

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

T.P.NO. 224/2017, 225/2017, 226/2017 & 227/2017

IN

CoP.NO. 153/2016, 154/2016, 155/2016 & 156/2016

DATED: WEDNESDAY THE 28th DAY OF JUNE 2017

*PRESENT: SHRI RATAKONDA MURALI, MEMBER JUDICIAL
SHRI. ASHOK KUMAR MISHRA, MEMBER TECHNICAL*

IN THE MATTER OF SECTIONS 391 to 394 OF THE COMPANIES ACT, 1956 AND OTHER
RELEVANT PROVISIONS OF THE COMPANIES ACT, 2013 ALONG WITH THE
COMPANIES ACT, 1956

AND

IN THE MATTER OF SECTION 230 TO 232 OF THE COMPANIES ACT, 2013 AND
OTHER RELEVANT PROVISIONS OF THE COMPANIES ACT, 2013 ALONGWITH
THE COMPANIES ACT, 1956

AND IN THE MATTER OF

SCHEME OF AMALGAMTION

DOWNHILL HOLIDAY RESORTS PRIVATE LIMITED

AND

FOOTHILLS RESORTS PRIVATE LIMITED

AND

PENNAR HOTELS AND RESORTS PRIVATE LIMITED

AND

VALDEL XTENT OUTSOURCING SOLUTIONS PRIVATE LIMITED

WITH

PRESTIGE ESTATES PROJECTS LIMITED

T.P.NO. 224/2017 IN CoP.NO. 153/2016

1. Downhill Holiday Resorts Private Limited,
The Falcon House
No.-1, Main Guard Cross Road
Bengaluru-560 001 -

PETITIONER/TRANSFEROR COMPANY NO.1

T.P.NO. 225/2017 IN CoP.NO. 154/2016

2. Foothills Resorts Private Limited,
The Falcon House
No.-1, Main Guard Cross Road
Bengaluru-560 001 -

PETITIONER/TRANSFEROR COMPANY NO.2

T.P.NO. 226/2017 IN CoP.NO.155/2016

3. Pennar Hotels and Resorts Private Limited,
The Falcon House
No.-1, Main Guard Cross Road
Bengaluru-560 001 -

PETITIONER/TRANSFEROR COMPANY NO.3

T.P.NO. 227/2017 IN CoP.NO.156/2016

4. **Valdel Xtent Outsourcing Solutions Private Limited,**
The Falcon House, No.-1, Main Guard Cross Road
Bengaluru-560 001 -

PETITIONER/TRANSFEROR COMPANY NO.4

PARTIES PRESENT: 1. Mr. A Murali, Advocate, J. SAGAR ASSOCIATES, Advocates and Solicitors, Level 3, Prestige Obelisk No.3, Kasturba Road Bengaluru-560001 Advocate for the Petitioner Companies
 2. Ms.Prema Hatti, Standing Counsel for Central Government Advocate for the Regional Director
 3. Mr. Vasant Kumar, Assistant, Representative for Official Liquidator

Heard on: 08.03.2017, 20.03.2017, 31.05.2017, 13.06.2017, 19.06.2017 & 27.06.2017

C O M M O N O R D E R

Originally these Company Petitions were filed before the Hon'ble High Court of Karnataka and they were numbered as Co.P.No.153/2016, 154/2016, 155/2016 & 156/2016. Subsequently as per Notification No. GSR.1119 (E) dated 7th December 2016 issued by the Ministry of Corporate Affairs, New Delhi, the said cases were transferred to this Tribunal and renumbered as T.P.NO. 224/2017, 225/2017, 226/2017 & 227/2017 respectively. These Company Petitions are being clubbed and disposed of by a Common Order.

These Company Petitions were filed on behalf of the Petitioner Companies under Section 391-394 of the Companies Act, 1956 read with Rule 9 of the Companies (Court) Rules, 1959, praying to order for sanctioning the Scheme of Amalgamation of the Transferor Companies with the Transferee Company and shall be binding upon all the Shareholders and Creditors of the Petitioner Companies.

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

The Petitioner Companies seeks an order for sanctioning the Scheme of Amalgamation of **DOWNHILL HOLIDAY RESORTS PRIVATE LIMITED** (Petitioner CompanyNo.1) and **FOOTHILLS RESORTS PRIVATE LIMITED** (Petitioner CompanyNo.2) and **PENNAR HOTELS AND RESORTS PRIVATE LIMITED** (Petitioner CompanyNo.3) and **VALDEL XTENT OUTSOURCING SOLUTIONS PRIVATE LIMITED** (Petitioner CompanyNo.4) with **PRESTIGE ESTATES PROJECTS LIMITED** (Transferee Company). The Scheme of Amalgamation is shown as **Annexure A**.

The Petitioner Company No.1 was incorporated on 5th December, 1995 as the Private Limited Company under the name, **DOWNHILL HOLIDAY RESORTS PRIVATE LIMITED** and obtained Certificate of Incorporation vide bearing CIN No.-U551023KA1995PTC019332.

The Petitioner Company No.1's objects as set out in its Memorandum of Association inter alia, as follows:

- i.) To carry on all or any of the business as owners, lessors, lessees, licensors, licensees, promoters, developers, builders of hotels, restaurants, motels, lodges, guest houses, cottages, bungalows, villas, apartments, rest-rooms, tourist bungalows, tourist cottages, shopping centres, cinema theatres, community halls, holiday resorts, country clubs, health clubs, health spa, meditation centres, refreshment rooms, pubs, beer houses, bars, clubs, recreation centres, billiards rooms, golf course,, swimming pools, boat clubs, tennis courts, playgrounds and places of all kinds and description for amusement, recreation, sports, entertainment and/ or pleasure and to manage, maintain, run or deal in all or any of the foregoing."

A Copy of Certificate of Incorporation and Memorandum & Articles of Association of the Petitioner Company No.1 are shown as **Annexure B in T.P.-224/17**.

The Latest Audited Balance Sheet of the Petitioner Company No.1 as on 15th March, 2015 is as follows:

Liabilities	Amount	Asset	Amount
Share Capital	4,15,00,000	Non-Current Investments	1,07,98,560
Reserve and Surplus	5,17,02,313	Long term loans and advances	8,16,88,489
Non-Current Liabilities	-	Cash and Cash Equivalents	7,49,762
Current Liabilities	34,498		
Total	9,32,36,811	Total	9,32,36,811

The Copy of Audited Balance Sheet as on 31st March, 2015 and as on 15th March, 2016 is shown as **Annexure C in T.P.224/17**.

The Petitioner Company No.2 was incorporated on 15th September, 1994 as the Private Limited Company under the name, **FOOTHILL RESORTS PRIVATE LIMITED** and obtained Certificate of Incorporation vide bearing CIN No.-U55101KA1994PTC016246.

The 2nd Petitioner Company's objects as set out in its Memorandum of Association inter alia, as follows:

- i) To carry on all or any of the business as owners, lessors, lessees, licensors, licensees, promoters, developers, builders of hotels, restaurants, motels, lodges, guest houses, cottages, bungalows, villas, apartments, rest-rooms, tourist bungalows, tourist cottages, shopping centres, cinema theatres, community halls, holiday resorts, country clubs, health clubs, health spa, meditation centres, refreshment rooms, pubs, beer houses, bars, clubs, recreation centres, billiards rooms, golf course,, swimming pools, boat clubs, tennis courts, playgrounds and places of all kinds and description for amusement, recreation, sports, entertainment and/ or pleasure and to manage, maintain, run or deal in all or any of the foregoing."

A Copy of Certificate of Incorporation and Memorandum & Articles of Association of the Petitioner Company No.2 are shown as **Annexure B in T.P.-225/17**.

The Latest Audited Balance Sheet of the Petitioner Company No.2 as on 15th March, 2015 is as follows:

Liabilities	Amount	Asset	Amount
Share Capital	5,62,06,940	Non-Current Investments	1,13,98,480
Reserve and Surplus	4,14,19,225	Long term loans and advances	8,55,71,996
Non-Current Liabilities	-	Cash and Cash Equivalents	6,92,027
Current Liabilities	36,338		
Total	9,76,62,503	Total	9,76,62,503

The Copy of Audited Balance Sheet as on 31st March, 2015 and as on 15th March, 2016 are shown as **Annexure C in T.P.225/17**.

The Petitioner Company No.3 was incorporated on 15th September, 1994 as the Private Limited Company under the name, **PENNAR HOTELS AND RESORTS PRIVATE LIMITED** and obtained Certificate of Incorporation vide bearing CIN No.-U55101KA1994PTC016244.

The 3rd Petitioner Company's objects as set out in its Memorandum of Association inter alia, as follows:

- i) To carry on all or any of the business as owners, lessors, lessees, licensors, licensees, promoters, developers, builders of hotels, restaurants, motels, lodges, guest houses, cottages, bungalows, villas, apartments, rest-rooms, tourist bungalows, tourist cottages, shopping centres, cinema theatres, community halls, holiday resorts, country clubs, health clubs, health spa, meditation centres, refreshment rooms, pubs, beer houses, bars, clubs, recreation centres, billiards rooms, golf course,, swimming pools, boat clubs, tennis courts, playgrounds and places of all kinds and description for amusement, recreation, sports, entertainment and/ or pleasure and to manage, maintain, run or deal in all or any of the foregoing."

A Copy of Certificate of Incorporation and Memorandum & Articles of Association of the Petitioner Company No.3 are shown as **Annexure B in T.P.-226/17**.

The Latest Audited Balance Sheet of the Petitioner Company No.3 as on 15th March, 2015 is as follows:

Liabilities	Amount	Asset	Amount
Share Capital	3,58,57,780	Non-Current Investments	77,98,960
Reserve and Surplus	2,94,94,124	Long term loans and advances	5,69,57,252
Non-Current Liabilities	-	Cash and Cash Equivalents	6,31,415
Current Liabilities	35,723		
Total	6,53,87,627	Total	6,53,87,627

The Copy of Audited Balance Sheet as on 31st March, 2015 and as on 15th March, 2016 are shown as **Annexure C in T.P.226/17**.

The Petitioner Company No.4 was incorporated on 14th November, 2000 as the Private Limited Company under the name, **VALDEL XTENT OUTSOURCING PRIVATE LIMITED** and obtained Certificate of Incorporation vide bearing CIN No.-U72200KA2000PTC028118.

The 4rd Petitioner Company's objects as set out in its Memorandum of Association inter alia, includes:

- i) To design, maintain, integrate, develop, market, sell, resell, hire, lease, license or deal in information systems, networks and software related to and for computers, telecommunications and other industries and in general to provide all types of information services to all types of industry, in India or abroad, and without limiting the generality of the above, to act as consultants to firms, companies or persons or to draw, create, make or in any other way deal in design development, reengineering, selling hiring, licensing or leasing of all types of software tools, packages, information systems and services.
- ii) To carry on the business of transaction processing in India or abroad, including but not limited to engineering support services, data conversion, remote online technical and managerial support, back office operations and other IT enables services by employing skilled manpower.

A Copy of Certificate of Incorporation and Memorandum & Articles of Association of the Petitioner Company No.4 are shown as **Annexure B in T.P.-227/17.**

The Latest Audited Balance Sheet of the Petitioner Company No.4 as on 15th March, 2015 is as follows:

Liabilities	Amount	Asset	Amount
Share Capital	29,00,00,000	Non-Current Investments	95,99,82,385
Reserve and Surplus	(11,38,69,283)	Long term loans and advances	41,30,77,540
Non-Current Liabilities	69,18,870	Cash and Cash Equivalents	3,99,22,119
Current Liabilities	2,49,29,12,901	Current Investments	1,26,29,80,464
Total	2,67,59,62,508	Total	2,67,59,62,508

The Copy of Audited Balance Sheet as on 31st March, 2015 and as on 15th March, 2016 are shown as **Annexure C in T.P.227/17.**

The Transferee Company was constituted as a Partnership Firm under the Indian Partnership Act, 1932 on 1st April, 1986 under the name and style of PRESTIGE ESTATES AND PROPERTIES. Subsequently the name of the Firm was changed to PRESTIGE ESTATES PROJECTS by a supplementary Deed of Partnership dated 12th May, 1997. The Firm was registered as private limited company on 4th June, 1997 under the name and style PRESTIGE

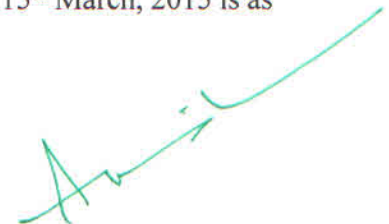
ESTATES PROJECTS PRIVATE LIMITED. Subsequently, the Company was converted into a Public Limited Company on 10th November, 2009 under the name and style **PRESTIGE ESTATES PROJECTS LIMITED** and obtained a fresh certificate of Incorporation bearing CIN no. L07010KA1997PLC022322. The Registered office of the Transferee Company is situated at No.38, Ground Floor, 1st Main Road, Lower Palace Orchards, Bengaluru- 560 003.

The Transferee Company's objects as set out in its Memorandum of Association inter alia, includes as follows:

- i) to purchase, acquire, take on lease, or in exchange or in any other lawful manner any area, lands, buildings, structures and other immovable properties or any interest therein and to develop, construct, sell, lease, dispose of or maintain the same and carry on all or any of the functions for the promotion and development of flats, apartments, dwelling houses, shops, offices, clubs, residential layouts, industrial parks, resorts and hold, lease or sell the same to intending users and purchasers.
- ii) To carry on the business of real estate consultants, advisors, surveyors and to render and provide consultancy services and assistance including project management services, construction, formation of layouts, land scraping, design legal and financial matters, rentals, lease and for the purpose to advertise and to carry out surveys, prepare reports, plans certificates or arrange to procure capital, finance, land, building, machinery and to represent the clients to various Government, Local Municipal Authorities, Bank, Financial Institutions and such other authorities and obtain clearances, licenses, permission, grants and orders from them.

A Copy of Certificate of Incorporation and Memorandum & Articles of Association of the Transferee Company is shown as **Annexure E in T.P.224/17.**

The Latest Audited Balance Sheet of the Transferee Company as on 15th March, 2015 is as follows:

Liabilities	Amount	Asset	Amount
Share Capital	3,75,00,00,000	Net Fixed Assets	8,10,31,00,000
Reserve and Surplus	35,19,51,00,000	Non-Current Investments	10,64,44,00,000
Non-Current Liabilities	4,31,67,00,000	Long term loans and advances	15,22,87,00,000
Current Liabilities	42,73,06,00,000	Other Non-Current Assets	69,57,00,000
		Current Assets	51,32,05,00,000
Total	85,99,24,00,000	Total	85,99,24,00,000

The Copy of Audited Balance Sheet as on 31st March, 2015 is shown as **Annexure F** in **T.P.224/17**.

The Petitioner Companies have averred that the reasons which justify the proposed Amalgamation with the Transferee Company, inter alia, are as follows:

- i) Greater integration, financial strength and flexibility for the amalgamated entity, would result in maximizing overall shareholder value.
- ii) Greater efficiency in cash management of the Transferee Company and unfettered access to cash flow which can be deployed more efficiently to fund growth opportunities, to further improve shareholder's value.
- iii) Simplification of group structure by eliminating multiple companies in similar business thus enabling focus on core competencies.

The Board of Directors of the Petitioner Companies No.1, 2, 3 & 4 at their respective Board Meetings held on 29th March, 2016 adopted the scheme of Amalgamation. Copy of Board Resolution is shown as **Annexure D** in the respective Company Petitions in T.P.-224/17, 225/17, 226/17 & T.P.-227/17.



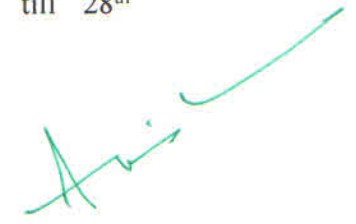

The Petitioner Companies had filed C.A.No.245/16, 246/16, 247/16 & 248/16 respectively before the Hon'ble High Court of Karnataka to dispense with the convening of meeting of Shareholders and Creditors of the respective Petitioner Companies. The Hon'ble High Court of Karnataka vide Order dated 17th June 2016 allowed the Applications and dispensed with the Shareholders and Creditors meeting(s) as prayed for in the respective Company Applications. The copies of the Orders of Hon'ble High Court in C.A.No.245/16, 246/16, 247/16 & 248/16 are shown as **Annexure -G** in the respective Company Petitions.

That the Petitioner Companies filed the Company Petitions bearing Co.P.No.153/2016, 154/2016, 155/2016 & 156/2016 respectively before the Hon'ble High Court for sanctioning the scheme of Amalgamation on 30th June, 2016.

The Hon'ble High Court of Karnataka vide Order dated 28th July, 2016 in Co.P.No.153/2016, 154/2016, 155/2016 & 156/2016 directed to issue Notice to Regional Director & Official Liquidator and to have an advertisement of Notice of Petition be carried out in the 'The Hindu', English daily Newspaper and 'Udayavani', Kannada daily Newspaper on or before 10th August, 2016 and fixed the next date of hearing of the present petitions was on 2nd September, 2016. The Hon'ble High Court accepted the Memo **dated. 8rd August, 2016**, for having advertised the Notice of the Petition as directed by the Hon'ble High Court.

The Regional Director, Ministry of Corporate Affairs, South East Region, Hyderabad represented by Registrar of Companies has filed Affidavits dated 09th November, 2016 along with Annexure R1 & R2 in the respective Company Petitions making some observations and in response to the same, Petitioner Company No.4 has filed Reply Affidavit dated 10th November, 2016. The observations made by the regional Director through Registrar of Companies, Karnataka and reply given by the Petitioner Company No.4 is noted hereunder:-

- 1.) The Notice dated 30th August, 2016 was issued to the Income Tax Department giving 15 days' time to offer comments/ objections, if any. But no comment/ objections have been received so far from the Income Tax Department by office of the Regional Director (South East Region) till 28th September, 2016.

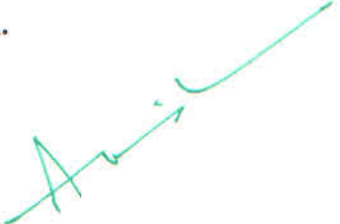



- 1.1) The Regional Director, Ministry of Corporate Affairs, South East Region, Hyderabad represented by Registrar of Companies has filed Additional Affidavits **dated 18th November, 2016** along with **Annexure R1** in the respective Company Petitions stating that they have received letter dated 4th November, 2016 from the Income Tax Department, Bengaluru on 15th November, 2016 conveying no objection for the Amalgamation subject to the conditions that the losses of M/s. Downhill Holiday Resorts Private Limited, M/s. Foothill Resorts Private Limited and M/s. Pennar Hotels and Resorts Private Limited are not allowed to be carried forward after amalgamation to the Amalgamated Company.
- 2). a.) The Transferee Company may amend its objects suitably for inclusion of the objects of the Transferor Company No.1-4 before the Scheme is implemented/ approved.

The Petitioner Companies in its Reply Affidavit has averred that the Transferor Company No.4 is carrying out real estate activities as provided under Article 18 and 19 of its Memorandum of Association, which is similar to the main objects of the Transferee Company. The Transferee Company will make suitable modifications to its objects, if required to carry on the business of the Transferor Company No.4.

- b.) The Registrar of Companies vide para No.17 of his report observed that the Petitioner/ Transferor Company No.4 violated the provisions of Section 383A/215 of the Act. Therefore, the Petitioner Transferor Company No.4 and it's Directors/Officers in default may get the said offence compounded by filling necessary compounding application under the provisions of Section 441 of the Companies Act, 2013 before the scheme is implemented / approved since clause of Part of the Scheme provides for dissolution of the Petitioner Transferor Company No.4.

It is averred that, the Transferor Company No.4 has appointed a Company Secretary and complied with the provisions of Section 383A of the Companies Act, 1956. The challan for reporting appointment of Company Secretary was filed on 28th October, 2016 vide Form DIR12 with SRN G18598417. The copy of Form DIR12 with SRN G18598417 is filed along with **Memo dated 8th June, 2017** shown as **Annexure A**.



- 3.) The Petitioner Companies submitted copy of the letter dated 26th July, 2016 of BSE Limited and NSE Limited. The copy of the letter dated 26th July, 2016 of national Stock Exchange of India is unsigned.

In the letter dated 26th July, 2016 of BSE Limited it is stated that "We are in receipt of Draft Scheme of Amalgamation of Downhill Holiday Resorts Pvt. Ltd., Foothills Resorts Pvt. Ltd., Pennar Hotels and Resorts Pvt. Ltd. And Valdel Xtent Outsourcing Solutions Pvt. Ltd with Prestige Estates Projects Limited as required under SEBI Circular No. CIR/CFD/CMD/16/2015 dated 30th November, 2015; SEBI vide letter dated 14th July, 2016 has given following comments on the draft Scheme of Arrangement:

- "The Company shall duly comply with various provisions of the Circulars."

Accordingly, based on aforesaid comments offered by SEBI, the BSE observed as follows:-

- To duly comply with various provisions of the circulars.

In the light of the above, we hereby advise that we have no adverse observations with limited reference to those matters having a bearing on listing/de-listing/continuous listing requirements within the provisions of Listing Agreement, so as to enable the company to file the scheme with Hon'ble High Court.

Further, pursuant to the above SEBI circulars, upon sanction of the Scheme by the Hon'ble High Court, the listed company shall submit to the stock exchange the following:

- a) Copy of Scheme as approved by the Hon'ble High Court;
- b) Result of voting by shareholders for approving the Scheme;
- c) Statement explaining changes, if any, and reasons for such changes carried out in the Approved Scheme vis-a-vis the Draft Scheme;

- d) Copy of the observation letter issued by all the Stock Exchanges where Company is listed.
- e) Status of compliance with the observations letter/s of the stock exchanges.
- f) The application seeking exemption from Rule 19(2) (b) of SCRR, 1957, wherever applicable; and
- g) Complaints Report as per Annexure II of this Circular.
- h) Any other document/disclosure as informed by the Exchange.

The Exchange reserves its right to withdraw its 'No adverse observation' at any stage if the information submitted to the Exchange is found to be incomplete/incorrect misleading/false or for any contravention of Rules, Bye-laws and Regulations of the Exchange, Listing Agreement, Guidelines/Regulations issued by statutory authorities.

In the Letter of the National Stock Exchange of India Limited dated 26th July, 2016 it is stated that 'This has reference to draft Scheme of Amalgamation of Downhill Holiday Resorts Pvt. Ltd., Foothills Resorts Pvt. Ltd., Pennar Hotels and Resorts Pvt. Ltd. And Valdel Xtent Outsourcing Solutions Pvt. Ltd and Prestige Estates Projects Limited and their respective shareholders submitted to NSE vide your letter dated 9th May, 2016.

Based on our letter reference no. Ref: NSE/LIST/81043 submitted to SEBI(LODR) Regulation, 2015 dated 30th November, 2015, SEBI has vide letter dated 26th July, 2016 has given following comments on the draft scheme of Amalgamation:

- a.) "The Company shall duly comply with various provisions of the Circulars."

Based on the draft scheme and other documents submitted by the company, including undertaking given in terms of regulation 11 of SEBI (LODR) Regulation, 2015, we hereby convey our "No -objection" in terms of Regulation 94 of SEBI (LODR) Regulation, 2015, so as to enable the Company to file the draft scheme with the Hon'ble High Court.

However, the Exchange reserves its rights to raise objections at any stage if the information submitted to the Exchange is found to be incomplete/incorrect misleading/false or for any contravention of Rules, Bye-laws and Regulations of the Exchange, SEBI(LODR) Regulations, 2015 Guidelines/Regulations issued by statutory authorities.

The validity of this "Observation Letter" shall be six months from 26th July, 2016 within which the Scheme shall be submitted to the Hon'ble High Court. Further, pursuant to the above cited SEBI circulars upon sanction of the Scheme by the Hon'ble High Court, the company shall submit to NSE the following:

- a) Copy of Scheme as approved by the Hon'ble High Court;
- b) Result of voting by shareholders for approving the Scheme;
- c) Statement explaining changes, if any, and reasons for such changes carried out in the Approved Scheme vis-a-vis the Draft Scheme;
- d) Status of compliance with the observations letter/s of the stock exchanges.
- e) The application seeking exemption from Rule 19(2) (b) of SCRR, 1957, wherever applicable; and
- f) Complaints Report as per Annexure II of this Circular.
- g) Complaints Report as per SEBI Circular No.CIR/CFD/CDM/16/2015 dated 30th November, 2015.

On the prayer made by the Official Liquidator in OLR No.114/2016, 116/2016, 117/2016 & 118/2016 in Co.P.No.153/16, 154/2016, 155/2016, 156/2016 vide order dated 2nd September, 2016, M/s. G.V. Sunder & Co. Chartered Accountants was appointed by the Hon'ble High Court of Karnataka to scrutinize the Books of Accounts and records of the Petitioner Companies. Upon scrutiny of Books & Records and other material made available by the Petitioner Companies. M/s. G.V. Sunder & Co. Chartered Accountants have submitted report dated 4th October, 2016. Pursuant to the same, the Official Liquidator has filed a report in OLR No.-157/2016, 158/2016, 159/2016 & 160/2016 in Co.P.No.153/2016,154/2016,155/2016 & 156/2016 dated 28th October, 2016 stating that:

- i) The Petitioner Companies have maintained proper Books of Accounts, Statutory Registers, minutes and other related records up to date, as defined in the Companies Act, 1956 and corresponding provisions of the Companies Act, 2013.
- ii) On scrutiny of Books of Accounts, Statutory Registers and other related records of the Petitioner Companies in their opinion that the Petitioner Companies have not conducted its activities in a manner prejudicial to the interest of its members or public.

- iii) The Chartered Accountant in Co.P.154/2016 & Co.P.156/2016 have observed that the Petitioner Companies No. 2 & 4 does not have a full-fledged Company Secretary but in his opinion and on verification of the documents it is found that the Transferor Companies No.2 & 4 has complied with the secretarial compliances with reference to the Companies Act, 1956 and corresponding provisions of the Companies Act, 2013.

Thus relying on the Scrutiny Report dated 4th October, 2016 submitted by G.V. Sunder & Co. Chartered Accountants the Official Liquidator submits that Petitioner Companies may kindly be dissolved without winding up.

The Counsel for the Petitioner Companies has contended that since the Petitioner Companies being the wholly owned subsidiary of the Transferee Company i.e. Prestige Estates Project Limited and the scheme is not detrimental in any manner to the interests of members or creditors of the Transferee Company. Therefore, there is no requirement for the Transferee Company to approach this Tribunal separately for sanction of the scheme. The counsel for the Petitioner Companies in support his contention has placed reliance on various Judgements passed by the Hon'ble High Court of various states:

- a.) *Nokia Siemens Network India Private Limited, Bangalore v. NIL, 2009 SCC Online KAR17;*
- b.) *Santhananlakshmi Investments P Ltd, In re 2005SCCOnline Mad709*
- c.) *Bysani Consumer Electronics Ltd. V. Jaisons Corporation Limited, C.P. No. 234 and 235 of 2005, High Court of Madras;*
- d.) *Mahaamba Investments Ltd. V. IDI Ltd, 2001 SCC Online Bom 1174;*
- e.) *In Re. Nebula Motors Ltd., 2003(5)ALD 327*
- f.) *Andhra Bank Housing Finance Ltd v. M/s Andhra Bank, 2009 SCC Online KAR17*

The Counsel for the Petitioner Companies submits that in view of the Judgement of the Hon'ble High Court of Karnataka in **Nokia Siemens Network India Private Limited v. Nil, (2009) 150 Comp cas728** wherein Hon'ble High Court has held as follows:

"..... that if the proposed scheme reorganisation of share capital is absent and when the 100 % subsidiary company is seeking to amalgamate with its holding company and where the scheme is not detrimental in any manner to the interests of the members or creditors of the transferee company, there is no need to examine the scheme by the court within its territorial jurisdiction the transferee company is situate. In such a case, the sanctioning court which has been approached by the Transferor Company can examine the scheme and see whether it does affect the rights of the members or creditors of the transferee company either because it involves reorganisation of its share capital or otherwise and if the rights of the members of the transferor company has not been touched upon, then there is no need for the transferee company to approach the court separately for necessary sanction of the scheme."

Further in the same decision Hon'ble High Court referred to the decision in **Vibank Housing Finance Limited v. Nil** 2006 130 CompCas 705Kar, ILR 2006 KAR 255, wherein it has been held that the holding company being the holder of the 100% of shares of its subsidiary company, in the meeting of the shareholders of the transferor company convened as directed by this court under Section 391 of the Act, the very same shareholders of the transferee company having participated in the said meeting and approved the scheme of amalgamation, it cannot be said that the decision cannot bind the transferee company, its members and creditors. The Board of Directors of the transferee company in the meeting held approved and adopted the scheme of amalgamation. The scheme of transfer does not affect the rights of the members or the creditors of the transferee company as between themselves and the company. No new shares are issued and there being no reorganisation of the share capital of the transferor company. In these circumstances, there would be no need for the transferee company to file an application and a petition under sections 391 to 394 of the Act.

In *Mahaamba Investments Ltd v. IDI Ltd*, 2001 SCC Online Bom 1174, the Hon'ble High Court of Bombay, while dealing with the office objection that no petition was filed by the transferee company with regard to the scheme of amalgamation of the transferor company with the transferee company, held that the relevant clauses of the scheme of amalgamation stated that no new shares were sought to be issued by to the members of the transferor company. The scheme did not affect the transferee company and creditors of the transferee company were not likely to be affected by the scheme. Accordingly, the filing of a separate petition by the transferee company was not necessary.

In *Andhra Bank Housing Finance Ltd v. M/s Andhra Bank*, 2009 SCC online KAR 17, the High Court of Judicature at Andhra Pradesh held that the Petitioner Company, Andhra Pradesh Housing Finance Limited was a 100% subsidiary of the Transferee Company and the proposed scheme is not in any manner prejudicial to the members of either the subsidiary company or the holding company. Accordingly, it was held that there was no requirement to file a separate application by the holding company for seeking sanction of the scheme.

The Counsel for the Petitioner Companies has contended even though the decisions have been rendered under the provisions of the Companies Act, 1956, yet the Tribunal is to consider the principle laid down in the decisions cited supra as the petition was originally filed before the Hon'ble High Court of Karnataka under the Companies Act, 1956. The Principle laid down in the decision where Transferor Companies are the wholly owned subsidiaries of the Transferee Company and the Transferor Companies which are going to be merged or amalgamated with its

holding company then there is no requirement for the Tribunal to direct the holding company i.e. Transferee Company to file the separate petition and to again examine the very same scheme separately if the scheme is not detrimental to the interests of members or creditors of the Transferee Company.

The Counsel for the Petitioner Companies has filed Memo **dated 3rd March, 2017** along with the certificate of Chartered Accountant stating that the Accounting Treatment specified in the scheme is in conformity with the Applicable Accounting Standards notified under Section 133 of the Companies Act, 2013.

After these Petitions were transferred from the Hon'ble High Court of Karnataka then the Tribunal directed the Counsel for the Petitioner Companies, whether Notice(s) to be issued to the authorities other than those to whom Notice(s) were already issued in pursuant to section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016.

The Counsel for the Petitioner Companies has filed the **Affidavits dated 8th March, 2017** of the authorised signatory of the Petitioner Companies stating that Notices have been served upon the Regional Director, Official Liquidator, Registrar of Companies and Income Tax assessing officer of the Petitioner Companies. The Bombay Stock Exchange and the National Stock Exchange have issued no-objection letters dated 26th July, 2016 respectively, to the Scheme. He further states that the Petitioner Companies are not governed by any Sectoral regulatory authority and there is no further requirement to issue notices to any other regulatory body for obtaining sanction of the said scheme of Amalgamation.

The Counsel for the Petitioner Companies have filed the **Memo dated 8th March, 2017** containing the Board Resolution **dated 31st March, 2016** of the Transferee Company in all the respective Company Petitions, the Extract of the Resolution passed by the Board of Directors of Prestige Estates Projects Limited for approving the Scheme of Amalgamation herewith as follows: *"subject to the requisite approvals of the BSE Limited ("BSE") and the National Stock Exchange of India Limited ("NSE") and approval of the members and creditors and subject to the approval of any other statutory / regulatory authorities, as may be required, and subject to such conditions and modifications as may be prescribed or imposed by any of the aforesaid authorities....."*.



The Transferee Company has the requisite approval of the BSE Limited ("BSE") and the National Stock Exchange of India Limited ("NSE") vide letters dated 26th July, 2016 subject to certain compliances. The Counsel for the Petitioner Companies have filed the Affidavit dated 8th March, 2017 in the respective Company Petitions that they are not governed by any Sectoral regulatory authority and there is no further requirement to issue notices to any other regulatory body for obtaining sanction of the said scheme of Amalgamation.

The Hon'ble High Court vide Order dated 17th June, 2016 has allowed the Application dispensed with the convening of the meetings of Shareholders and Creditors meeting(s) as prayed for in the respective Company Applications. Since the Petitioner Companies are the wholly owned subsidiaries of the Transferee Company.

The Hon'ble High Court of Karnataka, vide Order dated 28th July, 2016 directed the Petitioner Companies to have an advertisement to be carried out in the 'The Hindu', English daily Newspaper and 'Udayavani', Kannada daily newspaper on or before 10th August, 2016 and also fixed the next date of hearing of the present petition on 2nd September, 2016. The Counsel for the Petitioner Companies have carried out Advertisement on 3rd August, 2016. To this date no objection has been received from the general public.

The counsel for the Petitioner Companies has filed Board Resolution of Prestige Estates Project Limited, the Transferee Company dated 30th May, 2017 along with **Memo dated 15th June, 2016** stating that the Consent of the Shareholders and Creditors relating to the proposed scheme of amalgamation were not required, for the following reasons:-

- Based on the Judicial Precedents, the Company was not required to file a petition for approval of the scheme of amalgamation with the Hon'ble High Court of Karnataka. Given this, the Chairman emphasized the fact that the requirement of holding the meetings of its shareholders and creditors would not arise.
- Additionally, the scheme of Amalgamation merely contemplates the merger of wholly owned subsidiaries with its Parent company. Given this, the Chairman also informed the Board that as per Para 9 of the SEBI Circular No CIR/CFD/CMD/16/2015 dated 30th November, 2015 read with SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("collectively referred to as "SEBI Regulations") no shareholder approval was required since, amongst others, there was no issue/ allotment of shares by the company to the transferor companies or the Promoter Group. In this regard, an undertaking certified by the Auditor clearly stating that the reasons for non- applicability of Para 9 has been filed with the stock exchanges.

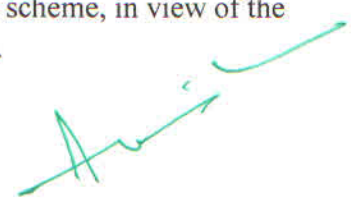
We have seen the decisions cited dealing with provisions of section 6 of General Clauses Act. There is no right created under the repealed enactment in the favour of Transferor Companies. In other words no right is vested on the Transferor Companies to seek exemption from moving separate petition for the approval of the scheme by the Transferee Company.

The contention of the learned Counsel that, the decisions cited were all rendered under the Companies Act, 1956. The counsel contends even though the decisions rendered under the repealed enactment i.e., the Companies Act, 1956 yet the principle laid down is applicable by virtue of provisions of section 6 of General Clauses Act. However, proposition of law is never the less applicable, since these petitions were originally filed in the Hon'ble High Court of Karnataka under the provisions of Companies Act, 1956. This proposition was applicable at that time and upon transfer to the Tribunal now no direction can be given to the Transferee Company to move the Tribunal for the sanction of the scheme. The Counsel for the petitioner also relied upon section 465 (2) (c) of the Companies Act, 2013 which is as follows:-

(c) any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure or existing usage, custom, privilege, restriction or exemption shall not be affected, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in, or from, the repealed enactments;

The learned counsel contend that, this practice followed under the Companies Act, 1956 continues to exist notwithstanding repeal of enactment. We have seen the decisions wherein it is clearly laid down when 100% subsidiary company is going to be merged or amalgamated with its Holding company and subject to the compliance of other requirements then Transferee Company need not file separate petition for the approval of the scheme under the Companies Act, 1956 as it is a transferred petition from Hon'ble High Court of Karnataka. In light of the above discussion filing of separate petition by the Transferee Company does not arise.

As seen from the decision cited, for the cases transferred from Hon'ble High Court of Karnataka where a 100 percent subsidiary companies are going to be merged with its holding company by virtue of the scheme of Amalgamation and if there is no restructuring of share capital of the holding company or issuing of any fresh shares pursuant to the scheme then there is no need for the Transferee Company to file separate application for sanction of the scheme. As rightly contended by Learned Counsel that the Petitioner / Transferor Companies are the wholly owned subsidiaries of Prestige Estates Projects Limited, the Transferee Company, then there is no need for the Transferee Company to file separate application for sanction of the scheme, in view of the Company Petitions transferred from the Hon'ble High Court of Karnataka.

The Counsel for the Petitioner Companies has further averred that, there is no likelihood that interests of any shareholders or creditors of the Petitioner Companies or the Transferee Company would be prejudiced as a result of the proposed Scheme of Amalgamation and the proposed Scheme of Amalgamation will be beneficial to both the Transferor Companies and the Transferee Company.

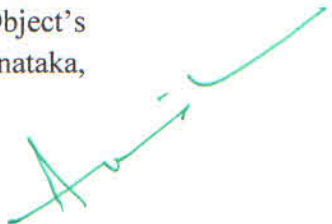
We have seen the scheme and it appears to be fair and reasonable and not detrimental in any manner to the interests of the members or creditors of the Transferee Company. The Transferee Company has also passed the Board Resolution approving the scheme. Thus the scheme can be approved, even though the Transferee Company has not filed any separate Petition.

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

THIS TRIBUNAL DO FURTHER ORDER

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

As a result of approving the Scheme of Amalgamation, the Transferor Companies viz., **DOWNHILL HOLIDAY RESORTS PRIVATE LIMITED, FOOTHILLS RESORTS PRIVATE LIMITED, PENNAR HOTELS AND RESORTS PRIVATE LIMITED, VALDEL XTENT OUTSOURCING SOLUTIONS PRIVATE LIMITED** are to be merged with **PRESTIGE ESTATES PROJECTS LIMITED**, the Transferee Company compliance the following before implementing the scheme:-

- i.) The Petitioner Company No.4 and its Director/ Officers in default are directed to get the past period violations compounded by filing necessary compounding application under the provisions of Section 441 of the Companies Act, 2013 as observed by the Registrar of Companies, Karnataka, Bangalore in his Affidavit, if any.
 - ii.) The Transferee Company is directed to incorporate the Object's clause of the Transferor Companies No.1 to 4 in its Main Object's clause as observed by the Registrar of Companies, Karnataka, Bangalore in his Affidavit.
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The Whole of the property, rights and powers of the Petitioner Companies be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to section 232 of the Companies Act, 2013, be transferred to and vest in the transferee company for all the state and interest of the Petitioner Companies therein but subject nevertheless to all the charges now affecting the same; and

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

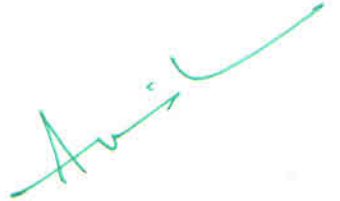
All the proceedings now pending by or against the petitioner Companies be continued by or against the Transferee Company, if any; and

Apart from above, that the losses of M/s. Downhill Holiday Resorts Private Limited, M/s. Foothill Resorts Private Limited and M/s. Pennar Hotels and Resorts Private Limited are not allowed to be carried forward after amalgamation to the Amalgamated Company.

The tax implications, if any, of the Petitioner Companies arising out of the scheme is subject to the final decision of concerned assessing authorities and the decision shall be binding on the Transferee Company.

That the Transferee Company shall comply the directions given in the letter dated 26th July, 2016 of BSE Limited and Letter dated 26th July, 2016 of National Stock Exchange of India Limited as reported in the Affidavit of Registrar of Companies.

Since the Transferor Companies are 100 percent subsidiary of the Transferee Company, there shall be no actual issuance of shares of the Transferee Company to the Shareholders of Petitioner/Transferor Companies.



The Petitioner Companies shall within thirty days of the date of the receipt of this order cause a certified copy of this order along with a copy of scheme of Amalgamation to be delivered to the Registrar of Companies for registration in accordance with Rule 25 (7) of Companies (Compromises, Arrangements & Amalgamations) Rules, 2016. The Transferee Company is also directed to file copy of this order with Registrar of Companies, Karnataka as per Rule 25(7) of the Companies Act, 2013.

The Scheme shall be effective from the appointed date as mentioned in the Scheme of Amalgamation i.e. 1st April, 2015.

The Petitioner Companies or their authorised signatory is directed that after the completion of the process of Amalgamation to handover the possession of the books of accounts and other relevant documents of the Petitioner Companies to the Transferee Company for the purpose of section 239 of the Companies Act, 2013.

If any person is genuinely aggrieved or his/her lawful interests will be prejudiced due to the merger of Transferor Companies into the Transferee Company, be at the liberty to apply to the Tribunal in the above matter for any directions that may be necessary.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 28th DAY OF JUNE, 2017