

IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD

C.P.No.297 of 2016

(CP (TCAA) No.22/HDB/2017)

U/s 391 and 394 of Companies Act, 1956

**In the matter of:**

M/s. Satya Prakash Hotels Private Limited

Regd office at: 14-41 P & T colony,

Gaddiannaram, Dilsukhnagar, Hyderabad,

Telangana, India.

.... Petitioner/ Transferor Company

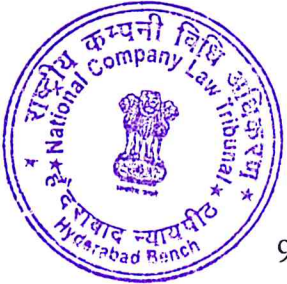
**Versus**

1. Mr. Anil Kumar Ravuri  
S/o. R Rammohan Rao,  
Aged about 51 years.
2. Mrs Satyavani Ravuri  
W/o Mr. Anil Kumar,  
Aged about 45 years  
Both are resident of 130 Finch Road,  
Ringwood, New Jersey, U.S.A. 07456.  
Both the Applicants are represented  
By their Power of Attorney  
Mr.Brungi Vijay Kumar,  
Residing at:1-2-19,  
Maruthi Nagar, Kothapet,  
Hyderabad – 500 035
3. Mr.Karri Naga Ramachandra Reddy,  
S/o.Sesha Reddy, Aged about 30 years,  
Occ: Business, R/o.D.No. 9-28,  
Bodavari Street, G.Mamidada,  
East Godavari Dist
4. Mr.KarriSesha Reddy,  
S/o. Ramachandra Reddy,  
Aged about 51 years,  
D.No. 11-15-14, Acyutharamayya Street,  
Ramaraopet, Kakinada,  
East Godavari Dist

CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL



5. Mr. Nallamilli Veera Venkata Sathireddy  
S/o.Late.Bhaskar Reddy,  
Aged about 38 years,  
Occ: Landlord & Business,  
R/o. D.No. 1-217, D.R.K. Nagar,  
G.Mamidada,  
East Godavari District
6. Mr.Padala Gangireddy  
S/o.Late. Ammireddy, Aged about 56 years,  
Occ: Landlord & Business  
R/o. HIG-128, VUDA Colony, Gajuwaka,  
Visakhapatnam District
7. Mr. Routhu Srinivasa Rao,  
S/o. Veera Swami, Aged about 45 years,  
Occ: Business, R/o. D.No.11-106,  
Madyaveedi, Bodavari Street,  
G.Mamidada, Pedapudi Mandal,  
East Godavari Dist
8. Mr.Nekkanti Prabhakar  
S/o.Sirvaram Prasad  
Aged about 30 years, Occ: Business,  
R/o. D.No.2-26/3, MogaliPalem,  
Bandanapudi Sivaru, Kajuluru Mandal,  
Maneru Post,  
East Godavari Dist
9. Mr.Pemonanaboina Rangarao,  
S/o. Venkatarao, Aged about 49 years,  
Occ: Business & Landlord,  
R/o. D.No.1-68, Konda Gunturu Village,  
Rajanagaram Mandal, East Godavari Dist.
10. Mr.Karri Manikyamba,  
W/o.Sesha Reddy, Aged about 46 years,  
Occ: Business, R/o. 11-15-14,  
AchutaRamayya Street,  
Ramaraopet, Kakinada,  
East Godavari Dist ...Respondents/Impleaded Respondents



**Judgment delivered on 18.09.2017**

**CORAM:**

**Hon'ble Mr.Rajeswara Rao Vittanala, Member (Judicial)**

**Parties/Counsels Present:**

For the Petitioner:	Shri.V.B.Raju&V.S.Raju, Advocates
For the Respondents No. 1 & 2:	Shri.P.Vikram&NitishBandari
For Respondents No. 3 to 10 :	Shri.D.V.V.S.Ravi Prasad, Advocate
For the Official Liquidator:	Shri.M.Anil Kumar, Advocate
For RoC& RD (SER):	Shri.B.Apparao, CGSC

**Per: Rajeswara Rao Vittanala, Member (Judicial)**

**JUDGEMENT**

1. The present Company Petition bearing CP No.297 of 2016(CP (TCAA) No.22/HDB/2017) is filed by M/s Satya Prakash Hotels Private Limited, under Sections 391 and 394 of the Companies Act, 1956 by inter-alia seeking to sanction the scheme of Amalgamation M/s Satya Prakash Hotels Private Limited with M/s Sri Brunda Infrastructure Private Limited as consented by the shareholders of the Petitioner Company/Transferor Company; to dissolve it without going through process of winding up etc.
2. The case was initially filed before the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and State of Andhra Pradesh. Subsequently, in pursuant to the notification of Companies (Removal of Difficulties) Fourth Order, 2016 and Companies (Transfer of Pending Proceedings) Rules, 2016 by issued the Ministry of Corporate Affairs, New Delhi, published in the Gazette of India, dated 07.12.2016, which came into force





with effect from 15.12.2016, the Hon'ble High Court transfer the case to this Bench, vide proceedings dated 24.01.2017. So the case was, accordingly listed before this Bench on various dates viz: 01.02.2017, 16.02.2017, 03.03.2017, 22.03.2017, 12.04.2017, 27.04.2017, 14.06.2017, 27.06.2017, 04.07.2017, 05.07.2017, 25.07.2017 & 28.07.2017. It has been adjourned at the requests of parties on one ground or the other.

3. The brief facts, as stated in the Company Petition, which are relevant to the issue in question, are as follows:
  - a) M/s Satya Prakash Hotels Private Limited (hereinafter referred to as "SPHPL"/Petitioner/Transferor Company) was incorporated as a Private Limited Company, in the then State of Andhra Pradesh, on 23<sup>rd</sup> March, 2001 under Certificate of Incorporation No.01-36463 of 2000-2001. Its share capital is Rs.15,00,00,000/- divided into 1,50,00,000 equity shares of Rs.10/- each and out of that an amount of Rs.8,80,00,000/- consisting 8,80,000 equity shares of Rs.10/- each subscribed & fully paid-up.
  - b) The main objects of the "SPHPL"/Transferor Company, in brief, are to Purchase or otherwise acquire any land, building or premises and to develop, improve, alter, demolish or let out for the purpose of carrying on the business of hotel, restaurant, coffee, lodging house; to carry out on business of wine, spirit and liquor, mineral and aerated waters and other drinks whether intoxicating or not etc.
4. M/s Sri Brunda Infrastructure Private Limited (hereinafter referred to as SBIPL/Transferee Company) was originally incorporated under the name and style of Chakka Constructions Private Limited, in the then State of Andhra Pradesh in the year 2010, under Corporate Identity No.U45200AP2010PTC069351. Later on, the Company had changed its name to M/s Sri Brunda Infrastructure Private Limited and consequent upon change of



name, the Registrar of Companies A.P. and Telangana, Hyderabad has issued a fresh Certificate of Incorporation, on 29<sup>th</sup> day of September, 2015 under Corporate Identity No.U45200AP2010PTC069351. Its Authorized share capital is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each and the entire share capital has been issued, subscribed and fully paid-up.

5. The main objects of the "SBIPL"/Transferee, in brief, are to carry on construction activities in India or elsewhere, either alone or jointly with one or more persons, government local or other bodies, acting as civil, electrical, mechanical instrumentation, architectural engineers, Interior decorators, consultants, adviser, supervisors, administrator, contractor, sub-contractor, turnkey contractors and to manage in all types of such constructions and development works, power stations, commercial and residential complexes.
6. It is stated that Transferor and Transferee Companies are closely held Companies, mainly engaged in business of hotel infrastructure and real-estate business. The Transferee Company offers strong financial structure to the Transferee Company to proposed amalgamation and would also result in economies of scale and reduction overheads administrative, managerial and other expenditure and optimal utilization of various resources.
7. It is stated that the Board of Directors of the both the Companies, at their respective meetings held on 09.12.2015, have approved the scheme of amalgamation of the Transferor and Transferee Companies, with effect from 01.04.2015 subject of approval/consent of the court.
8. The Petitioner Company have earlier filed CAs 955 of 2016, U/s 391 of the Companies Act, 1956 before the Hon'ble High Court for dispensation of the meeting of the equity shareholders and the same was allowed by common order dated 20<sup>th</sup> July, 2017.



9. It is stated that the Petitioner Company had availed secured loans from the Banks, which have given no objection to the proposed scheme of Amalgamation. And un-secured creditors have also given no objection for the scheme. It is alleged, that even though the Petitioner Company has not availed any loans, some persons claiming to be the un-secured creditors of Company have filed winding up petitions before the Hon'ble High Court, against the Petitioner, and those are still pending.
10. The Transferee Company has also filed similar application bearing CA. No. 956 of 2016 by seeking dispensation of meeting of equity shareholders. And the same was also allowed common order dated 20<sup>th</sup> July, 2016.
11. It is further stated that no investigations/proceedings are pending under Sections 233, 237 or other provisions of the Companies Act or under any Act against the Transferor Companies/Transferee Company. Therefore, the Petitioner submits that it is entitled for the relief as prayed for in the petition.
12. I have heard Shri.V.B Raju and V S Raju, learned counsels for the Petitioner, Shri. Nitish Bandari, learned counsel for the Respondent No. 1 & 2, Shri. D.A.V.S.Ravi Prasad, learned counsel for the Respondent Nos. 3 to 10, Shri M.Anil Kumar, counsel for Official Liquidator, Shri B.Apparao, learned counsel for the Registrar of Companies. I have also carefully perused the pleadings of both the parties along with extant provisions of Companies Act 1956/2013 and the rules made there under.
13. Shri V.S.Raju, Learned Counsel for the Petitioner submitted that even though winding up the petitioners are pending before the Hon'ble High Court, the present Company petition can be allowed since all four share shareholders have given their written consent and consequently dispensed with meetings of shareholders of both the Companies with by the Hon'ble High





Court as per common order dated 20<sup>th</sup> July, 2016. So the Scheme in question was also duly approved by the concerned parties. He further submits that the loan in question taken by Mr.M Surya Prakash, Managing Director of M/s Satya Prakash Hotel Private Limited, is in his personal capacity, and Company is not at all responsible for the same, and the suit filed by Respondents No.1 & 2 is being contested in the Civil Court. Therefore, he prayed the Tribunal to sanction the scheme as prayed for.

14. Shri. Nitish Bandari, Learned Counsel for the Respondent Nos. 1 & 2 (Impleaded Respondents vide order dated 28.07.2017 passed in CA No. 117 of 2017) submit that they have financed petitioner Company for an amount of Rs.8,15,95,181.60 (Rupees Eight Crores Fifteen Lakhs Ninety Five Thousand One Hundred and Eighty One and Sixty Paise Only). The scheme of amalgamation in question if accepted by the Tribunal would adversely affect their interest.

The Learned Counsel further submits that they have also filed a suit bearing OS No.1243 of 2015 on the file of VII Additional District Judge, R.R.District for the recovery of the said amount. The Civil Court also passed on Order dated 19.11.2015 in IA No.2276 of 2015 by directing the petitioner Company along with others to furnish immovable property as security to the satisfaction of the court for the said amount. It is alleged that the petitioner has suppressed the pendency of OA No.1108 of 2016 before DRT, Hyderabad filed by Syndicate Bank for an amount of Rs.19,44,36,800/- and also the liquidation proceedings initiated by K.Naga Rama Chandra Reddy, vide CP No.302 of 2015, CP No.15 of 2016 filed by N.Prabhakar, CP No.16 of 2016 filed by P Ranga Rao, CP No.17 of 2016 filed by R Srinivasa Rao, CP No.18 of 2016 filed by K Naga Ramachandra Reddy, CP No. 19 of 2016 filed by K Sessa Reddy.



15. Shri.D.V.A.S. Ravi Prasad, Learned Counsel for the impleading Respondents No. 3 to 10, has submitted that, when the Petitioner Company has failed to pay the amounts due to them , they have filed Winding up Company Petitions bearing CP No. 302 of 2015, 18, 19, 15, 16, 17, 35, 36 of 2016 before the Hon'ble High Court by seeking to wind up Petitioner Company, and those cases are pending. He has further stated that O.A.No.1108 of 2016 was filed by Syndicate Bank, before DRT, Hyderabad, and it is also pending for recovery of amount of Rs.19,44,36,800/-. Therefore the Petitioner has suppressed several material facts, and filed the present petition. The Petitioner Company is suffering losses, and it is liable to be liquidated for its indebtedness and, in order to avoid/escape for payment of debts, the present Company Petition is filed which is not maintainable and liable to be rejected with exemplary costs.
16. The Syndicate Bank, Corporate Finance Branch, Hyderabad has also raised objection to the amalgamation scheme in question by stating that the total outstanding due to them by the Petitioner Company is Rs.20,18,92,612/-. Accordingly, the Banker have issued demand notice U/s 13 (2) of Securitization Act, on 21.09.2013. Subsequently, the Bank also took Symbolic possession of the Hotel unit, U/s 13 (4) of Securitization Act, on 02.01.2014. The possession notice was also published in newspapers as required under law. It has also issued sale notice on 24.05.2014. When the Bank was trying to auction the property of the Company, the Petitioner has approached the DRT. The Bank also filed OA. 1108 of 2016 on 12.09.2016 under Section 19 of Recovery of Debts due to Banks and Financial Institutions Act for recovery of Rs.19,44,36,800/- due as on 12.09.2016, before DRT, Hyderabad, on the same is pending. They have stated the Bank has not given its consent to





the scheme of amalgamation in question. Therefore, they have prayed the Tribunal to dismiss the Company Petition.

17. The Deputy Official Liquidator has filed a report dated 29.06.2017 by inter-alia stating that they have received an affidavit dated 22.12.2016 filed by Syndicate Bank, Secured creditor of Petitioner Company, before the Hon'ble High court, in which , it is stated that they have opposed the present and their outstanding liability from the petitioner Company as on 30.11.16 is Rs. 20,18,92,612/. And the Bank has not furnished No Objection/Consent letter for the scheme question. .
18. The Regional Director, has filed a common affidavit dated 8<sup>th</sup> May, 2017 in both CP Nos. 297 & 298 of 16 , by inter-alia stating that the Income Tax Officer, Office of the Chief Commissioner of Income-tax, Visakhapatnam, vide its letter dated 19.12.2016 informed that there are tax dues from M/s Satya Prakash Hotels Private Limited as detailed below:

S.No	PAN	Name of the Assessee	Assessment Year	Taxes Pending (Rs.)
1	AAHCS8308P	M/s. Satya Prakash Hotels Private Limited	2007-08	3,97,696/-
2	AAHCS8308P	M/s. Satya Prakash Hotels Private Limited	2011-12	10,78,099/-
3	AAHCS8308P	M/s. Satya Prakash Hotels Private Limited	2012-13	20,000/-
4	ADBMMM4184H	Sri Miriayala Surya Prakasa Rao Managing Director of Satya Prakash Hotels Private Limited	2010-11	79,70,464/-



It is also stated that the Transferee Company has not filed the balance sheet and Profit and Loss Account and Annual Return for the financial year ended 31.03.2016.

19. The present Company Petition is filed under sections 391 & 394 of the Companies Act, 1956, which are analogous to sections 230 and 232 of Companies Act, 2013. These provisions

empowers Tribunal to sanction the compromise or arrangement, however, subject to compliance of various conditions like approval of majority in member representing minimum three-fourth of in value of the creditors, or class of creditors, or class of members, as the case may be: to disclose, all material facts relating to the Company, such as the latest financial position of the company; the latest auditor's report on the accounts of the company, the pendency of any investigation proceedings in relation to the company under sections 235 to 251 etc.

20. The petitioner Company has approached the Hon'ble High Court by filing CA Nos. 955 & 956 of 2016 by inter-alia stating that Transferor Company is having only 4 shareholders and all have given their written consent for the scheme in question, by way of notarized affidavit. Therefore, the Hon'ble High Court was pleased to dispose the said CAs common order dated 20<sup>th</sup> July, 2016 by dispensing with conducting of meeting of respective meetings of the shareholders of the Companies involved as stated supra.
21. It is not in dispute that Company Petitions bearing CP Nos. 302 of 2015 and 15, 16, 17, 18, 19, 35 & 36 of 2016 seeking to wind up the petitioner Company are pending before the Hon'ble High Court. These cases are admitted by order dated 22<sup>nd</sup> June, 2017 by deferring advertisement under rule 96 Companies (Court) Rules, 1959 by 60 days by posting them to 24.08.2017. Accordingly, the cases were listed again on 24.08.2017, before the Hon'ble High Court, and after hearing the parties, petitioners are permitted to publish about admission of company petitions in Business Standards, English daily newspaper, and "Andhra Bhoomi", Telugu daily newspaper, and further directed to post the case to 21.09.2017. Apart from above winding up petition, civil suit filed by the Respondent Nos. 1&2 is also pending apart from other case before the DRT, Hyderabad.





22. Under para 16 of the present Company petition, it is falsely stated that the petitioner Company has not availed any loans, some persons claiming to be un-secured creditors have filed winding up petitions before the Hon'ble High court and are pending. It is further false stated under para 18, which reads as under:

“ I respectfully submit that no investigations or proceedings are pending under section 235, 237 or other provisions of Companies Act, or under any Act against the Transferor Company or Transferee Company”

The above facts clearly show that the petitioner has come to the Tribunal with un-clean hands by suppressing several material facts relating to the issue in question, as detailed supra.

23. When the Respondent Nos.1&2 have filed impleading Application bearing CA No.117 of 2017, Mr. M Surya Prakash, the Director of M/s Satya Prakash Hotels Private Limited (Petitioner Company) has filed a counter dated 27<sup>th</sup> June, 2017, by again disputing the money taken from them as it is taken in personal capacity. The suit bearing OS No.1243 of 2015 is being contested. He has also simply and casually contended that the outstanding amount due to Syndicate Bank would be transferred from the books of petitioner company (Transferor Company) to Transferee Company upon sanctioning the scheme, and therefore, there cannot be any objection to the Bank for the scheme in question. It is further alleged that the respondents are opposing the Company petition to settle scores with Directors, who have taken amount in their individual capacity.

24. The above facts clearly indicate that the petitioner Company has not only suppressed all the material facts relating to the issue in question, but also tried to abuse the process of law by insisting even now to allow the Company Petition when blatant suppression of material brought to the notice of Tribunal by the Respondent with supporting documents. Therefore, it is a fit





case to not only to be rejected it but it should be imposed exemplary costs.

25. In view of the above facts and circumstances of the case, the Company Petition bearing C.P.No.297 of 2016 (CP (TCAA) No.22/HDB/2017) is hereby rejected with a cost of 1 lakh, out of which Rs.50,000/-(Rupees fifty thousand) is to be paid to both the respondent Nos.1&2 together and remaining Rs. 50,000/ (Rupees fifty thousand) to be paid to Respondent Nos. 3 to 10 together, within a period of three weeks from the date of receipt of copy order. All pending cases also stands disposed of.



Sd/-  
RAJESWARA RAO VITTANALA  
Member (Judicial)

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OF THE ORIGINAL

For Dy. Regr./Asst. Regr./Court Officer/  
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति  
CERTIFIED TRUE COPY  
केस संख्या  
CASE NUMBER...C.P.No.297 of 2016 (CP (TCAA) No.22/HDB/2017)  
निर्णय का तारीख  
DATE OF JUDGEMENT...16.9.2017  
प्रति तैयार किया गया तारीख  
COPY MADE READY ON...17.10.2017