

No. F.2/3/2019-SEZ
Government of India
Ministry of Commerce and Industry
Department of Commerce
(SEZ Section)

....

Udyog Bhawan, New Delhi
Dated the 30th May, 2019

OFFICE MEMORANDUM

Subject: Supplementary Agenda for the (90th) Meeting of the Board of Approval for Special Economic Zones (SEZs) scheduled to be held on 6th June, 2019 at 11.30 A.M in Room No. 141, Udyog Bhawan, New Delhi – regarding.

In continuation of this Department's O.M of even number dated 23rd May, 2019, the undersigned is directed to forward herewith the Supplementary Agenda for the 90th meeting of the Board of Approval for SEZs scheduled to be held on 6th June, 2019, for information and necessary action. A copy of the Supplementary Agenda has also been hosted on the website: www.sezindia.nic.in. The addressees located outside Delhi are requested to download the Agenda from the above mentioned website.

2. The addressees are requested to make it convenient to attend the meeting.



(Aditya Narayan)
Under Secretary to the Government of India
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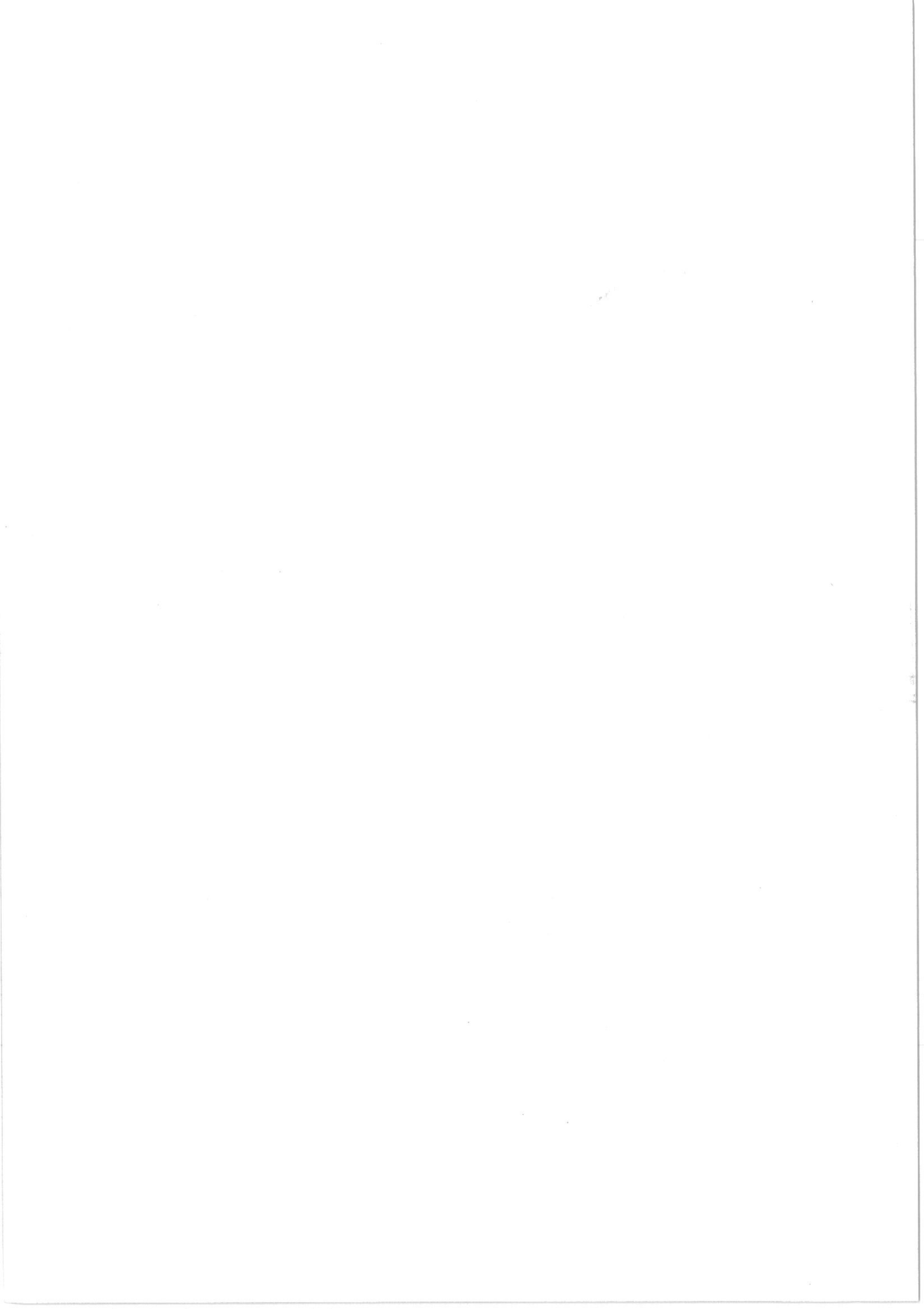
To

1. Central Board of Excise and Customs, Member (Customs), Department of Revenue, North Block, New Delhi. (Fax: 23092628).
2. Central Board of Direct Taxes, Member (IT), Department of Revenue, North Block, New Delhi. (Telefax: 23092107).
3. Joint Secretary, Ministry of Finance, Department of Financial Services, Banking Division, Jeevan Deep Building, New Delhi (Fax: 23344462/23366797).
4. Joint Secretary, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi.
5. Joint Secretary, Ministry of Shipping, Transport Bhawan, New Delhi.
6. Joint Secretary (E), Ministry of Petroleum and Natural Gas, Shastri Bhawan, New Delhi
7. Joint Secretary, Ministry of Agriculture, Plant Protection, Krishi Bhawan, New Delhi.
8. Ministry of Science and Technology, Sc 'G' & Head (TDT), Technology Bhavan, Mehrauli Road, New Delhi. (Telefax: 26862512)
9. Joint Secretary, Department of Biotechnology, Ministry of Science and Technology, 7th Floor, Block 2, CGO Complex, Lodhi Road, New Delhi - 110 003.

10. Additional Secretary and Development Commissioner (Micro, Small and Medium Enterprises Scale Industry), Room No. 701, Nirman Bhavan, New Delhi (Fax: 23062315).
11. Secretary, Department of Electronics & Information Technology, Electronics Niketan, 6, CGO Complex, New Delhi. (Fax: 24363101)
12. Joint Secretary (IS-I), Ministry of Home Affairs, North Block, New Delhi (Fax: 23092569)
13. Joint Secretary (C&W), Ministry of Defence, Fax: 23015444, South Block, New Delhi.
14. Joint Secretary, Ministry of Environment and Forests, Pariyavaran Bhavan, CGO Complex, New Delhi – 110003 (Fax: 24363577)
15. Joint Secretary & Legislative Counsel, Legislative Department, M/o Law & Justice, A-Wing, Shastri Bhavan, New Delhi. (Tel: 23387095).
16. Department of Legal Affairs (Shri Hemant Kumar, Assistant Legal Adviser), M/o Law & Justice, Shastri Bhawan, New Delhi.
17. Secretary, Department of Chemicals & Petrochemicals, Shastri Bhawan, New Delhi
18. Joint Secretary, Ministry of Overseas Indian Affairs, Akbar Bhawan, Chanakyapuri, New Delhi. (Fax: 24674140)
19. Chief Planner, Department of Urban Affairs, Town Country Planning Organisation, Vikas Bhavan (E-Block), I.P. Estate, New Delhi. (Fax: 23073678/23379197)
20. Director General, Director General of Foreign Trade, Department of Commerce, Udyog Bhavan, New Delhi.
21. Director General, Export Promotion Council for EOUs/SEZs, 8G, 8th Floor, Hansalaya Building, 15, Barakhamba Road, New Delhi – 110 001 (Fax: 223329770)
22. Dr. Rupa Chanda, Professor, Indian Institute of Management, Bangalore, Bennerghata Road, Bangalore, Karnataka
23. Development Commissioner, Noida Special Economic Zone, Noida.
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.
32. Development Commissioner, Dahej Special Economic Zone, Fadia Chambers, Ashram Road, Ahmedabad, Gujarat
33. Development Commissioner, Navi Mumbai Special Economic Zone, SEEPZ Service Center, Central Road, Andheri (East), Mumbai – 400 096
34. Development Commissioner, Sterling Special Economic Zone, Sandesara Estate, Atladra Padra Road, Vadodara - 390012
35. Development Commissioner, Andhra Pradesh Special Economic Zone, Udyog Bhawan, 9th Floor, Siripuram, Visakhapatnam – 3
36. Development Commissioner, Reliance Jamnagar Special Economic Zone, Jamnagar, Gujarat
37. Development Commissioner, Surat Special Economic Zone, Surat, Gujarat
38. Development Commissioner, Mihan Special Economic Zone, Nagpur, Maharashtra
39. Development Commissioner, Sricity Special Economic Zone, Andhra Pradesh.
40. Development Commissioner, Mangalore Special Economic Zone, Mangalore.

41. Government of Gujarat, Principal Secretary, Industries and Mines Department Sardar Patel Bhawan, Block No. 5, 3rd Floor, Gandhinagar – 382010 (Fax: 079-23250844).
42. Government of Tamil Nadu, Principal Secretary (Industries), Fort St. George, Chennai – 600009 (Fax: 044-25370822).
43. Government of Uttar Pradesh, Principal Secretary, (Industries), Lal Bahadur Shastri Bhawan, Lucknow – 226001 (Fax: 0522-2238255).
44. Government of Madhya Pradesh, Chief Secretary, (Commerce and Industry), Vallabh Bhavan, Bhopal (Fax: 0755-2559974)

Copy to: PPS to CS / PPS to AS (BBS) / PA to DS (SNS).



**Supplementary Agenda for the 90th meeting of the Board of Approval to be held on
6th June, 2019 at 11.30 A.M. in Room No. 141 ,UdyogBhawan, New Delhi**

Item No. 90.9 Requests for extension of LoP beyond 3rd Year onward (one proposal)

- As per Rule 18(1) of the SEZ Rules, the Approval Committee may approve or reject a proposal for setting up of Unit in a Special Economic Zone.
- Cases for consideration of extension of Letter of Permission (LoP)s i.r.o units in SEZs are governed by Rule 19(4) of SEZ Rules.
- Rule 19(4) states that an LoP shall be valid for one year. First Proviso grants power to DCs for extending the LoP not exceeding 2 years. Second Proviso grants further power to DCs for extending the LoP for one more year but subject to the condition that two-thirds of activities including construction, relating to the setting up of the Unit is complete and a Chartered Engineer's certificate to this effect is submitted by the entrepreneur.
- Extensions beyond 3rd year (in cases where two-third activities are not complete) and 4th year are granted by BoA.
- BoA can extend the validity for a period of one year at a time.
- There is no time limit up to which the Board can extend the validity.

90.9 (i) Request of M/s. Temple Packaging Pvt. Ltd. a unit in Indore SEZ for extension of Letter of Permission (LoP) beyond 27.07.2019 for one year upto 27.07.2020.

- LOA issued on (Date) : 28.07.2014
- Nature of business of the unit : Manufacturing of High Density Poly Ethylene (HDPE) containers, Child Resistance Closure (CRC) & Continuous Thread Closure (CTC) (screw type) closures.
- No. of Extensions : (3) by DC, ISEZ and (1) by BoA
- LoA valid upto : 27.07.2019
- Request : For further extension for 1 (One) Year up to 27.07.2020

Present Progress:

a) Details of Business Plan:

Sr No	Type of Cost	Proposed Investment (Revised) (Rs. In crore)
1	Land	1.65
2	Site Development & Building construction	26.60
3	Plant & Machinery including Electrical Installations	22.43
4	Pre-Operative Expense/Other Misc. Capital Expenditure (CAPEX)	1.30
	Total	51.98

The capital cost of the project has increased due to up-gradation of technology of the plant & machinery and increase in the value of dollar in view of currency fluctuations and increase in the cost of building construction.

b) Incremental Investment made so far and incremental investment since last extension:

Sr No	Type of Cost	Total Investment made so far (Rs in Cr)	Incremental Investment since last extension (Rs in Cr) up to 27.07.2018
1	Land	1.66	0.00
2	Site Development & Building Construction	26.42	3.97
3	Plant & Machinery including Advances (inclusive of Electrical Installation, utilities and Computers)	19.43	12.37
4	Pre-Operative Expense/Other Misc. Capital Expenditure (CAPEX)	1.30	0.84
	Total	48.81	17.18

c) Details of the physical progress till date:

Sr No	Activities	%completion	% completion during last one year	Deadline for the Completion of the Balance work
1	Land	100%	--	--
2	Site Development	100%	5%	1 month
	Building construction	98%	3%	3-4 months (as linked to machine installation)
3	Plant & Machinery including Advances (inclusive of Electrical Installation, utilities and Computers)	75%	28%	5-6 months
4	Pre-Operative Expense/Other Misc. Capital Expenditure (CAPEX)	80%	35%	2-3 months
	Total	86%		

Detailed Reasons for Delay:

The Indore SEZ unit of the company being set up in the Zone is in the final stage of completion, however, due to the reason narrated below, the unit could not start the commercial production before the date of validity of Letter of Approval (LoA) i.e. upto 27.07.2019:-

In order to conform to the latest packaging norms/requirement, the plant and machineries required to be installed at the unit had to be technically upgraded with latest versions as per the packaging requirements of the pharmaceutical companies for their USA market. Further, as the machines are technically very advanced, their selection, discussions and negotiations with suppliers took a considerably long time. In addition, these machines have a very long delivery

schedule from the supplier side. Thus, the delivery and erection of the machines took a very long time which have now been received in the unit.

Further, all the permissions, approvals and registrations taken from various Govt. Deptt. took considerable amount of time and thereafter the company started implementing the project. Presently, the company has completed construction activity on Plot No. A-4, Indore SEZ, Phase II, Pithampur and installation of plant & machinery and equipments is under process.

The company has assured to undertake best of its efforts to complete erection of plant & machinery with the next 5-6 months. After the erection of the machines, it will take around 3-4 months for undertaking the trial runs, obtaining approval from USFDA and simultaneously invite the prospective customers to conduct audit and validation of the manufacturing facility during the further requested period of one year. The company has therefore assured to complete the project with 2019-20.

Recommendation by the DC:-

DC, Indore SEZ has recommended the request of extension of LoP for a further period of one year upto 27.07.2020 in view of the following:-

Unit has made expenditure of Rs. 48.81 crores against the revised projected cost of Rs. 51.98 crores. An amount of Rs. 17.18 crores has been incurred since the last extension and physical progress of the project is 86%.

The request is placed before BOA for its consideration.

Item No. 90.10: Change of Shareholding Pattern/Change of name (one proposal)

In terms of DoC's Instruction No. 89 dated 17.05.2018, re-organization in respect of developer and co-developer including change in shareholding pattern, court approved mergers and de-mergers in case of developer/co-developer are to be undertaken by the Board of Approval.

90.10(i) Request of M/s. Vessel Warehousing Private Ltd., co-developer in M/s. J. Matadee FTWZ, at Mannur and Valarpuram Villages, Sriperumbudur for change in shareholding pattern.

M/s. Vessel Warehousing Private Limited was granted co-developer status on 21.03.2013. The proposal is for approval of change in their shareholding pattern. 99.99% of the shareholding of the company by transfer of 1,99,999 shares held by M/s. Ammon Holdings I Pte. Ltd., a company incorporated under the laws of Singapore, having its principal place of business at #16-03 Tower 2, Marina Bay Financial Centre, 10 Marina Boulevard, Singapore to M/s. Cella Holdings the same address of the former company in Singapore.

The details of shareholding pattern of the company both prior to transfer and post transfer is given below:-

Shareholding pattern prior to transfer		Shareholding pattern after transfer	
Name of the shareholder	Percentage of shareholding	Name of the shareholder	Percentage of shareholding
M/s. Ammon Holdings I Pte. Ltd., Singapore	99.999%	M/s. Cella Holdings Pte. Ltd., Singapore	99.999%
M/s. Xander Investment Holdings XXVI Ltd., Mauritius	0.001%	M/s. Xander Investment Holdings XXVI Ltd., Mauritius	0.001%

DC, MEPZ has informed that there is no change in the Board of Directors of company.

Recommendation by DC:

DC, MEPZ has recommended the proposal.

The request is placed before BOA for its consideration.

Item No. 90.11 Renewal of LoA of used and worn clothing unit(one proposal)

90.11 (i) Proposal of M/s Texool Spinners for renewal of LOA for next five years in terms of Rule 18(4) of SEZ Rules'2006.

M/s Texool Spinners was issued LOA on 22.06.2004 for "Manufacture of woolen and synthetic yarn". The unit commenced its production w.e.f. 01.06.2005 and its LOA is valid till 31.05.2019. As informed by DC, KASEZ, as per the condition of the original LOA of M/s Texool Spinners, they were not allowed to direct import of the used and worn clothing and instead was granted approval subject to the condition that they will procure their raw material only on the basis of intra zone purchase from their sister concern M/s Texool Weastseavers (now name changed to M/s Lotus Recyclers or from other reprocessing of worn clothing units of KASEZ). Therefore, they were not earlier treated as worn and used clothing reprocessing unit. The unit's request for deletion of the above condition of non direct import of used and worn clothing was rejected by UAC in its 97th meeting held on 06.06.2016 on the ground that deletion of the said condition would mean grant of new LoA for worn and used clothing under which the said unit will import second hand used clothing which will violate the Rule 18 (4)(c) of SEZ Rules, 2006.

Aggrieved with the above decision of the UAC M/s. Texool Spinner went into appeal before the BoA and the BoA in its 72nd meeting held on 12.08.2016, rejected the appeal of the unit with the observation that the activity proposed by the appellant falls under the restriction imposed by Rule 18 (4)(c) of SEZ Rules, 2006. The unit has filed SCA No. 18626 of 2016 before the Hon'ble High Court of Gujarat against the decision of the BoA. The said appeal is pending before the Hon'ble High Court of Gujarat.

DC, KASEZ had further informed that in the meanwhile since such procurement of imported used and worn clothing on intra zone purchase basis was also covered in the definition of import under Section 2(o) of SEZ Act, 2005 and as such they were also required to comply with the DoC Policy Guidelines dated 17.09.2013. The matter was taken up in the UAC in its 121st meeting held on 13.12.2017 wherein it was held that M/s Texool is also a worn clothing unit and that they were also required to comply with the DoC Policy Guidelines dated 17.09.2013.

Aggrieved with the decision of the UAC, the unit went into appeal before BoA and the BOA in its 81st meeting dated 05.02.2018 has upheld the decision of the UAC and also rejected the appeal of the unit. Minutes of the BoA is reproduced as under-

"The Board, after hearing the Appellant noted that as per the original WA dated 22.06.2004, the unit was authorized to export all its items excluding rejects and sales in the DTA as per provisions of the SEZ Scheme. It was also noted that the Appellant had approached the UAC KASEZ for approval for allowing DTA clearance of rejects i.e. wipers on the ground that they were not importing the worn/used clothing from outside India. However, as per Section 2 (a) of SEZ Act, 2005 procurement from units in SEZs are also import.

Therefore, the contention of the unit that they are different from other units operating under Policy Guidelines dated 17.09.2013 in respect of Used and Worn Clothing Units is not tenable. Therefore, the Board, decided that the appeal is liable for rejection."

In the meanwhile, LoA validity of M/s Texool Spinners is expiring on 31.05.2019. DC while forwarding the proposal for the 89th meeting of the BoA had informed that the unit has requested to renew their LOA for another five years. Details of unit are as under:

(i) The unit has filed form F-1 for renewal of their LoA on 06.03.2019 before 60 days of expiry of their LoA as per Rule 19 (6A)(1) of SEZ Rules. According to F-1, the details of current block is as under-

In lakhs			
Year	Free on board value	*Foreign Exchange	Net Foreign Exchange
2014-15	324.57	327.67	-3.10
2015-16	267.61	192.64	74.97
2016-17	624.93	185.17	439.76
2017-18	600.59	451.50	149.09
2018-19 (Upto 28.02.2019)	602	615.67	-13.67
Total	2419.70	1772.65	647.05

The unit has shown projection for next five years as mentioned below-

In lakhs			
Year	Free on board value of Export	*Foreign Exchange Outgo	Net Foreign Exchange Earnings
1st year	500	450	50
2nd year	550	500	50
3rd year	600	550	50
4th year	650	600	50
5th year	750	700	50
Total	3050	2800	250

Further in terms of criteria laid down under Rule 19 (6B), evaluation of performance of the unit is as under-

- (i) Employment generated- That presently, they employ around 122 (Men 80 + Women 42) unskilled and skilled labours.
- (ii) Instance of violation of applicable statutes related to the functioning of the unit- No such case noticed in the last five years.
- (iii) Cases of default, if any, of statutory payments- The unit has pending dues of Rs. 1,20,297/- on account of Lease Rent and user charges to KASEZ Authority till 31.03.2019.
- (iv) Undertaking of any activity not sanctioned or approved by the Development Commissioner- No such case noticed in the last five years.

The proposal was considered in the 89th meeting of the Board of Approval held on 22.04.2019 and the Board noted that the unit had approached the Hon'ble High Court of Gujarat against the decision of the BoA in its 72nd meeting held on 12.08.2016 in respect of his appeal against the decision of the UAC for deletion of condition of non-direct import of used and worn clothing. Considering that the matter is sub-judice, the Board, deferred the matter and directed

that the case may be strongly contested in the interest of the Union of India before the Hon'ble High Court of Gujarat.

Now, as informed by DC, the unit vide their letter dated 22.05.2019 has informed that they offer to unconditionally withdraw the writ filed in the Gujarat High Court in the event they are treated at par with the other 15 units whose LoA has been renewed upto 30.11.2019, with further extension, as per the report of the Committee appointed by the Ministry. They have further stated that the report of the Committee would be binding on them and also declare that they will not litigate further on the issue at a later date.

Recommendation by DC:

The request of M/s Texool Spinners for renewal of LOA for next five years beyond 01.06.2019 has been forwarded for placing before BOA in terms of Rule 18(4) of SEZ Rules, 2006, with the following recommendations:-

(i) Their extension of validity be considered only upto a period of 30.11.2019 as decided in the case of such other 15 worn clothing units for the sake of uniformity. However, formal approval for the extension of validity shall not be granted till the unit formally withdraws the case from the Hon'ble High Court of Gujarat (in case BoA decides to grant extension of validity) as stated by them.

(ii) Any further extension may be considered subject to the report of Committee of DC's constituted by the BOA and unit's performance.

The request is placed before BOA for its consideration.

Item No. 90.12 Proposal for setting up of an FTWZ (In-principal approval) (one proposal)

90.12 (i) Request of M/s. NDR Infrastructure Pvt. Ltd. seeking in-principle approval for setting up of a FTWZ at Nandiyambakkam Village, MinjurPanchayat, Ponneri Taluk, Tiruvallur District, Tamil Nadu in an area of 40 Ha (100 acres).

The prescribed documents for setting up of new SEZ for the consideration of the BoA and the status thereof are as follows:-

S. N.	Condition/Documents required	Status
A.	Documents required for setting up of SEZ in terms of Rule 3 of SEZ Rules, 2006:	
(i)	Completed Form A (with enclosures)	
a)	Total Proposed Investments :	Rs. 29224.04 Lakhs
b)	In case of FDI amount & Source of origin :	Nil
c)	Proposed Employment (in Nos.) :	The facility is likely to generate significant direct & indirect employment. While the FTWZ operations would require a man power of 50-60 people, the units in the facility, labour requirement, delivery personnel, agents etc would have significant scope for employment. Atleast 1000+ unskilled man power and about 300 skilled man power would be

	d) Proposed Exports (in US\$) :	working at the facility.
		Figures not available.
(ii)	DC's Inspection Report	Yes
(iii)	State Government's recommendation	The Industries Department, Government of Tamil Nadu vide letter dated 08.03.2019 has recommended the proposal for "in principle approval" subject to the prescribed conditions of their Housing & Urban Development Department and that the company should submit land records and ownership documents including Tahsildar Certificate once it completes the land purchase based on which recommendation for formal approval will be sent to DoC
(iv)	Recommendation for National Security Clearance (NSC) from Ministry of Home Affairs as per Rule 3 of SEZ Rules, 2006	DC, MEPZ vide letter dated 24.05.2019 has informed that the Developer has stated that their proposed FTWZ area is neither located in vicinity of 50 kms from LOC/LAC/International Border nor in the proximity of nuclear, space, defence installation or installations notified under the Official Secrets Act, 1923.
B.	Minimum area requirements in terms of Rule 5 of SEZ Rules, 2006:	Yes, (condition met)
	Fulfillment of minimum land area requirement in terms of the Rule 5 of the SEZ Rules, 2006 (40 hectares)	
C.	Details to be furnished for issue of notification for declaration of an area as SEZ in terms of Rule 7 of SEZ Rules, 2006:	
	Certificate from the concerned State Government or its authorized agency stating that the Developer(s) have;	
(i)	Legal possession	Certificate from Tehsildar has been provided for 34.22 Ha land in possession of developer. As per the proposal the company has entered into agreement with the land owners for purchase of 18 acres, details/documents not provided.
(ii)	Irrevocable rights to develop the said area as SEZ	Not provided
(iii)	that the said area is free from all encumbrances	Translation of Certificate of encumbrance (Tamil) not provided.
(iv)	Where the Developer has leasehold right over the identified area, the lease shall be for a period not less than twenty years	Not provided.
(v)	The identified area shall be Contiguous, Vacant and No public thoroughfare	Not provided

The proposal was deferred in the 89thBoA meeting of the Board of Approval held on 22.04.2019.

Recommendation of DC:

DC, MEPZ had recommended the proposal for "in-principle approval" for consideration of BoA.

90.13 Proposal for setting up of new SEZ (one proposal)

90.13 (i) Request of M/s. Yash Technologies Pvt. Ltd. for setting up of an SEZ for IT/ITES at Plot No. 1, Scheme No. 166, Distt. Indore, Madhya Pradesh over an area of 5.719 hectares.

Earlier while recommending the proposal for consideration of the Board of Approval, DC, Indore had mentioned that the project is coming up in Indore and has proximity to Raja Rammanna Centre for Advanced Technology, which is a unit of Department of Atomic Energy and that otherwise also there are a number of Defence installations in Mhow, which is adjoining Indore. DC had recommended that National Security Clearance may be obtained. The proposal was placed before the BoA in its 89th meeting held on 22.04.2019 and the Board, after deliberations, decided to defer the proposal in view of the non-availability of National Security Clearance from MHA. Meanwhile, vide their letter dated 09.05.2019, DC, Indore withdrew their recommendation for obtaining NSC for the project on the ground that there is no foreign investment. In the meantime, DoC had also received a copy of the revised guidelines for assessment of proposals for NSC from MHA on 10.05.2019. The revised guidelines were circulated to all DCs for their information and DC, Indore was also requested to re-examine the proposal in view of the revised guidelines.

Now, vide their letter dated 23.05.2019, DC, Indore has stated that :

- Two of the three Directors of the company are based abroad.
- The Indian Company, M/s Yash Technologies Pvt. Ltd., which has applied for formal approval is itself a subsidiary of M/s Yash Technologies Inc. in the US, and in its investment plan, the Indian company has stated that they would be taking a term loan from a nationalized bank and that all the funds are being arranged from the existing reserves and surplus from M/s Yash Technologies Private Limited..
- Considering the gist of pre-revised guidelines and that there are defense installations adjoining Indore, it had earlier been recommended by their office that NSC should be obtained on grounds of geographical sensitivity. Now, as per the revised guidelines, geographical sensitivity is applicable for areas in proximity of defense installations but only in those cases involving foreign investment from countries of concern. NSC is not required in this case in terms of the revised guidelines.

DC, ISEZ has accordingly recommended the request for grant of Formal Approval for setting up of sector specific IT/ITES SEZ to the Developer. The prescribed documents for setting up of new SEZ for the consideration of the BoA and the status thereof as informed by DC, Indore are as follows:-

S. N.	Condition/Documents required	Status
A.	Documents required for setting up of SEZ in terms of Rule 3 of SEZ Rules, 2006:	
(i)	Completed Form A (with enclosures)	
d)	Total Proposed Investments :	Rs.199.54 crores
e)	In case of FDI amount & Source of origin :	Nil
f)	Proposed Employment (in Nos.) :	Direct : 16200 Indirect : 2048
g)	Proposed Exports (in US\$) :	Rs.2000 crores

(ii)	DC's Inspection Report	As in the forwarding letter
(iii)	State Government's recommendation	Industrial Policy & Investment Promotion Department of Govt. of Madhya Pradesh vide letter dated 08.04.2019 has recommended the proposal for grant of formal approval.
(iv)	Recommendation for National Security Clearance (NSC) from Ministry of Home Affairs as per Rule 3 of SEZ Rules, 2006	As detailed in para 2 above, DC, Indore has observed that National Security Clearance in this case in terms of the revised guidelines of MHA is not required. Self declaration of the developer has been provided.
B.	Minimum area requirements in terms of Rule 5 of SEZ Rules, 2006:	DC, Indore has stated that the minimum built up area requirement is 50,000 sq. mtr. and the Developer has undertaken to have minimum built up area of 50,000 sq. mtr. for the SEZ vide letter dated 15.03.2019. The undertaking has been provided.
	Fulfillment of minimum land area requirement in terms of the Rule 5 of the SEZ Rules, 2006	
C.	Details to be furnished for issue of notification for declaration of an area as SEZ in terms of Rule 7 of SEZ Rules, 2006:	
	Certificate from the concerned State Government or its authorized agency stating that the Developer(s) have;	
(i)	Legal possession	The Indore Development Authority has certified the legal possession, free hold rights of developer and free from all encumbrances vide letter dated 11.04.2019. Land allotment order dated 13.03.2019 has been provided.
(ii)	Irrevocable rights to develop the said area as SEZ	
(iii)	that the said area is free from all encumbrances	
(iv)	Where the Developer has leasehold right over the identified area, the lease shall be for a period not less than twenty years	Land is under legal possession over 5.719 Ha of land.
(v)	The identified area shall be Contiguous, Vacant and No public thoroughfare	The Indore Development Authority has vide letter dated 11.04.2019 certified that the area is contiguous, vacant and there is no public thorough fare.

Recommendation of DC:

DC, Indore SEZ has requested for inclusion of the proposal in the agenda for consideration of the request of the Developer.

Accordingly, the request is placed before BoA for its consideration.

90.14 Appeal (one proposal)

90.14(i) Reconsideration of appeal in compliance of judgment dated 22.04.2019 of the Hon'ble High Court of Delhi in case of M/s Morgan Tectronics Limited.

M/s Morgan Tectronics Ltd, was granted an LOA on 31.07.1991 to set up a unit in Noida SEZ for manufacturing of consumer electronic hardware items, loader with lens for VCD players and trading activities as amended from time to time, subject to the condition imposed therein. The unit commenced its export production w.e.f. 10.08.1991. The LoA was last renewed upto 31.03.2017.

The UAC in its meeting held on 06.01.2016 reviewed authorized operations of the unit in wake of a number of reports about contravention of provisions of SEZ Act, 2005 by the unit. The UAC observed that the unit had been persistently contravening the provision of the Act as well as the LoA and also indulged in mis-declaration of goods.

The Directorate of Revenue Intelligence, New Delhi found that M/s Morgan Tectronics Ltd. imported disassembled LED TVs by mis-declaring the same as LED panels and clearing the same into DTA after availing exemption of Basic Customs Duty. The investigation of the DRI further indicated that the unit was playing the role of a facilitator for actual importer of the goods. The duty free goods imported after availing benefit of customs duty exemption in the name of SEZ units were cleared as DTA clearances to the actual importer of the goods.

Accordingly, the UAC decided to cancel the LoA issued to the unit under Section 16 of the SEZ Act, 2005 with the condition that no further import & export would be allowed to the unit. NFE would be calculated as per the SEZ Rules and in case the unit failed to achieve positive NFE suitable action in terms of Rule 54 of the SEZ Rules, 2006 read with Section 11 of the FT(D&R) Act, 1992 would be taken and that the unit should complete exit formalities under Rule 74 of SEZ Rules, 2006. The decision of the UAC was conveyed to the unit vide order dated 14.01.2016.

Aggrieved with the decision of the UAC, the unit filed an appeal (**Annexure-I**) for consideration of the BoA on the ground that the UAC did not give ample opportunity to the unit to hear and defend their problem. The appeal was deliberated before the Board of Approval in its 70th meeting held on 28.04.2016 and the appellant was heard. The Board directed the appellant represented by his advocate to furnish the details of manufacturing and trading activities of the unit and their NFE status separately, consignment wise which he desired to place before the BoA as additional information within a period of one week.

The unit had furnished the statement/inputs in connection with physical export DTA Sale/NFE to DoC which were forwarded to DC, NSEZ for verification. DC, NSEZ had stated that since the unit failed to provide the documents regarding details of EEFC Account of DTA buyer or Free Foreign Exchange received from overseas, NFE position cannot be determined.

The Board in its 73rd meeting held on 09.11.2016 took into account the observations of UAC and the fact that many cases were registered by different revenue agencies against M/s Morgan Tectronics Ltd. at DRI, Lucknow Zonal Unit and NSEZ, Customs and DRI, HQ New Delhi. The Board observed that no grounds have been made for the appeal and hence rejected the appeal.

Aggrieved with the decision of the Board, the appellant filed a Writ Petition (Civil) No. 11728/2016 before the Hon'ble High Court of Delhi. The Hon'ble Court vide judgment dated 22.04.2019 has disposed of the case with the following directions:-

“24. As is apparent from the above, the petitioner's explanation that its records had been seized by the DRI and, therefore, they were not in a position to submit the same, was not accepted by the BoA. The BoA held that the details of payments received from EEFC account or from overseas buyers would be through normal banking channels and the same could be provided by the petitioner.

25. It is contended on behalf of the petitioner that LoA had been extended from time to time as the petitioner had been regularly achieving positive Net Foreign Exchange position. It is contended that the petitioner was unable to provide the requisite details at the material time as its records had been seized, however, is now in a position to provide the same.

26. It is also noticed that the BoA had also taken an adverse view regarding the mis-declaration of goods covered under certain Bills of Entry (XXXX) It has also noticed that the petitioner had paid an aggregate sum of Rs.50 lakhs towards duty/penalty/fine as a result of the investigation carried out against the specified Bills of Entry.

27. *The petitioner asserts that it had paid the penalty/fine without prejudice to its rights. Further, it has prevailed before the Central Excise and Service Tax Appellate Tribunal (CESTAT) and the said amount is now required to be refunded to the petitioner. Clearly, if the petitioner has succeeded in establishing that it was not liable to pay the duty/penalty/fine as imposed, no adverse view taken on that ground can be sustained.*

28. *In the aforesaid circumstances, this Court considers it apposite that the BoA re-examine the petitioner's contention in the light of the decision rendered by the CESTAT. It would also be apposite for the BoA to consider the petitioner's contention that it had in fact achieved a positive NFE if the petitioner places the necessary documents to establish the same.*

29. *In view of the above, the impugned order is set aside and the matter is remanded to the BoA to consider the petitioner's appeal afresh. The petitioner is also at liberty to file further documents in support of its claim that it had achieved positive NFE, within a period of two weeks from today.*

30. *The petition is disposed of in the aforesaid terms. The pending application is also disposed of."*

Now the appellant has made his submission for consideration of the BoA vide letter dated 06.05.2019(**Annexure-II**) stating that the last LoA was valid for the period of five years i.e. upto 31.03.2017, however, the same was suspended on 14.01.2016 prematurely mainly on the ground of customs proceedings in respect of some Bills of Entry which proceedings have been decided in applicant's favour. That NFE may be calculated cumulatively for the period of five years and in the present case the applicant due to suspension of LoA prematurely couldn't achieve the export targets. The appellant requests that the LoA may be reinstated at least for the balance period of 15 months so as to enable the appellant to prove its NFE capability.

The appellant has submitted that after the LoA of the applicant was suspended, in order to save the overseas buyers and to maintain the continuity of business the export orders were diverted to the sister concern M/s Pertech Exports Pvt. Ltd. The said unit in same SEZ wherein the applicant's directors hold major shareholding and the directors of the applicant and sister concern are relatives (Wife and Daughter). Due to cancellation of LoA of the appellant the export orders were diverted to the above unit and during FY 2018-19 identical items valued approx. USD 104.45 lakh were exported by the applicant and BRC for approx USD 35.99 lakh were received.

The fresh submissions of the unit including Calculation Sheet showing export-import for the period 2012-13 to 2014-15, the Statement Showing Exports of Rs.61.5 cr. approx., details of payment received in foreign currency (BRC's) and sample copies of Shipping Bills and BRC-M/s Pertech Exports Private Limited (sister unit) alongwith the judgment of the Hon'ble High Court of Delhi and CESTAT were furnished to DC, NSEZ for their verification.

Now, vide letter dated 24.05.2019, DC, NSEZ has informed the following :

- (a) On going through the details of Export, Import and NFE for the current block of five years effective from 01.04.2012 as furnished by the unit for the year 2012-13, 2013-14 and 2014-15 to the BOA vide its letter dated 06.05.2019, it is observed that the details of export, deemed export, import and NEE though are as reflected by the unit in its APRs which are reproduced below in Table 1 (column 1-10):-

Table 1					Rs. Lakhs					
Year	GCA 0)	RPA 0)	Under Rule 53 A (n) ()	(i+ii+iii) (Total export taken by unit for NFE calculation	DTA sales	Capital Goods	Raw Mat. consumed	0th. Out flow	NFE	Pendin g FE
1	2	3	4	5	6	7	8	9	10	12
2012-13	1001.36	0.00	104.96	1106.32	0.00	0.00	118.30	0.00	988.02	0.00
2013-14	122	0.00	6144.46	6145.68	0.00	0.00	5607.40	0.00	538.28	0.00
2014-15	11.08	0.00	4850.97	4862.05	0.00	0.00	4649.81	0.00	212.24	0.00
Total	1013.66	0.00	11100.39	12114.05	0.00	0.00	10375.51	0.00	1738.54*	0.00

*This data does not reflect the NFE status separately for manufacturing and trading.

- (b) From column No. 4 of table 1 above, it may be seen that in terms of erstwhile Rule 53A(n) supplies to DTA against deemed export as shown by the unit should have been against payment in Foreign Exchange from the EEFC account of the domestic DTA buyer or Free Foreign exchange received from overseas. The erstwhile Rule 53A(n) is reproduced as under:-

"Supply of goods to Domestic Tariff Area against payment in foreign exchange from the Exchange earners Foreign Currency account of the Domestic Tariff Area buyers or Free Foreign Exchange received from overseas".

- (c) However, the unit has not provided the requisite details regarding Physical export and DTA sales against payment in Foreign Exchange from EEFC Account or free foreign exchange received from overseas.
- (d) Moreover, in their submission dt. 06.05.2019, the unit has itself stated that it has cleared the goods into DTA against payment in Indian Currency and requested that the proceeds may be considered as deemed Foreign Exchange. The unit admittedly has accepted the payment in INR in spite of the clear-cut provisions made by the RBI for purchase of foreign exchange by DTA buyers for payment to the SEZ units against purchase of goods and services by DTA buyers from the SEZ units, vide RBI circular No. 46 dated 23.10.2012.
- (e) In view of above, going by the definition given in erstwhile Rule 53A(n) of SEZ Rules, 2006 and submission made by the unit, the supplies made by the unit to DTA as deemed exports as reflected in column no. 4 of table I above may not be counted for calculation of NFE and thus the NFE of the unit results in 'NEGATIVE' by Rs.9361.85 Lakhs (as reflected in Table 2 below) during the current block of 5 years effective from 01.04.2012 and thus the unit is liable to penal action under the provisions of FT(D&R) Act, 1992 in terms of Rule 54 of the SEZ Rules, 2006. The unit was engaged in both trading and manufacturing activities and it was required to maintain separate records for trading and manufacturing activities. However, the unit has not furnished the bifurcated details of trading and manufacturing activities and therefore the exact NFE position separately for manufacturing & trading activities could not be ascertained. As per information/data submitted by M/s Morgan Telectronics Ltd. to DoC, NFE position works out to be as under:

Table 2

(Rs. Lakhs)

Year	GCA (i)	RPA (0)	Under Rule 53 A (n) (iii)	(i+ii-Fiii) (Total export Taken by Unit for NEE calculation	DTA sales	Capital Goods	Raw Mat. consumed	0th. Out flow	NFE	NFE due to INR payment for the supplies under Rule 53 A (n)	Pending FE
1	2	3	4	5	6	7	8	9	10	11	12
2012-13	1001.36	0.00	104.96	1106.32	0.00	0.00	118.30	0.00	988.02	883.06	0.00
2013-14	1.22	0.00	6144.46	6145.68	0.00	0.00	5607.40	0.00	538.28	-5606.18	0.00
2014-15	11.08	0.00	4850.97	4862.05	0.00	0.00	4649.81	0.00	212.24	-4638.73	0.00
Total	1013.66	0.00	11100.39*	12114.05	0.00	0.00	10375.51	0.00	1738.5	-9361.85	0.00

* Unit has itself stated that it has cleared the goods into DTA against payment in Indian Currency.

(f) As per the formula in APR, the value of raw material, consumables, components, packing materials etc. actually consumed during the year is taken for calculation of NFE and closing stock of such material, if any, may be carried forward and shall be taken as opening balance next year. Therefore, taking into account the consumed material as shown by the unit in documents furnished to DoC, its cumulative NFE during 2012-13 to 2014-15 works out to be negative by Rs. 9361.85 lakhs.

(g) The above figures have been got verified from NSEZ Customs/NSDL. Verified figures are given below in Table 3:-

Table 3

(Rs. Lakhs)

Year	Export	Import	DTA sales		Remarks
			Mfg.	Trading	
2012-13	1117.93	44.87	0.00	78.08	Unit has admitted in its submission made to BoA that against sale in DTA payment has been received in Rupees. During the period, the unit made DTA clearances broadly of colour TV, LED panel, mobiles phone and accessories
2013-14	1.22	4854.32	6.13	6063.20	
2014-15	11.08	4591.78	21.24	4758.11	
2015-16	0.00	1995.49	0.00	1498.36	
Total =	1130.23	11486.46	27.37*	12397.75*	

NFE (-) Rs.10356.23 [Export Rs.1130.23 Lakhs (—) Import Rs 11486.46 Lakhs]

*Note: Since import figure is consolidated one for manufacturing and trading, it is not possible to compute separate NFE status against manufacturing activities and trading activities. However, total NFE shortfall is to the tune of Rs. 10356.23 lakhs.

(h) As per rule 76 'trading' is a service and as per Section 2(z) of the SEZ Act, 2005, "services" means such tradable services which,-

- are covered under the General Agreement on Trade in Services annexed as IB to the Agreement establishing the World Trade Organisation concluded at Marrakesh on the 15th day of April, 1994;
- may be prescribed by the Central Government for the purposes of this Act; and
- earn foreign exchange;

(i) Hence the value of trading goods cleared into DTA is not as per rule 53A(n) of SEZ Rules, 2006 read with Section 2z(iii) of the SEZ Act, 2005 and unit is liable for penal action under the provisions of FT(D&R) Act, 1992 for the value of trading goods cleared in DTA and payment received in INR.

(j) To know the separate NFE status for the manufacturing and trading, the unit was requested to submit APRs for the year 2012-13 (from 01.04.2012 — date of start of block period), 2013-14, 2014-15 and 2015-16 (up to 23.02.2016 — date of cancellation of LOA) showing details of export, import and DTA sale etc in respect of manufacturing and trading separately, duly certified by CA and signed by Company's authorized signatory, vide this office letter dt. 23.05.2019.

(k) In reply, the unit vide its letter dt. 23.05.2019 received on 24.05.2019 has informed that they had cleared all goods in DTA as manufactured items only. Further the unit has mentioned that they shall not be submitting the same information once again. The unit has further mentioned that their key person dealing with this record Mr. Joseph had gone to his hometown and may return only next month and in his absence, they are not in a position to submit the details.

(l) The above contention of the unit that they had cleared all goods in DTA as manufactured items only is not correct in view of the data received from NSEZ Customs/NSDL which show transactions of trading done by the unit.

(m) As regards, details of export, BRC, shipping bill furnished by M/s Morgan Tectronics Ltd. in respect of M/s Pertech Export Pvt. Ltd., it has been mentioned that M/s Pertech Export Pvt. Ltd. has been issued separate LOA dated 10.05.2006 by office of DC, NSEZ for undertaking authorised operations as amended vide LOA dated 26.03.2019 and performance of the said unit is subject to separate monitoring by the Approval Committee in terms of Rule 54 of SEZ Rules, 2006. In no way, export performance of M/s Pertech Export Pvt. Ltd. can be clubbed with M/s Morgan Tectronics Ltd. both being separate entities and also having separate LOAs and hence performance monitoring of both units has to be done separately.

The request is placed before the Board of Approval for consideration in light of the aforesaid judgment and the facts and position stated above.

The appeal along with the submissions of the unit in pursuance to the judgment is placed before the BoA for consideration (**Annexure-I&II**).
