

No. K-43022/40/2022-SEZ
Government of India
Ministry of Commerce and Industry
Department of Commerce
(SEZ Section)

Udyog Bhawan, New Delhi
Dated the 25th July, 2022

OFFICE MEMORANDUM

Subject: 111th Meeting of the Board of Approval (BoA) for Special Economic Zones (SEZs) scheduled to be held on 28th July, 2022 - Supplementary Agenda regarding.

In continuation of this department's O.M. of even number dated 18th July, 2022, the undersigned is directed to enclose herewith the Supplementary Agenda for the 111th meeting of the BoA for SEZs scheduled to be held on 28th July, 2022 for information and necessary action. The agenda has also been hosted on the website: www.sezindia.gov.in.



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24. Development Commissioner, Kandla Special Economic Zone, Gandhidham.
25. Development Commissioner, Falta Special Economic Zone, Kolkata.
26. Development Commissioner, SEEPZ Special Economic Zone, Mumbai.
27. Development Commissioner, Madras Special Economic Zone, Chennai
28. Development Commissioner, Visakhapatnam Special Economic Zone, Visakhapatnam
29. Development Commissioner, Cochin Special Economic Zone, Cochin.
30. Development Commissioner, Indore Special Economic Zone, Indore.
31. Development Commissioner, Mundra Special Economic Zone, 4th Floor, C Wing, Port Users Building, Mundra (Kutch) Gujarat.
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Copy to: PPS to CS / PPS to AS (AY) / PPS to JS (VB)/ PPS to Dir (SNS).

**Supplementary Agenda for the 111th meeting of the Board of Approval to be held on
28th July, 2022 through Video Conferencing**

111.6 Procurement of sand and soil for infrastructural development in SEZ

111.6 (i) Permission for procurement of restricted items (sand and soil) by developer/co-developer/units for infrastructural development/construction activities inside the Special Economic Zones.

As per Section 2(m) of the SEZ Act, 2005, supplying goods, or providing services, from the Domestic Tariff Area to a Unit or Developer amounts to "export". The export policy of DGFT as regards sand and soil which is primarily required for construction activities and infrastructure development is 'restricted'.

The fourth proviso of sub-rule (1) of Rule 27 of the SEZ Rules, 2006 stipulates that for supply of Restricted items by a Domestic Tariff Area Unit to Special Economic Zone Developer or Unit, the Domestic Tariff Area Unit may supply such items to a Special Economic Zone Developer or Unit for setting up infrastructure facility or for setting up of a Unit and it may also supply raw material to Special Economic Zone Unit for undertaking a manufacturing operation except refrigeration, cutting, polishing and blending, subject to the prior approval of Board of Approval.

This department has been receiving proposals for supply of raw material (primarily sand/soil) for infrastructure development/construction purpose in the zone and the same were being placed before the Board of Approval for necessary permission as per the rule position stipulated above. The Board has allowed such procurement from time to time subject to the condition that the allowed items are actually used by the unit and environmental obligations are complied with.

The meeting of the Board of Approval is held at a frequency of once in every two months. During the interactive sessions held on the operational issues faced by the SEZs during the past lockdown owing to the Covid-19 pandemic, the developer/co-developer/units in SEZs had put forth the request to allow them procurement of sand/soil for internal consumption without obtaining approval from BoA so that they can carry out the construction activities without delay.

Accordingly, in order to facilitate the industry, a circular was issued to all DCs with the approval of the Hon'ble CIM on 18.05.2020 delegating the powers to the Development Commissioner to allow procurement of sand and soil from DTA for construction activities subject to the following conditions :

- (i) Items allowed are actually used by the unit.
- (ii) Fulfillment of safeguards and Standard Operating Procedures imposed by MHA (in view of lockdown situation and restrictions prevalent at that time).
- (iii) Environmental obligations prescribed by the MoEF&CC/State Pollution Control Board are met. and
- (iv) Post ratification by BoA, whenever the next meeting is convened.

In light of the said circular, the Development Commissioners are considering such requests raised by the units/developers from time to time and granting approval as per the

delegation. The cases are then received for post-ratification by the Board of Approval as per condition no. (iv) laid down in the said circular.

Since, construction activity is in the routine nature of infrastructure development and the same can be carried out under the close observation of the Development Commissioner, it was proposed that the same may permanently be delegated to the Unit Approval Committee to simplify the procedure and formalities subject to the condition that the items are actually used in the SEZ.

Accordingly, it was proposed to insert a proviso after the 4th proviso to Rule 27(1) to the effect that BoA shall approve proposals for procurement of restricted goods from DTA except in cases of restricted goods which are required by SEZ Developers/units for construction purposes viz. sand and soil. The proposed amendment shall provide certainty and adequate legal basis for such delegation. The following draft formulation was shared with the DGEP and the DGFT vide OM dated 03.02.2021 for their comments:

“Provided that supply of Restricted items by a Domestic Tariff Area unit to Special Economic Zone Developer or Unit for the purpose of construction or for setting up an infrastructure facility shall be subject to the prior approval of the Unit Approval Committee subject to the condition that the items are actually used for the stated purposes.”

Subsequently, DGEP, vide their OM dated 31.01.2022 conveyed that they concur with the proposal for insertion of a proviso in Rule 27(1) after proviso 4th with the following modification and subject to withdrawal of circular dated 18.05.2020:

“Provided also that supply of sand and soil, which is restricted item, as per export policy, by a Domestic Tariff Area to Special Economic Zone Developer or Unit for the purpose of construction or setting up of an infrastructural facility shall be subject to prior approval of the Unit Approval Committee subject to the condition that the items are actually used for the stated purpose.”

DGFT vide their OM dated 14.03.2022 stated that as the item is restricted for exports in the Export Policy, its supply to SEZ/units in SEZ, would require an Export Authorization from O/o DGFT. However, they have also observed that a relaxation has already been built under SEZ Rules, 2006 for items restricted for exports, subject to prior approval of BoA. It has been stated that in view of the existing SEZ Rules and later instructions issued by SEZ Division with the approval of the Competent Authority, DGFT has no further comments/observations to make on the proposed draft notification.

The draft notification was shared with the Legislative Department and the LD inter alia requested this Ministry to reconsider the proposal to amend the said rule with the following observations:

- (i) The proposed amendment empowering the Unit Approval Committee to grant prior approval for the supply of sand and soil which is restricted item as per the export policy for the purpose of construction or setting up of an infrastructure facility is contrary to the provisions of Section 9(2)(d) which confers power upon the Board to grant approval of such proposals.

(ii) The 4th proviso of Rule 27(1), already empowers the Board to approve the supply of restricted items by the Domestic Tariff Area unit to Special Economic Zone developer/unit for setting up infrastructural facilities.

(iii) The Board under Section 9(4) of the Act has power to delegate such powers and functions as it may deem fit, to one or more Development Commissioners.

Accordingly, in light of the observations of the Legislative Department, a revised formulation was shared with them which was as follows:

"Provided also that Development Commissioner may allow supply of sand and soil, which is restricted item, as per export policy, by Domestic Tariff Area to Special Economic Zone Developer or Unit for the purpose of construction or setting up of an infrastructural facility, on recommendation of Approval Committee subject to the condition that the items are actually used for the stated purpose . "

In response, the Legislative Department is of the view that the proposal to confer power upon the Development Commissioner is contrary to Section 9(2) of the Act, the proposed notification could not be issued by the Central Government. However, if it is considered necessary the Board may delegate its power under Section 9(4) of the said Act to one or more Development Commissioners as it may deem fit.

The proposals for ratification of approval granted by the Development Commissioner in light of circular dated 18.05.2020 were last considered in the 106th meeting of the BoA held on 28.09.2021. No such proposal has since been placed before the BoA for consideration/ratification.

In view of the above and in light of the opinion of the Legislative Department, the matter is placed before the Board of Approval for deliberation and decision for delegation of power under Section 9(4) of the SEZ Act to the Development Commissioner(s). A decision on course of action on pending ratification with respect to cases approved by the Development Commissioner may also be taken.

111.7 Transfer of Letter of Approval of the developer (one proposal)

111.7(i) Proposal for transfer of Letter of Approval of the developer, M/s Nokia India Private Ltd. SEZ in favour of M/s Salcomp Manufacturing India Private Limited.

M/s Nokia India Private Limited was granted LoA for setting up a sector specific SEZ for manufacture and assembly of electronics, telecommunications and IT Hardware (including mobile phones, parts, components and accessories for phones and networks) and development of software, R&D activities, training and other services in telecommunication over an area of 210 acre (83.375 Ha) at Sriperumbudur, Tamil Nadu. The said land was leased by SIPCOT to the developer for 99 years. The SEZ was notified on 17.08.2005 followed by subsequent partial denotifications and as on date stands notified over an area of 63.6132 Ha.

DC, MEPZ has informed that the developer suspended its manufacturing operations in the year 2015 and M/s Salcomp Manufacturing India Private Limited acquired Nokia's

manufacturing unit in the year 2020. Further, that the developer is not interested in discharging the functions of a developer of the SEZ since it is not commercially and administratively feasible for them to continue the same and therefore they desire to transfer its developer status.

SIPCOT has given an in-principle consent to transfer the leasehold rights over the entire extent of 63.6132 Ha area of SEZ after deducting the extent of land de-notified over the period of time. Further, that the Hon'ble High Court of Delhi vide order dated 22.12.2021, has allowed the transfer of leasehold rights under Nokia lease in favour of Salcomp. Vide the said order the provisional attachment order issued against Nokia, under Section 281B of the Income Tax Act, 1961, by which the transfer of lease hold rights in respect of properties under Nokia lease were prevented has been lifted.

In this connection, DC has referred to Section 10(1)(a) of the SEZ Act, 2005 which stipulates that if at any time the Board is of the opinion that a developer is unable to discharge the functions or perform the duties imposed on him by or under the provisions of this Act or rules made thereunder, the Board may, on application, or with the consent of the developer, or otherwise, for reasons to be recorded in writing, suspend the letter of approval, granted to the developer for a while or part of his area established as SEZ, for a period not exceeding one year and appoint an administrator to discharge the functions of the developer in accordance with the terms and conditions of the LoA and manage the SEZ accordingly.

A legal undertaking has been submitted by Salcomp Manufacturing India Pvt. Ltd. to undertake rights and liabilities of the developer, compliance of all legal requirements, assessment of taxability of the gain/loss arising, if any, out of the transfer of developer's LoA in favour of the obligor; payment of penalties; tax/duty along with interest and other obligations. As evident from the list of directors, two of the three are Chinese nationals.

In connection to the above, it may be noted that vide Instruction no. 89 dated 17.05.2018, re-organization including change of name, change of shareholding pattern, business transfer arrangements, court approved mergers and demergers, change of constitution may be undertaken with the prior approval of the Board of Approval in respect of developer/co-developer subject to the condition that the developer/co-developer shall not opt out or exit out of the Special Economic Zone and continues to operate as a going concern. All liabilities of the developer/co-developer will remain unchanged on such reorganization.

Subsequently, vide Instruction no. 109 dated 18.10.2021, the aforesaid powers were delegated to the Unit Approval Committee. As per the said instruction, the business transfer arrangements pertaining to developer/codeveloper shall be approved by the UAC subject to the safeguards specified therein. Hence, prima facie it appears that the case shall cover within the ambit of the said instruction.

However, since the LoA is to be transferred to a completely new entity which will be a new developer it is to be deliberated whether cases involving 100% change in the constitution/shareholding pattern/directors shall be placed before the BoA.

111.8 Request for co-developer status (one proposal)

111.8(i) Request of M/s. Bhandari & Sangath Builders LLP, Ahmedabad for approval as co-developer within the dual-use area of non-processing area in GIFT Multi Services SEZ at Ratanpur, District Gandhinagar, Gujarat developed by M/s. GIFT SEZ Limited.

(i)	Name of the Developer & Location	M/s. GIFT SEZ Limited, Villages Ratanpur and Phiropur, District Gandhinagar, Gujarat
(ii)	Date of LoA of Developer	07.01.2008
(iii)	Sector	Multi-services
(iv)	Date of notification	18.08.2011
(v)	Total notified area	105.4386 Ha
(vi)	Proposed Co-developer	M/s. Bhandari & Sangath Builders LLP
(vii)	Details of Infrastructure facilities/authorized operations to be undertaken by the codeveloper	Develop, Construct and operate residential building on building footprint 16C, block no. 16, in the dual use non processing area of GIFT SEZ.
(viii)	Total area on which activities will be performed by the co-developer	2,50,000 sq. ft.
(ix)	Proposed investment by the co-developer	Rs.175 cr
(x)	Net worth of the co-developer	Rs.239 cr
(xi)	Whether entered into a Co-developer agreement, if so date	No. A draft co-developer agreement and draft Lease cum Development Agreement has been provided. It has been mentioned that the agreement will be made on getting the mandatory approval from the BoA and DC.

DC, GIFT SEZ has informed that the draft lease agreement is for 99 years and provisional letter of allotment for development of residential sub project over land area admeasuring 3872 sq. mtrs. (0.3872 ha) with development rights of 2,50,000 sq. Feet for residential buildings. Further, the developer of the multi services SEZ has already obtained the requisite No Objection Certificate from the Government of Gujarat on 07.10.2021 for the dual use area in the Non-processing area for 63.84 acres (25.8353 ha).

Recommendation by DC, GIFT SEZ:-

In view of the increase in economic activity and other developments at GIFT SEZ, Gandhinagar, DC, GIFT SEZ has recommended the proposal in terms of Rule 11(10) of the SEZ Rules read with Rule 11(A)(1) of the SEZ Rules, 2006 without any fiscal benefits subject to consideration and approval by the Board of Approval.
