HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

C.P.Nos.207, 208, 209, 210, 211, 212,213, 214, 215, 216, 217, 218, 219, 220, 221,222 223, 224, 225,226 & 227 of 2016

COMMON ORDER

All these petitions are filed for approval of the scheme of amalgamation by the petitioners' companies with M/s.Hill Country Properties Limited, the petitioner in C.P.No.227 of 2016.

All the transferor companies were incorporated in different years viz., 2000, 2002, 2006, 2007 and 2008. Their main objectives are to carry on the business of construction and development of infrastructure etc. The accounts of the companies were audited on 31.12.2015.

The transferee company was originally incorporated as Maytas Rajeshwari Development Private Limited on 20th May, 2005 in the erstwhile State of Andhra Pradesh, Hyderabad. Later on its name was changed as Maytas Hill County Private Limited with effect from 28.12.2005. It was changed from Private Limited to Public Limited Company and later its name was changed as Maytas Hill County Limited. Certificate of Incorporation was issued on 20.12.2007. The name again was changed to Maytas Properties Limited with effect from 31.12.2007 and finally to Hill County Properties Limited with effect from 16.08.2013. The registered office of the company is situated at Bachupally, within the state of Telangana. The authorized share capital of the transferee company is Rs.78,54,99,000/- divided into 78,50,000 equity shares of Rs.100/- each and Rs.4,99,000/- divided into 4,990 preference shares of Rs.100/- each. The present issued, subscribed and paid up share capital of the Transferee company is Rs.25,00,000/- divided into 25,000 equity shares of Rs.100/- each fully paid up and Rs.4,99,000/- divided into 4,9990 preference shares of Rs.100/- each. The objects of the transferee company are to carry on the business of builders, constructors, developers, contractors or otherwise deal in houses, land buildings, sheds etc. The transferee company accounts were also audited upto 31.12.2015.

While so, the scheme of amalgamation was proposed in order to achieve consolidation, greater integration and financial strength and flexibility which would maximize overall shareholder value and improve the competitive position of the combined entity. It was thought that the scheme of amalgamation shall be beneficial to the shareholders, creditors and employees of the transferor companies and the transferee company. The similarity of objects and business of the transferor companies and transferee company was also taken into account. The factual reasons necessitated for the scheme of amalgamation are as follows:

a) The transferee company was established for the purposes of development of real estate. The erstwhile promoters of the transferee company and the transferor company were associates of Mr.Ramalinga Raju, the original promoter of M/s.Satyam Computer Services Limited. Post the Satyam episode in January 2009, the transferee company which was undertaking 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, shareholders, etc., were left in a lurch and felt cheated.

b) At this critical juncture, in order to protect the public interest including 800 end customers of the project among others, the proposal for investment made by the IL&FS group which was evaluated by SBI Capital Markets Limited (SBICAPS) and then after due deliberations, SBICAPS and Hon'ble Justice A.R.Laxmanan (Retd) recommended the induction of the IL&FS group as strategic investor. Accordingly the CLB, vide its order dated January 13, 2011, inducted the IL &FS group as the new promoters of the transferee company.

c) All the major shareholders of infrastructure Leasing & Finance Company Limited are public sector undertakings and mentioned below:

i.Life Insurance Corporation of India;

ii. ORIX Corporation Japan – a 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;

v. Central Bank of India;

vi. State Bank of India;

vii. UTI Asset Management Company Private Limited;

viii. India Discovery Fund Limited;

ix. IL & FS Employees' welfare Trust & others.

d) After taking over the management of the transferee company, the IL&FS Group has infused about Rs.12,00,00,00,000/-into the transferee company for the due completion of the "Hill County" project in public interest to fulfill the contractual obligation of the company and deliver residential units to 800 families in the city of Hyderabad. The funds were also used for the purpose of part repayment to project lenders, trade creditors, settlement with commercial banks and financial institutions. IL&FS also paid around Rs.57,00,00,000/- towards pending income tax dues which became liable during the erstwhile management regime.

e) In spite of the said funding of Rs.1,200 crores, the transferee company has suffered a lot due to past legacies and the political disturbances arising out of bifurcation of the erstwhile united state of Andhra Pradesh.

f) At the time of change of management during January, 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. In pursuance thereof, the IL&FS group has in fact closed nine (9) other companies promoted by Ramalinga Raju family since these nine (9) companies had no assets whatsoever. Thereafter by an order dated 29.09.2015 passed by this Hon'ble Court of Judicature at Hyderabad for the Sate of Telangana and State of Andhra Pradesh, the management merged 14 companies into the transferee company.

g) The transferee company has outstanding amounts payable to its creditors including PE investors, banks, and financial institutions and IL&FS group.

h) The Satyam episode which tarnished the image of the Companies and indefinitely delayed the project, some of the families who had initially purchased the residential units cancelled their agreements and demanded repayment of the amounts paid by them with interest and damages. The transferee company for adjudication of the – disputes filed Special Leave Petitions – before the Honourable Supreme Court – where the Special Leave Petitions filed by the transferee company were dismissed and the transferee company ultimately had to pay about crores of rupees as settlement of amounts.

i) IL& FS group rescued the transferee company and the transferor companies, the company even cleared the past employee outstanding dues.

j) There was no need to incorporate so many companies by the erstwhile management which they have done for the reasons known to them. The transferor companies herein are not undertaking any business except holding of land parcel and/or development rights, if any.

k) In view of the aforesaid the Scheme of Amalgamation of the 20 transferor companies into the transferee company is very essential and necessary as it is not commercially viable to maintain so many companies which are also becoming very difficult for the new management both in terms of administrative costs and the need for various statutory compliances."

The Board of Directors of transferor companies and the transferee company at their respective Board Meetings held on 29.3.2016 & 28.3.2016 approved the Scheme of Amalgamation between the transferor companies and the transferee company with effect from 1.4.2015 subject to approval/consent of shareholders and confirmation by this Court. The copies of the resolutions of the Board of Directors of the transferor companies and the transferee company are annexed to the petitions. Upon the scheme being effected, the transferor companies would be dissolved without winding up pursuant to the provisions of the Section 394 of the Companies Act 1956 (for short 'the Act').

The transferor companies and the transferee company filed appropriate company applications for convening the meetings of the shareholders and unsecured creditors for considering the proposed scheme of amalgamation. This Court by orders dated 20.4.2016 in the said applications directed to convene the meetings of equity shareholders and unsecured creditors and appointed

Chairpersons to convene the meetings. Accordingly, meetings were conducted to consider the proposed scheme of amalgamation. The Chairpersons submitted their reports. This Court, considering the said reports, allowed the company applications. Thereafter, the present company petitions have been filed for approval of the scheme of amalgamation by sanctioning and confirming the same so as to bind on all the members and employees of the petitioner companies and for dissolution of the transferor companies without going through the process of winding up and also for an order under Section 394 of the Act to cause certified copies to be delivered to the Registrar of Companies, Hyderabad, and for consequential direction for dissolution of the transferor companies without going through the process of winding up.

After filing the present company petitions, notices were issued to the Official Liquidator and Regional Director, South Eastern Region, Ministry of Corporate Affairs, Hyderabad and they filed their reports.

The report of the Official Liquidator indicates that the affairs of the company appeared to have not been conducted in a manner prejudicial to the interest of the members or to public interest.

The Regional Director, South Eastern Region filed an affidavit on 29.9.2016 stating that pursuant to the General Circular No.1/2014, dated 15.1.2014 issued by the Ministry of Corporate

Affairs, New Delhi, comments of the Income Tax Department was sought by letter dated 8.8.2016. As per the reply furnished by the Additional Commissioner of Income Tax, dated 17.8.2016, he was of the opinion that the Scheme of Amalgamation will no way help its stated objective by merging the inoperative companies and the real intention of proposed merger is best known to the parties concerned. There was no need for amalgamation and the scheme of amalgamation does not serve any purpose except in facilitating the setting off of the future profits of the 'Transferor Companies' as result of development agreements with the losses generated in the 'Transferee Company' or increase in losses of the transferee company with benefit to set off against future profits. The scheme of arrangement would result in Nil/reduced profits in the hands of the amalgamated entity, which would result in low taxation. Therefore, the proposed scheme of amalgamation deserves to be rejected. It is further stated that they addressed a letter dated 25.08.2016 to the Ministry of Corporate Affairs, New Delhi on the inspection carried out by Serious Fraud Investigation Office and copy was marked to the said Investigation Office followed by reminders on 21.9.2016 and 29.9.2016. The office of the Serious Fraud Investigation Office *vide* letter dated 29.9.2016 forwarded their comments/reports, which revealed that the inspection of books of account and other records of the transferee company was ordered by the Ministry *vide* its letter dated 28.5.2013. The report was submitted to the Ministry *vide* letter dated 30.4.2014. The

report submitted was examined by the Ministry and the Ministry of Corporate Affairs *vide* letter dated 24.2.2016 authorized the Serious Fraud Investigation Office to file complaints in respect of offences committed by the Directors etc of the company under the Companies Act, 1956 and they are in the process of filing of prosecution in the above said matter before competent Court. The Serious Fraud Investigation Office has already filed petitions under sections 388B, 397, 398 read with 401, 402 – 408 of the Companies Act, 1956 before the National Company Law Tribunal (erstwhile CLB), New Delhi and the said matter is pending and the next date of hearing is on 2.11.2016. The Registrar of Companies reported that all the companies involved in the Scheme of Amalgamation are regular in filing the statutory returns and no complaints, no investigations and no inspection are pending against the transferor companies.

In view of the above facts, it appears that there are no complaints, inspections and investigations pending against the transferor companies and hence, there cannot be any impediment with regard to amalgamation of those companies with the transferee company. So far as the transferee company is concerned, it is not being wound up and it is continued under the scheme of amalgamation and the pending proceedings, if any, in respect of the transferee company would continue without being effected by virtue of the present scheme of amalgamation. So far as the comments made by the Additional Commissioner of

Income Tax, it is always open to the Commissioner of Income tax, Basheerbagh, Hyderabad, to verify the accounts of the transferor companies as on the date of approval of the scheme of amalgamation and take appropriate proceedings, if they are warranted. The present scheme of amalgamation does not prevent the competent authority to take appropriate action.

In the circumstances, all the Company Petitions are ordered in terms of the prayers made therein.

JUSTICE A.RAMALINGESWARA RAO

18th November, 2016
rkk