

भारत सरकार
वाणिज्य एवं उद्योग मंत्रालय
वाणिज्य विभाग
विकास आयुक्त का कार्यालय
नोएडा विशेष आर्थिक क्षेत्र
नोएडा-दादरी रोड, फेज-2, नोएडा - 201305 (उत्तर प्रदेश)
दूरभाष (जोन कार्यालय): 0120 - 2567268-70 (3 लाइनें), फैक्स: 2562314, 2567276
ईमेल <dc@nsez.gov.in>; वेबसाइट: www.nsez.gov.in

फा०सं०.10/06/2022-SEZ/

दिनांक : 16/05/2023

सेवा में,

(ई मेल के माध्यम से)

1. निदेशक, वाणिज्य विभाग, वाणिज्य एवं उद्योग मंत्रालय, भारत सरकार, उद्योग भवन, नई दिल्ली- 110001।
2. अतिरिक्त महानिदेशक विदेश व्यापार, वाणिज्य एवं उद्योग मंत्रालय, 'ए' विंग, इंद्रप्रस्थ भवन, आई पी एस्टेट, नई दिल्ली - 110002।
3. आयुक्त, सीमा शुल्क, नोएडा सीमा शुल्क आयुक्तालय, इनलैंड कंटेनर डिपो, तिलपता, दादरी, गौतम बुध नगर, उत्तर प्रदेश - 201306.
4. प्रधान आयुक्त, आयकर, प्लॉट सं- ए-2 डी, आयकर भवन, सेक्टर - 24, नोएडा।
5. उपसचिव आई एफ - 1, बैंकिंग प्रभाग, आर्थिक मामलों का विभाग, वित्त मंत्रालय, भारत सरकार, तृतीय तल, जीवन दीप बिल्डिंग संसद मार्ग, नई दिल्ली।
6. मुख्य कार्यकारी अधिकारी, न्यू ओखला औद्योगिक विकास प्राधिकरण, मुख्य प्रशासनिक भवन, सेक्टर - 6, नोएडा (उत्तर प्रदेश)।
7. मुख्य कार्यकारी अधिकारी, ग्रेटर नोएडा औद्योगिक विकास प्राधिकरण, प्लॉट नं 01, नॉलेज पार्क -4, ग्रेटर नोएडा, गौतम बुद्ध नगर, (उत्तर प्रदेश)।
8. महाप्रबंधक, जिला उद्योग केंद्र, कलेक्ट्रेट के पास, सूरजपुर, ग्रेटर नोएडा (उत्तर प्रदेश)।
9. उपाध्यक्ष, बुलन्दशहर खुर्जा विकास प्राधिकरण, कालिन्दी कुञ्ज, जी टी रोड, खुर्जा - 203131 (उत्तर प्रदेश)।
10. संबंधित विशेष आर्थिक क्षेत्र विकासकर्ता।

विषय: नोएडा, ग्रेटर नोएडा और खुर्जा में स्थित निजी विशेष आर्थिक क्षेत्रों के संबंध में श्री ए० बिपिन मेनन, विकास आयुक्त, नोएडा विशेष आर्थिक क्षेत्र की अध्यक्षता में अनुमोदन समिति की दिनांक 08/05/2023 को पूर्वाहन 11:00 बजे आयोजित बैठक का कार्यवृत्त - एतद संबंधी।

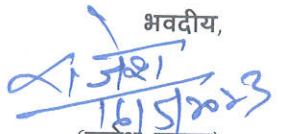
महोदय,

उपरोक्त विषय के सन्दर्भ में नोएडा, ग्रेटर नोएडा और खुर्जा में स्थित निजी विशेष आर्थिक क्षेत्रों के संबंध में श्री ए० बिपिन मेनन, विकास आयुक्त, नोएडा विशेष आर्थिक क्षेत्र की अध्यक्षता में अनुमोदन समिति की 08/05/2023 को पूर्वाहन 11:00 बजे आयोजित बैठक का कार्यवृत्त संलग्न है।

संलग्नक : उपरोक्त

प्रतिलिपि:-

1. सम्बंधित निर्दिष्ट अधिकारी।
2. सहायक विकास आयुक्त (प्रशासन) - कार्यवृत्त की एक प्रति हिंदी अनुवाद हेतु संलग्न है।

भवदीय,

(राजेश कुमार)
उप विकास आयुक्त

NOIDA SPECIAL ECONOMIC ZONE

Minutes of the Approval Committee meeting in respect of private SEZs located in Noida, Greater Noida & Khurja held under the Chairmanship of Shri A. Bipin Menon, Development Commissioner, NSEZ at 11:00 AM on 08.05.2023.

The following members of Approval Committee participated in the meeting:-

- (i) Shri Surender Malik, JDC, NSEZ.
- (ii) Shri Sunil Kumar, Supdt. (Customs), Noida.
- (iii) Smt. Garima Mishra, Asstt. Commissioner of Industries, DIC, Noida.
- (iv) Shri Chaman Lal, Asstt. DGFT, O/o DGFT, CLA, New Delhi.
- (v) Shri Neeraj Kumar, Income Tax Officer, Noida.

Besides, i) Shri Rajesh Kumar, DDC, ii) Shri Vishal Gupta, Authorized Officer, iii) Shri Prakash Chand Upadhyay, ADC, iv) Shri Pramod Kumar, ADC and; iv) and Shri Anuj Dixit, UDC, were also present to assist the Approval Committee. It was informed that the quorum was available and the meeting could proceed.

At the outset, the Chairman welcomed the participants. After a brief introduction, the agenda was taken up sequentially. After detailed deliberations amongst the members of the Approval Committee as well as interaction with the applicants / representatives of the developers / units, wherever required, the following decisions were taken unanimously:-

Item No. 1. Ratification of the Minutes of the Approval Committee meeting held on 24.04.2023:-

As no reference in respect of the decisions of the Approval Committee held on 24.04.2023 was received from any of the members of the Approval Committee or trade, therefore, the Minutes of the Meeting held on 24.04.2023 were ratified.

Item No.2: Proposals for expansion of area / partial deletion of area of the unit:-

2.1: M/s. HCL Technologies Ltd. (Unit-1) (Partial deletion)

2.1.1. Shri D.K. Sharma, Associate Director, of the unit joined the meeting through video conferencing and explained the proposal.

2.1.2. The Approval Committee discussed the proposal and after due deliberations, the Approval Committee approved the proposal for partial deletion of '3848 Sqft. Area at 3rd floor, software block (tower-II)' at HCL Technologies Ltd. IT/ITES SEZ, Noida. This approval is subject to the condition that the unit shall submit 'No Dues Certificate' from the Specified Officer in respect of the area to be deleted.

2.2: M/s. HCL Technologies Ltd. (Unit-III) (Partial deletion)

2.2.1. Shri D.K. Sharma, Associate Director, of the unit joined the meeting through video



conferencing and explained the proposal.

2.2.2. The Approval Committee discussed the proposal and after due deliberations, the Approval Committee approved the proposal for partial deletion of '3986 Sqft. Area at 3rd floor, software block (tower-III)' at HCL Technologies Ltd. IT/ITES SEZ, Noida. This approval is subject to the condition that the unit shall submit 'No Dues Certificate' from the Specified Officer in respect of the area to be deleted.

2.3: M/s. HCL Technologies Ltd. (Unit-V) (Partial deletion)

2.3.1. Shri D.K. Sharma, Associate Director, of the unit joined the meeting through video conferencing and explained the proposal.

2.3.2. The Approval Committee discussed the proposal and after due deliberations, the Approval Committee approved the proposal for partial deletion of '225.85 Sqft. Area at 2nd floor, SDB-II (Tower III) & 359.07 Sqft. Area at 5th floor SDB-V (tower-VI)' at HCL Technologies Ltd. IT/ITES SEZ, Noida. This approval is subject to the condition that the unit shall submit 'No Dues Certificate' from the Specified Officer in respect of the area to be deleted.

2.4: M/s. HCL Technologies Ltd. (Unit-VII) (Partial deletion)

2.4.1. Shri D.K. Sharma, Associate Director, of the unit joined the meeting through video conferencing and explained the proposal.

2.4.2. The Approval Committee discussed the proposal and after due deliberations, the Approval Committee approved the proposal for partial deletion of '363.62 Sqft. Area at 3rd floor, SDB-V (Tower VI) & 628.02 Sqft. Area at 4th floor SDB-V (tower-VI)' at HCL Technologies Ltd. IT/ITES SEZ, Noida. This approval is subject to the condition that the unit shall submit 'No Dues Certificate' from the Specified Officer in respect of the area to be deleted. The Committee further directed the representative of the unit to submit detailed list of input services (Rs. 802.00 lakh imported & Rs. 6615.00 Lakh indigenous) giving serial number & description as per default list of services.

2.5: M/s. Axtria India Private Limited (Partial deletion)

2.5.1 Shri Anurag Agarwal, CFO, of the unit joined the meeting through video conferencing and explained the proposal.

2.5.2 The Approval Committee discussed the proposal and after due deliberations, approved the proposal for partial deletion of '18910 Sqft. Area at 13th floor, Building No. 05' at Seaview Developers Pvt. Ltd. IT/ITES SEZ, Noida. This approval is subject to the condition that the unit shall submit 'No Dues Certificate' from the Specified Officer in respect of the area to be deleted.

2.6: M/s. Genpact India Private Limited (Unit-II) (Partial deletion)

2.6.1 Shri Shailendra Kumar Gaur, Manager, of the unit joined the meeting through video conferencing and explained the proposal.

2.6.2 The Approval Committee discussed the proposal and after due deliberations, approved the proposal for partial deletion of '66527 Sqft. Area at upper ground floor, 1st floor & 3rd floor, in building no. 5' at Seaview Developers Pvt. Ltd. IT/ITES SEZ, Noida. This approval is subject to the condition that the unit shall submit 'No Dues Certificate' from the Specified Officer in respect of the area to be deleted.

Item No.3: Proposals for cancellation of approval for allotment of space to facility providers:



3.1.: Oxygen Business Park Pvt. Ltd. (Foodiana Enterprises)

3.1.1. The Approval Committee discussed the proposal and after due deliberations, the Approval Committee approved the proposal for cancellation of permission letter no. 10/173/2008-SEZ/7319 dated 27.06.2019 granted for allotment of built-up space to Ms./ Foodiana Enterprises to set up & operate a 'Cafeteria/Canteen for staff' in the processing area of IT/ITES SEZ at plot no. 7, Sector-144, Noida.

Supplementary Agenda Item No.1: Monitoring of Performance of the units:-**1.1 M/s. TLG India Private Limited**

1.1.1 M/s. TLG India Pvt. Ltd. (LOA No. 10/59/2016-SEZ/1486 Dated 06.02.2017), a unit at Seaview Developers Pvt. Ltd., IT/ITES SEZ Plot No. 20 & 21, Sector 135 Noida, has submitted proposal for exit from SEZ Scheme. The year-wise performance/NFE status of the unit as per APRs since inception, duly verified by NSEZ CA firm, are as under:-

For the First block of 5 years:

Year	FOB value of export (Rs. in lakhs)	NFE Earnings (Rs. in lakhs)	DTA Sales (Rs. in lakhs)	Pending Foreign Exchange realization
2017-18	1668.91	1602.62	0.00	0.00
2018-19	2176.70	2122.37	0.00	0.00
2019-20	2064.04	1985.82	0.00	0.00
2020-21	1696.02	1593.78	0.00	0.00
2021-2022	1848.01	1782.51	0.00	0.00
Total:	9453.74	9087.10	0.00	0.00

For 2nd block of 5 years:-

Year	FOB value of export (Rs. in lakhs)	NFE Earnings (Rs. in lakhs)	DTA Sales (Rs. in lakhs)	Pending Foreign Exchange realization
2022-23	1032.78	1030.52	0.00	0.00
Total:	1032.78	1030.52	0.00	0.00

1.1.2 After due deliberations, the Approval Committee monitored the performance of the unit in terms of Rule 54 and took note of the positive NFE earned by the unit. The Committee further directed the unit to submit remaining APRs, if any, till the date upto which unit remained in operations.

1.2 M/s. Exl Service.com (India) Pvt. Ltd.

1.2.1 M/s. EXL Service.com (India) Pvt. Ltd. having LOA No. 10/42/2015-SEZ/304 Dated 08.01.2016 a unit at 11th & 12th Floor, Tower-3 in the Oxygen Business Park Pvt. Ltd. IT/ITES SEZ Plot No.7 Sector-144, Noida (U.P) has submitted proposal for exit from SEZ Scheme. The year-wise performance/NFE status of the unit as per APRs since inception, duly verified by NSEZ CA firm, are as under:-

For the First block of 5 years:

Year	FOB value of export (Rs. in lakhs)	NFE Earnings (Rs. in lakhs)	DTA Sales (Rs. in lakhs)	Pending Foreign Exchange realization
2016-17	2081.08	1985.52	0.00	0.00
2017-18	4456.98	4304.01	0.00	0.00
2018-19	17602.97	16943.81	0.00	0.00
2019-20	24762.68	23422.02	0.00	0.00
2020-21	23711.84	23094.38	0.00	0.00
2021-2022 (split-1 01.04.2021 to 30.05.2021)	2161.33	2127.95	0.00	0.00
Total:	74776.88	71877.69	0.00	0.00

For 2nd block of 5 years:-

Year	FOB value of export (Rs. in lakhs)	NFE Earnings (Rs. in lakhs)	DTA Sales (Rs. in lakhs)	Pending Foreign Exchange realization
2021-2022 (split-2 31.05.2021 to 31.03.2022)	32357.81	31949.53	0.00	0.00
2022-23	38681.01	38117.52	0.00	0.00
Total:	71038.82	70067.05	0.00	0.00

1.2.2 After due deliberations, the Approval Committee monitored the performance of the unit in terms of Rule 54 and took note of the positive NFE earned by the unit. The Committee further directed the unit to submit remaining APRs, if any, till the date upto which unit remained in operations and also submit reply of the observations of CA firm NSEZ.

Supplementary Agenda item no. 2: Request for resumption of Letter of Approval (LOA) of Unit No. I & II of M/s Moser Baer Solar Limited (under Liquidation) for the purpose of STATUTORY COMPLIANCE and clearance of assets into DTA.

2.1 The Committee was informed that M/s. Moser Baer Solar Ltd. (Unit-I) was issued an LOA No. 10/83/2007-SEZ/2815 dated 22.05.2007 at Sector Specific SEZ of M/s. Moser Baer India

Ltd. Located at Plot No. 66 B, Udyog Vihar, Greater Noida (U.P.). The unit had commenced its operations w.e.f. 12.04.2009 and the same expired on 11.04.2014. Unit had applied for LOA renewal vide its letter dated 11.04.2014. However, the request of the unit was not accepted by the competent authority (refer nsp 61-62) as unit failed to achieve positive NFE. Further unit was asked to submit revised APRs so that correct figures of negative NFE could be established for taking necessary action regarding issuance of fresh SCN with the approval of Approval Committee.

2.2 Similarly, M/s. Moser Baer Solar Limited (Unit-II) was issued LOA No. 03.02.2010-SEZ/4751 dated 24.06.2010. Unit commenced production on 09.09.2011 and accordingly LOA was valid upto 08.09.2016. The request of the unit for extension of 2nd block of five years effective from 09.09.2011 for two years i.e. upto 08.09.2018 under Rule 72 of SEZ rules 2006 was placed before the Approval Committee in its meeting held on 02.06.2017. The approval committee observed that the request of the unit is not specifically covered under Rule 72 of SEZ Rules, 2006 and consideration of the request will require relaxation of Rule 72 position. After that, UAC dated 02.06.2017 decided to recommend the proposal of Unit-II for extension of first block of five years to BOA, inter alia keeping in view the circumstances of this industry, position explained by the unit regarding new insolvency bankruptcy code (IBC). Accordingly, BOA in its meeting held on 18.09.2017 has approved the proposal of M/s. Moser Baer Solar Ltd. (unit-II) for extension of first block of five years from 09.09.2011 for two years i.e. upto 08.09.2018.

2.3 Moser Baer Solar Ltd. is going through the Corporate Insolvency Resolution Process since 14.11.2017 and sh. Arvind Garg has been appointed Insolvency professional appointed by NCLT. He has submitted a letter dated 28.02.2023 and stated that despite public notice inviting Expressions of Interest, the Resolution Professional did not receive any Resolution Plan in respect of the Corporate Debtor (or Company). After expiry of the statutory period for CIRP, liquidation of the Corporate Debtor was ordered under Section 33(1)(a) of the IBC. Shri Arvind Garg having IDBI Registration No. IBBI/IPA- 003/IP-N00029/2017-18/10189 has been appointed as Liquidator vide order passed on 30.05.2019. In terms of the provisions of Section 35 of the IBC, the Liquidator is empowered to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor and to sell such immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction All the stock at modules lying in the premises of the SEZ Unit I & II of MBSL situated at 66 B, Udyog Vihar, Greater Noida Uttar Pradesh-201306, are under his custody and need to be disposed of and sold in terms of the provisions of the IBC. The Liquidator vide its letter dated 03.03.2021 has requested for the permission of Dy. Development Commissioner-Customs NSEZ for disposal of modules lying at Corporate Debtor's factory premises situated at 66B, Udyog Vihar, Greater Noida, Uttar Pradesh- 201106. The Authorised Officer (Custom) MBIL-SEZ Greater Noida has vide its letter deed 07.04.2021 conveyed its acceptance of request for disposal of modules lying at factory premises, subject to compliance of provisions of the Customs Act and SEZ Act/Rules for DTA Clearances. Here, it may be noted that the LOA of SEZ Unit-2 was valid till 08.09.2021. The IRP has on 06.04.2022 filed the application IA-1610/2022 before the NCLT seeking permission to undertake assignment/transfer of the (Not Readily Realisable Assets ('NRRRA')) of the Corporate Debtor in accordance with regulation 37A of the IBBI(Liquidation Process) Regulations, 2016. Based on the submissions made by the Liquidator, the NCLT has vide Order passed on 17.08.2022 allowed the application for sale of NRRRA, subject to the condition that the liquidator after finding the buyer for sale will report to the NCLT and seek permission regarding the same. The NRRRA assets are independent of other assets with undisputed titles. These other assets have clear title and out of the same, Steel-Crates have been auctioned and another set of assets comprising of plant & machinery is yet to be auctioned. In 7th Consultative Committee of Shareholders Meeting held on 22.09.2022, it was decided by the members that the assets forming liquidation estate will be grouped into 2 separate buckets containing 1) Disputed assets as NRRRA (2 factory buildings with land underneath & utility blocks) 2) Undisputed assets (Plant & Machinery and steel -Crates) Subsequently, the Liquidator published sale notice on 11.10.2022 for the sale of Plant & Machinery and Steel Crates as well as for the assignments/transfer of rights underlying the disputed asset of CD as NRRRA.



Following this steel crates stand was auctioned for Rs. 8,15,00,000/- (Rupees eight crore and fifty lakhs only) vide e-auction conducted on 06.01.2023 through a sale notice dated 09.12.2022. In this e-auction, M/s Gaurav Worldwide Trading Pvt Ltd emerged as the successful bidder.

2.4 The liquidator along-with the successfule bidder of the steel-crates requested for the following-

- i. Resumption of the LOA of above stated SEZ Units (I&II) of the Company for the limited purposes of statutory compliance, and allowing access to SEZ Online filing facility, and
- ii. clearance of the stocks/ assets, etc. into DTA by exempting customs duties/ taxes, and
- iii. Thereafter cancelling the LOAs of both the Units. It may be noted that since the stocks assets of the Company are being disposed of in the course of liquidation process (and not in ordinary course of business or trade), no taxes/ duties should be levied on the same, as are levied in the ordinary course of business.

2.5 In the matter comments of S.O. and legal opinion were sought.

Comments of S.O. are as under:-

"As mentioned above, among other things, the unit has requested for clearance of goods / stock in DTA without payment of Customs duties / taxes. In this regard, the unit has taken plea of Section 238 of IBC which deals with overriding effect of IBC law in case of discrepancies with other laws. However, the unit has not mentioned about the point of discrepancy of IBC vis-à-vis taxation laws on the matter of clearance of goods. It appears, IBC do not mandate for exemption from payment of taxes / duties if a unit is under Insolvency. Further, that the order / judgment passed by the Court should be referred to in the matter for clearance of goods for disposal without payment of duties / taxes.

In addition to the above it is submitted that -

As per Section 30 of SEZ Act, the duties of Customs shall be required to paid when any goods are to be removed from SEZ to DTA. Section 238 is only overriding section in case of any discrepancy/contradiction vis-a-viz IBC; it does not grant general immunity from payment of taxes in course of liquidation of assets. Therefore, the duties of Customs would be required to be paid before clearance of goods into DTA."

2.6 Legal opinion in the matter is as under:-

Relief/Request Point (i) above:-

(a) The Unit or the Developer needs to first approach the Approval Committee and thereafter it can file the appeal to the Board of Approval vide section 15 (4).

(b) The Developer/unit/person can also Appeal to the High Court under Section 24 of the Act which provides for Appeal.

(c) The Developer/unit/person can also approach the High Court and the Supreme Court vide their inherent powers under the Constitution of India, 1949 however, approaching the High Court prior to the exhaustion of the provision under Section 24 of the NSEZ Act would not be advisable considering the same would amount to act against the established procedure.

Thus, the LOA cannot be resumed without following the due process as prescribed under the Act.

Relief/Request Point (ii) above:-

Chapter VI of the SEZ act deals with "Special Fiscal Provisions for Special Economic Zones".

I/46725/2023

By virtue of Section 26 'Exemptions, drawbacks and concessions to every Developer and entrepreneur' various exemptions are provided against trade and tariffs. It should be noted that these exemptions are provided in light of the GATT and GATS to which India is a part and thus, the sole motive is to provide impetus to export and trade through SEZs. However, these can only be actualised when the developer is within the ambit of SEZ. In the instant matter the LOA has been cancelled and the same has not be resumed yet. Thus, the developer would not be liable for availing these benefits."

2.7 Sh. Arvind Garg, IRP appeared before the Approval Committee through video conferencing and explained the proposal.

2.8 After due deliberations, the Approval Committee unanimously decided to seek legal opinion on the following points:-

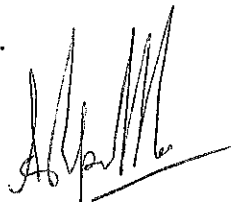
- i. Since this is now an NCLT Case and the IRP has been instructed by NCLT to dispose off the assets of Moser Baer to recover the amount for paying off creditors, can the office of DC or UAC extend the LOA for taking out the auctioned goods? It is relevant to note that Section 238 of IBC overrides other laws.
- ii. If any shortfall in NFE is to be recovered by payment of 1% of shortfall (Rule 80), how would this be recovered when the unit no longer exists and vests in the IRP. Can the penalty amount so imposed be sent to IRP for recovery (Section 35 of IBC vests all property with the IRP).
- iii. The IRP has been able to find a buyer only for Steel Crates. The rest of plant and machinery would also be auctioned. What is the procedure to be followed for DTA sale of all these?

Further the Committee empowered office of the Development Commissioner NSEZ to take decision on file on receipt of the legal opinion from legal retainer.

The meeting ended with a vote of thanks to the Chair.


(Surender Malik)

Joint Development Commissioner


(A. Bipin Menon)

Development Commissioner