

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Video Conference

**CORAM: HON'BLE BHASKARA PANTULA MOHAN-MEMBER JUDICIAL
CORAM: HON'BLE DR.BINOD KUMAR SINHA-MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 25.07.2022 AT 10:30 AM THROUGH VIDEO CONFERENCE**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Miscellaneous Application/21/2021 in Company Petition/36/2021
NAME OF THE COMPANY	Emaar Hills Township Pvt Ltd & 13 others
NAME OF THE PETITIONER(S)	Telangana State Industrial Infrastructure Corporation
NAME OF THE RESPONDENT(S)	Emaar Hills Township Pvt Ltd & 13 others
UNDER SECTION	241

ORDER

Learned Counsel for the Petitioner and Learned Counsel for the R1 appeared via video conference. Order Pronounced in MA No. 21/2021 Vide Separate Sheets.

- a. Prayers 'a' and 'f' of MA No.21/2021 allowed.
- b. The question on the maintainability disposed of in favour of the Applicant.
- c. Respondents are directed to file its counter within 4 weeks.

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MEMBER (T)

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MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-II, HYDERABAD**

M.A. No. 21/2021 in

C.P. No. 36/2021

Under Sections 241 & 242 of the Companies Act, 2013,
r/w Rule 11 of the NCLT Rules, 2016.

Between:

Telangana State Industrial Infrastructure Corporation
Having its office at
6th Floor, Parishrama Bhavan, Fateh Maidan Road
Basheerbagh, Hyderabad, Telangana – 500004
Represented by its General Manager (Legal)
Smt. P.K. Revathi Bai.

... Petitioner

A N D

1. M/S Emaar Hills Township Pvt. Ltd.,
Having its Registered Office at
Boulder Hills Golf & Country Club,
Manikonda Village, Gachibowli,
Hyderabad, Telangana.
2. Emaar Properties, PJSC,
A Company incorporated in Dubai, U.A.E.,
Having its Registered Office at
P.O. Box – 9440, Dubai.
3. Emaar Holdings,
A Company incorporated under the laws of Mauritius,
Having its office C/O
SGG Corporate Services (Mauritius) Ltd.,
33 Edith Cavell Street, Port Louis, 11324,
Mauritius.
4. Mr. Ahmad Thani Rashed Almatrooshi
S/o. Thani Rashed Almatrooshi
Aged: 63 years, Occ: Business, Director
Of M/s.EHTPL (Respondent No.1)
R/o. 271, Wadi Alamardi, PO Box: 21888, Dubai
United Arab Emirates
5. Mr. Ashish Narayan Prasad Kabra
S/o. Narayan Prasad Ramniwas Kabra

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- Aged: 47 years, Occ: Business, Director
Of M/s.EHTPL (Respondent No.1)
R/o. E117, Sahakar Villa
SV Road, Mumabi – 400 064
6. Mr. Vijay Menon
S/o. K.R.Menon
Former Director of M/s.EHTPL (Respondent No.1)
R/o. Boulder Hills Golf & Country Club
Opp: ISB, Manikonda Village, Gachibowli
Hyderabad, Telangana.
 7. Mr. A.J. Jaganathan
S/o. Arogyaswami
Former Director of M/s.EHTPL (Respondent No.1)
R/o. Boulder Hills Golf & Country Club
Opp: ISB, Manikonda Village, Gachibowli
Hyderabad, Telangana.
 8. Mr. Shrikant Prabhakar Joshi
S/o. Prabhakar Joshi
Former Director of M/s.EHTPL (Respondent No.1)
R/o. C-1, Manasarovar
19, 3rd Seaward Road, Valmiki Nagar
Tamilnadu.
 9. Mr. Amit Jain
S/o. Brij Kishore Jain
Former Director of M/s.EHTPL (Respondent No.1)
R/o. H.No.317, Sector 9
Faridabad-121 006, Haryana
 10. Mr. Essamuddin Hussain Ibrahim Galadari
Former Director of M/s.EHTPL (Respondent No.1)
R/o. Boulder Hills Golf & Country Club
Opp: ISB, Manikonda Village, Gachibowli
Hyderabad, Telangana.
 11. Emaar MGF Land Ltd
(Now known as Emaar India Ltd.),
306-308, Square One, C-2,
District Centre, Saket,
New Delhi – 110017.
 12. Axis Bank Ltd.
6-3-249/6, 1st Floor, Alcazar Plaza,
Road No. 1, Banjara Hills,
Hyderabad – 500034.

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13. Registrar of Companies, Telangana,
2nd Floor, Corporate Bhavan, Tattiannaram,
Bandlaguda, Hyderabad – 500068.
14. Serious Fraud Investigation Office,
Ministry of Corporate Affairs,
Government of India,
Represented by its Director,
4th Floor, Corporate Bhavan, Tattiannaram,
Bandlaguda, Hyderabad – 500068.

... Respondents

Date of Order: 25.07.2022

Coram:

Sri Bhaskara Pantula Mohan, Member, Judicial
Dr. Binod Kumar Sinha, Member, Technical

Counsels Present:

- For the Petitioner : Mr. J. Ramachandra Rao, Additional
Advocate General
Mr.A. Sanjeev, Mr. DVAS Ravi Prasad, Mr.
G.Sai Prasen, Advocates
- For the Respondent 1 : Mr. Sajan Poovayya, Senior Counsel, Mr. P.
Venugopal, Senior Counsel, Mr. P. Ravi
Charan, Mr. L. Venkateswara Rao, Ms.
Niharika Agarwal, Advocates
- For the Respondent 2 & 3 : Mr. Dutta, Senior Counsel, Mr.Nayyar,
Senior Counsel.
Mr. Parag Maini, Mr.Abhimanyu Chopra,
Mr. Raghav Chadha, Mr. Arman Sharma,
Mr. Shaurya Vardhan, Advocates
- For the Respondent 11 : Ms. Shireen Sethna Baria, Mr. Rajvinder
Singh Ahluwalia, Ms. Kajal Kumar,
Mr.T.Anand Subramaniam, Advocates
- For the Respondent 12 : Ms.T.N.Haripriya, Advocate
- For the Respondent 14 : Mr. Sujan Kumar Reddy, CGSC

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[PER : BENCH]

ORDER

1. Before proceeding with the matter, it is pertinent herein to note that a petition came to be filed under Section 241-242 of the Companies Act, 2013 by the Telangana State Industrial Infrastructure Corporation Limited (hereinafter referred to as the "Petitioner"), alleging various acts of oppression and mismanagement into the affairs of M/s. Emaar Hills Township Private Limited (hereinafter referred to as the "Respondent No. 1"), which is allegedly leading to substantial loss of revenue of the Petitioner and thereby, adversely impacting the public interest at large.
2. For sake of ready reference, the reliefs prayed for in the main Company Petition are recapped as under:-
 - a) To declare the purported Development Agreement-cum-General Power of Attorney, entered into between the Respondent No. 1 and the Respondent No. 11, as null and void;
 - b) To direct the Respondent Nos. 2 and 3 to truly and properly account for all the monies realised by them by sale of properties in the township project, either directly or through the Respondent No. 11 or any other entry;
 - c) To grant an order of injunction restraining the Respondents Nos. 2 and 3 from acting/conducting the affairs of the Respondent No. 1 Company and directing them to hand over the assets and records of the Respondent No. 1 Company, including disclosing the details of all assets/properties/monetary transactions and accounts, to the Petitioner, and further direct the regulation of the conduct of the affairs of the Respondent No. 1 Company upon such terms and conditions, as may appear to be just and equitable;
 - d) To direct an independent enquiry/investigation into the affairs of the Respondent No. 1 Company, by appointing an independent auditor;

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- e) To direct an independent inquiry into the affairs of the Respondent-Companies, by the Central Government, represented by the Respondent No. 14, under Section 213 of the Companies Act, 2013;
 - f) To direct the Respondent No. 13 to mark the company status as 'under management dispute';
 - g) To direct that the execution of the Integrated Project be carried out under the supervision and control of the Petitioner;
 - h) To direct the regularisation of compliances of all statutory provisions and all submissions before the Registrar of Companies and all other statutory and governmental authorities;
 - i) To declare that the nominees of the Respondents, on the Board of the Respondent No. 1, have vacated office;
 - j) To supersede the existing Board of Directors in the Respondent No. 1 Company and appoint a fresh Board of Directors in such manner as this Tribunal may deem fit and proper;
 - k) To direct the Respondent No. 2 to sell shares held by it in the Respondent No. 1 Company, through the Respondent No. 3 Company, to the Petitioner and to allow the Petitioner to buy-out the entire shares of the Respondent No. 1 Company;
 - l) To permit the Petitioner to regulate the conduct of affairs of the Respondent No. 1 Company, in future;
 - m) To pass such orders, as this Tribunal may deem fit to grant relief from the acts complained of.
3. The contour of facts as averred by the Petitioner in the main company Petition are as follows:-
- a) That the Petitioner, the Telangana State Industrial Infrastructure Corporation Limited (TSIIC), is a wholly owned company of the Government of Telangana, formed with the main objective to promote industries in the State of Telangana and thereby to assist in the socio-economic development of the State. The other objects of the Petitioner are acquisition/ development of lands, providing infrastructural

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- facilities, allotment of plots/sheds to entrepreneurs in the industrial areas for industrial purposes.
- b) That the State of Telangana was formed as a result of the bifurcation of the erstwhile State of Andhra Pradesh, in view of the enactment of the Andhra Pradesh Reorganization Act, 2014, which came into effect from 02.06.2014.
- c) That subsequently, the Petitioner was incorporated on 04.09.2014, under the Companies Act, 2013, replacing the jurisdiction of the Andhra Pradesh Industrial Infrastructure Corporation Limited (hereinafter referred to as the "APIIC") in the State of Telangana. As per Section 68 of the A.P. Reorganization Act, 2014 (hereinafter referred to as the "Reorganization Act, 2014"), all the assets and liabilities of the Corporations as referred shall be appropriated between the successor-States, in the manner specified in Section 53 of the said Act.
- d) That the Respondent No. 1, M/s. Emaar Hills Township Private Limited, is a Company incorporated under the provisions of the Companies Act, 1956, with the Registrar of Companies, Hyderabad, on 20.8.2003.
- e) That the Respondent No. 2, Emaar Properties PJSC Dubai, is a foreign company incorporated in the U.A.E and is said to be a developer of large projects comprising residential and commercial properties.
- f) That the Respondent No. 2, through the Respondent No. 3, holds 74% shareholding in the Respondent No. 1 Company. The Respondent No.2, which is the ultimate holding company, as developer has entered into Collaboration agreement with erstwhile APIIC, wherein the developer through its subsidiary company, i.e., Emaar Holdings, Mauritius, has subscribed to the shares of the three SPVs.
- g) That the Respondent No. 3, Emaar Holdings, is a company incorporated under the laws of Mauritius and is a 100% subsidiary of the Respondent No. 2. It has subscribed to the capital of the Respondent No. 1.
- h) That the Respondents No. 4, 5, 8, 9 and 10 are Directors of the Respondent No. 1 Company, while Respondents No. 6 and 7 are

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members of the Respondent No. 1 Company, holding 5000 equity shares each.

- i) That the Respondent No. 11, EMAAR MGF Land Limited, now known as Emaar India Limited, is a company, having office in New Delhi.
- j) That pursuant to the reorganization of the State, the subject property, i.e., the lands at Manikonda, Hyderabad, formed part of the State of Telangana. Thereby, it passed on to the Petitioner from the APIIC, by virtue of the operation of law, as provided under Section 48(1)(a) of the Reorganization Act, 2014.
- k) That the then Government of Andhra Pradesh, as the owner of the subject property, was keen to establish an integrated project at Manikonda Village, comprising of a golf course, a boutique resort hotel, with other residential and commercial development, like convention centre-cum-exhibition complex (hereinafter referred to as the "Integrated Project"). The project was to boost tourism and development in the erstwhile state of Andhra Pradesh, contributing to revenue generation.
- l) That for the purpose of developing the Integrated Project, three Expressions of Interest (hereinafter referred to as "EoI") were called by the then State Government of Andhra Pradesh on 05.04.1999, 30.03.2000 and 26.07.2001 respectively. Out of the three bidders who had come forward in response to the last EoI, the Respondent No. 2 was selected as the successful bidder, by the State Government.
- m) That the Government of Andhra Pradesh issued a Government Order, G.O. Ms. No. 359, dated 04.09.2002, in which it was stated that the Government has conceived a proposal to establish an integrated project. The Government designated the erstwhile APIIC as the nodal agency to develop and implement the Integrated Project. The Vice-Chairman and Managing Director of the APIIC, were authorized to enter into a Memorandum of Understanding with the Respondent No. 2, for the implementation of the Integrated Project.

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- n) That as per the said G.O., the land use for the Integrated Project was approximately 235 acres for the golf course, 285 acres for the multi-use township and 15 acres for unusable land (water bodies). It was contemplated that the said project would be implemented through separate joint ventures (JVs) i.e., two special purpose vehicle companies, SPV-1 and SPV-2.
- o) That the SPV-1 was to develop the pre-championship 18-hole golf course and multi-use development, including villas and commercial complexes, at Manikonda. The equity investment in SPV-1 was to be 26% by the Petitioner and 74% by the Respondent No.2. The SPV-2 was to develop the convention centre and hotel. The equity investments in SPV-2 were to be 49% by the Petitioner and 51% by the Respondent No.2. All the equity contribution of the Petitioner was to be in the form of land value alone, land being the most valuable asset.
- p) That in line with the directions contained in the G.O. No. 359, the State of Andhra Pradesh and the Respondent No. 2 entered into a Memorandum of Understanding (MoU), dated 06.11.2002, which recorded, in principle, the agreement between Petitioner and the Respondent No. 2, for execution of the Integrated Project. The said MOU provided for the creation of special purpose vehicles with equity holding of both the parties, as companies, having registered office in the State of Andhra Pradesh (now the State of Telangana). Clause 1.ii.(a) of the MoU made a provision for the same.
- q) That with regard to the development of the Integrated Project, a Collaboration Agreement, dated 19.8.2003, was entered into, by the State of Andhra Pradesh and the Respondent No. 2, specifying the terms and conditions of the development of the Integrated Project. The Government of Andhra Pradesh then issued G.O.Ms. No. 14, dated 11.01.2005.
- r) That some modifications were required to be carried out to the said collaboration agreement and accordingly, a Supplementary Agreement, dated 19.4.2005, was executed between the State of Andhra Pradesh

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and the Respondent No. 2, modifying certain aspects, including revision in the structure of the Integrated Project, by formation of three SPVs instead of two. However, the basic character and role of the parties remained the same.

- s) That in terms of the agreements entered into by the parties, the Respondent No. 1 does not possess any right of assignment with regard to the Integrated Project, as mandated by Clause No. 6.11 of the Collaboration Agreement. The Shareholder Agreement, vide Clause No. 23, also imposes a specific restriction on the parties, from assigning their rights, obligations and duties to a third party, under any circumstances whatsoever.
- t) That in terms of the Collaboration Agreement, as provided in Clause No. 3.1.(c)iii, the Respondent No. 1 cannot carry on any operation or business or otherwise enter into any agreement or arrangement with any person or incur any liability, which may have material bearing on the finances of the Respondent No. 1, without prior written consent of the parties.
- u) That the Respondent No. 2, which is the developer, is entitled to assign its rights of development, maintenance and operation of the Integrated Project, only with the prior written approval of the Petitioner, as per Clause 2.4 (x) of the Collaboration Agreement.
- v) That in any circumstance, the Respondents did not have the power of allowing sale of the subject lands to third parties, as has happened in the present case.
- w) That in terms of the understanding between the State of Andhra Pradesh and the Respondent No. 2, three Joint Venture Companies were incorporated. The SPV-1, which is the Respondent No.1, was incorporated and in respect of the shareholding of the said company, a Shareholder's Agreement was executed in December, 2005, the State of Andhra Pradesh and Respondents No. 1, 2 and 3, whereby it was agreed that the Petitioner would hold 26% of the shareholding in the Respondent No.1 and the Respondent No. 2 would hold 74%.

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- x) That it necessarily follows from such shareholding pattern that the entire profit from the sale of the properties which are the subject matter of the joint venture, would be shared between the parties in such ratio and the parting of such profit to third parties is not envisaged. Clauses 4.4(a) and 11 of the Shareholders' Agreement provide for the same.
- y) That the State of Andhra Pradesh, with a bona-fide intention of developing the Integrated Project, executed a conveyance deed in favour of the Respondent No. 1, which was the sole company entrusted with the township development of the project and had no right of assignment, with regard to the project. Further, the Respondent No.1, being only a delegate should not further delegate.
- z) That the Respondent No. 1 had allotted and issued equity shares in the Respondent No. 1 Company, for an amount of Rs. 1,70,03,070/-, which was equivalent to 26% of its paid-up equity.
- aa) That with the specific understanding that the Respondent No. 1 Company was alone to develop the Integrated Project, from its own internal accruals, the State of Andhra Pradesh reposed complete faith in the Respondent No. 2, which was acting through Respondent No. 3, who was the majority shareholder in the Respondent No.1 Company. It was agreed and understood that the Respondent No. 2, through the Respondent No. 3, would comply with the terms of the Collaboration Agreement and the Shareholders' Agreement of the Respondent No. 1.
- bb) That contrary to the good faith the Respondent Nos. 2 and 3, with the intent of appropriating for themselves, the land of the Respondent No.1 Company, which was a highly valuable asset, had conceived a plan to defraud the APIIC, by assigning the entire Integrated Project to a third party.
- cc) That the Respondent No. 2, vide letter dated 02.05.2005, requested the APIIC to consider to allow Fairbridge Holdings Limited to take 34% equity out of the 74% equity, which the Respondent No. 3 held in the Respondent No. 1 Company, a request which was rejected by the APIIC.

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- dd) Pursuant to the rejection of the proposal by the APIIC, the Respondent No. 2 conceived a different mechanism by transferring substantial rights in the project land, to its group company, which is Respondent No. 11 herein.
- ee) The Respondents No. 2 and 3 executed a Development Agreement, dated 03.11.2006, in favour of the Respondent No.11, an entity substantially owned by the former, wherein the entire project, which was to be undertaken by the Respondent No. 1, has been hived off to the Respondent No. 11, making the Respondent No. 1 as a shell company. The said agreement could not have been executed by the Respondent No. 1 in favour of the Respondent No. 11, since under Clause no. 23 of the Collaboration Agreement, it had no power of assignment of the project. The execution of the said agreement, in favour of the Respondent No. 11 was in grave violation of the Collaboration Agreement and the Shareholders' Agreement. Therefore, the Board, in its meeting dated 21.09.2006, could not have accorded approval to the same and thus, the presence of the nominee director of the Petitioner, in the Board meeting, is of no consequence.
- ff) That later, a Development Agreement cum General Power of Attorney, dated 25.07.2007, was entered into, by the Respondent No. 1 and the Respondent No. 11, without the knowledge of the APIIC, vide which the alleged Development Agreement, dated 03.11 .2006, was cancelled and the same was purportedly replaced by the new Development Agreement, dated 25.07.2007.
- gg) That the said decisions were taken by the Respondent No. 2, unilaterally, by misusing the majority it had on the Board of the Respondent No. 1 Company. None of the documents executed between the Petitioner and the Respondent No. 1 establish that the Government of Andhra Pradesh/ APIIC intend to assign substantial rights in the project land to any third parties.
- hh) That there was absolutely no requirement for the execution of the said documents and the same was neither brought to the knowledge of the

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- APIIC nor was its approval obtained, though mandatory, because the said arrangements being material, especially when profits were adversely affected by the said arrangements.
- ii) That it is clear that the said Development Agreement was entered into, with the only intention of helping the Respondents No. 2 and 3, to put their deceitful plans in place, to hive off lands and siphon monies through their own company, making the Respondent No. 1 Company a mere rubber stamp with no assets, business, authority or any kind of control on the development of the Integrated Project.
- jj) That in Clause 2.8.1 of the purported Development Agreement cum General Power of Attorney, the percentage of allocation of shares in gross revenue is left to be covered in a separate percentage sheet, to be executed from time to time, when the development models are firmed up by the Respondent No. 1 and the Respondent No. 11. It is, therefore, established that the execution of the alleged Development Agreement cum General Power of Attorney and the mention that the percentage of allocation of share in gross revenue would be decided separately, was done with the intent of enriching the Respondents No. 2 and 3, while causing huge financial loss to the APIIC.
- kk) That the alleged agreements that were entered into with the Respondent No. 11, entitled it to retain a major portion of the revenues and only a minimum of 5% and maximum 25% of the revenues were to be passed on to the Respondent No.1. Thus, the Respondent No. 11 Company could appropriate up to 95% of the revenues.
- ll) That the diversion of the business opportunity from the Respondent No.1 to another company effectively controlled by the Respondent Nos. 2 and 3, amounts to oppression as it deprives the APIIC of due revenues, attributable to the said business opportunity. The diversion also defeats the intent and purpose of the formation of the Respondent No.1 as an SPV, that was solely incorporated for the development of the Integrated Project.

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- mm) That such diversion by the highhanded majority of the Respondent Nos. 2 and 3, resulted in a serious setback and huge financial loss to the APIIC, apart from being contrary to several agreements that were executed between the parties. It is also severely impinges the right of the APIIC as a shareholder and is in clear breach of the fiduciary duty owed by the nominee directors of the Respondent No. 2, on the Board of the Respondent No. 1. Further, it is contrary to public interest, as the Petitioner (as also the APIIC) is a Government Company.
- nn) That after a gap of about 13 months, a purported Addendum, dated 23.07.2008, to the aforementioned Development Agreement cum General Power of Attorney was entered into, vide which the percentage of share of revenue of the Respondent No. 1 was reduced to as low as 5% under substantial revenue areas. It is pertinent to note that in areas of operations & maintenance and advertisements in common areas, sharing was to be made on profits and not revenues.
- oo) That a spate of agreements was brought into the picture, without obtaining the approval of the APIIC or as contemplated between the parties to the Collaboration Agreement and the Shareholders' Agreement, with regard to the Integrated Project. Neither were the signatories authorized by the Board to sign the same. The documents so executed affected the interest of the Petitioner and Respondent No.1 seriously. The Respondents had literally passed on the project and its revenues to another companies, thereby depriving the Respondent No.1 and more specifically, the Petitioner, of the revenues due to them.
- pp) That the Respondent Nos. 2 and 3 have attempted to reduce the revenues due to the Petitioner in a phased manner by inducting a new entrant and assigning to it the rights of the Respondent No. 1, executing a spate of agreements, depriving the APIIC of its rightful dues and thereafter, reducing the percentage in the share of revenue of the Respondent No. 1 to 5%. Therefore, the Respondents No. 2 and 3 paved the way to have the entire revenues of the Project, in their hands.

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- qq) That the Respondents No. 2 and 3, contrary to the terms and conditions, passed on the project to the Respondent No. 11, which evidently did not possess the financial standing to take up the project, since it mortgaged the assets of the Respondent No. 1. In favour of the Respondent No. 12 Bank, to raise funds by way of a term loan of Rupees One Hundred and Fifty Crores, which fund raising could have been done by the Respondent No. 1, if required.
- rr) That the Respondents No. 2 and 3 never approached the APIIC with regard to the mortgaging of the subject lands and no permission to that effect was granted by the Petitioner.
- ss) That the act of mortgaging the assets of the Respondent No. 1 is in complete violation of the Collaboration Agreement, the Shareholders' Agreement and provisions of the Companies Act, 2013.
- tt) That in terms of Clause 2.5.1 of the Collaboration Agreement, an independent Engineer (IE) and an Independent Auditor (IA) were to be appointed for the transparent functioning and execution of the Integrated Project. No such appointments have been made by the Respondents No. 2 and 3, in spite of being requested by the APIIC, only to enable them to achieve their evil motive without any hindrance.
- uu) That the share capital of the Respondent No. 11 is substantially held by the Respondents No. 2 and 3 and such an interest of the latter was required to be disclosed to the Board of the Respondent No. 1, but was not affected. Such non-disclosure and non-receipt of approvals amounts to a violation of the provisions of Section 184 of the Companies Act, 2013, and a breach of the clauses of the Shareholders' Agreement.
- vv) That the set-up of all the Respondent Companies would show that the senior executives of the Respondent No. 11 and those of the Respondent No.1 are the same persons. For instance, the Respondent No. 8, Mr.Srikant Joshi is the Chief Executive Officer of the Respondent No.11 and a director of the Respondent No.1. The non-disclosure about Mr.Srikant Joshi would amount to a violation of Sections 297 and 299 of the Companies Act, 1956.

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- ww) That the alleged Development Agreement-cum-General power of Attorney was signed by the Respondent No. 8, who is the CEO of the Respondent No. 1, on behalf of the Respondent No. 11 and such execution of the contract did not receive the sanction of the Board. In addition to the above, the Respondent No. 6, who is a director on the Board of the Respondent No. 1, is also the Chief Executive Officer of the Respondent No. 11.
- xx) The representatives of the Respondents No. 2 and 3, who had interest in the Respondent No. 1 Company as well as in the Respondent No. 11, did not specifically disclose their interests to the Board Members of the Respondent No. 1.
- yy) That the Respondent No. 1 had issued notices for Board meetings and General Meetings of the Board and the shareholders, at a shorter notice, without obtaining prior consent from the Petitioner and thereby, breaching statutory provisions.
- zz) That transactions which were material and financial in nature, were only tabled at the Board meetings, instead of providing the requisite details in the agenda to the meetings, so that the Petitioners could be enabled to understand and examine the same.
- aaa) That the APIIC issued letters, dated 28.01.2010 and 09.02.2010, to the Respondent No.1, expressing concern on the corporate guarantee issued by the Respondent No. 1 Company, in respect of the loan sought by the Respondent No. 11, apart from concerns on the mismanagement of the affairs of the Respondent No.1.
- bbb) That the Respondent No. 2 had entered into an Agency Agreement, dated 29.01.2005, with M/S Stylish Home Pvt. Ltd., on behalf of the Respondent No. 1, for selling of the villa plots in the Integrated Project, which the APIIC came to know of only on 02.09.2010, when the Respondent No. 2 had enclosed a copy of the said agreement in a letter, dated 02.09.2010, addressed to the APIIC.

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- ccc) That the Respondent No. 2 had gone to the extent of executing such an agreement even prior to the transfer of land to it. No information about the said agreement was ever disclosed to the APIIC.
- ddd) That the APIIC instituted a civil suit, numbered as O.S. No. 655/2010, on the file of the learned II Additional Civil Judge, City Civil Court, Hyderabad, seeking rendition of accounts and a permanent injunction against the Respondent No. 11, since the latter was selling/ entering into agreements of sale of the subject properties, without any right, title or interest. That the said suit was dismissed for default, vide order dated 04.10.2018, against which I.A. No. 1764/2018 was preferred by APIIC, seeking restoration of the suit. The Petitioner sought impleadment in the suit, vide I.A. No. 147/2021, which is pending.
- eee) That the Respondents No. 2 and 3 were also mismanaging the affairs of the Respondent No. 1, by selling the lands of the Respondent No. 1, through the Respondent No. 11, at gross under-valuation, causing irreparable loss to the APIIC.
- fff) That the Respondent No. 11 has shown the lands as sold at the rate of Rs. 5,000/- per square yard, which is not correct value of the subject properties, as the prevailing market rate at the time was approximately Rs. 40,000/- per square yard. The fraud may be gauged from the fact that in some cases, the lands are being shown as sold at the rate of Rs. 5,000/- per square yard and on the same dates, some lands are being sold by the Respondent No. 11 at more than four times of the said rate, as is evidenced from the chart attached at Annexure 33 to 39 of the Application.
- ggg) That this act amounts to cheating the public in as much as despite parting with a large amount of money, the buyer would not get a clear title of the properties purchased by them.
- hhh) That the Respondents No. 8 to 10 are the nominees of the Respondents No. 2 and 3 and comprise the majority on the Board of the Respondent No. 1. The Respondents No. 6 and 7 are said to hold 5000 shares each and are said to be aiding the other Respondents. The Respondents No.

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8 to 10 have violated their fiduciary duties as directors by effectively keeping the affairs of the Respondent No. 1 in the dark.

- iii) That it is evident from the above sequence of events that the Respondent No. 2, in collusion with the Respondent No. 3, has defrauded the Petitioner in the conduct of the affairs of Respondent No.1 Company.
- jjj) Thus, the rights of the Petitioner, as a minority shareholder of the Respondent No. 1 Company, were impinged upon by the Respondents No. 2 and 3, who are the majority shareholders of the Respondent No. 1. The facts, narrated above, would establish that the conduct of the Respondents No. 2 and 3 and their directors are harsh, burdensome and wrongful towards the Petitioner.
- kkk) That APIIC had filed a Company Petition bearing C.P. No. 108/2010, under Sections 397 and 398, read with Sections 402 and 403 of the Companies Act, 1956, before the Company Law Board, Chennai. Thereafter, the same was transferred to this Tribunal and disposed, vide ~~order~~ order dated 06.04.2017, granting liberty to the Petitioner to file a petition on the earlier cause of action, with additional material facts, if any.
4. Basing on the above, the Petitioner herein has filed a Miscellaneous Application, numbered as M.A. 21/2021, stating that documents annexed establish *prima facie* evidence against the Respondents and prayed for the following interim reliefs:
- a) To direct the Respondent Nos. 2 and 3, their officers, representatives, assignees or any other entities and their nominee directors in the Respondent No. 1 Company, to not, in any manner, deal with or otherwise dispose of or encumber, alienate, transfer and/or create third-party interest in the assets and properties of the Respondent No. 1 Company;
- b) To restrain the Respondents from commencing or proceeding, directly or indirectly, with any kind of activity on the property belonging to the Respondent No. 1 Company;

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- c) To appoint an Advocate Commissioner to secure and authenticate the statutory records and books of accounts of the Respondent No. 1 Company;
 - d) To restrain the Respondent No. 1 Company from conducting any meetings without the leave of this Tribunal, pending disposal of the present company petition;
 - e) To direct the Respondent No. 1 Company to furnish the revenue and expenditure statements once in a month;
 - f) To direct the Respondent No. 1 Company to furnish the details of unutilised land and to pass such orders for resumption of unutilised land;
 - g) To direct the Respondent-Companies to compensate the financial losses incurred by the Government of Telangana/ TSIIC, till date, with regard to equity dilution and such other consequences;
 - h) To pass such further or other orders, as this Tribunal may deem fit and proper and thus, render justice.
5. Respondent No. 1, through its reply to the M.A. No. 21/2021, denied all the allegations contained in the Application and contended that both, the Miscellaneous Application as well as the Company Petition, are not maintainable and deserve to be dismissed. The Respondent No. 1, *inter alia*, contends as follows:
- a) That the Petitioner is bereft of *locus standi* to file the instant Petition as it is not the recorded shareholder of the Respondent and no equity of APIIC has been diluted in terms of the Shareholders' Agreement, dated 28.12.2005.
 - b) That any person intending to file a Petition under Sections 241 and 242 of the Companies Act, 2013, must satisfy the basic condition contemplated under Section 2(55) of the Companies Act, 2013. Unless a person's name is entered in the Statutory Register of Members, as a Member of the Company, as maintained in terms of the provisions of the Companies Act, 2013, the person cannot be construed to be a member, thereby disentitling it to maintain an application under

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sections 241 and 242 of the Companies Act, 2013. That in this regard, it is pertinent to note that in the extract of the Annual Returns for the financial year, dated 31.03.2019, the name of APIIC is still shown as a member holding 26% share in the Respondent No. 1 Company. Therefore, the Petitioner is not a member of the Respondent No. 1 Company. The said extract is attached at Page No. 1562 of the Application.

- c) That the Petitioner has relied on Sections 48, 53 and 68 of the Andhra Pradesh Reorganisation Act, 2014, to maintain the instant Petition. A perusal of Section 48(1)(a) of the said Act, shows that the land belonging to the erstwhile State of Andhra Pradesh shall pass to the State of Telangana, if within the transfer territory. The subject land was conveyed absolutely to the Respondent No. 1, vide a registered Conveyance Deed, dated 28.12.2005, and thus, no more belonged to the State of Andhra Pradesh/APIIC, on the appointed date of 02.06.2014. Reliance placed on Section 48 by the Petitioner is misplaced in as much as the land belongs to the Respondent No. 1 and the APIIC received shares in consideration for the same.
- d) That the reliance placed by the Petitioner on Section 53 is equally misplaced in as much as under Section 53, the location of the property is the basis for apportionment as mandated by the Andhra Pradesh Reorganisation Act, 2014. Since the land stood transferred to the Respondent No. 1 in lieu of consideration, the location of the land cannot be made basis for apportionment.
- e) That the Petitioner has neither any averment in the Petition about the apportionment of assets and liabilities nor about any mutual agreement between the Petitioner and APIIC. In the absence of the same, the Petitioner has no *locus standi* to maintain the instant Petition, especially in the light of the bar contained in Section 53(2) of the Andhra Pradesh Reorganisation Act, 2014.
- f) That as per Section 68 of the Andhra Pradesh Reorganisation Act, 2014, the successor States shall apportion the assets, rights and liabilities of

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the Corporations specified in the Ninth Schedule, as provided for by Section 53. The mandate of the Act, as provided for, in Sections 53 and 68, read together, is to lay down the principles of apportionment between the successor States and the law, as contained therein, does not automatically transfer such assets, rights and liabilities to the corporations of the successor States. Therefore, the present APIIC and the Petitioner have to agree on a specific demerger with apportionment of rights and liabilities, based on such an apportionment, the Petitioner may appropriate steps to become a member/shareholder in the Respondent No. 1.

- g) That the instant Petition is not maintainable as it is contrary to the provisions of the Andhra Pradesh Infrastructure Development Enabling Act, 2001 (hereinafter referred to as the "Enabling Act, 2001") and in view of the arbitration clauses in the agreements executed between the parties.
- h) That there is an arbitration clause existing under the Shareholders' Agreement, dated 28.12.2005, executed between the Respondents No. 1 to 3 and APIIC. Hence, this Tribunal has no jurisdiction to entertain the instant Petition.
- i) That it is pertinent to highlight recital 'G' of the MoU, dated, 06.11.2002, which states as under:
- "G. The Sponsor has selected the Developer through a process of competitive bidding for development of the Integrated Project, followed by negotiations, as provided in the Andhra Pradesh Infrastructure Development Enabling Act, 2001."*
- j) That the provisions of the Enabling Act, 2001, would apply to the Integrated Project which is in dispute and in terms of the said Act, disputes between the parties have to be resolved through the Conciliation Board, established under the Enabling Act, 2001.
- k) That a Writ Petition, bearing W.P. No. 32285/2010 is pending before the Hon'ble High Court of Telangana, which vide its order, dated 23.12.2010, stayed the notice, dated 29.10.2010, issued by APIIC, for terminating the various agreements executed with third parties and

restraining APIIC from terminating the Collaboration Agreement, pending further orders. A copy of the writ petition and the interim order are attached to the Counter as Annexure B.

- l) That the Respondent No. 2 had given various representations to the APIIC in order to resolve the dispute, however, no reply had been given by the APIIC.
- m) That the provisions of the Enabling Act, 2001, specifically Section 41 thereof, would apply to the Integrated Project and hence, the parties should be referred to the Conciliation Board.
- n) The Government of Telangana, vide G.O.RT. No. 322, dated 15.10.2015, constituted a Committee of Secretaries to examine the status of the Integrated Project and to come up with alternatives to resolve the issue. The representatives of the Respondent No. 2 appeared before the said Committee and submitted a proposal, dated 15.11.2015, to ensure completion of the Project, protect the interest of the homebuyers and ensure that the APIIC receives all amounts due to it under the contractual arrangement.
- o) That the Petitioner has approached this Tribunal with unclean hands and has suppressed key facts.
- p) That APIIC had filed a Company Petition bearing C.P. No. 108/2010, under Sections 397 and 398, read with Sections 402 and 403 of the Companies Act, 1956, before the Company Law Board, Chennai.
- q) Thereafter, the Petitioner filed a Petition for amendment bearing C.A. No. 34/2016, seeking to amend the cause title by substituting the name of the APIIC, with that of the Petitioner. The said amendment was filed owing to the reorganisation of the State of Andhra Pradesh and the Petitioner was to take over the obligations of the APIIC.
- r) That pending adjudication of the said C.A., the Petitioner sought withdrawal of the C.P., on the ground that the scheme of de-merger between the APIIC and the Petitioner was pending, and the distribution of assets and liabilities, under the Andhra Pradesh Reorganisation Act,

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2014, had not been complete. Accordingly, C.P. No. 108/2010 was disposed of as withdrawn, with liberty.

- s) That the Petitioner has not pleaded as to what the change in circumstance is, from the time when the earlier petition was withdrawn till the filing of the present Petition, since the corresponding rights and obligations of the Petitioner will not fructify till the de-merger is not finalised.
- t) That the Petitioner seeks to assail the Development Agreement-cum-General Power of Attorney, dated 25.07.2007, entered into between the Respondent No. 1 and the Respondent No. 11. The Petitioner has no *locus standi* to question the past concluded contracts between the Respondent No. 1 and the Developer, under which several for completing the project had been taken.
- u) That the said Development Agreement had been duly sanctioned by the Board of Directors of the Respondent No. 1, which included the nominee Director of the APIIC. Further, every action taken under the said Agreement had been duly brought to the notice of the Board, ever since the Agreement was entered into, on 03.11.2006 and as subsequently modified from time to time.
- v) That the Petitioner has not placed on record important documents which can demonstrate the acknowledgement of the Petitioner regarding the appointment of the Respondent No. 11 as a developer.
- w) APIIC, vide letter dated 25.05.2007, numbered as Lr.No.81/APIIC/Project/ICCC/2001, sought clarifications as to the inclusion of the Respondent No. 11 as co-developer. A clarification was issued by the Respondent No.1, vide letter dated 25.05.2007, confirming the Respondent No.11 as co-developer in all project components of the Integrated Project and stated that there will be no dilution in shareholding of the APIIC, a position which stands today.
- x) That the APIIC, vide letter dated 28.05.2007, numbered as Lr.No.81/APIIC/Project/ICCC/2001, to the Secretary, Information Technology & Communications Department, Government of Andhra

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Pradesh, that a supplementary agreement was executed between APIIC and the Respondent No. 2, for the development of Township Project, in view of orders issued in G.O.Ms. No. 14 I&C (I&F) Department, dated 11.05.2005, where it was communicated that APIIC had no objection for including the Respondent No. 11 as a co-developer for the development of the IT/ITES SEZ.

- y) Subsequently, the Government of Andhra Pradesh, through its Secretary, IT&C Department, vide letter dated 04.06.2007 and numbered D.O.Lr.1187/IT&C/Prom2/2006, confirmed that the State Government has no objection to the request of the Respondent No. 1, with regard to the inclusion of the Respondent No. 11 as a co-developer for the said project. The said letter is attached to the Counter, as Annexure - I.
- z) That the Ministry of Commerce and Industry, Government of India, vide its letter dated 19.06.2007 and numbered F.2/311/2006-EPZ, approved the Respondent No. 11 for providing infrastructure. The letter is attached to the Counter, as Annexure - J.
- aa) The APIIC issued a notice, dated 29.10.2010, to Respondent No. 2, calling upon it to rectify the alleged breaches, failing which, it was threatened that Collaboration Agreement would be terminated. The Respondent No. 2 issued a reply, dated 08.12.2010, showing how the Developer has invested approximately Rupees Nine Hundred Crores in the Integrated Project and as to how the interest of the Respondent No. 1 had not been compromised in any manner by entering into the agreement with the Developer.
- bb) That the Respondent No. 2 requested the APIIC to initiate the process of conciliation to arrive at a mutually acceptable solution to the disputes raised by APIIC, to which there was no response from the latter, prompting the former to move the Hon'ble High Court, vide the said W.P No. 32285/2010.
- cc) That the APIIC had also initiated a suit, numbered as O.S. No. 655/2010 on the file of the learned II Additional Chief Judge, City Civil

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Court, Hyderabad, against the Respondent No. 11, seeking, *inter alia*, rendition of accounts and a permanent injunction from carrying out any activity in the scheduled property. The APIIC had not impleaded the Respondent Nos. 1 to 3 as parties in the said suit. That subsequently, the said suit was dismissed for non-prosecution, vide order dated 04.10.2018, against which the Petitioner preferred an application to set aside, which is currently pending.

- dd) That arbitration clauses are contained in all the documents, viz. the MoU, dated 06.11.2002 (Clause 11), the Collaboration Agreement, dated 19.08.2003 (Clauses 6.3 and 6.4) and the Shareholders' Agreement (Clause 28), dated 28.12.2005. Therefore, the Petitioner ought to take recourse to arbitration, as the alleged reliefs as prayed for, flow directly from the said agreements. Hence, this Tribunal has no jurisdiction to entertain the instant Petition.
- ee) That Clause 6(v) of the MoU and Clause 2.4(v) of the Collaboration Agreement specifically provide for assignment of rights towards development, to other parties, through appropriate mechanism.
- ff) Thus, what has been done is in terms of the MoU and the Collaboration Agreement. The said documents, read together, make it succinctly clear that the option to assign the rights by the Respondent No. 1 was present since the date of execution of the documents. Any stray clause in the documents may not be given weightage to undo the intention of the parties, as contained in the MoU, dated 06.11.2002.
- gg) That the issue of the grant of development rights to the Respondent No. 11 was duly discussed in the Board Meeting, dated 21.09.2006. The representative of the APIIC was also present in the said meeting and after due deliberations, sanction was accorded to the execution of the Development Agreement-cum-Power of Attorney between the Respondent No. 1 and Respondent No. 11. Therefore, there is no merit in the contention of the Petitioner that prior written approval was not obtained from the APIIC. The extracts of the minutes of the Board

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Meeting, dated 21.09.2006, are attached to the Counter, as Annexure O.

- hh) That the entire case of the Petitioner is centred around disputed questions of fact relating to the appointment of the Developer. This Tribunal is not a fact-finding body and ought not to adjudicate disputed questions of fact.
- ii) That even as on date, the nominee director of the APIIC is on the Board of the Respondent No. 1 and the APIIC has confirmed the same vide letter, dated 20.08.2014, attached to the Counter as Annexure P.
- jj) That Respondent No. 1 and other Respondents have preferred a writ petition before the Hon'ble Supreme Court of India, numbered as W.P. (C) No. 1074/2020, against the Government of Telangana, seeking revival of the Project, and the same is pending.
- kk) That the Government of Andhra Pradesh, vide G.O.Ms. No. 1279, dated 08.10.2010, has prohibited registration of documents pertaining to the properties under the Integrated Project. Accordingly, there is no threat or urgency to the properties from the perspective of the creation of any third-party rights as alleged by the Petitioner.
- ll) That the Petitioner has not made any specific averments giving rise to cause of action for proceeding under Section 213 of the Companies Act, 2013. The Petitioner has not placed on record any fact from the date of order permitting withdrawal of the earlier petition to the date of filing the instant Petition, showing acts of oppression, on part of the Respondents.
- mm) A mere allegation of fraud does not entitle one to any interim relief. Fraud has to be established by cogent evidence and there is no evidence placed by the Petitioner, proving that there is fraud.
6. Respondents No. 2 and 3, through their reply to the M.A. No. 21/2021, denied all the allegations contained in the Application and contended that both, the Miscellaneous Application as well as the Company Petition, are not maintainable and deserve to be dismissed. The Respondent Nos. 2 and

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3 have reiterated the submissions on a similar line of contentions, as advanced by the Respondent No. 1 and has further contented as under:

- a) That the Petitioner has no *locus standi* to maintain the instant Petition since the Petitioner is not a shareholder of the Respondent No. 1 Company, and its name is not registered in the Register of Members, as per the provisions of the Companies Act, 2013.
- b) That the Petitioner has not approached this Tribunal with clean hands and has not disclosed material facts and documents, which are as under:
 - i) That the Respondent Nos. 2 and 3, had time and again, made representations to the Petitioner for the amicable resolution of the disputes, vide letters, including those on 12.04.2012, 15.11.2015, 20.06.2016, 16.03.2017, 19.04.2018, 04.04.2019 and 18.11.2019, copies of which are attached to the Counter as Annexure B.
 - ii) That the constitution of the Committee of Secretaries, vide G.O.RT.No. 322, dated 15.10.2015, under the Enabling Act, 2001, to sort out issues between the Petitioner and the Respondents.
 - iii) That the civil suit filed by the Petitioner against the Respondent No.11, numbered as O.S. No. 655/2010, on the file of the Learned II Additional Chief Judge, City Civil Court, Hyderabad, which was dismissed for non-prosecution, vide Order dated 04.10.2018.
 - iv) That there was no objection was by the Board of Directors of the Respondent No. 1 Company, which included the nominee director of the APIIC, for the appointment of Respondent No. 11 as the Developer. Further, there had been no objection from the Government towards the same.
- c) That the Petition cannot be entertained due to the specific bar under Section 41 of the Enabling Act, 2001, which provides for the disputes to be referred to the Conciliation Board.
- d) That there does not exist any urgency or a change in circumstances, that call for grant of interim reliefs, since a de-merger has not taken place between the Petitioner and the APIIC.

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- e) That bald allegations of fraud have been averred by the Petitioner, without any material being placed.
- f) That there is no restriction to assign the rights towards development, management and operation of the Integrated Project, upon a joint reading of the documents, viz. the MoU, dated 06.11.2002 (Clause 6(v)), the Collaboration Agreement, dated 19.08.2003 (Clause 2(v)) and the Shareholders' Agreement (Clause 18), dated 28.12.2005.
7. Respondent No. 11, through its limited reply to the M.A. No. 21/2021, denied all the allegations contained in the Application and contended that both, the Miscellaneous Application as well as the Company Petition, are not maintainable and deserve to be dismissed. The Respondent No. 11 has made submissions similar to those advanced by the Respondent No. 1. The following are the contentions in brief:
- a) That the Petitioner has no *locus standi* to maintain the instant Petition since the Petitioner is not a shareholder of the Respondent No. 1 Company, and its name is not registered in the Register of Members, as per the provisions of the Companies Act, 2013.
- b) That the instant Petition is contrary to the provisions of the Reorganisation Act, 2014 and the reliance on Sections 48, 53 and 68 of the Act, is misplaced.
- c) That the provisions of the Enabling Act, 2001, would apply to the Integrated Project and under Section 41 of the Act, the disputes between the parties are required to be resolved through the Conciliation Board, established under the Act, as noticed by the Hon'ble High Court of Telangana, vide order dated 23.12.2010, in W.P. No. 32285/2010.
- d) That there has been a suppression of material facts by the Petitioner, regarding the constitution of the Committee of Secretaries, vide G.O.RT. No. 322, dated 15.10.2015, under the Enabling Act, 2001, to sort out issues between the Petitioner and the Respondents.
- e) That there is no privity of contract between the Petitioner and the Respondent No. 11

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- f) That the instant Petition is the buffet of all the pending litigation between the parties and would amount to forum shopping.
 - g) That the civil suit filed by the Petitioner against the Respondent No. 11, numbered as O.S. No. 655/2010, on the file of the learned II Additional Chief Judge, City Civil Court, Hyderabad, which was dismissed for non-prosecution, vide order, dated 04.10.2018.
 - h) That the arrangement for Respondent No. 1, acting through a developer/ co-developer, is a legitimate and valid action, as is borne out from the various documents, viz. Clause 6(v) of the MoU and Clause 2.4(v) of the Collaboration Agreement, which specifically provide for assignment of rights towards development, to other parties, through appropriate mechanism.
 - i) That the instant Petition is liable to be dismissed on the grounds of delay and laches, being barred by limitation, in the absence of a cogent explanation towards the same.
 - j) That no case has been made out for the grant of interim relief and the interim reliefs sought by the Petitioner are in the nature of final reliefs, therefore not being liable to be granted.
8. That counsel for the Petitioner has filed a Memo dated 29.04.2022, *inter-alia*, stating as under:-
- a) That the Petitioner could secure certain important documents which were enclosed by the Respondents No.1 to its reply to the Notice U/Sec. 260(4) of the Companies Act, submitted to the RoC on 13.01.2021.
 - b) That although the reply of R1 dated 13.01.2021, to the RoC was relying on these documents, they have not been filed before this Tribunal, when the R1 has filed its counter.
 - c) That the petitioner could secure those documents which are germane for the purpose of adjudication of the present company Petition from the RoC. That the said documents, which could not be filed along with the Company Petition are now filed herewith.
 - d) Stating so, counsel for the Petitioner prayed to receive the same on record for effective adjudication of the Company Petition.

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9. Learned Counsel for R2 & R3 filed its reply to the memo dated 29.04.2022, *inter-alia* stating as under:-

- a) That the said memo dated 29.04.2022, is nothing but abuse of the process of law as well as the process solely intended to place on record, documents that have not been pleaded/relied upon/filed by the Petitioner in their Company Petition and are now seeking to rely upon same belatedly.
- b) That the Petitioner is guilty of *suppresio very* and *suggestio falsi*, as it has wrongly portrayed and relied on certain documents and not putting forth the proper chain of events and correct statements of facts and correspondences of this Tribunal, which are germane for the purpose of proper and due adjudication of the dispute and which has since then been filed by the Respondents No. 2 & 3 as separate compilation dated 04.05.2022 and are on record before this Tribunal.
- c) That the entire attempt by the Petitioner by way of filing memo and taking entire new line of argument is clearly an afterthought basis the arguments advanced/made by the Respondents on the preliminary objections taken thereto and as such is liable to be rejected at this stage itself.
- d) That the Petitioner is now seeking to argue aspects of the other state specific acts and the alleged implied consents, which are neither relevant not proper for the adjudication of the present dispute.
- e) That the document submitted by the Respondent No.1 with the RoC i.e., R13 *interse* them and have no material bearing on this issues.
- f) That the petitioner, while being fully aware of the letter dated 20.08.2014 filed at Page No. 5 of the compilation filed by the R2 & R3 has consciously chosen not to disclose the same before this Tribunal. That Shri. E. Venkata Narsimha Reddy was a nominated member of APIIC and instead of the clear disclosure to this effect, the Petitioner has been portraying that Shri. E. Venkata Narsimha Reddy is now in TSIIC, therefore the same forms some kind of acknowledgment from the R2 & R3 qua TSIIC as a shareholder, which is absolutely misleading

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and has no relevance for the purpose of adjudication of the controversy between the parties. That the letter dated 20.08.2014 issued by APIIC nominating Shri. E. Venkata Narsimha Reddy has till date not been withdrawn and is in effect.

- g) That a petition under the provisions of Section 241 & 242 of the Companies Act, 2013, cannot be maintained by the person whose name is not registered on the register of members.
- h) That the alleged documents chosen to be relied upon by the Petitioner at this belated stage has been stated to be obtained post the counter foiled by the Respondent No.1, in this regard, it may be relevant to point out that firstly the counter was filed by the Respondent No.1 on September of 2021, while the present memo has been preferred on April 29, 2022 after more than 8 months, secondly, the documents so filed by the Petitioner are all communications and correspondences interse the parties, so the statement that "these certain important documents" is incorrect as the foretasted "these certain important documents" were always with the Petitioner since the inception. The Respondent Nos. 2 and 3 has already filed a compilation of the documents before this Hon'ble Tribunal which is also on record and contain the relevant documents and the same shall be read as per and parcel of the present reply.
- i) That the principles applicable to the production of additional documents as per applicable principles make it clear that additional documents fan not be introduced after the filing of pleadings. It is only in exceptional circumstances on satisfaction of the following conditions that a Court or Tribunal may permit a party to adduce additional documents after the stage of pleadings. They are:
- a. When the document in question was not in the party's knowledge;
 - or
 - b. When the document could not be produced at the time in spite of due diligence.

Both of which are absent in the instant case.

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- j) The Hon'ble Apex Court in catena of judgements has clearly defined due diligence in the present context as doing everything reasonable which a prudent man would exercise in the context of his own affairs which has not be done in the instant case for the reasons best known to the Petitioner.
- k) In the present case, it is seen that neither of the two requirements have been satisfied by the Petitioner in any manner whatsoever.
- l) That the scheme of de-merger between Andhra Pradesh Industrial Infrastructure Corporation Limited ("APIIC") and Telangana State Industrial Infrastructure Corporation Limited ("TSIIC") is still pending and the distribution of assets and liabilities is still not complete, which is an admitted position and remains uncontroverted by the Petitioner. The same is established beyond reasonable doubt by the withdrawal affidavit filed by the TSIIC withdrawing the Company Petition No.108 of 2016 filed before this Hon'ble Tribunal which is already on record of this Hon'ble Tribunal. The relevant Paragraph No.4 and prayer of the Withdrawal Affidavit is being reproduced herein bellow for ready reference:

*"4. However, the scheme of demerger between Andhra Pradesh Industrial Infrastructure Corporation Limited and Telangana Industrial Infrastructure Corporation Limited is still pending and distribution of assets and liabilities has not been completed between the above mentioned entities. **As the Complete de-merger has not been finalized between Andhra Pradesh Industrial Infrastructure Corporation Limited and Telangana Industrial Infrastructure Corporation Limited, the rights and claims arising out of the agreements executed by Andhra Pradesh Industrial Infrastructure Corporation Limited and the respondents herein, M/s Telangana Industrial Infrastructure Corporation Limited is currently not in a position to pursue litigation in relation to the same. In the said circumstance, the Petitioner craves leave of this hon'ble Tribunal to withdraw the company petition which was filed prior to the bifurcation of the State of Andhra Pradesh.** The Petitioner craves leave of this Hon'ble Tribunal to withdraw the Company petition with liberty to take all necessary measures including approaching this Hon'ble Tribunal*

through a fresh company petition by including all the necessary parties.”

(EMPHASIS SUPPLIED)

“For the aforesaid reasons, is humbly prayed that this Hon’ble Court may be pleased permit the Petitioner to withdraw TR No.01/HDB/2016 (Company Petition No.108 of 2016) with liberty to approach this Hon’ble Tribunal by way of a fresh petition after competition of the de-merger between Andhra Pradesh Industrial Infrastructure Corporation Limited and Telangana Industrial Infrastructure Corporation Limited and pass such further or other order(s) as this Hon’ble Court deems fit and proper in the circumstances of the case.”

- m) That no circumstantial change has taken place since the withdrawal and to that extent, the Petitioner ought to be held bound by its own submission before this Hon’ble Tribunal. Even it is apparent from the documents already filed by the Answering Respondents under revised compilation that the same position remains as on date and also it is evident from the white paper released by the State Government of Andhra Pradesh in December, 2018 that no bifurcation has yet taken place. This fact is reiterated by APIIC in its Audited Balance Sheet for the period ending 31.03.2018, wherein it is reflected that APIIC still holds the shares in the Respondent No.1 Company. White Paper issued by the State Government of Andhra Pradesh in December, 2018 is being annexed herewith and marked as **Annexure -2**. Relevant paragraph 6(d) at internal page 10 and 11 of the White Paper issued by the State Government of Andhra Pradesh in December, 2018 is being reproduced herein below for ready reference.

“6d.....However, no institution is so far bifurcated due to Non-Cooperation from Government of India and Govt. of Telangana.”

- n) That had the Petitioner filed complete documents and correspondences, it would have transpired that at all instances, the Respondent clarified and requested the Petitioner to supply and submit physical shares for the necessary purposes of transmission. However, till date no physical shares have been supplied/issued to the Respondent as till date the demerger has not taken place between TSIIC and APIIC. This further

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- establishes the malice on part of the Petitioner and the *malafide* intention with which the Petitioner has been making baseless claims.
- o) That the Petitioner by way of the present memo under reply, is attempting to misguide this Hon'ble Tribunal while it has not been able to demonstrate the distribution of shares/assets/liabilities with APIIC. It is noteworthy to mention that for the present matter, there is a requirement of the Petitioner to be on the register of members, which is a fundamental requirement under the Companies Act for any entity to stake claim on the shares/shareholding and for maintaining the action under Section 241 and Section 242 of the Companies Act. However, the Petitioner is now attempting to surreptitiously give the dispute a complexion that the present petition is pertaining to the transmission of shares, while the Petitioner itself has chosen not plead and/or rely upon such documents anywhere in the petition solely with an ulterior motive of consciously omitting to rely upon the documents, which it chooses to rely upon at such a belated stage of proceedings. Since, the Petitioner is not on the register of members on this ground alone the petition merits dismissal as this Hon'ble Tribunal can't go into any other factors, let alone determination of rights of the Petitioner basis state specific legislations.
- p) The Respondent has filed various documents which are forming part of the documents from page 16-90 in its revised compilation, wherein it is clearly noted that the scheme for demerger *interse* APIIC and TSIIC is still pending and the rights and liabilities have not yet been distributed/crystallized.
- q) In view of the facts and circumstances stated above, Senior Counsels for R2 & R3 prayed this Tribunal to dismiss the Company Petition with exemplary costs in the interest of justice.
10. Respondent No. 13, through its counter to the C.P. No. 36/2021, denied all the allegations contained in the Petition and *inter alia*, stated as follows:

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- a) That as per the signatory details of the Respondent No. 1 Company available from online MCA portal, Mr. Vijay Menon i.e., Respondent No.6 has been the director of Respondent No.1 Company, w.e.f. 21.08.2003 to 26.03.2007. The details of Mr. A.J. Jaganathan i.e., Respondent No.7 showing as a former director of Respondent No.1 Company is not shown or available in the signatory details of the Respondent No.1 Company. Mr. Shrikanth Prabhakar Joshi i.e., Respondent No.8 was the director of the Respondent No.1 Company, w.e.f. 12.05.2010 to 27.09.2011. Mr. Essamuddin Hussain Ibrahim Galadari i.e., Respondent No. 10 was the director of Respondent No.1 Company, as per the signatory details of Respondent No.1 Company, w.e.f. 12.05.2010 to 02.06.2013.
- b) That it is an admitted fact about the Respondent No.11 is a Company, which falls under the jurisdiction of the RoC, Delhi. Any company registered and falling under the jurisdiction of another RoC against which action cannot be sought from another jurisdictional RoC. The Petitioner is put to strict proof on the necessity of impleading Respondent No.11 without impleading the jurisdictional RoC, Delhi as the Respondent and therefore, the Respondent No. 13 does not comment on the fact of the Respondent No. 11 as a relevant and essential party to the proceedings, based on the facts set out in the Petition.
- c) That the allegations of the Petitioner that the Respondent No. 2, through Respondent No. 3, had diverted the profits from the Respondent No. 1 Company to its sister concern, the Respondent No.11, are the matters falling within the personal records of the Petitioner Company, regarding which the Respondent No. 13 shall not be able to comment as the said facts are based upon the dispute between two companies, arising out of their contractual obligations.
- d) That the RoC has issued a Show Cause Notice, dated 01.12.2020, to the Respondent No. 1, which is an admitted fact. The said notice pertains to calling for information by the RoC, as per the powers vested

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to him under Section 206(4) of the Companies Act, 2013, which was done issued pursuant to the orders of the Ministry of Corporate Affairs, Government of India, which ordered an inquiry, under Section 206 of the Companies Act, 2013, into the affairs of the Respondent No. 1 Company. The Respondent No. 1 Company had replied to the RoC and based on the replies received further action on the inquiry is under progress.

- e) That another inquiry under Section 206(4) was also ordered by the Government of India, in respect of APIIC, against which notice was issued to the said Company. It is submitted that when the transactions of the said APIIC with the Respondent No. 1 Company were taken up during the course of the inquiry, it was informed to the RoC that after the bifurcation of the combined State of Andhra Pradesh into two states i.e., Telangana and Andhra Pradesh, the TSIIC i.e., the Petitioner herein, is the entity now handling the issues relating to Respondent No.1 Company. Hence, the office of the RoC, Telangana i.e., has suggested to the Ministry of Corporate Affairs, Government of India, that an inquiry be ordered against the TSIIC, in place of the APIIC and the matter is under consideration of the Ministry.
- f) That as regards the subject of transfer of shares, the RoC has no control over the transfer of shares when it takes place between the two shareholders of a Company and thereby, the Act does not empower the RoC to restrict the transfer of shares to be taken place between the shareholders.
- g) That it is the consistent stand of the Ministry of Corporate Affairs that it will not be a party to disputes of purely private nature or in the nature of contractual obligations. However, if the complaint involves a violation of the Statute to be enforced by the Ministry, has some adverse impact on public interest, the same shall be taken into consideration. Inquiry is under consideration against the Petitioner Company and as well as against the Respondent No.1 Company and thus, the prayer of the Petitioner is pre-mature.

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h) That the prayer of the Petitioner for directing the RoC to mark the status of the Respondent No.1 Company as management dispute can be complied with, subject to the Petitioner proving various facts before this Tribunal and upon directions to be issued to that effect.

Reiterating the above, it was prayed that the Petition be adjudicated on its merit, taking into consideration the submissions of the Respondent No. 13.

11. Respondent No. 14, through its counter to the C.P. No. 36/2021, denied all the allegations contained in the Petition and *inter alia*, stated as follows:

- a) That the Serious Fraud Investigation Office (SFIO) is an investigation agency under the Ministry of Corporate Affairs, Government of India.
- b) That the SFIO takes up investigations into the affairs of companies, on being entrusted to do so, by the Central Government, under the provisions of Sections 210 and 212 of the Companies Act, 2013.
- c) That a necessary pre-condition for an investigation to be conducted by the SFIO is that the Central Government must form an opinion that such an investigation into the affairs of the Company, by the SFIO is necessary.
- d) That the SFIO cannot, *suo-moto*, investigate into the affairs of the Company.
- e) That in the instant case, no orders have been made by the Central Government regarding investigation into the affairs of the Respondent Companies and therefore, the SFIO cannot take up the investigation, and hence, the prayer of the Petitioner, in this regard, cannot be legally considered.

12. Reiterating the above, it was prayed that the SFIO be discharged from the instant proceedings.

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Date of Order: 25.07.2022

13. Heard both sides, perused the records and Case Law.
14. Before we decide on the issue of locus standi of the Petitioner i.e. Telangana State Industrial Infrastructure Corporation Limited (TSIIC) to prosecute this Petition under Section 241 of the Companies Act, 2013, we would like to relay on record certain documents, which are essential for just and proper adjudication of the issue involved in the case.
15. In the Reply to the Memo dated 29.04.2022 filed by the Petitioner, on behalf of Respondents 2 & 3, at page no.21, a letter dated 11.04.2016 issued by the TSIIC is hereby brought out on this Order.



Telangana State Industrial Infrastructure Corporation Ltd.,
(A Government of Telangana Undertaking)



Ltr.No. TSIIC/Projects Wing/Demerger/2016

dt: 11-04-2016

To
✓ M/s. Emaar Hills Township Pvt Ltd
Boulder Hills Golf & Country Club
(Opp: ISB - Indian School of Business)
Manikonda Village, Gachibowli
Hyderabad - 500 032

Sir

Sub:- TSIIC Ltd - Joint Venture / Special Purpose companies of APIC - Bifurcation of Andhra Pradesh State - Formation of New State of Telangana- Demerger of APIC
Correction in address in correspondence with TSIIC - Reg

Ref:- Lr.No.TSIIC/TDS/2014-15, dt: 26.11.2014 of TSIIC Ltd

It is to inform that, as per the Andhra Pradesh Reorganisation Act, 2014, a new state of Telangana is formed with effect from 02.06.2014.

Consequent to the above, a separate Telangana Industrial Infrastructure Corporation Limited (TSIIC) is formed demerging the same from Andhra Pradesh Industrial Infrastructure Corporation Limited and the TSIIC has been incorporated on 04.09.2014. A copy of the certification of Incorporation and Memorandum of Association is enclosed herewith for reference. Since, then the TSIIC is operating independently. Our PAN is AAFCT1093A.

As per the demerger, the Joint Venture Company M/s. Emaar Hills Township Pvt Ltd is the Joint Venture of TSIIC since falling in Telangana State geographically. In view of the above, it is kindly note and necessary action may be initiated and the changes be carried in the records and the equity be changed in the name of TSIIC Ltd..

You are requested to correspond further in the name of Telangana Industrial Infrastructure Corporation Limited.

Yours faithfully

VICE CHAIRMAN &
MANAGING DIRECTOR

Regd. Office : "Parisrama Bhavanam", 6th Floor, Basheerbagh, Hyderabad-500 004, Telangana, India.
Tel : 040-23237625, 23237626, Fax : +91-40-23240205, Web : tsiiic.telangana.gov.in

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16. At page nos.23 to 30, the Minutes of the Meeting of the Emaar Hills Township Private Limited wherein the Managing Director of the Petitioner i.e. TSIIC is shown as Director present.

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MINUTES BOOK

EMAAR HILLS TOWNSHIP PRIVATE LIMITED

MINUTES OF THE 58TH MEETING OF THE BOARD OF DIRECTORS OF EMAAR HILLS TOWNSHIP PRIVATE LIMITED HELD ON THURSDAY, THE 16TH JUNE, 2016 AT 10:00 A.M AT HICC, MADHAPUR, HYDERABAD-500081 TELANGANA STATE, INDIA.

DIRECTORS PRESENT:

1. Mr. Amit Jain
2. Mr. Ashish Kabra
3. Mr. E. Venkat Narsimha Reddy

IN ATTENDANCE:

Mr. S. Madhusudhana Rao

CHAIRMAN OF THE MEETING:

With the permission of the directors present at the meeting, Mr. Amit Jain occupied the chair and welcomed the members of the Board of Directors of the Company and requested to participate in the proceedings of the meeting.

QUORUM:

As the requisite quorum for the Meeting was present, the Chairman conducted the proceedings of the meeting as per the agenda circulated to the Board of Directors.

ITEM 1: LEAVE OF ABSENCE

As all the directors were present, leave of absence did not arise.


ITEM NO 2: TO CONFIRM THE MINUTES OF THE PREVIOUS BOARD MEETING AND REVIEW THE ACTION TAKEN REPORT ON THE DECISIONS OF THE BOARD MEETING DATED 14.03.2016:

The minutes of the Meeting of the Board of Directors of the Company held on 14.03.2016 were circulated to the members of the Board and the same was confirmed by the Board.

The action taken report on the decisions of the Board Meeting held on 14.03.2016 were reviewed and recorded.

The following resolutions were passed by the Board in this regard:

RESOLVED THAT the minutes of the meeting of the Board of Directors of the Company held on 14.03.2016 which was circulated and placed before the Board be and is hereby confirmed.

CHAIRMAN'S INITIALS


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MINUTES BOOK

RESOLVED FURTHER THAT the action taken report on the decisions of the Board Meeting held on 14.03.2016 which was circulated to the members of the Board were reviewed and recorded.

ITEM NO 3: TO TAKE NOTE AND RECORD THE GENERAL DISCLOSURE MADE BY THE DIRECTORS IN FORM MBP-1 UNDER SECTION 184(1) OF THE COMPANIES ACT, 2013:

The Board of Directors were informed that as per Section 184 of the Companies Act, 2013 every Director at the first Board Meeting in every financial year shall disclose his/her concern or interest in any company, body corporate, firm or other association of individuals in Form MBP-1. Copies of MBP 1 received from the Directors were enclosed for review and to take on record.

The Board, after reviewing the forms, passed the following resolutions.

RESOLVED THAT pursuant to Section 179(3) of the Companies Act, 2013 and the rules made thereunder, the notices of interest by Director in Form MBP-1 under section 184 of the Companies Act, 2013 and the rules made thereunder, received from the Directors of the Company be and are hereby reviewed, noted and taken on record.

RESOLVED FURTHER THAT any one of the directors of the Company or Mr. S. Madhusudhana Rao be and is hereby authorized to do all the acts, deeds and things which are required for effecting the above said resolution.

ITEM NO 4: TO TAKE NOTE AND RECORD THE DISCLOSURE MADE BY DIRECTORS IN FORM DIR-8 UNDER SECTION 164(2) OF THE COMPANIES ACT, 2013:

The Board of Directors were informed that the Company has received the Form DIR-8's from the Directors as required under Section 164(2) of the Companies Act, 2013 and copies of the same were enclosed for information of the Board and record the same.

The Board after review of DIR-8 forms passed the following resolution.

RESOLVED THAT pursuant to Section 164(2) of the Companies Act, 2013 and the rules made thereunder, the declarations received from Directors in Form DIR-8 be and are hereby reviewed, noted and taken on record.

RESOLVED FURTHER THAT any one of the directors of the Company or Mr. S. Madhusudhana Rao be and is hereby authorized to do all the acts, deeds and things which are required for effecting the above said resolution.

ITEM NO 5: TO DISCUSS ABOUT CHANGE OF OWNERSHIP ON THE SHARES FROM APIIC TO TSIIC BY OPERATION OF LAW

The Board of directors were informed that the Company has received a letter dated 11.04.2016 from TSIIC requesting the Company to change the ownership in the shares held by them in the Company from APIIC to TSIIC in the records of the Company. Also it was mentioned in the letter that as per the Andhra Pradesh

CHAIRMAN'S INITIALS

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MINUTES BOOK

Reorganization Act, 2014 geographically since the assets are falling in Telangana State, the ownership will automatically get transferred to TSIIC. The copy of the letter received from TSIIC is placed before the Board.

While discussing the matter Mr. E. Venkat Narsimha Reddy, VC & MD of TSIIC Ltd explained that as per the Clause no. 53 (1) read with 68(1) & Ninth Schedule-Serial No.17 of Andhra Pradesh Reorganization Act, 2014 promulgated by the Government of India vide notification dated 01.03.2014, "The assets and liabilities relating to any commercial or industrial undertaking of the existing state of Andhra Pradesh, where such undertaking or part thereof is exclusively located in, or its operations are confined to, a local area, shall pass to the state in which that area is included on the appointed day, irrespective of the location of its headquarters".

Therefore, in view of the above, request for change of ownership will fall under transmission by way of operation of law as per section 56 of the Companies Act, 2013.

The Board, after due deliberations, considered the request made by the TSIIC and approved to transmit the said shares in the name of Telangana State Industrial Infrastructure Corporation Limited (TSIIC Limited) upon receipt of the original share certificates from TSIIC.

The following resolution was passed in this regard:

RESOLVED THAT the 2,50,32,202 equity shares of Rs.10/- each having distinctive numbers 4839336 to 6539642 & 72945805 to 96277699 in the certificate numbers 6 & 8 respectively, presently registered in the name of APIIC Limited be transmitted to and registered in the name of Telangana State Industrial Infrastructure Corporation Limited (TSIIC Limited) upon receipt of the original share certificates from TSIIC in pursuance of Clause no. 53 (1) read with 68(1) & Ninth Schedule-Serial No.17 of Andhra Pradesh Reorganization Act, 2014 promulgated by the Government of India vide notification dated 01.03.2014.

RESOLVED FURTHER THAT any one of the directors of the Company or Mr. S. Madhusudhana Rao be and is hereby authorized to make necessary endorsement on the share certificates and update the register of members and other records of the Company as per the above resolution and to do the needful in connection therewith or ancillary or incidental thereto.

ITEM NO 6: TO DO ANY OTHER BUSINESS WITH THE PERMISSION OF THE CHAIR AND BOARD:

a) AUTHORISATION TO ATTEND AND VOTE AT THE CREDITORS MEETING OF EMAAR MGF LAND LTD.

The Board of Directors was informed that the Company has received a notice of court convened meeting of the unsecured creditors from Emaar MGF Land Limited regarding the proposed Scheme of Arrangement between Emaar MGF Land Ltd and MGF Developments Ltd.

CHAIRMAN'S INITIALS

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MINUTES BOOK

The Board was further informed that as the Company is unsecured creditor of Emaar MGF Land Ltd, it has to convey its consent or dissent at the court convened unsecured creditors meeting to be held on Monday, July 11, 2016 at 11:00 A.M. at Kamani Auditorium, 1, Copernicus Marg, New Delhi - 110001 for the proposed Scheme of Arrangement. The Copy of notice of court convened unsecured creditors meeting is placed before the Board for review and record.

The Board of directors, after due deliberations, accorded its consent to vote in favour of the proposed Scheme of Arrangement between Emaar MGF Land Ltd and MGF Developments Ltd subject to a condition that the interest of the Company and TSIIC shall not be effected in any way.

The following resolution was passed in this regard.

RESOLVED THAT without prejudice to the interest of the Company and TSIIC, the approval of the Board be and is hereby its consent to vote in favour of the proposed Scheme of Arrangement between Emaar MGF Land Ltd and MGF Developments Ltd.

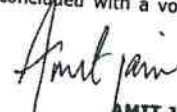
RESOLVED FURTHER THAT the Company do hereby severally authorize following persons to attend and vote on our behalf, at meeting of the Unsecured Creditors of Emaar MGF Land Limited to be convened under the supervision of the Hon'ble High Court to consider and approve, with or without modifications, the proposed Scheme of Arrangement between Emaar MGF Land Ltd and MGF Developments Ltd, proposed to be held on Monday, July 11, 2016 at 11:00 A.M. at Kamani Auditorium, 1, Copernicus Marg, New Delhi - 110001, or any adjournment thereof:

1. Mr. Ashish Narayan Prasad Kabra, S/o Mr. Narayan Prasad Ramniwas Kabra, or
2. Mr. Chandra Shekher Joshi, S/o Late Mr. Liladhar Joshi.

RESOLVED FURTHER THAT the above representatives be further severally authorised to appoint proxy(ies) on their behalf and to exercise any rights and powers (including the right to attend and vote through proxy) and to do all such acts, deeds and things as may be deemed necessary to effectuate the above.

RESOLVED FURTHER THAT Mr. Amit Jain, Director, Mr. Ashish Kabra, Director and Mr. S. Madhusudhana Rao be and are hereby authorized, severally, to execute and sign, various documents, papers, letters, affidavits, Consents, NOC etc., on behalf of the Company which may be required or requested from time and to take other steps on behalf of the Company, in respect of the Scheme of Arrangement between Emaar MGF Land Limited and MGF Developments Limited.

There being no other business to transact, the meeting concluded with a vote of thanks to the Chair at 10:25 A.M.


AMIT JAIN
Chairman of the Meeting

Date: 24.06.2016
Place: Hyderabad

CHAIRMAN'S INITIALS

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MINUTES BOOK

ACTION TAKEN REPORT ON THE DECISIONS OF BOARD MEETING HELD ON
 16.06.2016

Sl. No.	Business transacted	Decisions arrived in the Board Meeting	Action taken
1.	To confirm the minutes of the previous board meeting and review the action taken report on the decisions of the board meeting dated 14.03.2016	Minutes approved and action taken report was reviewed and noted by the board	Signed minutes were kept in the register maintained by the Company.
2.	To take note and record the general disclosure made by the directors in form MBP-1 under section 184(1) of the companies act, 2013	The Board noted and recorded the general disclosures made by Directors.	Updated the concerned registers.
3.	To take note and record the disclosure made by directors in form dir-8 under section 164(2) of the companies act, 2013:	The Board noted and recorded the general disclosures made by Directors.	Signed disclosures kept in the relevant file maintained by the Company
4.	To discuss about change of ownership on the shares from APIIC to TSIIC by operation of law	The Board approved to transmit the said shares in the name of Telangana State Industrial Infrastructure Corporation Limited (TSIIC Limited) upon receipt of the original share certificates from TSIIC.	The Company is yet to receive the share certificates from TSIIC.
5.	Authorisation to attend and vote at the creditors meeting of EMAAR MGF Land Ltd.	The Board of directors accorded its consent to vote in favour of the proposed Scheme of Arrangement between Emaar MGF Land Ltd and MGF Developments Ltd subject to a condition that the interest of the Company and TSIIC shall not be affected in any way.	Certified true copy of resolution was given in this regard to attend and vote in favour of the scheme.

The Board of directors is requested to pass the following resolution, with or without modifications, after reviewing the minutes and action taken report.

CHAIRMAN'S INITIALS

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MINUTES BOOK

RESOLVED THAT the minutes of the meeting of the Board of Directors of the Company held on 16.06.2016 which was circulated and placed before the Board be and is hereby confirmed.

RESOLVED FURTHER THAT the action taken report on the decisions of the Board Meeting held on 16.06.2016 which was circulated to the members of the Board were reviewed and recorded.

CHAIRMAN'S INITIALS

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EMAAR HILLS TOWNSHIP PVT LTD

BOARD MEETING ON 16/06/2016 AT HICC ANDERABAD AT 10AM

S. NO. NAME OF DIRECTOR SIGNATURE

1. SRI. E. VENKAT NARSIMHA REDDY 
2. SRI. AMIT JAIN 
3. SRI. ASHISH KARRA 

IN ATTENDANCE

1. SRI. MADHUSUDHANA RAO 
(AUTHORISED PERSON)

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EMAAR HILLS TOWNSHIP PVT LTD

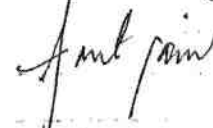
BOARD MEETING ON 16/09/2016 AT: HKS, HYDERABAD AT 9:30 AM

SNO NAME OF DIRECTOR SIGNATURE

1. SRI. VENKAT NARSIMHA REDDY



2. SRI. AMIT JAIN



3. SRI. ASHISH KABRA



IN ATTENDANCE

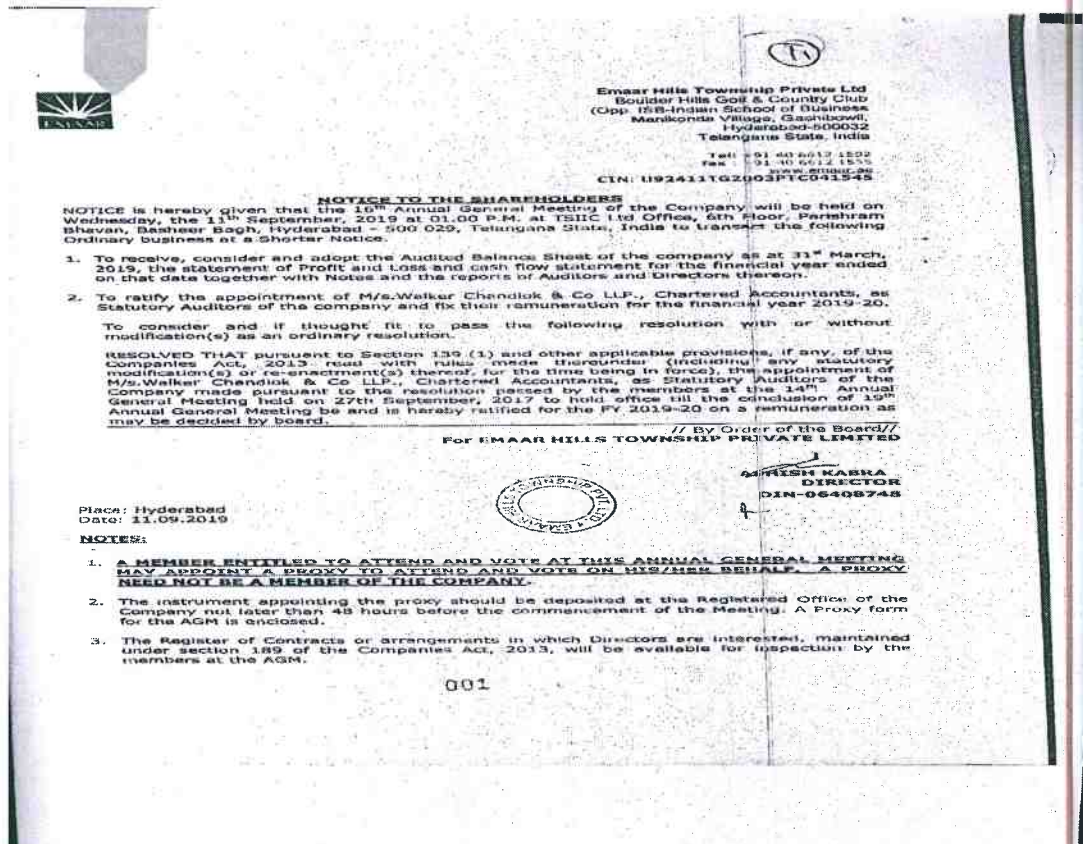
1. SRI. MADHUSUDHANA RAO
(AUTHORIZED PERSON)




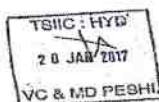

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17. At page no.25 of the same book, the following words are used at paragraph no.4 “The Board, after due deliberations, considered the request made by the TSIIC and approved to transmit the said shares in the name of Telangana State Industrial Infrastructure Corporation Limited (TSIIC Limited) upon receipt of the original share certificates from TSIIC.”
18. At page no.11 of the Memo dated 29.04.2022 filed by the Petitioner, a Notice of General Meeting of the Respondent Company is annexed, which is reproduced herewith:



19. The above notice of the General Meeting clearly shows that the Respondent is addressing the Petitioner and sending the notice as a Shareholder of the Respondent Company.
20. At page no.7 of the same Memo, a letter dated 19.01.2017 is addressed by the Respondent Company to the Petitioner, which is reproduced herewith.

Emaar Hills Township Private Ltd
Boulder Hills Golf & Country Club
(Opp. IBS Indian School of Business)
Manikonda Village, Gachibowli
Hyderabad - 500 032
Telangana State, India
Tel: +91 40 6612 1502
Fax: +91 40 6612 1555
www.emaar.ae

CIN :- 092411TG2003PTC041545

Ref: EHTPL/2016-17/TSIC/007 Date: 19.01.2017

To,
M/s. Telangana State Industrial Infrastructure Corporation Ltd (TSIIC Ltd)
Parishram Bhavan, 6th Floor,
Bashier Bagh, Hyderabad - 500 004
Telangana State, India

Dear Sir,

Sub:- TSIIC Ltd - Request for transmission of shares in the name TSIIC Ltd by operation of law - currently held in the name of APIIC Ltd which has ceased to exist as a unified entity due to application of A.P.State Reorganisation Act, 2014 (APSARA, 2014)

Ref:- Ltr No. TSIIC/Projects Wing/Demerger/2016; Dt: 11.04.2016 of TSIIC



This is with reference to your letter dated 24.10.2016 on the subject cited above and subsequent discussions during the 6th December 2016 board meeting.

As per Section 56 of the Companies Act 2013, transmission of shares means transfer of title to shares by operation of law. On transmission of shares, the entity to which shares are transmitted shall become the new shareholder of the company and shall be entitled to all the rights and subject to all liabilities as a shareholder. The transmission of shares shall be approved and given effect by the Board on submission of intimation regarding transmission along with the original shares certificates.

In accordance with the Section 53(1), 53(2) and Section 107 of the AP State Reorganisation Act 2014 and Section 56(2) of the Companies Act 2013 and on the basis of intimation about demerger vide above referred letter, on 16th June 2016 the Board has approved the transmission request by operation of law subject to submission of original share certificates.

As per Section 56(4) of Companies Act 2013, every company shall, unless prohibited by any provision of law or any order of court, tribunal or other authority, deliver the certificates of all securities transmitted within a period of one month from the date of intimation of transmission under sub-section (2) in case of transmission shares.

In order to complete the process of transmission, the original share certificates are required to be surrendered to the Company along with the request for transmission of the shares in the name of applicant. The company has received only intimation for transmission of shares and is yet to receive the original share certificate(s).


 

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21. The above said letter on the subject, it is stated that 'Request for transmission of shares in the name of TSIIC Limited by operation of law – currently held in the name of APIIC Ltd. which has ceased to exist as a unified entity due to an application of A.P.State Reorganisation Act, 2014'. Even though such letter states that the transmission of shares held by the Petitioner in the Respondent Company have to be transmitted in the name of the Petitioner Company from APIIC as per the A.P.State Reorganisation Act, 2014, but at the same time, the Respondent Company is requesting for the surrender of original share certificates issued by the Respondent Company to APIIC.
22. At page no.1676 of the main Company Petition, the following document clearly shows and projects TSIIC as the holder of 2,50,32,202 shares.

1676




Emaar Hills Township Private Ltd
 Boulder Hills Golf & Country Club
 (Opp. ISE-Indian School of Business)
 Manikonda Village, Gachibowli,
 Hyderabad-500032
 Telangana, India
 Tel: +91 40 6612 1500
 Fax: +91 40 6612 1505
 www.emaar.ae

CIN: U92411TG2603PTC041546

LIST OF SHAREHOLDERS AS ON 31.03.2019
 Type of Shares: Equity
 Amount per share: Rs.10/-

Sl. No.	Ledger Folio	Name and Address	Father's / Husband's Name	No. of Shares Held
1.	004	EMAAR HOLDING 1st Cascades Building, Manikonda	- NA -	7,12,45,497
2.	005	APIIC LIMITED (TSIC LIMITED) 1st Floor, 2nd SM/3, Patsa Pantan Road, Hyderabad - 500 004	- NA -	2,50,32,202
Total no. of equity shares				9,62,77,699

FOR EMAAR HILLS TOWNSHIP PRIVATE LIMITED



ASHISH KABRA
 DIRECTOR
 DIN: 06408746

//TRUE COPY//

General Manager (LAW)
 ETC LTD
 A Government Company Under MOU
 6th Floor, Government House,
 Rajinagar, Hyderabad - 500 004.

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23. At page no.1803 of the main Company Petition, the Note below the Balance Sheet clearly mentions that the TSIIC had taken over the activities of APIIC in so far as it pertains to the State of Telangana and is the beneficial owner of the shares.

1803

Notes (Hills Township Police Limited)
 Summary of significant accounting policies and other explanatory information
 (All amounts in ₹ unless otherwise stated)

4. Share capital

	31 March 2020		31 March 2019	
	Number	Amount	Number	Amount
Authorised share capital				
Equity share of ₹10 each	100,000,000	1,000,000,000	100,000,000	1,000,000,000
	100,000,000	1,000,000,000	100,000,000	1,000,000,000
Issued, subscribed and fully paid-up				
Equity share of ₹10 each	96,277,699	962,776,999	96,277,699	962,776,999
	96,277,699	962,776,999	96,277,699	962,776,999

(a) Reconciliation of number of equity shares and amounts outstanding at the beginning and at the end of the reporting year

	31 March 2020		31 March 2019	
	Number	Amount	Number	Amount
Equity share of ₹10 each, fully paid-up				
Balance at the beginning of the year	96,277,699	962,776,999	96,277,699	962,776,999
Add: Allotted during the year	-	-	-	-
Decreasing at the end of the year	-	-	-	-
	96,277,699	962,776,999	96,277,699	962,776,999

(b) Terms/right attached to equity shares
 The Company has only one class of equity shares having par value of ₹10 per share. Each holder of equity shares is entitled to one vote per share. The Company declares and pays dividends in Indian rupees. The dividend proposed by the Board of Directors is subject to the approval of the shareholders in the ensuing General Meeting. In the event of liquidation of the Company, the holder of equity shares will be entitled to receive remaining assets of the Company, after distribution of all preferential amounts. The distribution will be in proportion to the number of equity shares held by the shareholder.

(c) Shares held by holding company

	31 March 2020		31 March 2019	
	Number	Amount	Number	Amount
Equity share of ₹10 each, fully paid-up				
Hills Holding (Maharashtra), the Holding Company	71,245,497	712,454,970	71,245,497	712,454,970

(d) Shareholders holding more than five percent of paid-up equity share capital

	31 March 2020		31 March 2019	
	Number	% holding	Number	% holding
Equity share of ₹10 each, fully paid-up				
Hills Holding (Maharashtra)	71,245,497	74.00%	71,245,497	74.00%
Andhra Pradesh Industrial Infrastructure Corporation Limited (APIIC)	25,033,203	26.00%	25,033,203	26.00%

As per records of the Company, including its register of shareholders/ members and other documents received from shareholders regarding beneficial interest, the above shareholders represent both legal and beneficial ownership of shares.

Note: The Andhra Pradesh Reorganisation Act, 2014, transferred the State of Andhra Pradesh from Telangana and existing Andhra Pradesh State on 2 June 2014. Post reorganisation, securities of Andhra Pradesh Industrial Infrastructure Corporation (APIIC) pertaining to the state of Telangana were transferred/ owned out by Telangana State Industrial Infrastructure Corporation (TSIIC). However, the share certificates have not been reissued in the name of TSIIC.



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Law
 General Manager (Law)
 TSIIC LTD
 A Government of Telangana undertaking
 6th Floor, Purusoma Bhawan,
 Basheerbagh, Hyderabad - 500 004.

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24. From the entire gamut of pleadings and the documents annexed to the Memo and also to the petition one thing is very clear and that is the Respondent Company i.e. Emaar Hills Township Private Limited had issued shares to APIIC long ago. Subsequently, the State is bifurcated into two States and in view of the formation of State of Telangana, the new entity called TSIIC has been incorporated to take over the activities of APIIC in so far as it relates to the State of Telangana. That means all the assets including the land bank held by the APIIC, which are situated in the State of Telangana shall automatically become the properties of TSIIC. Section 53, one of the Sections of the A.P.State Reorganisation Act, 2014 is very clear that the assets and liabilities relating to any commercial or industrial undertaking of the existing State of Andhra Pradesh shall pass to the State of Telangana in so far as the assets that are located in Telangana are concerned. If, we read the proviso of Section 53, the same will clearly establish beyond any doubt that every Government asset that is situated in the State of Telangana shall, by operation of law, become the asset of the State of Telangana. *Section 68 of the A.P.State Reorganisation Act, 2014 in its 9th Schedule, there is a mention of APIIC as one of the entities owned by the erstwhile State of Andhra Pradesh.* There are various arguments advanced by the Respondent Company i.e. Emaar Hills Township Private Limited and counter arguments on the part of the TSIIC, the Applicant in MA 21/2021. Emaar Hills Township Pvt. Ltd. would canvas in nutshell that the Respondent Company had issued shares to APIIC and on the formation of new entity TSIIC, if at all TSIIC claims any ownership on the said shares, the same have to be transmitted in the name of the TSIIC. Further, the procedure that is required to be followed is that TSIIC shall tender the original share certificates with the Emaar Hills Township Private Limited for the transmission of shares on to their name. Since the shares have not been transmitted, TSIIC has not become owner of the shares and hence TSIIC has no locus standi of whatsoever nature to

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pursue the petition alleging oppression and mismanagement against the Company.

25. Per contra, the Learned Additional Advocate General appearing on behalf of the TSIIC would urge that by virtue of Section 53 of A.P.State Reorganisation Act, 2014, there is no need for transmission of shares, TSIIC has automatically, by operation of law, become the owner of such shares held by APIIC by virtue of A.P.State Reorganisation Act, 2014.
26. Precisely the question that is required to be decided in this application is: *whether the transmission of shares from APIIC to TSIIC is required to be done in pursuance of the Companies Act or by virtue of Section 53 of the A.P.State Reorganisation Act, 2014, TSIIC would automatically become the owner of the shares by operation of law?*

Before answering this question, we are aware that the A.P.State Industrial Corporation Limited (APIIC) is formed as a Government Company. Subsequently, on the bifurcation of the State, TSIIC is also formed as a Government Company. We are very clear that a 'Government Company' means a Company in which the entire holding of the shares is held by the Government concerned and in this case the State of Telangana and the ownership of such shares or property would be held by the Governor of that State in the name of the concerned entity. There are plethora of decisions of the Hon'ble Apex Court which say that Article 12 of the Constitution of India would apply in case of a Public Sector Undertakings, which are the estate of the State. The following decisions of the Hon'ble Apex Court would clearly establish that the Petitioner i.e. TSIIC is an instrumentality of the State covered under Article 12 of the Constitution of India. The following decisions would support us in this particular view:

- i. **Rajasthan State Electricity Board Vs Mohan Lal and Others (AIR 1967 SC 1857)**, which says that Electricity Board of Rajasthan is "State" within the definition of Article 12, under the expression "other authorities", wherein interpretation of Rule of *ejusdem generics* is not applicable.

- ii. **State of Punjab Vs State of Jalandhar &Ors (AIR 1979 SC 1981)**
- iii. **RD Shetty Vs. The Indian International Airport Authority of India and others (AIR 1979 SC 1628):** this judgment said that the Government which represents the executive authority of the State, may act through the instrumentality or agency of natural persons or it may employ the instrumentality or agency of juridical persons to carry out its functions. In the early days, when the Government had limited functions, it could operate effectively through natural persons constituting its civil service and they were found adequate to discharge governmental functions, which were of traditional vintage.
- iv. **The Gujrat State Finance Corporation Vs M/s Lotus Hotel Pvt Ltd (AIR 1982 Guj 198)**
- v. **SK Verma Vs Mahesh Chandra and Others (1983) 4 SCC214**)this case talks about maintainability of reference should not be questioned especially by Public Sector Corporations on mere technical grounds.
- vi. **A.L Kalra Vs Project & Equipment Corporation of India Ltd (1984) 3 SCC 316,**this case talked about Government Undertakings to be referred as "Other authorities" under Article 12 of the Constitution of India and that employees to such bodies are entitled to get protection under Part III though not under Part II.
- vii. **P.K Ramchandra Iyer & Others Vs Union of India and Others (AIR 1984 SC 541),** according to this judgment Indian Council of Agricultural Research (ICAR) is "other authorities" under Article 12 of the Indian Constitution.
- viii. **NGEF Limited Vs Chandra Developers and Others (2005) 8 SCC**

219, this judgment says that Section 536(2) ipso fact does not confer any power or jurisdiction to the Company Court for sale of assets of sick companies.

27. From the above, we are sure that TSIIC is not a Company owned by some private individuals but it is an instrumentality of the State. Pausing here for a moment, we are very conscious of the conduct of the Respondent Company i.e. Emaar Hills Township Private Limited wherein in every correspondence right from the beginning, the letters addressed and also the manner in which it gave an impression to the TSIIC by appointing their Managing Director as one of the Directors of Emaar Hills Township Private Limited and also while addressing notices of the Meetings and at every stage and every document goes to show that in fact the Respondent Company have recognized and treated the Petitioner Company i.e. TSIIC as the successor company of APIIC as though TSIIC has absolute rights over its properties including the shares in the Respondent Company. Practically, the Respondent Company may advance arguments that they have only addressed letters by treating TSIIC as a future shareholder and always wanted the shares to be transmitted on to their name and apart from that the appointment of Directors on to their Board is nothing to do with the transmission of shares. Here, we consciously differ with the argument advanced by the Respondent Company and we hereby expressly, with all the knowledge of facts and circumstances of the case hold that the conduct of the Respondent Company i.e. Emaar Hills Township Private Limited with the Petitioner is certainly an act of recognizing TSIIC as the shareholder of the Respondent Company.
28. In addition to the above, Section 53 of A.P.State Reorganisation Act, 2014 also clearly establishes that the assets of the erstwhile industrial entities or commercial entities would automatically become the assets of the new entities established by the State of Telangana. Therefore, what we intend to reiterate here is that the legal position of the Petitioner Company i.e. TSIIC as an instrumentality of the State covered under Article 12 of the

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Constitution of India coupled with the conduct of the Respondent Company in treating the TSIIC as their shareholder and holding meetings in their office, issuing notices of General Meetings to TSIIC which clearly establish that the ground on which the Respondent Company is questioning the locus standi of the Petitioner is marred by wrongful intention and they are trying to escape the probable enquiry into the affairs of the Company.

29. The argument of the Respondents that an earlier petition filed by the APIIC for oppression and mismanagement has been withdrawn citing non-completion of demerger which is no abstacle to this petition. In our view, the petition filed under Section 397, 398 of the Companies Act, 1956 having been withdrawn due to non-completion of demerger, has absolutely no bearing on this case for the reason that in our opinion the demerger is not at all required in this case and the withdrawal of Company Petition by APIIC is also of no consequence and has no bearing on this petition.
30. It is also in the public interest that the niceties or technicalities and hair splitting arguments are to be ignored to unearth the truth hidden behind the curtain. In view of the same, we hold that the Petitioner has got all the locus standi to pursue the Company Petition No.CP 36/2021 and the Respondent Company i.e. Emaar Hills Township Private Limited is bound to file its counter in reply to the contentions raised by the Petitioner in the main Company Petition.
31. Apart from the issue of maintainability of this petition, the other issue that comes for consideration is whether the Petitioner Company is entitled for the reliefs sought in the application MA 21/2021. The contentions raised in the petition are in the public interest and it is the property of the State which is being sold away or alienated in a very deceitful manner by the Respondent Companies through their agents. This is our prima facie view. In view of the same, the balance of convenience and the damage that took place to the Government estate is very large. We are inclined to pass the following Interim Orders.

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Therefore, we direct that –

- i. The 2nd and 3rd Respondents, their officers, representatives, assignees or any other of their entities and their nominee directors in the 1st Respondent Company to not in any manner deal with or otherwise dispose of or encumber, alienate, transfer and/or create third party interest in the assets and properties of the 1st Respondent Company.
 - ii. The Respondent Companies to compensate the financial losses incurred by the Government of Telangana / TSIIC till date, in regard to equity dilution and such other consequences.
32. MA No.21/2021 allowed to the extent of prayers (a) & (f). The Respondents are directed to file their counter within four weeks from the date of this order.
33. Post the CP.No.36/2021 on 26.08.2022.


DR. BINI K. S. HA
MEMBER JUDICIAL

Pratik/Syamala


BHASKARA PANTULA MOHAN
MEMBER JUDICIAL