Highlights:

ZEUS ADVISES LOTUS HERBALS FOR BUY OUT OF "SOULTREE"...

Lotus Herbals Private Limited, a renowned brand in the market of beauty and personal care products, having a presence across India, acquired 100% stakes of Vedicare Ayurveda Private Limited, owner of the brand "Soultree", a certified organic ayurvedic wellness and personal care brand. ZEUS represented Lotus for the transaction, which was led by Senior Partner Mr Sunil Tyagi who advised on overall aspects of the deal.

Keeping in view the structural requirements, transaction was further channelled by Partner Mrs Jayshree Chandra, together with the Managing Associate Mr Santosh Singh and supported by associates Ms Nischala Maruvada, Mr Prashaant Malaviya and Ms Tanvi Tekriwal on various aspects of Corporate Laws, Labour Laws, Intellectual Property Rights and Real Estate Laws. Basis the due diligence report, ZEUS' team prepared the transaction documents in furtherance of the acquisition.

Due to COVID-19 situation, the entire transactional advisory was extended through online and electronic support. Highlight being that, despite the colossal challenge of working from home, our team co-ordinated the entire assignment flawlessly and seamlessly and carried out hassle free closing, without compromising on timelines, quality or efficiency.

Corporate Brief

- *Companies (Acceptance of Deposits) Amendment Rules, 2020;*
- *Extension of Time for holding of Annual General Meeting for the Financial Year Ended on 31.03.2020;*
- *Relaxation of additional fee and extension of last date of filing of cost audit report for the Financial Year 2019-2020 under the Companies Act, 2013;*
- *Extension of Companies Fresh Start Scheme, 2020;*
- *Extension of LLP Settlement Scheme, 2020;*
- *Scheme for Relaxation of Time for Filing Forms related to Creation or Modification of Charges under the Companies Act, 2013;*
- *Clarification on Passing of Ordinary and Special Resolutions by Companies under the Companies Act, 2013;*
- *Review of Foreign Direct Investment (FDI) Policy in Defense Sector;*
- *Extension of Moratorium Against Filing of Applications for Corporate Insolvency Resolution Process;*
- *Relaxations / Notifications made/ issued by the Securities and Exchange Board of India (SEBI);*
- *Farm Bill(s) Passed by the Parliament;*
- *Key Highlights of Foreign Contribution (Regulation) Amendment Bill, 2020; and*
- *Key Highlights of Companies (Amendment) Act, 2020.*

RERA Brief

- *Circular issued by Karnataka Real Estate Regulatory Authority regarding imposition of delay fee for delayed submission of Quarterly Update and Annual Audit Statement.*
- *Two Public notices dated 08.09.2020 issued by Kerala Real Estate Regulatory Authority to the Real Estate Promoters regarding prior registration of the project before advertisement and mentioning of the details of the registration in any such advertisement.*
- *Public notice dated 08.09.2020 issued by Kerala Real Estate Regulatory Authority to the Real Estate Agents.*
- *Public notice dated 17.09.2020 issued by Kerala Real Estate Regulatory Authority to the Real Estate Promoters.*
- *Order issued by the Punjab Real Estate Regulatory Authority regarding hearing of cases through video conferencing.*
- *Whether a lender can be deemed to be a promoter under RERA to re-structure loans of the project and whether such promoter needs permission from 2/3rd majority of promoters before auctioning such project.*

Litigation Brief

- *Kridhan Infrastructure Pvt. Ltd Vs. Venkatesan Sankaranarayan and Ors.*
- *Real Estate (Regulation and Development) Act, 2016: Constitutional validity of Section 43 (5) of the Real Estate Regulation and Development) Act, 2016 & Haryana Real Estate (Regulation and Development) Amendment Rules, 2019.*

Corporate Brief

➲ **Companies (Acceptance of Deposits) Amendment Rules, 2020:**

The Ministry of Corporate Affairs, vide its Notification bearing G.S.R. No. 548 (E) dated 07.09.2020, in exercise of powers conferred by Section 73 read with sub-section (1) and (2) of Section 469 of Companies Act, 2013, the Central Government in consultation with the Reserve Bank of India, further amended the Companies (Acceptance of Deposits) Rules, 2014 and made the Companies (Acceptance of Deposits) Amendment Rules, 2020 ("Amendment Rules, 2020").

The key amendments proposed by virtue of the Amendment Rules, 2020 are enumerated herein below:

- The definition of the term "deposit" under Rule 2(1)(c)(xvii), has been amended to mean that an amount of Rupees Twenty Five Lakhs or more received by a start-up company, by way of a convertible note (convertible into equity shares or repayable with a period not exceeding ten years from the date of issue) in a single tranche, from a person. By virtue of the said Amendment Rules, 2020, the period with respect to

conversion of equity shares or repayment has been increased to ten years as opposed to five years.

- With respect to the terms and conditions of acceptance of deposits by companies, Second proviso (i) of Rule 3(3) of the Amendment Rules, 2020 have been amended provide that the maximum limit in respect of deposits to be accepted from members shall not apply to a private company which is a start-up for ten years from the date of incorporation. By virtue of the said Amendment Rules, 2020, the exemption from maximum limit of deposits given to the private company which is a start-up has been increased to ten years as opposed to five years.

➲ **Extension of time for holding of Annual General Meeting for the Financial Year Ended on 31.03.2020:**

- By virtue of powers vested with the Registrar of Companies, NCT of Delhi and Haryana, under Section 96(1) of the Companies Act, 2013, the Ministry of Corporate Affairs, vide its Order dated 08.09.2020, extended the time to hold the annual general meeting, other than the first annual general meeting, for the financial year ended on 31.03.2020, for the companies within the jurisdiction of (Registrar of Companies, NCT of Delhi and Haryana) which are unable to hold their annual general meeting for such period within the due date of holding the annual general meeting.
- The extension of time to hold the annual general meeting was extended by a period of 3 (three) months from the due date by which the annual general meeting ought to have been held in accordance with the provisions of Section 96(1) of the Companies Act, 2013.
- The extension of time granted by virtue of the said Order also covers the:
  a) Pending application(s) filed in Form GNL-1 for the extension of the financial year ended on 31.03.2020, which are yet to be approved;
  b) Pending application(s) filed in Form GNL-1 for the extension of the financial year ended on 31.03.2020, which were rejected.
- By virtue of the said order, it was further clarified that the said extension of annual general meeting upto a period of 3 (three) shall be deemed to have been granted without any further action by the companies.

➲ **Relaxation of additional fee and extension of last date of filing of cost audit report for the Financial Year 2019-2020 under the Companies Act, 2013:**

- The Ministry of Corporate Affairs, vide its General Circular No. 29/2020 dated 10.09.2020, in view of the extraordinary disruptions caused due to the COVID- 19 pandemic, provided that, if the cost audit report for the financial year 2019 – 2020 by the cost auditor to the Board of Directors of the companies is submitted by 30.11.2020, then the same would not be considered as a violation of Rule 6(5) of Companies (Costs Records and Audit) Rules, 2014.
- Therefore, the cost audit report for the financial year ended on 31.03.2020 shall be filed in e-form CRA – 4 within 30 (thirty) days from the date of receipt of copy of cost audit report by the company. However, in an event the company has availed extension of time for holding the Annual General Meeting then the e-form CRA- 4 may be filed within the timeline provided under the proviso to Rule 6(6) of the Companies (Costs Records and Audit) Rules, 2014.

➲ **Extension of Companies Fresh Start Scheme, 2020:**

- The Ministry of Corporate Affairs vide its General Circular No. 12/2020 dated 30.03.2020 had previously issued guidelines pertaining to Companies Fresh Start Scheme, 2020.
- However, in view of the disruptions caused by the COVID-19 pandemic, the Ministry of Corporate Affairs, vide its General Circular No. 30/2020 dated 28.09.2020, has decided to extend the said Companies Fresh Start Scheme, 2020 till 31.12.2020. Further, the Ministry of Corporate Affairs also provided that all other terms and requirements provided by virtue of the said General Circular No. 12/2020 dated 30.03.2020 shall remain unchanged.

➲ **Extension of LLP Settlement Scheme, 2020:**

- The Ministry of Corporate Affairs vide its General Circular No. 13/2020 dated 30.03.2020 had previously issued guidelines pertaining to LLP Settlement Scheme, 2020.
  - However, in view of the disruptions caused by the COVID- 19 pandemic, the Ministry of Corporate Affairs, vide its General Circular No. 31/2020 dated 28.09.2020, has decided to extend the said LLP Settlement Scheme, 2020 till 31.12.2020. Further, the Ministry of Corporate Affairs also provided that all other terms and requirements provided by virtue of the said General Circular No. 13/2020 dated 30.03.2020 shall remain unchanged.

➲ **Scheme for Relaxation of Time for Filing Forms related to Creation or Modification of Charges under the Companies Act, 2013:**

- The Ministry of Corporate Affairs, in continuation of its General Circular No. 23/2020 dated 17.06.2020 and in view of the COVID – 19 pandemic, has decided to extend the scheme for Relaxation of Time for Filing Forms related to Creation or Modification of Charges.
- By virtue of its General Circular No. 32/2020 dated 28.09.2020, the timeline provided as "30.09.2020" and "01.10.2020" have been substituted by "31.12.2020" and "01.01.2021".
- Further, the Ministry of Corporate Affairs also provided that all other terms and requirements provided by virtue of the

said General Circular No. 23/2020 dated 17.06.2020 shall remain unchanged.

➲ **Clarification on Passing of Ordinary and Special Resolutions by Companies under the Companies Act, 2013:**

- The Ministry of Corporate Affairs, in continuation of its General Circular No. 14/2020 dated 08.04.2020, General Circular No. 17/2020 dated 15.06.2020, General Circular No. 22/2020 dated 08.04.2020 and in view of the COVID – 19 pandemic, issued its General Circular No. 33/2020 dated 28.09.2020, and allowed the companies to conduct their Extraordinary General Meeting through VC or OAVM or transact items through postal ballot in accordance with the framework provided in the aforesaid General Circular(s) upto 31.12.2020.
- Further, the Ministry of Corporate Affairs also provided that all other terms and requirements provided by virtue of the aforesaid General Circular(s) shall remain unchanged.

➲ **Review of Foreign Direct Investment (FDI) Policy in Defense Sector:**

The Ministry of Commerce and Industry, Department of Promotion of Industry and Internal Trade, vide its Press Note No. 4 (2020 Series), reviewed and revised the Foreign Direct Investment Policy in Defence Sector.

- Earlier, foreign direct investment upto 49% under the automatic route was permitted for Defence Industry subject to the Industrial License under the Industries (Development & Regulation) Act, 1951 and Manufacturing of Small Arms and Ammunition under the Arms Act, 1959. Further, the infusion of fresh foreign investment within the permitted automatic route level in a company not seeking industrial license, resulting in change of ownership pattern or transfer of stake by existing investor required government approval.
- However, the Ministry of Commerce and Industry, Department of Promotion of Industry and Internal Trade, has reviewed the extant foreign direct investment policy and revised the same.
- Accordingly, the foreign direct investment upto 74% under the automatic route has been permitted for Defence Industry subject to the Industrial License under the Industries (Development & Regulation) Act, 1951 and Manufacturing of Small Arms and Ammunition under the Arms Act, 1959.
- Further, infusion of fresh foreign investment upto 49%, in a company not seeking industrial license or which already has government approval for foreign direct investment in defence sector, shall require mandatory submission of declaration with the Ministry of Defence in case of change in equity/ shareholding pattern or transfer of stake by existing investor to new foreign investor for FDI upto 49%, within a period of 30 (thirty) days of such change.
- The proposals for raising foreign direct investment beyond 49% from such companies, shall require government approval.
- The license applications shall be considered by the Department of Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, in consultation with the Ministry of Defence and Ministry of External Affairs.
- Further, foreign investments in the defence sector shall be subject to scrutiny on grounds of national security and the Government reserves the right to review any foreign investment in the defence sector that affects or may affect national security.
- The said reviewed / revised position of foreign direct investment in the defence sector shall take effect from the date of FEMA notification.

➲ **Extension of Moratorium Against Filing of Applications for Corporate Insolvency Resolution Process:**

- The Ministry of Corporate Affairs vide its Notification dated 24.09.2020, in exercise of powers conferred by Section 10A of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), further extended the moratorium against filing of applications for commencement of corporate insolvency resolution processes (CIRP) for any defaults arising post 25.03.2020, by a further period of 3 (three) months from 25.09.2020, i.e., until 25.12.2020.

➲ **Relaxations / Notifications made/ issued by the Securities and Exchange Board of India (SEBI):**

i. Disclosures on Margin Obligations given by way of Pledge/Re-pledge in the Depository System:

- SEBI, by virtue of powers conferred by Section 11(1) of the Securities and Exchange Board of India Act, 1992, issued a Circular dated 02.09.2020 in order to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
- By virtue of the said Circular dated 02.09.2020, SEBI provided clarification with respect to Regulation 29(4) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 ("**Takeover Regulations**") which further provides that for the purposes of disclosures under Regulation 29(1) and (2) of the Takeover Regulations, the shares taken by way of encumbrance shall be treated as an acquisition, shares given upon release of encumbrance shall be treated as disposal, and the disclosures shall be made by such person accordingly in such form as may be prescribed.
- SEBI, vide its previous circular dated 25.02.2020 had also issued guidelines on acceptance of collateral from

clients in the form of securities by the Trading Member/ Clearing Member, only by way of 'Margin Pledge' created in the Depository System.

- For the ease of doing business, SEBI further provided that the disclosures specified under Regulation 29(4) of the Takeover Regulations, in relation to shares encumbered with Trading Member/ Clearing Member as a collateral from clients for margin obligation in the ordinary course of stock broking business have been dispensed with.

ii. Write-off of shares held by Foreign Portfolio Investors:

- SEBI vide its circular No. IMD/FPI&C/ CIR/P/2019/124 dated 05.011.2019 had previously issued operational guidelines for FPIs and DDPs under SEBI (Foreign Portfolio Investors), Regulations 2019, wherein, it permitted the write-off of securities held by FPIs, who wish to surrender their registration in respect of shares of companies which are unlisted/illiquid/ suspended/delisted.
- SEBI by virtue of powers conferred by Section 11(1) of the Securities and Exchange Board of India Act, 1992, further issued its Circular No. SEBI/HO/IMD/FPI&C/CIR/P/2020/177 dated 21.09.2020. By virtue of the said Circular SEBI further permitted the said FPIs to write-off shares of all companies which they are unable to sell.
- However, with respect to write-off of shares held by FPIs, the process detailed at Para 17 of Part C of the said Operational Guidelines shall be complied with.

iii. Resources for Trustees of Mutual Funds:

- SEBI vide its circular No. SEBI/HO/IMD/DF4/CIR/P/2020/151 dated 10.08.2020 had previously issued guidelines on resources for Trustees of Mutual Funds.
- SEBI by virtue of powers conferred by Section 11(1) of the Securities and Exchange Board of India Act, 1992, read with Regulation 77 of SEBI (Mutual Funds) Regulations, 1996, further issued its Circular No. SEBI/HO/IMD/DF4/CIR/P/2020/178 dated 23.09.2020, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
- By virtue of the said Circular, SEBI further provided that the compliance of its circular dated 10.08.2020 shall be applicable from 01.01.2021, and that all the other conditions specified in the said circular shall remain unchanged.

➲ Farm Bill(s) Passed by the Parliament:

For the purposes of transforming agriculture and raising the income of farmers', the Parliament recently passed the following Bill(s):

i. The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Bill, 2020: The said Bill aims and allows intra-state and inter-state trade of farmers' produce beyond the physical premises of agricultural produce market committee markets and the state governments are prohibited from levying any market fee, cess or levy outside agricultural produce market committee areas.

ii. The Farmers (Empowerment and Protection) Agreement of Price Assurance and Farm Services Bill, 2020: The said Bill creates framework for contract farming through an agreement between a farmer and a buyer prior to the production or rearing of any farm produce.

iii. The Essential Commodities (Amendment) Bill, 2020: The said Bill aims and allows the central government to regulate the supply of certain food items only under extraordinary circumstances (such as war and famine). Stock limits may be imposed on agricultural produce only if there is a steep price rise.

➲ Key Highlights of the Foreign Contribution (Regulation) Amendment Bill, 2020:

The Parliament recently passed the Foreign Contribution (Regulation) Amendment Bill, 2020 which further amends the Foreign Contribution (Regulation) Act, 2010. The major amendments proposed to be brought in by virtue of the Foreign Contribution (Regulation) Amendment Bill, 2020 are enumerated hereunder:

i. Amendment of Section 3(1)(c) for Prohibition to accept Foreign Contribution: The said amendment, seeks to include a "public servant" (as defined under Section 21 of the Indian Penal Code, 1860) within the ambit of Section 3, in order to provide that no foreign contribution shall be accepted by any public servant.

ii. Amendment of Section 7 for Prohibition to Transfer Foreign Contribution to Other Person: Section 7 of the the Foreign Contribution (Regulation) Act, 2010 has been further amended to prohibit any transfer of foreign contribution to any person.

iii. Amendment of Section 8(1) for Restriction to Utilise Foreign Contribution for Administrative Purpose: Section 8(1) of the Foreign Contribution (Regulation) Act, 2010 has been further amended to reduce the limit for defraying administrative expenses from existing "fifty per cent" to "twenty per cent".

iv. Insertion of Section 12A, pertaining to Powers of Central Government to require Aadhar Number, etc., as Identification Document: The insertion of this Section 12A

empowers the Central Government to require Aadhar No. etc., as an identification document, for any person seeking prior permission or prior approval under Section 11, or makes an application for grant of certificate under Section 12, or, as the case may, for renewal of certificate under Section 16. Similarly, a copy of the passport or Overseas Citizen of India Card, in case of a foreigner.

v. Insertion of Section 14A, pertaining to Surrender of Certificate: The insertion of Section 14A, enables the Central Government to permit any person to surrender the certificate granted under the Foreign Contribution (Regulation) Act, 2010, if after making inquiry as it deems fit, the Central Government is satisfied that such person has not contravened any of the provisions of the Foreign Contribution (Regulation) Act, 2010, and the management of foreign contribution and asset, if any, created out of such contribution has been vested in the authority as provided in Section 15(1) of the Foreign Contribution (Regulation) Act, 2010.

vi. Substitution of Section 17, pertaining to Foreign Contribution through Scheduled Bank: The amendment of Section 17 of the Foreign Contribution (Regulation) Act, 2010 provides that every person who has been granted certificate or prior permission under Section 12 shall receive foreign contribution only in an account designated as ''FCRA Account'' which shall be opened by him in such branch of the State Bank of India at New Delhi, as the Central Government may, by notification, specify and for the matters relating thereto.

➲ Key Highlights of Companies (Amendment) Act, 2020:

The major amendments proposed to be brought in by virtue of the Companies (Amendment) Act, 2020 are enumerated hereunder:

i. Issue of Shares under Section 62 of the Companies Act, 2013: The time period for providing the offer letter to all the existing shareholders under the rights issue process which is made between 15 (fifteen) days to 30 (thirty) days. However, the Companies (Amendment) Act, 2020 adds the term "*or such lesser number of days as may be prescribed*" which suggests that beyond this time period, any offer that is made is deemed to be declined.

ii. Declaration in respect of Beneficial Interest in any Share: In respect of declaration of beneficial interest in any share, the amended Section 89 (5) of the Companies (Amendment) Act, 2020, further provides that if any person fails to make a declaration as required sub-sections (1), (2) or (3), he shall be liable to a penalty of Rs. 50,000 (Rupees Fifty Thousand); and in case of continuing failure with a further penalty of Rs. 200 (Rupees Two Hundred) for each day after the first during which the such failure continues, subject to a maximum of Rs. 5,00,000 (Rupees Five Lakhs).

iii. Resolutions and Agreements to be filed under section 117 of the Companies Act, 2013:
- The amended sub-section (2) of Section 117 provides that, if any company fails to file the resolution or the agreement under sub-section(1) before the expiry of the period specified therein, then such a company shall be liable to a penalty of Rs. 10,000 (Rupees Ten Thousand); and in the event of continuing failure, with a further penalty of Rs. 100 (Rupees One Hundred) for each day after the first during which the such failure continues, subject to a maximum of Rs. 2,00,000 (Rupees Two Lakhs). The said penalties, upto a maximum of Rs. 50,000 (Rupees Fifty Thousand) are also applicable to every officer of the company who is in default, including the liquidator of the company.
- Further, Dealing with the filing of resolutions with the Registrar of Companies, in which the exemption has been granted to the banking companies. The Companies (Amendment) Act, 2020 under amended sub-section (3) in clause (g) extends such exemption to the Non-Banking Financial Companies registered under Chapter IIIB of the Reserve Bank of India Act, 1934; and also any class of housing finance company registered under the National Housing Bank Act, 1987.

iv. Periodical Financial Statements under Section 129A of the Companies Act, 2013: For the purposes of improving corporate governance, Section 129A has been inserted which provides for the provision for specified classes of unlisted companies to prepare and file their periodical financial results at a frequency which shall be notified eventually.

v. Corporate Social responsibility under Section 135 of the Companies Act, 2013: The Companies (Amendment) Act, 2020 brings in the following changes with respect to the Corporate Social Responsibility Obligations:
- The requirement to set up a Committee for Corporate Social Responsibility has been waived in an event the amount required to be spent is less than Rs. 50 Lakhs and in such a case the Board of Directors shall be entitled to discharge the obligations of the Committee of Corporate Social Responsibility.
- The amounts that are spent in excess of the requirements are allowed to be set-off for such number of subsequent financial years.
- The penalty for default in transfer of the unspent amounts shall be as follows:
  a For Companies: the penalty shall be twice the amount that is required to be transferred by the

company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account or Rs. 1 Crore, whichever is lower; and

b For Officer in Default: the penalty shall be 1/10th of the amount that is required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account or Rs. 2 Lakhs, whichever is lower.

vi. Incorporation/ Insertion of Chapter XXIA after Section 378 of the Companies Act, 2013: The Chapter XXIA has been inserted for the purposes of providing clarity and governance for the producer companies, i.e., the body corporates having objectives or activities specified in Section 378B and registered as a Producer Company under the Companies Act, 1956 or Companies Act, 2013.

vii. Apart from the abovementioned proposed changes, the Companies (Amendment) Act, 2020, also reduces the terms and penalties in breach of various offences under the Companies Act, 2013 in an event those defaults may be determined objectively without an element of fraud.

Real Estate Brief

➲ **Circular issued by Karnataka Real Estate Regulatory Authority ("Karnataka RERA) *regarding imposition of delay fee for delayed submission of Quarterly Update and Annual Audit Statement:***

- Promoters of registered projects under RERA are mandatorily required to upload necessary details under section 11(1) and 4(2) (1) (D) of Real Estate (Regulation and Development) Act, 2016 (**"the Act"**) read with rule 15(D) of Karnataka Real Estate (Regulation and Development) Rules, 2017, about the Quarterly Updates and Annual Audit Statement of the registered projects on the RERA website.
- As many of the Promoters are not filing the Quarterly Updates and Annual Audit Statement on the RERA website within the prescribed time limit of fifteen days from the expiry of each quarter, Karnataka RERA vide its circular dated 03.09.2020, under Section 37 of RERA issued timelines and fee for delayed Quarterly Updates, as follows:

S. NO.	Due date as per KRERA rules (rule 15(D))	Delay	Delay fees as per the project
1	15 days from the end of quarter	Up to 1 month from the due date	INR 10,000/-
		Beyond 1 month	INR 20,000/- per month of delay

➲ **Public Notice issued by Kerala Real Estate Regulatory Authority ("K-RERA") to the Promoters of Real Estate Projects:**

- K-RERA vide its public notice dated 08.09.2020 announced that the Real Estate Promoters, for any real estate project, shall not advertise or issue prospectus to the public, without registering such project with K-RERA.
- The extension for submission of application by the promoters for registration of the project, was till 30.09.2020, which was meant only for the promoters who were unable to submit such applications before 23.03.2020, due to unavoidable reasons.
- K-RERA further provided that, the non-compliance of registration of such project by the promoters shall attract a penalty of 10% of the estimated cost of the real estate project as determined by K-RERA, under section 59 of the Act.

➲ **Public Notice issued by Kerala Real Estate Regulatory ("K-RERA") Authority to the Promoters of Real Estate Projects:**

- K-RERA vide its public notice dated 08.09.2020 announced that the Real Estate Promoters, for any real estate project, shall not advertise or issue prospectus to the public, without mentioning the details of the RERA registration of such project.
- K-RERA further provided that, any such advertisement by any promoter without the mentioning of RERA registration details shall amount to violation of Real Estate (Regulation and Development) Act, 2016 and would attract a penalty of 10% of the estimated cost of the real estate project as determined by K-RERA, under section 61 of the Act.

➲ **Public Notice issued by Kerala Real Estate Regulatory ("K-RERA") Authority to the Real Estate Agents:**

- K-RERA vide its public notice dated 08.09.2020 announced that, as per section 10(a) of the Act, the Real Estate Agents, for any real estate project being sold by the promoter, shall not facilitate the sale or purchase of any plot or apartment, without obtaining registration under section 3 of the Act.
- K-RERA further provided that, the non-compliance of registration of such project by the promoters shall attract a penalty of INR 10,000/- for every day during which the default continues, which may cumulatively extend up to 5% of the estimated cost of the real estate project as determined by K-RERA, under section 62 of the Act.

➲ **Public Notice issued by Kerala Real Estate Regulatory ("K-RERA") Authority to the Promoters of Real Estate Projects regarding submission of application for registration of projects:**

- K-RERA vide its public notice dated 17.09.2020 made the following announcements:
  a. For ongoing and new projects:
     i. For the projects for which permit has been obtained from local authority prior to 01.01.2020 shall be considered as "ongoing projects". The projects for which permit has been obtained prior to 01.01.2020 but activities such as to advertise, market, book, sell or offer for sale or invite persons to purchase in any manner any unit(s) in the real estate project have not been started, shall be considered as "new projects".
     ii. Promoters of ongoing projects for which the application of registration has not been received on or before 30.09.2020 by K-RERA, shall be penalised for an amount of 10% of estimated cost of the project or imprisoned for a term of 3 years or fine of further 10% of the cost of project or both.
  b. For plot subdivision villa projects:
     i. Date of development permit, which is first obtained by the promoters for plot subdivision layout, shall be considered for determining the status of the project as "ongoing", irrespective of the date of obtaining building permits.
  c. For registration of ongoing real estate projects with regard to occupancy certificate:
     i. Promoters of ongoing projects, for which the occupancy certificate has been obtained on or after 01.01.2020, shall submit duly filled application for registration of ongoing projects (Form A1) on or before 30.09.2020.
  d. For ongoing plot subdivision projects:
     i. For the projects involving only plot subdivision, development certificate shall be issued for registration. For the projects involving plot subdivision and building, both, occupancy certificate and development certificate for plot subdivision layout are required for registration of the project.
     ii. Promoters of such projects which have not received such development certificate or occupancy certificate shall submit their applications in form-A1 along with enclosures, for registration of such projects on or before 30.09.2020.

➲ **Order issued by the Punjab Real Estate Regulatory Authority regarding hearing of cases through video conferencing:**

- Punjab Real Estate Regulatory Authority (**"Punjab RERA"**) vide its order dated 08.09.2020 stated that all the cases before the Adjudicating Officer, Real Estate Regulatory Authority, Punjab will be heard through online video conference at "Cisco Webex Meetings App".

➲ **Whether a lender can be deemed to be a promoter under RERA to re-structure loans of the project and whether such promoter needs permission from 2/3rd majority of promoters before auctioning such project:**

- In the matter of Deepak Chowdhary vs. M/s PNB Housing Finance Ltd. & ors.

Facts:

- Builder, despite receiving huge consideration for the project "Hues", raised a loan from bank and PNB Housing Finance Ltd. (PNBHFL). Upon failure to repay such loan by the borrower, PNBHFL conducted e-auctioning of such project.
- Complainant-Allottee (Deepak Chowdhary) filed a complaint against respondent no.1 (PNBHFL) wherein, it was contended by the complainant that, the respondent, being the promoter, was e-auctioning the project "Hues" without obtaining the permission of 2/3 majority of the allottees.

Observations and findings by HARERA:

- Authority held that, the lender (PNBHFL) approved the loan to the builder without conducting proper due diligence of the project. A loan amount of 250 crores was sanctioned for a project which was nowhere near completion stage.
- Accordingly, PNBHFL has a cause to develop the project.
- Further, respondent no.2 (M/s Supertech Ltd.) had assigned the project to PNBHFL by virtue of a mortgage. And as per section 2(zk) of Real Estate Regulation Act, (the "**Act**") PNBHFL, being an assignee of respondent no. 2, falls within the ambit of a "promoter".
- As per section 15 of the Act, a promoter cannot transfer majority of his rights and liabilities in respect of a real estate project to a third party, without obtaining written approval of the Authority and 2/3rd majority of the allottees.
- As the lender failed to ensure the usage of funds for the purpose they were given, allottees' rights cannot be subservient to that of the lender.
- Hence, PNBHFL cannot e-auction the project and was ordered to re-structure the loans for the project and disclose all the outstanding liabilities of the project and only then can proceed with the auction.

Litigation Brief

➲ Liquidation: A matter of Last Resort

In the matter of : Kridhan Infrastructure Pvt. Ltd Vs. Venkatesan Sankaranarayan and Ors. (Civil Appeal No. 3299/2020) before the Hon'ble Supreme Court of India ('**Hon'ble Supreme Court**').

Facts:

The Corporate Insolvency Resolution Process ('**CIRP**') was initiated qua the Corporate Debtor –i.e, Tecpro Systems Ltd. in 2017. Pursuant to which Resolution Plans were invited and a Resolution Plan submitted by a Prospective Resolution Applicant ('**Appellant**') was subsequently approved by the Committee of Creditors ('**CoC**') and then the National Company Law Tribunal ('**Adjudicating Authority**') in May of 2019.

However, the aforesaid Resolution Plan, despite being approved, was not implemented and as such an application was moved before the Adjudicating Authority under Section 33 of the Insolvency and Bankruptcy Code 2016 ('**I & B Code**') seeking liquidation of the Corporate Debtor. In January this year, the Adjudicating Authority allowed this application for liquidation.

Subsequently, the National Company Law Appellate Tribunal ('**Hon'ble Appellate Tribunal**') was moved in appeal against the Order of liquidation. Thereafter, the Hon'ble Appellate Tribunal provided an opportunity to the Appellant to provide a timeline within which the Resolution Plan could be implemented. Hence, on 25 February 2020, a meeting took place between the member of the erstwhile CoC, the Appellant and the liquidator and a revised time line was agreed upon.

Pursuant to which a revised timeline was prepared and placed before the Hon'ble Appellate Tribunal which stipulated that the Appellant would deposit an amount of Rs. 15 crores upfront in an escrow account within seven days from the date of the Order of the Hon'ble Appellate Tribunal and another amount of Rs 50 crores thereafter within three months. In the event this second round of payment was not made, it was explicitly stated that the amount of Rs. 15 crores would stand forfeited.

The Hon'ble Appellate Tribunal by its Order dated 29.007.2020 allowed the Appellant to make the first round of payment which was complied with. Then on 18.08.2020, the Appellant furnished an undertaking in line with the agreement arrived at, with respect to payments to be made. Despite the same, however, in September, the Hon'ble Appellate Tribunal upheld the Order of liquidation.

It was against this Order of the Hon'ble Appellate Tribunal that the Hon'ble Supreme Court was approached.

Issue:

Whether recover of money is the sole object under the I & B Code and hence the Order of Liquidation should be allowed to subsist on account of delay in execution of the resolution of the Corporate Debtor by the Resolution Applicant ('RA') even though the RA is ready the undertake resolution of the Corporate Debtor?

Observations:

The Hon'ble Supreme Court explicitly stated that Liquidation of the Corporate Debtor should be a matter of last resort. It was observed that the I & B Code recognizes a wider public interest in resolving corporate insolvencies and its object is not the mere recovery of monies due and outstanding.

Further, in order to enable the appellant to have one final opportunity to do so, the Hon'ble Supreme Court directed the Appellant to demonstrate its bona fides by depositing an amount of Rs 50 crores upfront in terms of the understanding which was arrived at on 25 February 2020. Further, the appellant was specifically placed on notice of the fact that should it fail to do so in whole or in part, the entire amount of Rs 20 crores which has been deposited thus far, shall stand forfeited without any further recourse to, which while noting that recovery of money is not the sole object under the I & B Code, proceeded to stay the Order of the Hon'ble Appellate Tribunal.

Therefore, in the said case the Hon'ble Supreme Court had directed the appellant to **"demonstrate its ability to implement the Resolution Plan"** and only subsequently, when the appellant had demonstrated the bona fides by making the requisite deposits within the stipulated time and was specifically notified about the contingency of forfeiture of the amount in the event of default, stayed the Order of liquidation. The appellant was also asked to deposit the remaining amount, in line with the undertaking, by January of 2021.

Interim Orders:

(i) The operation of the impugned Order of the Hon'ble Appellate Tribunal dated 8 September 2020, is stayed;

(ii) The Appellant shall, in order to demonstrate its ability to implement the Resolution Plan and in compliance with the understanding arrived at on 25 February 2020 deposit an amount of Rs. 50 crores, on or before 10 January 2021; and

(iii) The auction of the properties of the Corporate Debtor shall remain stayed in the meantime

➲ Real Estate (Regulation and Development) Act, 2016: Constitutional validity of Section 43 (5) of the Real Estate Regulation and Development) Act, 2016 & Haryana Real Estate (Regulation and Development) Amendment Rules, 2019.

IN THE MATTER OF: Experion Developers Private Limited vs. State of Haryana & Others. (And other connected matters) [Decided by Hon'ble High Court of Punjab and Haryana at Chandigarh on 16.10.2020]

Issues:

1. Whether the proviso to Section 43 (5) of the Real Estate Regulation and Development) Act, 2015 ('the Act') and correspondingly the order passed by the Real Estate Appellate Tribunal ('Appellate Tribunal') rejecting the prayer of the some Petitioners for waiver of pre deposit for entertaining the appeal against the order of Real Estate Regulatory Authority ('Authority') or Adjudicating Officer ('AO') is constitutionally valid?
2. Whether Rules 28 and 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 ('Haryana Rules') as well as forms CRA and CAO as amended by Haryana Real Estate (Regulation and Development) Amendment Rules, 2019 notified on 12.09.2019 ('Haryana Amendment Rules 2019') are ultra vires the Act? What is the scope and jurisdiction of the Authority and the AO, respectively, in relation to complaints under the Act?
3. Whether the Act is applicable retroactively to 'ongoing' Projects?

Facts:

Forty Four (44) Writ Petitions were filed under Article 226 of the Constitution, raising several issues of law concerning the interpretation of the provisions of the Act as well as Haryana Rules.

Court's Observations:

- The Hon'ble Court relied on the decision of the Apex Court in *M/s. Technimont Pvt. Ltd. vs. State of Punjab* which held that - "the right to appeal is the creature of a statue and therefore, is and can be made conditional upon fulfilling certain conditions by the statue itself and therefore, any requirement of fulfillment of a condition imposed by the statute itself before a person can avail the remedy of appeal is a valid piece of legislation. The Appellate Authority does not have the inherent powers to waive the limitation or precondition prescribed by the stature for filing an appeal." Negating the plea that requiring only the promoters who are in appeal to make the pre deposit as a condition to entertaining their appeal was discriminatory, the Hon'ble Court relied on the decision of the Division Bench of this Hon'ble High Court in *M/s. Lotus Realtech Pvt. Ltd. vs. State of Haryana* wherein it was held that the Act makes it apparent that the promoters and Allottees form two distinctly identifiable separate class of persons. The condition of pre-deposit imposed upon the promoters is inconsonance with and in furtherance of the object and purpose of the Act which seeks to eradicate fraud and delays resorted to by the promoters.
- The Hon'ble Court held that the Appellate Tribunal is not obliged to proceed to 'entertain' or hear an appeal that has been filed before it, if the promoter, who has filed such appeal, fails to comply with the direction for making the pre-deposit in terms of the proviso to Section 43 (5) of the Act. Where the Appellate Tribunal rejects the plea of the Appellant for waiver of pre-deposit, it grants one more opportunity to the Appellant to make the pre-deposit within reasonable time failing which it will proceed to dismiss the appeal. However, there cannot be indefinite postponement of the date by which the pre-deposit has to be made, otherwise it would defeat the very object of the Act. The Hon'ble Court rejected the request of Petitioners to be granted further time beyond the date as stipulated by the Appellate Tribunal or where the appeals have been rejected on account to failure to make the pre deposit.
- The Hon'ble Court noted that in *M/s. Technimont Pvt. Ltd. (supra),* the Apex Court had observed that the power of High Court under Article 226 of the Constitution, in rare cases of genuine hardship, to waive the requirement of pre-deposit either wholly or in part, continued. The Court observed that no satisfactory case of 'genuine hardship' has been made out in these Writ Petitions. It was observed that in none of the cases, the Authority can be held to have exercised a jurisdiction that it lacked and its orders cannot be said to be without jurisdiction. Therefore no interference of the High Court under Article 226 is warranted under these circumstances.
- The Court stated that it is not correct to equate the powers of the Authority with that of the AO as they operate in different sphere. The scope of the adjudicatory powers of the AO is limited to determine compensation and interest in the event of violation of Sections 12, 14, 18 and 19 of the Act. The question of compensation arises only in relation to the failure of the promoter to discharge his obligations. Therefore, in a complaint for compensation or interest in terms of Section 71 of the Act, the complainant would be the allottee and the Respondent would be the promoter. However, the powers of the Authority to inquire into complaints are wider in scope. Under Section 31 of the Act, a complaint before the Authority can be against any

promoter/allottee/real estate agent, as the case maybe. The powers or adjudication are vested only with the Authority and not with the AO. The Court observed that if a complainant is seeking only compensation or interest by way of compensation simpliciter with no other relief, then the complainant would straightaway file a complaint before AO. The complaint will be filed in form CAO and will be referrable to Rule 29 of the Haryana Rules. The AO in such instance would proceed to determine the violations under Section 12, 14, 18 and 19 of the Act. Therefore, no question of inconsistent order would arise. If, however, a single complaint is filed seeking combination of reliefs with one of the reliefs being relief of compensation and payment of interest, then in such instance, the complaint will be first examined by the Authority which will determine if there is a violation of provisions of the Act. If the Authority comes to an affirmative conclusion regarding the violations, then for the limited purpose of adjudging the quantum of compensation or interest, refer the complaint to AO for that limited purpose, who will proceed to determine the quantum of compensation or interest as per factors outlined under section 72 of the Act. Therefore, the powers of the Authority under Section 31 read with Sections 35 to 37 of the Act will not overlap the functions of the AO under Section 71 of the Act.

- The Hon'ble Court noted that Rules 28 and 29 of Haryana Rules as amended seek to give effect to the harmonized construction of the provisions of the Act concerning the powers of the Authority and of the AO. The amended Rule 28 (1) of the Rules, in so far as it requires the Authority to first determine violations of the Act and then if it finds existence of such violations to refer the matter to the AO only where there is prayer for compensation and interest by way of compensation. Rule 29 of the Haryana Rules is also consistent with this clear delineation of the adjudicatory powers of the Authority and the AO respectively, therefore Rules 28 and 29 or the amendments to Forms CRA and CAO are not ultra vires of the Act.

Relying on Bombay High Court's decision in *Neelkamal Realtors Suburban Pvt. Ltd. vs. Union of India*, the Court held that there is nothing unreasonable and arbitrary in making the provisions of the Act applicable to all ongoing projects. The legislature was conscious of the impact the Act would have on ongoing projects, i.e. those for which a CC has yet not been received by the promoter. A collective reading of Section 3 with Section 2 (o) and 2 (zn) indicate that care was taken to specify which projects will stand exempted. Therefore, without satisfying the requirements under Section 2 (a) and 2 (c) of the Act, a promoter cannot avoid registration of an 'ongoing project'. If it is the case of a promoter that the CC has been deliberately delayed then such issue will be examined the by AO, the Authority or the Appellate Tribunal.

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