

IN THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH (COURT – II)
(Through Hybrid Mode)

Item No. 103

CP (CAA) No. 26/Chd/Hry/2023
(2nd Motion)

IN THE MATTER OF:

ASG Overseas Pvt. Ltd. & Ors.

...

Transferor Companies

And

BPTP Ltd.

...

Transferee Company

Under Section: 230-232, CA 2013

Order delivered on 02.07.2024

CORAM:

**SHRI. UMESH KUMAR SHUKLA,
PRASAD,
HON'BLE MEMBER (T)**

SHRI. P.S.N.

HON'BLE MEMBER (J)

PRESENT:

**For the Petitioner : Mr. Kartikeya Goel with Mr. Rajeev Goel,
Companies Advocates.**

ORDER

The petitioner and counsel for the petitioner are present. The matter listed for clarification is taken up and the issue on which the clarification is needed as under:-

- (i) The petitioner companies have issued notice only to Haryana Real Estate Regulatory Authority (HRERA). However, it is noted from the website of Transferee Company, BPTP Limited that it has projects in Haryana as well as in Uttar Pradesh and other transferor company may have projects in other States. Therefore, notices need to be served upon the Uttar Pradesh Real Estate Regulatory Authority (UPRERA) and such Real Estate Regulatory Authority(ies) (RERA) of the State(s), where the project(s) of the petitioner

companies are located and/or where it is registered as real estate agent, as a sectoral regulator pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

- (ii) It is also noted that the Transferee Company: BPTP Limited is developing SEZs at Faridabad, Noida and Greater Noida. Therefore, the notices need to be served upon the Ministry of Commerce and Industry, Department of Commerce/ Development Commissioner of the Concerned Special Economic Zone Authority as a sectoral regulator in respect of BPTP Limited and other petitioner companies, which are developing/ setting up SEZ or located in SEZ pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

- (iii) The RoC in its report has made the following observation:

98.	<p>Observation, if any:</p> <ol style="list-style-type: none"> As per Annexure-A9 of the petition dated 19.09.2022 'status of statutory dues and other dues' have been provided. At serial no. 09 of the list given therein, it is seen that that Transferee Company has shown 'Advances From Customer' of Rs. 8,69,26,44,242/- (Not due for payment). In the notes it has been provided that the advances were received from real estate customers which will be adjusted against the final payment to be made at the time of taking possession. Therefore, the Transferee Company has submitted that consent from all such parties is not required. Therefore, it appears that the scheme was never placed for approval of the 'Home Buyer'S'. On browsing the website of Haryana RERA it is seen that a large no. of complaints have been filed by the home buyers against the Transferee Company and Haryana RERA has been disposing off those complaints. Therefore, the interest of the home buyers is required to be protected. The scheme must be placed before them for their approval, by calling their meeting.
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In view of the above observations put forth by the RoC, we are of the view that the homebuyers need to be made aware of the

pendency of the Scheme of Arrangement between the Petitioner Companies before this Tribunal. Therefore, the Petitioner companies are directed to send the notice through speed post/email to their respective homebuyers and give a newspaper publication in this regard, both in English and Hindi newspapers having wide circulation in the State of Haryana, where the registered office of the Petitioner Companies are situated.

The representation/s, if any, may be made by the above authorities [(i) and (ii)] and the homebuyers to this Tribunal with a copy to the Petitioner Company(ies), within a period of 30 days from the date of receipt of the notice, failing which it shall be presumed that they have no representation to make on the proposed Scheme and this Tribunal will proceed further with the approval of the Scheme.

- (iv) Registrar of Companies in his report has submitted that there should be one appointed date for the scheme. It is noted that the Petitioner Companies have proposed two appointed dates: 01.04.2022 for amalgamation of Transferor Company No. 1 to 65 with Transferee Company and 01.08.2022 for Demerger of Transferee Company into Resulting Company No. 1 and 2. We have gone through the provisions of Section 232(6) of the Companies Act, 2013 and General Circular 09/2019 dated 21.09.2019 of Ministry of Corporate Affairs and of the view that there should be one appointed date for the scheme. In view of the above, the Petitioner Companies may choose one appointed date.

- (v) The Petitioner Companies have sought the exemption from issuing the notice to Competition Commission of India based on the legal opinion obtained from the C&S Partners, which has opined on the basis of (i) Assets and Turnover threshold prescribed under section 5 of the Competition Act (ii) Notification dated 27.03.2017 issued under section 54 of the Competition Act (iii) Regulation 4 read with Entry 9 Schedule I of Competition Commission of India (Procedure in regard to the transaction of business relating to Combinations) Regulations 2011. It is noted that the Applicant Company No. 29, 30 and 64 having different shareholders and therefore the case may not fall under ground (iii). It is also noted that the Petitioner Companies have stated to have filed the Financial Statements as on 31.03.2022 and 30.11.2022 along with the petition in a pen drive, however the same are not available neither with the Petition nor on the DMS. For examining the ground at (i) and (ii), the financial statements of the petitioner companies are required, they are directed to file the audited financial statements (both standalone as well as consolidated) of the Petitioner Companies for the years ended on 31.03.2022 & 31.03.2023 and audited/unaudited financial statements for the year ended 31.03.2024.
- (vi) It is noted that Directorate of Town & Country Planning, Haryana has voted against the Scheme of Arrangement in the meeting of Unsecured Creditors of the Transferee Company held on

27.05.2023, however, vide Memo No. 29402 dated 05.09.2023 have given 'No Objection Certificate' qua the Scheme, Directorate of Town & Country Planning, Haryana is directed to clarify its stand on the Scheme.

- (vii) It is noted that the proposed Scheme provides for reduction of capital of Resulting Company no. 01 and 02. The Applicants companies are directed to file an affidavit that the proposed scheme is in compliance of the requirements under section 66 of the Companies Act, 2013 read with NCLT (Procedure for Reduction of Share Capital of Company) Rules, 2016.

2. In response to the above, the point-wise submissions made by the Learned Counsel for the Petitioner, after obtaining necessary instructions from the clients, has submitted as under:

- (i) The Transferee Company has only one single project in UP and the same has been completed on 29.12.2020 and therefore, there is no requirement to issue the notice to UPRERA. There are no other projects of Transferor Companies 1 to 65 in other State(s) other than in Haryana and none of the Applicant Companies are acting as real estate agent, therefore, there is no need to issue notice to RERA in respect of them.
- (ii) The Transferee company BPTP Ltd./ Applicant Companies have only extended the services as a contractor, as wanted by SEZ Authorities and therefore, its activities are not falling within the

ambit of Sectoral Regulator. Therefore, there is no need for issuing of any notice in this regard.

- (iii) Under the Real Estate Regulation Act of Central Government as well as the Haryana RERA read with Haryana RERA Regulations, no notice is required to be given to the customers (home buyers) of the real estate projects with regard to proposal of amalgamation and the said provisions supersede the provision of Section 230 for issuing the notice to the class creditors (home buyers).
- (iv) No further submission other than what is submitted in the Petition.
- (v) The learned counsel has agreed to provide the financial statements both of stand-alone as well as consolidated of the Applicant Companies, for the years ending 31.03.2022, 31.03.2023 and 31.03.2024 (if they are available) along with statement clearly demonstrating, how they are covered under exemption.
- (vi) Subsequent to the voting against the scheme of arrangement in the meeting of unsecured creditors of the transferee company, No Objection Certificate has been issued by the Directorate of Town and Country Planning, Haryana, clearly specifying the reason, why it voted against the scheme and why the said objections have been dropped.
- (vii) As per explanation to sub-Section 12 of Section 230 of the Companies Act, 2013, the provisions of section 66 shall not apply

to the reduction of share capital effected in the process of Section 230-232. Therefore, the same is not required to be complied with.

3. The learned counsel has prayed for grant of a day's time to submit the information/ clarification. Time prayed for is granted.

At the request of the learned counsel for the petitioner Companies, let the matter be posted for tomorrow i.e. 03.07.2024.

Sd/-
(UMESH KUMAR SHUKLA)
HON'BLE MEMBER (T)

Sd/-
(DR. P.S.N. PRASAD)
HON'BLE MEMBER (J)