

भारत सरकार, वाणिज्य एवं उद्योग मंत्रालय, वाणिज्य विभाग
विकास आयुक्त का कार्यालय
नोएडा विशेष आर्थिक क्षेत्र
नोएडा दादरी रोड, फेस-II, नोएडा-201305, जिला - गौतमबुद्ध नगर
Government of India, Min. of Commerce & Industry, Deptt. of Commerce,
Office of the Development Commissioner
NOIDA SPECIAL ECONOMIC ZONE
Noida Dadri Road, Phase-II, NOIDA-201305, Distt. Gautam Budh Nagar (UP)

फा. सं. 12/01/2017 - प्रोज/

दिनांक: 09/03/2017

सेवा में,

1. मुख्य कार्यपालक अधिकारी, न्यू ओखला औद्योगिक विकास प्राधिकरण, मुख्य प्रशासनिक भवन, सेक्टर - 6, नोएडा।
2. अतिरिक्त महानिदेशक विदेश व्यापार, वाणिज्य एवं उद्योग मंत्रालय, 'ए' विंग, इंदरप्रस्थ भवन, आई पी एस्टेट, नई दिल्ली।
3. आयुक्त, आयकर, ए 2 डी, आयकर भवन, सेक्टर 24, नोएडा।
4. आयुक्त, सीमा शुल्क, नोएडा सीमा शुल्क आयुक्तालय, इनलैंड कंटेनर डिपो, तिलपता, दादरी, गौतम बुद्ध नगर, उत्तर प्रदेश - 201305.
5. निदेशक, वाणिज्य विभाग, वाणिज्य एवं उद्योग मंत्रालय, भारत सरकार, उद्योग भवन, नई दिल्ली -110001।
6. उप सचिव (आई एफ-1), बैंकिंग प्रभाग, आर्थिक मामलों का विभाग, वित्त मंत्रालय, भारत सरकार, तृतीय तल, जीवन दीप बिल्डिंग संसद मार्ग, नई दिल्ली।
7. महाप्रबंधक, जिला उद्योग केंद्र, कलेक्ट्रेट के पास, सूरजपुर, ग्रेटर, नोएडा।

विषय: दिनांक 01.03.2017 को पूर्वाह्न 11:30 बजे आयोजित नोएडा विशेष आर्थिक क्षेत्र की यूनिट अनुमोदन समिति की बैठक का कार्यवृत्त - एतद संबंधी।

महोदय,

मुझे उपरोक्त विषय का सन्दर्भ लेने और डॉ. एल बी सिंघल, विकास आयुक्त, नोएडा विशेष आर्थिक क्षेत्र की अध्यक्षता में दिनांक 01.03.2017 को पूर्वाह्न 11:30 बजे सम्मेलन हॉल, प्रशासनिक भवन, नोएडा विशेष आर्थिक क्षेत्र, नोएडा में आयोजित नोएडा विशेष आर्थिक क्षेत्र की यूनिट अनुमोदन समिति की बैठक का कार्यवृत्त अंग्रेषित करने का निर्देश हुआ है।

संलग्नक : उपरोक्त

भवदीय,



(माला रंगराजन)

उप विकास आयुक्त

प्रतिलिपि:

1. अपर सचिव (एस.ई.जेड.), वाणिज्य विभाग, वाणिज्य एवं उद्योग मंत्रालय, भारत सरकार, उद्योग भवन, नई दिल्ली - सूचनार्थ।
2. विशेष कार्याधिकारी - विकास आयुक्त के सूचनार्थ।
3. वैयक्तिक सहायक - संयुक्त विकास आयुक्त के सूचनार्थ।
4. निर्दिष्ट अधिकारी, नोएडा विशेष आर्थिक क्षेत्र - सूचनार्थ एवं आवश्यक कार्यवाही के लिए।
5. सहायक विकास आयुक्त, सम्पदा अनुभाग, नोएडा विशेष आर्थिक क्षेत्र, सूचनार्थ एवं आवश्यक कार्यवाही के लिए।

उप विकास आयुक्त

Minutes of the meeting of the Approval Committee of Noida SEZ held under the chairmanship of Dr. L.B. Singhal, Development Commissioner (DC), Noida SEZ at 11:30 AM on 01/03/2017 in the Conference Hall of NSEZ.

The following members of the Approval Committee were present during the meeting:-

- 1) Shri S.S. Shukla, Jt. Development Commissioner, NSEZ.
- 2) Shri Sukhbir Singh Badhal, Asstt. DGFT, CLA, New Delhi.
- 3) Shri Manbir Singh, Asstt. Commissioner, Customs, Noida Commissionerate.
- 4) Ms. Sandhya Maurya, Income Tax Officer, Income Tax Deptt., Noida.
- 5) Shri Tribhuvan Nath Patel, Addl. Statistical Officer, DIC, Noida (Rep. of Principal Secretary, Industry, Govt. of UP.).
- 6) Mukesh Goyal, Associate Architect, (Rep. of Noida Authority).

2. Besides, during the meeting (i) Smt. Mala Ranagarajan, Dy. Development Commissioner, NSEZ, S/Shri (ii) R.K. Srivastava Dy. Development Commissioner, NSEZ (iii) Md. Salik Parwaiz, Specified Officer, NSEZ, (iv) Prakash Chand Upadhyay, Asstt. Development Commissioner, NSEZ, (v) Rajendra Mohan Kashyap, PA to JDC, NSEZ, and (vi) G.P. Singh, SDO, UPPCL, Noida were also present to assist the Approval Committee.

3. At the outset, DC, NSEZ welcomed the participants. After brief introduction, each items included in the agenda were taken up for deliberation one by one. After detailed deliberations as well as interaction with the applicants / representatives of the units, the following decisions were taken:-

(i) Ratification of Minutes of last meeting of the Approval Committee held on 01/02/2017:-

It was informed that no reference against the decisions of the Approval Committee held on 01/02/2017 was received and therefore, Minutes of the meeting held on 01/02/2017 were ratified.



Item wise decisions on proposals included in agenda:

1. Proposal of M/s. Shingla Handicraft for setting up a new Unit in NSEZ.

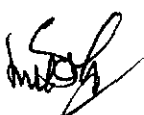
It was informed to the Approval Committee that the applicant has proposed to set up a new unit in NSEZ to undertake Manufacturing of Handbags, Jute Handbags, Article of Paper Machie, Hand woven tapestries embroidery work, Marble Monuments, Article of Brass, Other Household articles and parts thereof, Other – Paintings drawings and pastels, Domestic decoration articles, Jewellery Box with projected exports of Rs. 850 Lakhs and NFE earnings worth Rs. 510 Lakhs over a period of five years.

Shri Anil Kumar, proprietor of the firm and Ms.. Radhika Aggarwal appeared before the Approval Committee to explain the project. Shri Kumar informed that his family is engaged into trading of clothes and readymade garments with an annual turnover of approx. Rs. 20-25 Lakhs. Ms. Aggarwal informed that she has completed studies in Fine Arts and Home Science and has experience in the proposed activities.

Ms. Aggarwal also informed that Amritsar and nearby cities in Punjab has a long tradition of export of handicrafts mainly handmade embroidery and other handicrafts. She also stated that they have no documents for showing experience of her work, as this work was being done in an unorganised way as per requirement of their clients. She further informed that they are well versed with the garment industry being in the same as a family business.

The Approval Committee observed that detailed background of promoter has not been given in the project report. Further, the proprietor has failed to produce any documentary proof which could be relied upon for his existing family business.

The Approval Committee directed Shri Anil Kumar to submit his detailed background showing his net worth, experience in proposed activities and his ITR for the year 2013-14, 2014-15 & 2015-16 along with computation sheet and details of his existing family business, Residential address and Shop details etc. The Approval Committee further directed to submit copy of electricity bill of existing place of business as well as item wise write up giving source of inputs etc. from the applicant and also to remove deficiencies pointed out in their application. The Approval Committee also directed the promoter to



indicate main activity along with its ITC(HS) classification, which he would like to undertake in SEZ unit.

The Approval Committee directed that jurisdictional Central Excise may be requested to verify the credentials of the said firm. Besides, report on genuineness of financial credentials may also be called for from the certifying Chartered Accountant of the firm.

The Approval Committee, after due deliberations, deferred the proposal of M/s. Shingla Handicraft for setting up a new unit in NSEZ.

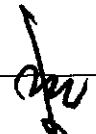
2. Proposal of M/s. Compass Systems Pvt. Ltd. for setting up a new Unit in NSEZ.

It was informed to the Approval Committee that the applicant has proposed to set up a new unit in NSEZ to undertake service activities viz. IT/ITES i.e. Business Applications mainly related to Retailers, Network Providers and Financial Institution with projected exports of Rs. 3294 Lakhs and NFE earnings worth Rs. 3262 Lakhs over a period of five years.

Shri Vipin Kumar, Director of the company appeared before the Approval Committee to explain the project. Shri Kumar informed that Compass Systems was established in 2001 and has annual turnover of approx. Rs. 24 Crores during 2015-16. He further informed that the company has already been working from DTA and have approx. 300 employees. He also informed that Cavisson Systems Inc, USA is parent company of Compass Systems and they have agreement with its parent company to provide services to develop the product and render services to the client of Cavisson. He also stated that they will have Cavisson Systems Inc. as its sole customer as on now and will subsequently expand their operations.

Shri Kumar further informed that the proposed SEZ unit will be a fresh investment in NSEZ and their DTA unit will also continue to work. He further informed that they will not be shifting old Capital goods or employees from the DTA unit to proposed SEZ unit.

It was informed to them that some shortcomings were observed in their application which needs to be rectified. Shri Kumar assured to rectify the deficiencies observed in their application at the earliest.



Noida Special Economic Zone

(Minutes of Meeting of Approval Committee of Noida SEZ held on 01/03/2017)

Page 4 of 24

	<p>The Approval Committee, after due deliberations, <u>approved</u> the proposal of M/s. Compass Systems Pvt. Ltd. for "IT/ITES i.e. Business Applications mainly related to Retailers, Network Providers and Financial Institution", subject to rectification of the deficiencies observed in their application.</p>
3.	<p>Request of M/s. Iotina Technology Pvt. Ltd. to withdraw its application for Setting up a new unit in NSEZ.</p> <p>It was informed that the Approval Committee in its meeting held on 04/01/2017 had approved the proposal of M/s. Iotina Technologies Pvt. Ltd. for setting up a unit in NSEZ subject to rectification of the deficiencies observed in their application including furnishing of details of specific services to be included in LOA.</p> <p>It was further informed that the applicant vide its email dated 01/02/2017 has informed that due to uncertainty brought in by the event in United States and rapid changes in business environment, they don't think that they would be able to honor their commitment as per the submitted project report and have requested for withdrawal of their application for setting up a new SEZ unit.</p> <p>The Approval Committee took note of the request of M/s. Iotina Technologies Pvt. Ltd. to withdraw its application.</p>
4.	<p>Proposal of M/s. Groz Engineering Tools Pvt. Ltd. for inclusion of additional authorized operations in LOA.</p> <p>It was informed to the Approval Committee that M/s. Groz Engineering Tools Pvt. Ltd. has been issued an LOA dated 19/03/2009 for Manufacturing & Trading of various Engineering tools (Trading is allowed upto 5% of FOB value of export). Unit has commenced its export production w.e.f. 26/04/2013 and LOA of the unit is valid till 25/04/2018.</p> <p>It was also informed that the unit has submitted a proposal for inclusion of additional items i.e. "Trading of tools for working hand tools, pneumatic, hydraulic or with self-contained electric or non-electric motor" in their authorized operations.</p>



Shri Sumeet Sharma, authorized representative of the company appeared before the Approval Committee. Shri Sharma informed that they will procure the materials mainly from China and destination of export will be worldwide.

The Approval Committee, after due deliberations, approved the proposal of unit for inclusion of "Trading of tools for working hand tools, pneumatic, hydraulic or with self-contained electric or non-electric motor" subject to the following conditions:

- (i) Trading will be allowed upto 5% of FOB Value of export.
- (ii) Trading will be allowed only for physical export to any other country, for supply to other units in NSEZ or other SEZ or EOUs, against freely convertible currency.
- (iii) No DTA clearance for trading goods shall be allowed.
- (iv) Unit will maintain separate area earmarked for manufacturing and trading activities and maintain separate records/accounts of NFE for manufacturing and trading activities.
- (v) NFE status for manufacturing activity and trading activity will be calculated separately.

5. Proposal in respect of M/s. Jagat Gems & Jewellery for Review of LOA.

It was informed to the Approval Committee that M/s. Jagat Gems & Jewellery was issued an LOA dated 10/03/2000 for Manufacturing & Export of Plain & Studded Gold Jewellery. Unit has commenced its export production w.e.f. 30/03/2000 and LOA of the unit was valid till 03/11/2016.

It was informed to the Approval Committee that unit has been lying non-functional since 2010-11. It was further informed that the Approval Committee in its meeting held on 04/11/2015 renewed the LOA of unit for six months upto 03/05/2016 with the condition that no request for transfer of assets and liabilities shall be entertained and unit shall restart the business within this period. The Approval Committee in its meeting held on 04/05/2016 gave last opportunity to the unit and again extended the validity of LOA for another six months i.e. upto 03/11/2016 and directed the unit to restart the export



Noida Special Economic Zone

(Minutes of Meeting of Approval Committee of Noida SEZ held on 01/03/2017)

Page 6 of 24

activities within the extended validity period with intimation to this office. The Approval Committee in its said meeting held on 04/05/2016 further decided that if unit fails to restart the operations within extended validity period, no further extension shall be given and unit will surrender the Plots to NSEZ Authority.

It was further informed to the Approval Committee that the unit has neither informed this office about re-commencement of export activities nor has made any request for further extension in the validity of LOA. It was also informed that lease rent amounting to Rs. 34,774/- is currently outstanding in respect of Plot No. 129G/33, 34 & 35, NSEZ.

Shri Manav Oberoi, authorized representative of the firm appeared on behalf of the unit. He informed that due to ill health of proprietor they could not start the activities. He requested to extend the validity of LOA for another six months as the unit is closed from last few years & need to restart from scratch.

It was informed to Shri Oberoi that LOA of the unit has already expired on 03/11/2016. His attention was invited to Rule 11(5) of SEZ Rules, 2006, which says that notwithstanding any other conditions in the Lease Deed, the lease rights would cease to exist in case of the expiry or cancellation of LOA and in this case, LOA of M/s. Jagat Gems & Jewellery had expired 03/11/2016. Also, the unit has not submitted any request for extension of validity of its LOA.

The Approval Committee deliberated on the matter in detail and came to the conclusion that the unit has been lying non-functional since 2010-11 and even after giving enough opportunities the unit has failed to re-start its activities. The Approval Committee did not find any merit in this case for further extension in the validity of LOA and accordingly did not agree for further extension of LOA.

The Approval Committee, after due deliberations, came to the conclusion that LOA of the unit stands expired w.e.f. expiry of its validity on 03/11/2016 and consequently lease right being coterminous with validity of LOA also stands expired on 03/11/2016 in terms of provisions of Rule 11(5) of SEZ Rules, 2006. Therefore, the Approval Committee directed the Estate Management section to take necessary action against the unit under provisions of P.P. Act for realization of outstanding lease rent and to takeover possession



of space allotted to it.

The unit may, under Rule 55 read with Rule 56 of the SEZ Rules, 2006, prefer an appeal against the decision of Approval Committee, to the appropriate Appellate Authority, i.e. Board of Approval, Ministry of Commerce & Industry, Department of Commerce, Udyog Bhavan, New Delhi in accordance with the procedure given in Chapter VII of the SEZ Rules, 2006, if they desire to do so.

6. Proposal in respect of M/s. Nikka Mal Jewellers for Review of LOA.

It was informed to the Approval Committee that M/s. Nikka Mal Jewellers was issued an LOA dated 13/08/2002 for (1) Manufacturing & Export of Plain & Studded Gold Jewellery (2) Remaking/Re-Manufacturing of Broken, Outdated and Rejected Jewellery. Unit has commenced its export production w.e.f. 05/01/2004 and LOA of the unit was valid till 05/07/2016.

It was informed to the Approval Committee that unit has been lying non-functional since 2012-13. It was further informed that the Approval Committee in its meeting held on 06/01/2016 renewed the LOA of the unit for six months upto 05/07/2016 with the condition that unit shall re-start the business within this period. It was also decided that the progress shall be reviewed by the Approval Committee after six months for further extension.

It was informed to the Approval Committee that the unit has neither informed this office about re-commencement of export activities nor has made any request for further extension in the validity of LOA beyond 05/07/2016. It was also informed that as per information received from NSEZ Customs and NSDL, unit has not made any export or import during the said period.

The promoters were informed through the email to attend the meeting. Besides, Shri Krishna Soni, authorized representative of the unit also confirmed on phone that someone will positively attend the meeting. However, no one from the unit appeared for the meeting.

Attention of the members was invited to Rule 11(5) of SEZ Rules, 2006, which says that





notwithstanding any other conditions in the Lease Deed, the lease rights would cease to exist in case of the expiry or cancellation of LOA and in this case, LOA of M/s. Nikka Mal Jewellers had expired 05/07/2016. Also, the unit has not submitted any request for extension of validity of its LOA.

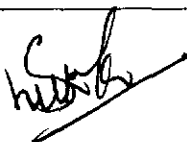
The Approval Committee deliberated on the matter in detail and came to the conclusion that the unit has been lying non-functional since 2012-13 and even after giving enough opportunities the unit has failed to re-start its activities. The Approval Committee did not find any merit in this case for further extension in the validity of LOA and accordingly did not agree for further extension of LOA.

The Approval Committee, after due deliberations, observed that LOA of the unit stands expired w.e.f. expiry of its validity on 05/07/2016 and consequently lease right being coterminous with validity of LOA also stands expired on 05/07/2016 in terms of provisions of Rule 11(5) of SEZ Rules, 2006. The Approval Committee further directed the Estate Management section to take necessary action against the unit as appropriate under provisions of P.P. Act for realization of outstanding lease rent and to takeover possession of space allotted to it.

The unit may, under Rule 55 read with Rule 56 of the SEZ Rules, 2006, prefer an appeal against the decision of Approval Committee, to the appropriate Appellate Authority, i.e. Board of Approval, Ministry of Commerce & Industry, Department of Commerce, Udyog Bhavan, New Delhi in accordance with the procedure given in Chapter VII of the SEZ Rules, 2006, if they desire to do so.

7. Proposal of M/s Bikram Exports for extension of sharing permission at Plot No. 129 G/51 & 52, NSEZ with M/s B.S. Bikram Overseas.

It was informed to the Approval Committee that M/s. Bikram Exports and M/s B.S. Bikram Overseas are sister-concern units of same promoters. It was further informed that M/s. Bikram Exports was granted sharing permission with M/s B.S. Bikram Overseas at Plot No. 129 G/51 & 52, NSEZ on 20/04/2010 which was valid upto 31/12/2016. Now unit has applied for extension of sharing permission beyond 31.12.2016 for further period of one year.



It was observed that main allottee i.e. M/s. B.S. Bikram Overseas is not doing any export activity from said premises since F.Y 2011-12. However, M/s Bikram Exports has been doing well since 2010 on sharing basis on above plots.

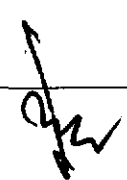
Sh. Baldev Singh, Partner in both firm appeared on behalf of the unit. He informed that they could not make export from M/s. B.S. Bikram Overseas during previous years due to lack of orders. He further informed that now they are getting orders from their buyers from overseas for export of gold jewellery and they will start export from M/s. B.S. Bikram Overseas shortly.

It was informed to the Approval Committee that some cases have come to notice in NSEZ where original allottee has not been working since last 2-3 years or more. However, the units which have been allowed to work on sharing basis have been doing well. Such units have made investments in building and plant & machinery. A question has arisen that if the allotment in respect of original allottee is cancelled, then functional unit, which has been allowed to work on sharing basis and is doing well, will also have to be closed/relocated. Further, in such cases original allottee does not meet the criteria for transfer of assets and liabilities under rule 74A of SEZ Rules, 2006. Therefore, the assets and liabilities cannot be transfer to sister concern, which is doing well and has been allowed to work on sharing basis, as the original allottee is not working.

It was also informed that Department of Commerce vide this office letter dated 19.10.2016 and subsequent reminder dated 20.12.2016 & 19.01.2017 has been requested to examine the matter and issue suitable guideline in this regard. However, till date no response has been received from Department of Commerce.

It was decided to issue a reminder again to the Department of Commerce so that the same can be taken up during the DCs' meeting.

The Approval Committee, after due deliberations, approved request of M/s. Bikram Exports for extension of sharing permission beyond 31/12/2016 for a further period of six months at Plot No. 129 G/51 & 52 with M/s B. S. Bikram Overseas. The Approval Committee further directed M/s. B.S. Bikram Overseas to start the export immediately and decided to review the case again after six months.



8. Proposal of M/s. SU Import Services Pvt. Ltd. for inclusion of additional manufacturing items as authorized operations in LOA.

It was informed to the Approval Committee that M/s. SU Import Services Pvt. Ltd. has been issued an LOA dated 16/02/2006 for Manufacturing & Trading activities. Unit has commenced its export production w.e.f. 05/06/2006 and LOA of the unit is valid till 04/06/2021.

It was also informed that the unit has submitted a proposal for inclusion of additional manufacturing items i.e. All kinds of Electrical Bulbs/Filament Bulb with fittings, CFL Light, LED Light and Analog Clock Movement in their authorized operations.

Shri Upendra Gupta, authorized representative of the company appeared before the Approval Committee. Shri Gupta informed that these items were earlier part of their LOA prior to renewal of LOA. The Approval Committee in its meeting held on 05/10/2016 advised them to submit list of all manufacturing items along with ITC HS and process flow chart. However, these items were left inadvertently as they had not submitted the ITC HS Code and flow chart of these items at that time.

It was informed to the Approval Committee that Unit had requested for urgent approval to clear one shipment of analog clock movement, which was lying ready for dispatch. It was observed that these items were authorized in the original LOA. In view of the urgency shown by the unit, with the approval of Development Commissioner, one time permission for clearance of the said shipment was given by this office on 23/02/2017.

The Approval Committee, after due deliberations, ratified the above decision and also approved the proposal of unit for inclusion of additional manufacturing items i.e. All kinds of Electrical Bulbs/Filament Bulb with fittings, CFL Light, LED Light and Analog Clock Movement in their authorized operations.

9. Proposal of M/s. AOV International (partnership firm) for change of name/Constitution to "M/s. AOV International LLP (a Limited Liability Partnership firm)".

It was informed to the Approval Committee that M/s. AOV International (a partnership



firm) has been issued LOA dated 12/01/2016 for Manufacturing & Export of Hand Pump, their Spares and Pipes. Unit commenced its export production w.e.f. 18/11/2016 and LOA is valid till 17/11/2021.

It was informed to the Approval Committee that the firm has submitted a proposal for change in name/constitution of the unit from "M/s. AOV International (partnership firm)" to "M/s. AOV International LLP (a Limited Liability Partnership firm)".

Shri A.K. Singhal, authorized representative of the unit appeared before the Approval Committee. He informed that there is no change in partners or shareholding of the firm due to above changes in name/constitution.

It was informed to the Approval Committee that unit has been requested to submit some documents/information related to proposed change, which are awaited.

It was informed to the Approval Committee that Board of Approvals in its 69th meeting held on 23.02.2016 has issued clarification / instruction regarding Rule 74A of SEZ Rules, 2006. The extract of minutes of said meeting is reproduced below here:-

"The Joint Secretary (GPM) explained to the Board that representations have been received on the applicability of Rule 74A of SEZ Rules, 2006 in cases where the operational SEZ units continue to operate as such, i.e. on a going concern basis as a result of change of name, court approved mergers/de-mergers, slump sale, change of constitution from proprietorship to partnership & vice-versa, change of constitution from public limited company to private/limited liability company & vice-versa, company to partnership & vice-versa, change in shareholding up to 50 per cent, etc. and per se are not opting out/exiting out of the SEZ scheme.

With a view to promote the ease of doing business in India and that restructuring of entity/business is a fairly common occurrence, BOA decided that provisions of Rule 74A shall not apply to SEZ units that do not exit or opt out of the SEZ scheme by transferring its assets and liabilities to another person and the SEZ unit continues to operate as a going concern in the situations mentioned above. The UACs concerned, may consider



such requests under Rule 19 (2) of the SEZ Rules, 2006.

In so far as Business Transfer Agreement is concerned, it was explained that certain acquisitions happen globally as a result of Business Transfer Agreement which result in transfer of the SEZ unit of the Indian company on a going concern basis to acquirer. The BOA decided that such cases resulting in change of ownership would be decided on merits by the Board of Approvals on a case to case basis."

The Approval Committee, after due deliberations, approved the proposal of unit for change in name/constitution of the unit from "M/s. AOV International (partnership firm)" to "M/s. AOV International LLP (a Limited Liability Partnership firm)" as there is no change in shareholding, subject to submission of requisite documents/information.

10. **Following cases for monitoring of performance/APRs under Rule 54 of SEZ Rules, 2006 were also placed before the Approval Committee. The unit wise decision of the Approval Committee are indicated below:-**

- i) **M/s. Omnie Solutions India Pvt. Ltd.** - The Approval Committee monitored the performance of the unit on the basis of APRs up to 2015-16 and noted achievement of positive NFE by the unit. It was further decided to extend the validity of LOA for next five years upto 02/02/2022.
- ii) **M/s. On-graph Technologies Pvt. Ltd.** - The Approval Committee monitored the performance of the unit on the basis of APRs up to 2015-16 and noted achievement of positive NFE by the unit.

11. **Review of LOA issued to M/s. Shri Lal Mahal Ltd. in the wake of report of DRI about Diversion of duty free imported gold and contravention of provisions of SEZ Act, 2005, SEZ Rules 2006, Conditions of LOA and conditions of Bond-cum-LUT.**

1. It was informed to the Approval Committee that M/s. Shri Lal Mahal Ltd. has been issued an LOA dated 22/02/2010 for Manufacturing & export of Jewellery made from Gold and precious stones inter-alia, subject to the following conditions:-

"(i) Condition No. (i) of Letter of Approval dated 22/02/2010 "You shall export the goods

manufactured as per Provisions of the Special Economic Zones Act, 2005 and Rules made there-under for a period of five years from the date of commencement of production. For this purpose, you shall execute the Bond-cum-Legal Undertaking as prescribed under the Special Economic Zone Rules, 2006".

(ii) Condition No. (x) of Letter of Approval dated 22/02/2010 "You shall abide by the provisions of Special Economic Zones Act, 2005 and the Rules and orders/Instructions made there-under."

(iii) Condition No. (xiii) of Letter of Approval dated 22/02/2010 "if you fail to comply with the conditions stipulated above, this Letter of Approval shall be cancelled as per the provisions of the Special Economic Zones Act, 2005 and the rules and orders made there-under".

2. The unit had executed Bond-cum-LUT on 20/06/2011, which was jointly accepted by the Specified Officer and the Development Commissioner, NSEZ and acceptance of the same was conveyed to the unit vide this office letter dated 02/08/2011. The unit commenced its export production w.e.f. 08/05/2012 and accordingly LOA of the unit is valid upto 07/05/2017.

3. It was informed to the Approval Committee that recently a letter dated 16/02/2017 has been received from DRI, Noida regional Unit in case of M/s. Shri Lal Mahal Ltd. stating as under:

"3.1. Acting upon a specific intelligence, teams of the DRI, Lucknow conducted searches on 22-23/12/2016 at various places in case of M/s. Shri Lal Mahal Ltd, SDF No. F-10, A & B, NSEZ, Noida, in accordance with the provisions of Customs Act, 1962, SEZ Act, 2005 read with notification No. 2666(E) dated 05.08.2016 issued by Ministry of Commerce and Industry. The main findings of the said searches are as follows:


(i) " **Search at SEZ Unit of M/s Shree Lal Mahal Limited., situated at F-10, A & B, NSEZ, Noida:** At the premises, Stock taking/verification was done by the team of DRI officers and against the stock of approx. 238 KG (238000gms), only the Jewellery weighing 647 gm was found in the



premises and on further asking about the details of gold, Sh. Tapan Kumar Bera(Authorised Representative/ Signatory) stated that approx. 2.572 KG gold was taken as sample by the SEZ Customs Officers during stock taking in the month of August, 2016. **Accordingly, the quantity of approx. 235 KG of gold was found short from the stock at the premises.** On being enquired about the shortage of gold, it was informed that the gold was taken out of the SEZ unit premises by Sh. Prem Chand Garg, Sh. Devasish Garg, Sh. Rajendra Garg, and by Sh. Rajesh on the directions of Sh. Prem Garg and Sh. Devasish Garg from time to time. Also, there was shortage of approx. 19.5 KG of silver bars from the quantity of the 35 KG of silver bars imported vide two bill of entries. From the search of the premises, 80.2 KG of silver in the form of rods and bricks was found and recovered. Since, there were no documents relating to the said quantity of silver, the same was seized under Section 110 of the Customs Act, 1962.

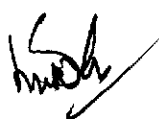
In addition, it was informed and evident from the documents that 196 KG of duty free gold has been sent to M/s. Polaris Overseas Pvt. Ltd., Delhi for job work. During the search operation at the premises of M/s. Polaris Overseas Pvt. Ltd., Delhi no facility and manpower was found existing and this Jewellery appears to be manufactured out of unaccounted gold and not out of duty free gold imported by the NSEZ Unit. 15KG of gold Jewellery lying at CWC, SEZ Noida made out of non-existent M/s. Polaris Overseas Pvt. Ltd., (6 KG) and other (9KG) was initially detained. Since, no manufacturing facility was found to be existent at M/s. Polaris Overseas Pvt. Ltd., and in the given facts there was a reason to believe that the said 15KG gold Jewellery was not culminated out of "authorised operations". The said 15.829KG gold Jewellery was seized.

- (ii) The records available at the SEZ Unit further indicated that out of the total quantity of gold shown as sent for job work to company M/s. Polaris Overseas Pvt. Ltd., B-16, Bhagwan Dass Nagar, New Delhi-26, the



balance 196 KG of Gold has not been shown received from the so called job worker. This quantity is excluding the stock, which should have been in the factory.

- (iii) **Search at premises of M/s. Polaris Overseas Pvt. Ltd. Situated at B-16, Bhagwan Dass Nagar, New Delhi:** During the search of the premises, no stock of gold in any form was found. Neither any machinery nor any artisan/labour was found. The premises was being used as the place for rest of the drivers, etc.
- (iv) At the SEZ Unit and at the address of B-16, Bhagwan Dass Nagar, N Delhi (address of M/s. Polaris Overseas Pvt. Ltd. - shown as job worker), no one was able to show the quantity of the gold as shown in the records. Hence, in brief, diversion of approx. 235 KG of gold and 19.5 KG of silver from the SEZ Unit was detected. Since no gold was found at the premises of B-16, Bhagwan Dass Nagar, N Delhi (address of Polaris Overseas Pvt. Ltd. - shown as job worker), approx. 196 KG of gold appears to be diverted from the job worker's end.
- (v) Hence, in total, approx. 431 KG quantity of duty free imported gold appears to be diverted from the SEZ unit premises and job worker premises. Also, unaccounted quantity of silver of 80.2 KGs, found at SEZ Unit premises was recovered and seized.
- (vi) Statements of Sh. Rajendra Kumar Garg (Accountant), Maharishi Dadhichi (Ex-Authorised Signatory and presently looking after all import/export related work), Tapan Kumar Bera (Authorised Signatory) and Rajesh Kumar Singh (Driver) employees of M/s. Shri Lal Mahal Limited were recorded under Section 108 of the Customs Act, 1962 wherein they disclosed that Shri Prem Chand Garg is the mastermind of the entire syndicate and on his instructions the entire show is being run and duty free gold in question was diverted on his instruction. They further admitted that the said goods has been taken out from SEZ unit by Shri Prem Chand Garg or Shri Devasish Garg or Shri Rajesh Kumar



Singh on the directions of Shri Prem Chand Garg, Shri Devasish Garg and Smt. Anita Garg.

- (vii) That further investigation of the case is going on and involvement of the other persons is yet to be worked out. Beside that despite of the repeated summons; Smt. Anita Garg Director of M/ s Shree Lal Mahal Limited, Shri D. S. Bali and Shri Sunil Bansal (Director of M/s. Bindra Sales Pvt. Ltd., and M/s. Polaris Overseas Pvt. Ltd.) are not joining the investigation.
- (viii) M/s. Shri Lal Mahal Limited was authorised to carry out the operation of "Manufacturing of Jewellery made from gold and precious stones and manufacturing of Diamond Jewellery"; as per the authorization given by the office of Development Commissioner, SEZ under the provisions of Section 2 of SEZ Act, 2005. Under the provisions of Section 15 of SEZ Act, 2005 they were required to carry out such authorised operations, which are mentioned in the letter of approval F.No. 07 /10/2009-PROJ/ 1463 dated 22.02.2010 and 07/10/2009-PROJ/2255 dated 01.03.2013 issued by the Assistant Development Commissioner, Special Economic Zone, Noida.
- (ix) As provided under Section 26 of the SEZ Act, 2005 an entrepreneur is entitled to exemption from, inter-alia, duty of customs under the Customs Act, 1962 or the Customs Tariff Act, 1975 or any other law for the time being in force, on the goods imported into an SEZ Unit to carry out the "Authorised Operations". The Central Government may prescribe the manner in which and the terms & conditions subject to which the exemption is granted.
- (x) The Rule 35 of the SEZ Rules, 2006 mandates that unit shall "account for" the entire quantity of the goods imported or procured duty free, by way of export, sales, or supplies in DTA or transfer to other Special Economic Zone Unit or Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-



technology Park Unit or bonded warehouses and the balance held in stock.

- (xi) The Rule 25 of the SEZ Rules, 2006 mandates that where an entrepreneur does not utilize the goods on which exemption have been availed for the "authorised operations" or is unable to "account for" the same, the entrepreneur is required to refund an amount equal to the benefit of exemption availed without prejudice to any other action under the relevant provisions of the Customs Act, 1962, the Foreign Trade (Development and Regulation) Act, 1992, etc.
- (xii) The Rule 34 of the SEZ Rules, 2006 mandates that the goods admitted into a Special Economic Zone shall be used by the Unit or the Developer only for carrying out the "authorized operations" but if the goods admitted are utilized for purposes other than for the authorized operations or if the Unit or Developer fails to "account for" the goods as provided under these rules, duty shall be chargeable on such goods as if these goods have been cleared for home consumption.
- (xiii) Therefore *prima facie* it is apparent that M/s. Shri Lal Mahal Ltd. has grossly misused the provisions of the SEZ Act/ Rules, the Customs Act, 1962 & other exemption granted to the NSEZ units. The duty Involvement on 431 KG Gold found short on 23.12.2016 (235 KG found short at factory & 196 KG at job worker's end) alone is approx. INR 13.12 crore besides the interest and penalty. Further investigation in the matter is underway.
- (xiv) Till now five persons namely Shri Prem Chand Garg, Shri Rajendra Kumar Garg, Shri Maharishi Dadhichi, Shri Rajesh Kumar Singh and Shri Tapan Kumar Bera, have been arrested for their involvement in this activity of diversion of duty free imported gold and are under judicial custody in Meerut Jail.
- (xv) In view of above, you may like to initiate process of cancellation of letter of approval granted to M/s. Shri Lal Mahal and other suitable action as





Noida Special Economic Zone

(Minutes of Meeting of Approval Committee of Noida SEZ held on 01/03/2017)

applicable under the provisions of the SEZ Act/Rules at your end.”

4. As per reports received from NSEZ Customs, Gold had been taken out by the unit on sub-contracting basis on 7 different occasions between 10/05/2016 to 25/07/2016. Thereafter no sub-contracting permission has been granted to unit. As per NSDL data, details of sub-contracting permissions are as under:

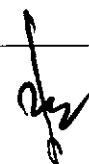
S.No.	Out approved by AO on	Out approved by PO on	In approved by AO on	In approved by PO on
1	18/05/2016*	18/05/2016	24/05/2016	25/05/2016
			24/06/2016	29/06/2016
			29/06/2016	01/07/2016
2	26/05/2016*	26/05/2016	30/06/2016	01/07/2016
			13/07/2016	13/07/2016
3	26/05/2016*	26/05/2016	--	--
4	23/06/2016*	23/06/2016	--	--
5	14/07/2016*	14/07/2016	--	--
6	15/07/2016*	15/07/2016	--	--
7	25/07/2016*	25/07/2016	--	--

[* Date of online approval – Source NSDL]

5. The Specified Officer, NSEZ informed that the actual date of goods taken out and brought in may be different than the approval date on NSDL. Accordingly, the NSEZ Customs verified the details of sub-contracting permissions as under:

S.No.	Goods taken out on	Quantity of goods taken out (Kgs)	Goods brought back to SEZ on	Quantity of Goods brought back to SEZ (Kgs)	Quantity pending for bringing back (Kgs)
1	10/05/2016	75	19/05/2016	9	Nil
			23/06/2016	60	
			29/06/2016	6	
2	12/05/2016	78	29/06/2016	34	Nil
			12/07/2016	40	
			19/12/2016	4	
3	26/05/2016	20	19/12/2016	2	18
4	23/06/2016	10	--	--	10
5	14/07/2016	50	--	--	50
6	15/07/2016	73	--	--	73
7	25/07/2016	45	--	--	45
Total		351		155	196

[Source- Customs, NSEZ]



6. Further, as per Rule 42(1)(h) of SEZ Rules, 2006 [Source- SEZ Rules, 2006 - with amendments upto July, 2010 as available on sezindia website <www.sezindia.nic.in>], "A Unit may take goods, including finished goods requiring further processing or semi-finished or semi-processed goods, including studded jewellery or inputs to the sub-contractor's premises -

(i) for sub-contracting any production process; or

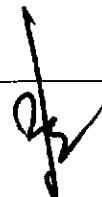
(ii) part of the production, without payment of duty, subject to the condition that

(h) the goods sent out for sub-contracting shall be returned to the Unit within one hundred and twenty days from the date of removal or within such period as may be extended by the Specified Officer for reasons to be recorded in writing for granting such extension;"

7. Accordingly, Approval Committee observed that unit has persistently violated Rule 42(1)(h) of SEZ Rules, 2006 as it has taken the Gold out for job work on 5 different occasions starting 26th May, 2016 to 25th July, 2016 and the goods have not been brought back in the stipulated period of 120 days. Further, unit has neither applied for extension nor such extension has been given by the Specified Officer, NSEZ.

8. Further, as per condition No. 7 of Bond-cum-Legal Undertaking executed by the unit, it had undertaken as under:-

"We, the obligors shall, after the commencement of production or service activities, submit to the Development Commissioner and the Specified Officer, Annual Performance Return within a period of ninety days following the close of financial year, in the form prescribed under the Special Economic Zone Rules, 2006, certified by a Chartered Accountant. In case of wrong submission of such information or failure to submit such information within the stipulated time, the permission granted to us for carrying out the authorized operations may be withdrawn and/or the permission for further imports and sales in the Domestic Tariff Area may be stopped."



However, the unit has not submitted APR for the year 2015-16 till date despite email letter dated 12/09/2016 followed by several reminders dated 27/09/2016, 29/12/2016 and 30/12/2016, which is a violation of the said condition of Bond-cum-LUT executed by the unit. Further, it has also been observed that APR for the year 2012-13, 2013-14 & 2014-15 had been submitted on 16/07/2013, 09/09/2015 & 16/09/2015 respectively by the unit. Hence, unit has persistently failed to submit APRs on time during previous years also.

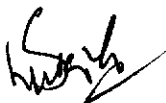
9. In this case, on the basis of documents/information placed before it, the Approval Committee observed as under:

- i) The unit has persistently violated the provisions of SEZ Act/SEZ Rules and terms & conditions of LOA/Bond-cum-LUT.
- ii) The unit has has persistently violated Rule 42(1)(h) of SEZ Rules, 2006 by not bringing back the Gold sent out for sub-contracting within 120 days as required under Rule 42(1)(h) of SEZ Rules, 2006.
- iii) The unit has consistently failed to submit APRs within stipulated time.
- iv) The unit has grossly misused the provisions of Section 26 of the SEZ Act, 2005; Rule 35, Rule 25 and Rule 34 of the SEZ Rules, 2006 & other exemption granted to the NSEZ units as explained by the DRI mentioned in the para 3 above.

10. The Approval Committee further observed that unit has persistently violated the terms & conditions of the LOA/Bond-cum-LUT and SEZ Rules, 2006. The Approval Committee observed that Section 16(1) of the SEZ Act, 2005 provides that Approval Committee may, at any time, if it has any reason or cause to believe that the entrepreneur has persistently contravened any of the terms & conditions subject to which LOA was granted to the entrepreneur, cancel the LOA but such cancellation will not be done unless the entrepreneur has been afforded a reasonable opportunity of being heard.

11. In the light of above observations, the Approval Committee decided as under:

- i) In view of the gravity of violations mentioned above, a notice under Section



16(1) of the SEZ Act, 2005 may be issued calling upon the unit to explain within 21 days of issuance of notice as to why LOA issued to them should not be cancelled for persistently contravening the provisions of SEZ Act/SEZ Rules and terms & conditions of LOA/ Bond-cum-LUT.

- ii) The above actions would be without prejudice to any other action under any other law.

12. Approval Committee further directed that notice for cancellation of LOA be issued by email as well as registered post. The case may be placed in the next meeting of Approval Committee and unit may be provided an opportunity of personal hearing in the next meeting of Approval Committee proposed to be held in NSEZ Service Centre, Noida at 11:30 AM on 05/04/2017.

12. Proposal in respect of M/s. Metenere Ltd. for Review of authorized operations.

It was informed that M/s. Metenere Ltd. (earlier M/s. Met Trade India Ltd.) has been issued LOA dated 25/02/2010 for *Manufacturing of Sputtering Target of various precious metals*. The unit has commenced its export production w.e.f. 04/06/2010 and LOA is currently valid till 03/06/2020.

2. It was also informed that as per DOC letter dated 19.07.2013, only following two activities with minimum value addition by SEZ units engaged in manufacture and export of gold jewellery are allowed:-

Sl. No.	Item of Export	Minimum Value Addition
a.	Plain gold jewellery and articles and ornaments like Mangalsutra containing gold and black beads/imitation stones, except in studded form of jewellery	3%
b.	All types of studded gold jewellery and articles thereof	5%

3. In this regard, it was also informed that earlier another jewellery unit viz. M/s. M.D. Overseas had submitted a proposal to allow for manufacture and export of all permissible Gem & Jewellery items under Para 4.61 of HBOP, 2015-20 as under:-



Noida Special Economic Zone

(Minutes of Meeting of Approval Committee of Noida SEZ held on 01/03/2017)

Page 22 of 24

Sl No	Items of export	Minimum Addition	Value
a)	Plain gold jewellery, Articles, and ornaments like Mangalsutra containing gold and black beads / imitation stones, except in studded form of jewellery.	3.5 %	
b)	All types of Studded gold	6.0% (for those studded with coloured Gem stones) and 7.0% (for those studded with diamonds).	
c)	Any jewellery / articles manufactured by fully mechanised process	2.0 %	
d)	Gold medallions & coins (excluding coins of nature of legal tender)	1.5 %	
e)	Gold / silver / platinum findings / mountings manufactured by mechanised process	2.5 %	

This request of M/s. M.D. Overseas was referred by NSEZ to DOC vide letter dated 25.05.2015. In response to the aforesaid reference, DOC vide letter dated 11.08.2015 had clarified that in view of the instructions issued vide letters dated 25.04.2013 and 19.07.2013, the request of M/s. M.D. Overseas Ltd. for manufacturing and exporting all permissible Gem & Jewellery items under FTP 2015-2020 may not be accepted. Thus as per DOC letter dated 11.08.2015 read with their earlier letters dated 25.04.2013 & 19.07.2013 only two activities in the jewellery sector indicated at (a) and (b) are permitted in SEZ.

4. It was informed to the Approval Committee that M/s. Jindal Dyechem Industries Pvt. Ltd. and M/s. Jindal Exports & Imports Pvt. Ltd. (two approved unit in NSEZ), which were engaged into Manufacturing & export of gold jewellery had earlier submitted a proposal to manufacturing of sputtering targets. In the said proposal, the unit had informed that they have decided to diversify the operations in NSEZ and now wish to manufacture and export **Sputtering Targets as article of precious metal covered under ITC(HS) Code 71159010 with value addition of 0.5%**. It was also stated that these sputtering targets are used in electro-plating (for layering of microfilm of gold) and each piece will contain in terms of value more than 99% of gold and remaining portion will be copper. **The said proposal was rejected by the Approval Committee in its meeting held on 07/10/2015 keeping in view the clarification issued by DOC as**



mentioned in Para 2 & 3 above.

5. It was informed that the issue of classification of Sputtering Targets under CETH No. 85439000 or 71159090 is pending before CESTAT, New Delhi in the case of M/s. Metenere Ltd. However, as reported earlier by the unit, the CESTAT, New Delhi vide order No. 51863/2014 dated 28/04/2014 i.c.o. Appeal No. 57231 of 2013 of M/s. Met Trade India Ltd. (now Metenere Ltd.) had stayed classification of Sputtering Target under 8543900 and stated that the contention of the Jurisdictional Central Excise to classify the same under sub-heading 71159090 is not correct.

As per the CESTAT stay order dated 28/04/2014, "Sputtering Targets consist of a flat piece of copper bonded with a layer of gold or silver or any other metal whose film is to be deposited on a substance. In Physical Vapour Deposition Machine, the Sputtering Targets is bombarded by very high energy atoms of an inert gas like Argon as a result of which the atoms of gold/silver/other metal in Sputtering Targets get ejected and are deposited on a substrate like silicon wafer, forming a thin film. Thus except for use with Physical Vapour Deposition Machine, there is no other use of the Sputtering Targets."

In view of above, in the stay order, CESTAT had stated that the Sputtering Targets have to be treated as components of the Physical Vapour Deposition Machine of heading 8543 and prima facie would be classifiable under sub-heading 85439000. **However, final outcome of the CESTAT on the issue is still awaited.**

6. Shri Ankur Singh, Executive Director of the company appeared before the Approval Committee. He informed that there is no dispute that the same are used with Physical Vapour deposition Machine which is classifiable under 8543. Sputtering Target consists of a Flat Piece of copper bonded with a layer of Gold or Silver or Tin or any other metal whose film is to be deposited on a substrate. In physical Vapour Deposition Machine, the sputtering Target is bombarded by high energy atoms of an inert gas like Argon. As a result of which the atoms of Gold/Silver/Tin/other metal in the sputtering target get ejected and deposited on a substrate like Silicon Wafer, forming a thin film. Thus, except for use with physical vapour deposition machine, there is no other use of the sputtering target. In this view, the sputtering target have to be treated as component of Physical Vapour Deposition machine of heading 8543 and be classifiable as Engineering sector



under sub heading 8543900. He further informed that CESTAT, Appellate Tribunal vide its Stay Order No. 57819 of 2013 in appeal No-57213 of 2113 had confirmed stand of their company.

7. Shri Singh also informed that approx. 200 gms of 24 CT Gold of 99.5% purity is used with 293 gms of Copper in Sputtering Targets. He further informed that in terms of value of the metals in Sputtering Targets, being a precious metal, value of Gold is more than 95% and value of copper and other metal is less than 5%.

8. The Approval Committee examined the matter in detail and observed that in view of the Instructions dated 25/04/2013 & 19/07/2013 and further clarification vide letter dated 11/08/2015, in the SEZ in case of precious metals, export of Plain & Studded jewellery is to be allowed. Other items as given in FTP such as Article of gold, medallions etc. are not be allowed. The Approval Committee was unanimous in its view that these items would actually in nature of article of gold which are having gold more than 95% in terms of value and Gold is 24 Carat of purity. The Approval Committee also noted that the entire export is made to U.A.E.

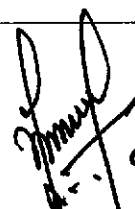
9. However, in view of the fact that extension in the validity of LOA was granted by the Approval Committee in its meeting held on 22/06/2015, the present Approval Committee cannot review the decision.

10. In view of above, the Approval Committee decided that full facts of the case may be placed before the Board of Approval (BOA). It may be categorically stated that in view of the present Approval Committee, the authorized operations i.e. Sputtering Targets cannot be allowed in terms of the clarification issued by DOC on 11/08/2015.

Meeting ended with thanks to the Chair.


(S. S. Shukla)

Jt. Development Commissioner


09/03/17
(Dr. L. B. Singhal)

Development Commissioner