

Real Estate Update

September 19, 2003

DISINVESTMENTS OF HINDUSTAN PETROLEUM CORPORATION LIMITED AND BHARAT PETROLEUM CORPORATION LIMITED WILL REQUIRE LEGISLATIVE AMENDMENTS

On September 16, 2003, the Supreme Court of India restrained the Government of India from proceeding with the disinvestment process for Hindustan Petroleum Corporation Limited ("HPCL") and Bharat Petroleum Corporation Limited ("BPCL") until the "nationalization legislations" under which the assets were transferred to the two Public Sector Undertakings many years (pursuant to the then prevalent nationalization policies) was amended by the Parliament.

The Supreme Court examined the provisions of the nationalization legislations under which the assets of HPCL and BPCL were nationalized and concluded that these legislations provided for vesting of the nationalized property in the Government or a Government Company. A "government company" is defined under the Indian Companies Act, 1956, as a company in which at least 51% of the paid up capital is held by the State Government and/or the Central Government.

Using principles of statutory interpretation, the Supreme Court concluded that the legislations do not permit the nationalized property to be held by any person other than the Government or a Government Company. The Court was influenced by the fact that the legislations were enacted to ensure that the distribution and marketing of petroleum products was vested with the Government or a Government Company for the common good.

The Supreme Court was careful to point out that the decision was not to be seen as a comment on the policy of disinvestments followed by the Government of India. The Supreme Court also did not get into the issue of whether a separate legislation is required to effect the privatization process in general. The Supreme Court restricted itself to the Government disinvestments in BPCL and HPCL and the need for legislative amendments to effect the same. The Supreme Court concluded that an amendment of the nationalization legislations was necessary.

On the whole, it would therefore appear that plans of privatization of other government companies (contemplated by the Government of India) need not be affected. On a separate note, in an earlier judgment the Supreme Court had upheld the disinvestments made by the Government of India in BALCO.

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