment of income tax.

15. In order to meet the objections raised in the report of the Regional Director, a detailed common reply affidavit has been filed by the Authorised Signatory of the petitioners companies, wherein it is *inter alia* stated that the transferee company was established for the purpose of development of real estate, that the promoters of the transferee and transferor companies are associates of Mr. Ramalinga Raju, the original promoter of M/s. Satyam Computer Services Limited, that post the Satyam episode in January 2009 the transferee company, which was holding the 'Hill County' project, was severely and adversely affected and this resulted in the entire project coming to a standstill and various stakeholders in the transferee company including about 800 end purchasers of the project, project lenders, private equity investors, creditors, employees etc., were left in the lurch and felt cheated. It is further stated that in order to protect the public interest, including 800 end customers of the project amongst others, the proposal for investment made by the IL & FS Group was evaluated by the SBI Capital Markets Limits (SBICAPS) and after due deliberations, the SBICAPS and Hon'ble Justice AR. Lakshmanan (Retired) recommended the induction of the IL & FS Group as strategic investor and that accordingly the Company Law Board, vide its order dt.13.1.2011 included the IL & FS Group as the new promoter of the transferee company. The affidavit has given the details of the shareholders of IL & FS Company Limited which are as follows:

- i. *"Life Insurance Corporation of India (LIC of India);*
- ii. *ORIX Corporation Japan – company based in Osaka, Japan and established in 1964 by three trading companies and five banks;*
- iii. *Abu Dhabi Investment Authority – a sovereign wealth fund owned by the Government of Emirate of Abu Dhabi;*
- iv. *Housing Development Finance Corporation Limited (HDFC);*
- v. *Central Bank of India;*
- vi. *State Bank of India (SBI)*
- vii. *UIT Asset Management Company Pvt. Ltd.;*
- viii. *India Discovery Fund Limited;*
- ix. *IL&FS Employees' Welfare Trust & Others."*

It is accordingly pleaded that the operations of the IL&FS Group are only in public interest as all the major shareholders of the company are Public Sector Undertakings and the funds which are invested by the Group are also public funds. It is further averred that after taking over the management of the transferee company, IL&FS Group has infused about Rs.850 crores into the transferee company for the due completion of the 'Hill County' project in public interest to fulfil the contractual obligation of the company and delivered residential units to 800 families in the city of Hyderabad, that the funds were also used for the purpose of completion of Hill County project, part repayment to project lenders, trade creditors, settlement with commercial banks and financial institutions, that new promoters paid around Rs.57 crores towards pending income tax dues, which became liable during the erstwhile management regime, and that this payment towards pending income tax was also from public money. That in spite of the said investment of Rs.850 crores, the transferee company continues to be in losses even as on the effective date, that due to Satyam episode and the political disturbances arising out of bifurcation of the erstwhile united State of Andhra Pradesh, the completion of the Hill County project was delayed by almost seven years and that the transferee company is in negative net-worth as of today. That at the time of change of management during the year 2011 it was envisaged that since the transferee company and the transferor companies are all held by one family group, to make the business of the companies profitable and in view of public interest it would be prudent and more efficient to consolidate the business of the companies under one umbrella company, that in pursuance thereof, the IL&FS Group has in fact closed ten other companies promoted by Ramalinga Raju family since the said companies have no assets whatsoever, that the 14 transferor companies have already given development rights for Hill County project with irrevocable power of attorney to the transferee company, and that the only way to close these companies would be by approaching this Court in a fair and transparent manner with application for the approval of the Scheme of Amalgamation.

16. It is further stated that since the amount of Rs.850 crores invested by

the IL&FS Group is out of public funds, there is an inherent and intrinsic obligation on the shareholders, i.e., public sector undertakings to eventually return the funds to public and also when public funds are involved this will automatically satisfy the condition of public interest unless proved otherwise. That none of the fourteen transferor companies are carrying on their business and in fact it can reasonably said that the transferor companies may have been promoted by the erstwhile management, only with an object of receiving huge dividends from these companies, that since all the Directors/shareholders of both the transferor companies and the transferee company are either directly or indirectly related to Mr. B. Ramalinga Raju, there was no need to have 14 separate transferor companies and that these companies are not undertaking any business except holding of land parcels which were given to the transferee company for development.

17. At the hearing, Mr. R. Raghunandhan, learned Senior Counsel appearing for the petitioners - transferor companies and the transferee company, has advanced the following submissions.

(i) In the matter of approval of the scheme of arrangement, Income Tax Department has no *locus standi* to raise objections;

(ii) The proposed the scheme of amalgamation is intended to close 14 transferor companies, which were floated by the erstwhile management, and not carrying on any activity, with a view to have a proper and complete control over the affairs of the transferee company and that in that process even if there is resultant avoidance of tax it amounts to tax planning, but not tax evasion, and therefore the same cannot constitute a ground for declining to approve the scheme. In support of his submissions, the learned Senior Counsel has referred to the following judgments.

(i) *In Re: Indo Continental Hotels & Resorts Ltd.*^[1]

(ii) *In Re: Indo Continental Hotel and Resorts Ltd.*^[2]

(iii) *In Re: AVM Capital Services Private Limited*^[3]

(iv) *Anu Trading Private Limited v. Shinano Retail Private*

Limited^[4]

(v) *Union of India v. Azadi Bachao Andolan*^[5]

(vi) *Vodafone International Holdings B.V. v. Union of India*^[6]

(vii) *Miheer H. Mafatlal v. Mafatlal Industries Limited*^[7]

18. In *Miheer H. Mafatlal* (7 supra), the Supreme Court has dealt in detail with the scope of interference by the Company Court in sanction proceedings. After referring to the provisions of Sections 391 and 393 of the Act, the Supreme Court held:

“The aforesaid provisions of the Act show that compromise or arrangement can be proposed between a company and its creditors or any class of them or between a company and its members or any class of them. Such a compromise would also take in its sweep any scheme of amalgamation/merger of one company with another. When such a scheme is put forward by a company for the sanction of the Court in the first instance the Court has to direct holding of meetings of creditors or class of creditors or members or class of members who are concerned with such a scheme and once the majority in number representing three-fourths in value of creditors or class of creditors or members or class of members, as the case may be, present or voting either in person or by proxy at such a meeting accord their approval to any compromise or arrangement thus put to vote, and once such compromise is sanctioned by the Court, it would be binding to all creditors or class of creditors or members or class of members, as the case may be, which would also necessarily mean that even to dissenting creditors or class of creditors or dissenting members or class of members such sanctioned scheme would remain binding. Before sanctioning such a scheme even though approved by a majority of the concerned creditors or members the Court has to be satisfied that the company or any other person moving such an application for sanction under sub-section (2) of Section 391 has disclosed all the relevant matters mentioned in the proviso to sub-section (2) of that Section. So far as the meetings of the creditors or members, or their respective classes for whom the Scheme is proposed are concerned, it is enjoined by Section 391(1)(a) that the requisite information as contemplated by the said provision is also required to be placed for consideration of the voters concerned so that the parties concerned before whom the scheme is placed for voting can take an informed and objective decision whether to vote for the scheme or against it. On a conjoint reading of the relevant provisions of Sections 391 and 393 it becomes at once clear that the Company Court which is called upon to sanction such a scheme has not merely to go by the ipse dixit of the majority of the shareholders or creditors or their respective classes who might have voted in favour of the scheme by requisite majority but the Court has to consider the pros and cons of the scheme with a view to finding out whether the scheme is fair, just and reasonable and is not contrary to any provisions of law and it does not violate any public policy. This is implicit in the

very concept of compromise or arrangement which is required to receive the imprimatur of a court of law. No court of law would ever countenance any scheme of compromise or arrangement arrived at between the parties and which might be supported by the requisite majority if the Court finds that it is an unconscionable or an illegal scheme or is otherwise unfair or unjust to the class of shareholders or creditors for whom it is meant. Consequently it cannot be said that a Company Court before whom an application is moved for sanctioning such a scheme which might have got the requisite majority support of the creditors or members or any class of them for whom the scheme is mooted by the company concerned has to act merely as a rubber stamp and must almost automatically put its seal of approval on such a scheme. It is trite to say that once the scheme gets sanctioned by the Court it would bind even the dissenting minority shareholders or creditors. Therefore, the fairness of the scheme qua them also has to be kept in view by the Company Court while putting its seal of approval on the scheme concerned placed for its sanction. It is, of course, true that so far as the Company Court is concerned as per the statutory provisions of Sections [391](#) and [393](#) of the Act the question of voidability of the scheme will have to be judged subject to the rider that a scheme sanctioned by majority will remain binding to a dissenting minority of creditors or members, as the case may be, even though they have not consented to such a scheme and to that extent absence of their consent will have no effect on the scheme. It can be postulated that even in case of such a scheme of compromise and arrangement put up for sanction of a Company Court it will have to be seen whether the proposed scheme is lawful and just and fair to the whole class of creditors or members including the dissenting minority to whom it is offered for approval and which has been approved by such class of persons with required majority vote.”

The Supreme Court further held:

“The Court certainly would not act as a court of appeal and sit in judgment over the informed view of the parties concerned to the compromise as the same would be in the realm of corporate and commercial wisdom of the parties concerned. The Court has neither the expertise nor the jurisdiction to delve deep into the commercial wisdom exercised by the creditors and members of the company who have ratified the Scheme by the requisite majority. Consequently the Company Court's jurisdiction to that extent is peripheral and supervisory and not appellate. The Court acts like an umpire in a game of cricket who has to see that both the teams play their game according to the rules and do not overstep the limits. But subject to that how best the game is to be played is left to the players and not to the umpire.”

19. From the above authoritative pronouncement of the Apex Court, it is evident that unless the Company Court while considering the applications for sanction of the scheme comes to the conclusion that the scheme is not fair, just and reasonable, or the same is contrary to the provisions of law or it violates any public policy, it should not decline to

sanction the scheme.

20. As noted hereinbefore, the main objection raised by the Income Tax Department for the proposed amalgamation is that there is a likelihood of the transferee company setting off its losses against profits that are being made by the transferor companies in future. In other words, there is an implicit plea that the scheme is affecting public interest or violating public policy.

21. There was indeed a big debate as to whether a transaction by which the parties achieve avoidance of tax, is illegal or not?

In *Commissioners of Inland Revenue v. Duke of Westminster*^[8], Lord Tomlin, it was held as under:

“Every man is entitled if he can to order his affairs so that the tax attaching under the appropriate Acts is less than it otherwise would be. If he succeeds in ordering them so as to secure this result, then, however, unappreciative the Commissioners of Inland Revenue or his fellow tax gatherers may be of his ingenuity, he cannot be compelled to pay an increased tax.”

J.C. Shah, J, in *C.I.T. v. Raman & Co.*^[9], has referred to and relied upon the above mentioned legal proposition in *Duke of West Minister* (8 supra). However, Chinnappa Reddy, J, in *Mc.Dowell and Company Limited v. Commercial Tax Officer*^[10], while concurring with the majority judgment of Justice Ranganath Mishra (as he then was) and disagreeing with the observations of J.C. Shah, J, in *Raman & Co* (9 supra), observed as under:

“We think that time has come for us to depart from the Westminster principle as emphatically as the British Courts have done and to disassociate ourselves from the observations of Shah, J and similar observations made elsewhere.”

In *Azadi Bachao Andolan* (5 supra), a question arose whether the observations of Chinnappa Reddy, J, in *McDowell and Co. Ltd.*, (10 supra), reflected the majority opinion. In paragraph 146 of the judgment, the Court held:

“With respect, therefore, we are unable to agree with the view that Duke of Westminster (8 supra) is dead, or that its ghost has been exorcised in England. The House of Lords does not seem to think so, and we agree, with

respect. In our view, the principle in Duke of Westminster (8 supra) is very much alive and kicking in the country of its birth. And as far as this country is concerned, the observations of Shah, J., in CIT v. Raman and Co. (9 supra) are very much relevant even today.”

In *Vodafone International Holdings B.V.* (6 supra), it was argued that the opinion expressed in *Azadi Bachao Andolan* (5 supra) was incorrect as in doing so, the Supreme Court has overlooked paragraph 146 of the report of the majority judgment concurring with the view of Chinnappa Reddy, J. After dealing with this aspect in great detail, both Kapadia, J, (as he then was) and Radhakrishnan, J, who wrote separate opinions, have concurred with the view in *Azadi Bachao Andolan* (5 supra). The Supreme Court has dealt with the concepts of tax avoidance and tax evasion and referred to the celebrated words of Lord Tomlin in *Duke of Westminster* (8 supra) reproduced above, and summarized the principles emanating from that case as under:

- (1) *“A legislation is to receive a strict or literal interpretation;*
- (2) *An arrangement is to be looked at not in by its economic or commercial substance but by its legal form; and*
- (3) *An arrangement is effective for tax purposes even if it has no business purpose and has been entered into to avoid tax.”*

The Supreme Court has also referred to and relied upon the judgments of His Lordships in *W.T. Ramsay v. I.R.C.*^[11] wherein the following principles were culled out.

- (1) *“A taxpayer was only to be taxed if the Legislation clearly indicated that this was the case;*
- (2) *A taxpayer was entitled to manage his or her affairs so as to reduce tax;*
- (3) *Even if the purpose or object of a transaction was to avoid tax this did not invalidate a transaction unless an anti- avoidance provision applied; and*
- (4) *If a document or transaction was genuine and not a sham in the traditional sense, the Court had to adhere to the form of the transaction following the Duke Westminster (8 supra) concept.”*

In conclusion, the Supreme Court in paragraph 332 in *Vodafone International Holdings B.V.* (6 supra), *inter alia* held as under:

“Needless to say if the arrangement is to be effective, it is essential that the transaction has some economic or commercial substance.”

The Supreme Court further held in paragraph 334 as under:

“Revenue cannot tax a subject without a statute to support and in the course we also acknowledge that every tax payer is entitled to arrange his affairs so that his taxes shall be as low as possible and that he is not bound to choose that pattern which will replenish the treasury. The Revenue's stand that the ratio laid down in McDowell (10 supra) is contrary to what has been laid down in Azadi Bachao Andolan (5 supra), in our view, is unsustainable and, therefore, calls for no reconsideration by a Larger Bench.”

22. The legal position that emerges from the above discussion is that if a transaction is entered as sham with a view to circumvent tax laws and evade taxation, the Court will not approve such transaction. However, if a document or transaction is bona fide and not sham in the traditional sense and even if the purpose or object of a transaction was to avoid tax, such transaction cannot be invalidated unless an anti-avoidance provision to that effect exists.

23. In the instant case, neither the Income Tax Department nor the Regional Director has pleaded that the proposed arrangement is sham or is intended to violate any law. On the contrary, the only plea raised is that with a view to offset the losses being suffered by the transferee company, the profit making transferor companies are proposed to be amalgamated. The petitioners have strongly denied the allegation that the scheme is intended to avoid tax laws. From the background of the case pleaded by the petitioners, it is clearly evident that after the collapse of the eminent company, Satyam, which appeared to be promoter of the transferee company, a new management in which as many as nine public sector undertakings are holding shares has taken over MAYTAS company. The main purpose of the proposed amalgamation is to streamline the affairs of the companies by ensuring that all the 14 transferor companies which have stopped their activities are wound up. Therefore, *ex facie* this Court has no reason to doubt the bona fide nature of the scheme. If one of the reasons for the proposed amalgamation is tax planning, applying the settled legal position emanating from the above mentioned legal authorities, the scheme cannot be invalidated only on that ground. The intention of a party to reduce tax liability cannot be said to be contrary to public interest or against public policy. On the contrary, as held by the Courts in the judgments referred to above, such planning by a tax payer is

permissible in law.

24. As regards the investigation stated to be pending against the transferee company, as the transferee company will continue to exist after amalgamation, the pendency of investigation would not affect public interest as it will continue to be liable for all legal actions that may be taken against it.

25. In the light of the above, and as no objections/claims have been received in pursuance of the advertisement got published by the petitioners in the newspapers, this Court is of the opinion that the proposed scheme of amalgamation is in conformity with the provisions of the Act and that the same does not in any manner affect the interest of any of the stake holders, including the public.

26. Therefore, the proposed scheme of amalgamation is sanctioned with effect from the appointed date, i.e., 01.4.2014. The petitioners shall cause a certified copy of this order to be delivered to the Registrar of Companies for the State of Telangana and the State of Andhra Pradesh, Hyderabad, within 30 days of its receipt and take all other consequential steps in pursuance of the approval of the scheme of amalgamation.

27. The company petitions are accordingly allowed.

C.V. NAGARJUNA REDDY, J

29-9-2015

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[\[1\]](#) (1990) 69 Comp. Cases 93 (Raj.)

[\[2\]](#) (1998) 93 Comp. Cases 194 (Raj.)

[\[3\]](#) (2012) 173 Comp. Cases 355 (Bom.) : 2012 (114) Bom.LR 2533

- [\[4\]](#) 2014 (1) MPHT 521
- [\[5\]](#) (2004) 10 SCC 1
- [\[6\]](#) (2012) 6 SCC 613
- [\[7\]](#) (1997) 1 SCC 579
- [\[8\]](#) 1936 AC 1
- [\[9\]](#) AIR 1968 SC 49
- [\[10\]](#) (1985) 3 SCC 230
- [\[11\]](#) (1982) AC 300