

No. K-43022/154/2024-SEZ
Government of India
Ministry of Commerce and Industry
Department of Commerce
(SEZ Section)

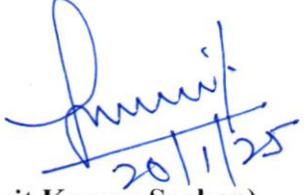
Vanijya Bhawan, New Delhi
Dated the 20th January, 2025

OFFICE MEMORANDUM

Subject: 126th Meeting of the Board of Approval (BoA) for Special Economic Zones (SEZs) scheduled to be held on 24th January, 2025 – Supplementary Agenda – II - regarding.

The undersigned is directed to refer to this Department's O.M. of even number dated 26th December, 2024 and 30th December, 2024 on the subject cited above and to inform that the 126th meeting of the BoA for SEZs is scheduled to be held on 24th January, 2025, 11.00 AM, at Room No. 427, Vanijya Bhawan, New Delhi under the Chairmanship of Commerce Secretary in hybrid mode.

2. **The Supplementary Agenda – II for the 126th meeting of the BoA for SEZs is enclosed herewith.** The same has also been hosted on the website: www.sezindia.gov.in.
3. All the addresses are requested to kindly make it convenient to attend the meeting.
4. The meeting link of the aforesaid meeting will be shared shortly.


20/1/25

(Sumit Kumar Sachan)

Under Secretary to the Government of India

Tel: 23039829

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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 Indirect Taxes and Customs, Member (IT), Department of Revenue, North Block, New Delhi. (23095479)
3. Joint Secretary, Ministry of Finance, Department of Financial Services, Banking Division, Jeevan Deep Building, New Delhi (Fax: 23344462/23366797).
4. Shri Sanjiv, Joint Secretary, Department of Promotion of Industry and Internal Trade (DPIIT), UdyogBhawan, New Delhi.
5. Joint Secretary, Ministry of Shipping, Transport Bhawan, New Delhi.
6. Joint Secretary (E), Ministry of Petroleum and Natural Gas, ShastriBhawan, New Delhi
7. Joint Secretary, Ministry of Agriculture, Plant Protection, KrishiBhawan, New Delhi.
8. Ministry of Science and Technology, Sc 'G' & Head (TDT), Technology Bhawan, 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, NirmanBhavan, 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.
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15. Joint Secretary & Legislative Counsel, Legislative Department, M/o Law & Justice, A-Wing, ShastriBhavan, New Delhi. (Tel: 23387095).
16. Department of Legal Affairs (Shri Hemant Kumar, Assistant Legal Adviser), M/o Law & Justice, 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, VikasBhavan (E-Block), I.P. Estate, New Delhi. (Fax: 23073678/23379197)
20. Director General, Director General of Foreign Trade, Department of Commerce, UdyogBhavan, 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. RupaChanda, 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, AtladraPadra Road, Vadodara - 390012
35. Development Commissioner, Andhra Pradesh Special Economic Zone, UdyogBhawan, 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. Development Commissioner, GIFT SEZ, Gujarat
42. Commerce Department, A.P. Secretariat, Hyderabad – 500022. (Fax: 040-23452895).
43. Government of Telangana, Special Chief Secretary, Industries and Commerce Department, Telangana Secretariat Khairatabad, Hyderabad, Telangana.
44. Government of Karnataka, Principal Secretary, Commerce and Industry Department, Vikas Saudha, Bangalore – 560001. (Fax: 080-22259870)
45. Government of Maharashtra, Principal Secretary (Industries), Energy and Labour Department, Mumbai – 400 032.
46. Government of Gujarat, Principal Secretary, Industries and Mines Department Sardar Patel Bhawan, Block No. 5, 3rd Floor, Gandhinagar – 382010 (Fax: 079-23250844).
47. Government of West Bengal, Principal Secretary, (Commerce and Industry), IP Branch (4th Floor), SEZ Section, 4, Abanindranath Tagore Sarani (Camac Street) Kolkata – 700 016
48. Government of Tamil Nadu, Principal Secretary (Industries), Fort St. George, Chennai – 600009 (Fax: 044-25370822).
49. Government of Kerala, Principal Secretary (Industries), Government Secretariat, Trivandrum – 695001 (Fax: 0471-2333017).
50. Government of Haryana, Financial Commissioner and Principal Secretary), Department of Industries, Haryana Civil Secretariat, Chandigarh (Fax: 0172-2740526).
51. Government of Rajasthan, Principal Secretary (Industries), Secretariat Campus, Bhagwan Das Road, Jaipur – 302005 (0141-2227788).
52. Government of Uttar Pradesh, Principal Secretary, (Industries), Lal Bahadur Shastri Bhawan, Lucknow – 226001 (Fax: 0522-2238255).
53. Government of Punjab, Principal Secretary Department of Industry & Commerce UdyogBhawan), Sector -17, Chandigarh- 160017.
54. Government of Puducherry, Secretary, Department of Industries, Chief Secretariat, Puducherry.
55. Government of Odisha, Principal Secretary (Industries), Odisha Secretariat, Bhubaneshwar – 751001 (Fax: 0671-536819/2406299).
56. Government of Madhya Pradesh, Chief Secretary, (Commerce and Industry), VallabhBhavan, Bhopal (Fax: 0755-2559974)
57. Government of Uttarakhand, Principal Secretary, (Industries), No. 4, Subhash Road, Secretariat, Dehradun, Uttarakhand
58. Government of Jharkhand (Secretary), Department of Industries Nepal House, Doranda, Ranchi – 834002.
59. Union Territory of Daman and Diu and Dadra Nagar Haveli, Secretary (Industries), Department of Industries, Secretariat, Moti Daman – 396220 (Fax: 0260-2230775).
60. Government of Nagaland, Principal Secretary, Department of Industries and Commerce), Kohima, Nagaland.
61. Government of Chattishgarh, Commissioner-cum-Secretary Industries, Directorate of Industries, LIC Building Campus, 2nd Floor, Pandri, Raipur, Chhattisgarh (Fax: 0771-2583651).

Copy to: PPS to CS / PPS to AS (LSS) / PPS to JS (VA) / PA to Dir (GP).

Supplementary Agenda II for the 126th meeting of the Board of Approval for Special Economic Zones (SEZs) to be held on 24th January, 2025

Agenda Item No. 126.10:

Request for Co-Developer status [1 proposal – 126.10(i)]

Relevant provision: In terms of sub-section (11) under Section 3 of the SEZ Act, 2005, *Any person who or a State Government which, intends to provide any infrastructure facilities in the identified area or undertake any authorized operation after entering into an agreement with the Developer, make a proposal for the same to the Board for its approval.*

126.10(i) Proposal of M/s. Steinweg Sharaf (India) Private Limited for Co-Developer status in Jawaharlal Nehru Port Authority-SEZ, Raigad, Navi Mumbai.

Jurisdictional SEZ - SEEPZ SEZ (SEEPZ)

Facts of the case:

1.	Name of the Developer & Location	M/s. Jawaharlal Nehru Port Authority, Raigad, Navi Mumbai – 400707
2.	Date of LOA to Developer	16.07.2014
3.	Sector of the SEZ	Multi Product/ Multi Sector SEZ
4.	Date of Notification	11.08.2014
5.	Total notified area (in Hectares)	277.387 Hectare
6.	Whether the SEZ is operational or not	Operational
	i. If operational, date of Operationalization	24.06.2020
	ii. No. of Units	54
	iii. Total Exports & Imports for the last 5 years (Rs. in Cr.)	The SEZ became operational w.e.f. 24.06.2020 and the total Exports and Imports are Rs. 4816.69 crores and Rs.10342.94 crores, respectively for the period from 24.06.2020 till date.
	iv. Total Employment (In Nos.)	784 Nos.
7.	Name of the Co-Developer sought approval for Co-Developer status	M/s. Steinweg Sharaf (India) Private Limited,

		Plot No. 604+605+606, Sector 6 at JNPA- SEZ, Village Sonari, Taluka: Uran, Dist: Raigad, Maharashtra, PIN 400707
8.	Details of Infrastructure facilities/ authorized operations to be undertaken by the co-developer	Development, Operation and Maintenance of Processing Zone and to develop Free Trade Warehousing Zone (FTWZ) and infrastructure like Modular Infrastructure Facilities, Container Yard, office complex, Open spaces, Roads, Operations Leasing of project infrastructure, and its allied logistics and supply of utility in the SEZ Area" at JNPA -SEZ and undertaking other default authorized operations as per MOCI Instruction No. 50 dated: 15.03.2010
9.	Total area (in Hectares) on which activities will be performed by the co-developer	48,572 Sq Mtr (4.85 Hectare)
10.	Proposed investment by the Co-developer (Rs. in Cr.)	Rs. 169.93 crores
11.	Net worth of the Co-developer (Rs. in Cr.)	Rs. 115.65 crores (Co-Developer - Steinweg Sharaf (India) Private Limited) + Rs. 597.25 crores (Steinweg Sharaf FZCO, Dubai (Holding company) = Rs.712.90 crores
12.	Date of the Co-developer agreement	26.11.2024

Recommendation by DC, SEEPZ:

The request of M/s. Steinweg Sharaf (India) Private Limited for granting Co-Developer status in Plot No. 604+605+606, Sector 6 at JINPA- SEZ, Village Sonari, Taluka: Uran, Dist: Raigad, Maharashtra, PIN 400707 for "Development, Operation and Maintenance of Processing Zone and to develop Free Trade Warehousing Zone (FTWZ) and infrastructure like Modular Infrastructure Facilities, Container Yard, office complex, Open spaces, Roads, Operations Leasing of project infrastructure, and its allied logistics and supply of utility in the SEZ Area" at JNPA -SEZ and undertaking other default authorized operations as per MOCI Instruction No. 50 dated: 15.03.2010 in 48572 Sq. Mtr (4.85 Hectare) area, is recommended, in terms of Section 3(11) of SEZ Act 2005 & Rule 3-A of SEZ Rules 2006 and forwarded for consideration of the BoA.

Agenda Item No. 126.11:

Request for partial/full de-notification [1 proposal – 126.11(i)]

Procedural guidelines on de-notification of SEZ:

- In terms of first proviso to rule 8 of the SEZ Rules, 2006, *the Central Government may, on the recommendation of the Board (Board of Approval) on the application made by the Developer, if it is satisfied, modify, withdraw or rescind the notification of a SEZ issued under this rule.*
- In the 60th meeting of the Board of Approval held on 08.11.2013, while considering a proposal of de-notification, the Board after deliberations decided that henceforth all cases of partial or complete de-notification of SEZs will be processed on file by DoC, subject to the conditions that:
 - (a) DC to furnish a certificate in the prescribed format certifying inter-alia that;
 - the Developer has either not availed or has refunded all the tax/duty benefits availed under SEZ Act/Rules in respect of the area to be de-notified.
 - there are either no units in the SEZ or the same have been de-bonded.
 - (b) The State Govt. has no objection to the de-notification proposal and
 - (c) Subject to stipulations communicated vide DoC's letter No. D.12/45/2009-SEZ dated 13.09.2013.

125.11(i) Proposal of M/s. Adani Ports & Special Economic Zone Ltd. for partial de-notification of 333.7396 Ha out of 8282.7670 Ha of their multi product SEZ at Mundra, Kutch, Gujarat.

Jurisdictional SEZ – Adani Ports & SEZ (APSEZ)

Facts of the case:

Name of Developer	: M/s. Adani Ports & Special Economic Zone Ltd.
Location	: Mundra, Kutch, Gujarat
LoA issued on (date)	: 14.04.2006 (Formal Approval)
Sector	: Multi Product
Operational or not operational	: Operational with 60 units and 29,905 employments (in Nos.)
Notified Area (in Hectares)	: 8282.7670 Ha.
Area proposed for de-notification (in Hectares)	: 333.7396 Ha.

M/s. Adani Ports & Special Economic Zone Ltd. has requested for partial de-notification of 333.7396 Ha out of 8282.7670 Ha. As regards reasons, the developer has submitted that due to stiff competition in the solar market and severe dumping of solar equipment into India, the Units in EMC are becoming economically unviable within the SEZ. In order to survive in this difficult market, it has become essential for these units to exit from SEZ. In view of this, the constituent units in the EMC area have desired not to continue their operations in SEZ format. Hence, the co-developer, Mundra Solar Technopark Pvt. Ltd. Has requested the developer to de-notify the EMC are from SEZ on as-is-where-is basis.

As per DoC's O.M. dated 14.07.2016 regarding required documents for partial de-notification and the status thereof is as below:

S. No.	Documents/Details Required	Status
(i)	Form-C5 for decrease in area along with DC's recommendation	Yes, provided
(ii)	DC's certificate in prescribed format	Yes, provided
(iii)	Developer's Certificate countersigned by DC	Yes, provided
(iv)	Land details of the area to be de-notified countersigned by DC	Yes, provided
(v)	Colored Map of the SEZ clearly indicating area to be de-notified and left-over area duly countersigned by DC	Yes, provided

(vi)	“No Objection Certificate” from the State Government w.r.t. instructions issued by DoC vide its instruction No. D.12/45/2009-SEZ dated 13.09.2013 for partial de-notification shall be complied with	Yes, provided
(vii)	‘No Dues Certificate’ from specified officer	Yes, provided

The State Government of Gujarat vide letter dated 22.03.2024 has conveyed their No-objection to the proposal and requested to process the application of partial de-notification of an area of 333-73-96 Hectares subject to below mentioned conditions:

1. APSEZ has to submit Boundary map of proposed de-notify area, which is prepared by DILR.
2. Developer has to assure for approach to proposed area of de-notification, if proposed area is surrounded by SEZ area.

DC, APSEZ has certified that;

- The existing units have been de-bonded following the procedure prescribed in Rule 74 of the SEZ Rules, 2006.
- The Developer, APSEZL had availed the following tax/duty benefits under SEZ Act/Rules –
VAT/Commercial Tax – INR 7,13,254/- and GST – INR 7,80,447/-
All tax/duty benefits indicated above have been refunded by the Developer to DC’s satisfaction.
- The SEZ shall remain contiguous even after de-notification of the area of 333.7396 Ha and shall meet the minimum land requirement prescribed for multiproduct SEZ which is 50 hectares.

In compliance of DoC’s No. 102 dated 18-11-2019 regarding Physical Inspection and Contiguity condition, the site was inspected on 28.11.2024 by PO, APSEZ along with Circle Officer, Mundra and the representative of the Developer. It is noted that the land area, proposed to be de-notified, was found to have independent access to DTA post de-notification with DTA area (north and west) and notified SEZ (south and east). Remaining special economic zone shall remain contiguous after de-notification of the proposed area. Further, vide Certificate dated 14.11.2024, the DC has certified that the SEZ shall remain contiguous even after the de-notification of 333.74 Ha.

Recommendation by DC, APSEZ:

In view of the above, it is requested to kindly consider the proposal of the Developer for partial de-notification of an area of 333.7396 Ha. of land out of the existing 8234.1840 hectares of notified SEZ at Mundra.

Agenda Item No. 126.12:

Request for extension of LoA of SEZ Unit [1 proposal – 126.12(i)]

Relevant Rule position:

- 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 Approval i.r.o. units in SEZs are governed by Rule 19(4) of SEZ Rules.
- Rule 19(4) states that LoA shall be valid for one year. First Proviso grants power to DCs for extending the LoA for a period not exceeding 2 years. Second Proviso grants further power to DCs for extending the LoA for one more year 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 (or beyond 2nd year in cases where two-third activities are not complete) and onwards 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.

126.12(i) Proposal of M/s. Mundra Petrochem Limited, APSEZ, Mundra for grant of LOA extension for a period of one-year.

Jurisdictional SEZ – Adani Port & SEZ, Mundra (APSEZ)

Facts of the case:

Name of the Unit	:	Mundra Petrochem Limited
LOA issued on (date)	:	30-12-2021
Nature of business of the unit	:	Manufacturing of Caustic Soda, PVC, Tar, Sodium Sulphate, Ammonium Sulphate etc.
No. of extensions granted	:	2 years by Development Commissioner
LOA Valid up to (date)	:	29-12-2024
Request for	:	One-year extension upto 30-12-2025

(a) Details of business plan: -

S. No	Type of Cost	Proposed Investment (Rs. in INR)
1	P&M, civil construction and other costs	34,700 cr

(b) Investment made so far & incremental investment since last extension:

S. No	Type of Cost	Total Investment made so far (Rs. in cr)	Incremental investment since last extension (Rs. in cr)
1	P&M and Civil	4,365	3,703

Details as informed by the Unit:

1. The overall CAPEX and timeline for completing the construction and commissioning of project is ANR 34,700 Cr. and 4 years from the start of the construction activity.
2. While the LOA was issued in December, 2021, due to Covid pandemic and other issues, the start of the project and commissioning was rescheduled.
3. Now, the project activities are progressing in full swing.

4. The Chartered Engineer has certified that the project completion status of Mundra Petrochem Ltd. is under 1/3rd of activities relating to setting up of the unit.
5. The unit expects to employ more than 2000 employees including contractors on regular basis for the production and other related activities.

Details of Physical progress till date: As certified by the chartered engineer vide certificate dated 27-11-2024: -

Activities completed-Temporary Road, Drainage, Power connection facilities for construction work and Labour colony, Construction site office, Security facilities, Canteen Building, ground levelling, Construction of Water storage facilities, Warehouse – 5 nos.

Activities under progress- Pile cap/ sub-structures (RCC work) & pre-cast column, Structure Fabrication & Equipment erection for VCM finishing column, piping, civil work for chlor alkali plant & PVC cooling tower etc.

Project Implementation schedule: - Considering the size of the project, the unit has submitted that the project activities will be ready in another 1 year and thereafter the trial run may take another 6-8 months. Accordingly, the commercial production is expected to start by the end of 2026.

Reason for Delay: - The unit has informed, considering the size of the project and big investment, the start of the project and commissioning was rescheduled due to covid pandemic and other issues.

Recommendation by DC, APSEZ:

DC, APSEZ, Mundra has recommended for extension of the LOA for 1 year i.e. upto 30-12-2025.

Agenda Item No. 126.13:

Miscellaneous [1 case – 126.13(i)]

126.13(i) Proposal of M/s. Perungudi Real Estates Private Limited for Dual Use Infrastructure in Non-Processing Area of SEZ in terms of Rule 11 A(1) of SEZ Rules, 2006.

Jurisdictional SEZ – MEPZ SEZ (MEPZ)

Facts of the case:

Name of the SEZ : M/s. Perungudi Real Estates Private Limited
Location : No. 5/142, Rajiv Gandhi Salai, OMR Road,
Perungudi, Palavakkam, Chennai, Tamil Nadu
Sector : IT/ITES
Formal Approval : 31.03.2017
(date)
Notified land area : 4.28 Ha
(in Hectares)
Operational status : Operational w.e.f. 01.08.2021 with 17 no. of Units

The Developer vide letter dated 15th July 2024 and 19th November 2024 has now requested for Dual use approval of Tower 4 building admeasuring 3,080.00 Sq.mtr. built-up area in non-processing area in terms of Rule 11 A(1) of SEZ Rules 2006. The Developer stated that they have a proposal to utilize the non-processing area for Dual Use purpose for Restaurant/Resto bar and retail outlets.

In this regard, the Developer has submitted the following details: -

Particulars	Details
Total Built-up area (in Square meters), as informed by the developer.	2,59,261.00 Sq.mtr
Total Built-up area in Processing Area (in Square meters), as informed by the developer.	1,86,336.00 Sq.mtrs
Total Built-up area in	72,925.00 Sq.mtrs

Non-Processing area (in Square meters), as informed by the developer.				
Total extent of land utilized for Dual Use Infrastructure		1857.00 Sq.mtrs		
Details of Dual Use Infrastructure in Non-Processing area (in Sq.mtrs.)				
Block	Ground Floor	First Floor	Second Floor	Total area
Tower 4	1857.00	756.31	466.69	3080.00 (4.22% of total NPA)
Infrastructure Proposed to be developed by Developer / Co-developer		Restaurant / Restobar		
Net Worth Certificate		Developer has submitted the Net worth Certificate certified by Chartered Accountant for the Value of ₹. (-) 2,749.00 Lakhs		
Turnover of the Existing Business		₹ 39,406 Lakhs		
Status of refund of applicable tax / duty benefits availed on the area proposed for Dual Use Infrastructure in Non-Processing Area.		As per Chartered Engineer Certificate, the Developer has paid their duties of ₹ 1,42,03,725.00 (Rupees One Crore Forty-Two Lakhs Three Thousand Seven Hundred and Twenty-Five only) on 06.11.2024, 08.11.2024 and 12.11.2024.		
No Objection Certificate from State Government		NoC obtained from State Government dated 27.04.2021 for dual use infrastructure in non-processing area		
No Objection Certificate from Specified Officer		Specified officer has given NOC for Dual Use Infrastructure dated 19.11.2024		
Access Control Mechanism for movement of persons in the area proposed for Dual use Non-Processing Area.		The developer has mentioned that they shall ensure & follow separate lane for entry and exit, appropriate access control & screening mechanisms in the Non-processing dual use zone.		

Further, as regards payment of State duty exemptions or benefits, the Developer has stated that the land was registered in March 2016 with the payment of applicable stamp duty and Registration charges to State Government. Then the land was subsequently notified as an SEZ in March 2017. The Developer has provided an undertaking stating that no stamp duty / registration Charges / Charges for change of land use or any other benefits have been availed from the State Government for Dual Use Purpose.

The Developer obtained the No Objection Certificate (NOC) from the State Government dated 27.04.2021 for Dual Use Infrastructure in the Non-Processing area and SEZ become operational from August 2021 onwards. The Developer has stated that there have been no changes to the land area and the Developer has not availed any benefits since the issuance of the NoC from the State Government. Furthermore, the Developer has refunded the applicable tax / duty benefits availed for the proposed Dual Use Infrastructure area and same has been certified by Specified Officer concerned.

The following documents have been submitted by the Developer: -

- i. NoC from the Specified officer
- ii. NoC from the State Government
- iii. Chartered Engineer's Certificate
- iv. Undertaking by the developer for payment of differential duties
- v. Copy of Challans

Relevant provisions under the SEZ law:

• **Rule 11: Processing and non-processing area: -**

(1) The Development Commissioner shall demarcate the area and issue demarcation order under the provision of section 6, specifying the survey numbers and boundaries of area of the Special Economic Zone as specified in the notification issued under rule 8.

• **Rule 11A: Bifurcation of non-processing area: -**

The non-processing area can be bifurcated into two parts, namely:

(1) Where the social or commercial infrastructure and other facilities are permitted to be used by both the Special Economic Zone and Domestic Tariff Area entities: No exemptions, concessions or drawback shall be admissible for creation of such infrastructure. The Customs duty, Central Excise duty, Central Goods and Services Tax, Integrated Goods

and Services Tax and State Goods and Services Tax and such other Central levies and tax benefits already availed for creation of such infrastructure shall be refunded by the Developer in full, without interest. However, in cases of short payment of the amount refundable to the Government on account of dual use permission, interest will have to be paid at the rate of fifteen per cent per annum from the day the said amount becomes payable to the date of actual payment. Utilisation of SEZ land shall be subject to following conditions:

- (a) the land is to be put to only such use which is as per the regulations of the concerned State Government or local bodies;
- (b) if any exemption or refund has been taken from State or local taxes like stamp duty State Goods and Services Tax, change of land uses, etc., the same shall be refunded back to State Government or local authorities and a certificate to this effect shall be produced from the concerned authorities;
- (c) No Objection Certificate (NOC) from the concerned State Government shall be produced before the consideration of the request by Board of Approval (BoA). State Government may issue No Objection Certificate (NOC) taking into consideration (a) and (b) above.

(3) The Department of Commerce has provided the following norms with respect to areas to be earmarked for residential, commercial and other social facilities: -

- (a) The Developer or Co-developer shall submit an application in the format as specified by the Central Government to the Development Commissioner indicating therein the portion of the non-processing area where social or commercial infrastructure and other facilities are proposed to be used by both Special Economic Zone and Domestic Tariff Area entities and the said application shall be accompanied with a copy of the Infrastructure Plan and No Objection Certificate from the concerned State Government and supporting documents.
- (b) The Development Commissioner shall forward the said application to the Board of Approval (BoA) for approval.
- (c) The area restrictions for duty paid dual use non processing area in the Special Economic Zones shall be as follows:
 - (i) Housing - not more than twenty-five per cent of non-processing area;
 - (ii) Commercial- not more than ten per cent of non-processing area;
 - (iii) Open area and circulation area-not less than forty-five per cent of non-processing area;

(iv) Social and institutional infrastructure including schools, colleges, socio-cultural centres, training institutes, banks, post office, etc., in the remaining area.

(d) Floor Area Ratio or Floor Space Index shall conform to the norms of the concerned local authorities.

(e) No sale shall be permitted of such duty paid dual use infrastructure in the non-processing area and only lease hold rights can devolve upon the users or transferees of the said dual use duty paid infrastructure in Non-Processing Area of Special Economic Zones; and

(f) Any other conditions as may be specified by the Department of Commerce or Board of Approval.

Recommendation by DC, MEPZ:

The proposal of M/s. Perungudi Real Estates Private Limited, the Developer for Dual Use Infrastructure of 3,080 Sq.mtr. built-up area in Non-Processing Area in terms of Rule 11 A(1) of SEZ Rules 2006, is recommended and forwarded for consideration of BoA.

Agenda Item No. 126.14:

Appeal [2 cases – 126.14(i) & 126.14(ii)]

Rule position: - In terms of the rule 55 of the SEZ Rules, 2006, any person aggrieved by an order passed by the Approval Committee under section 15 or against cancellation of Letter of Approval under section 16, may prefer an appeal to the Board in the Form J.

Further, in terms of rule 56, an appeal shall be preferred by the aggrieved person within a period of thirty days from the date of receipt of the order of the Approval Committee under rule 18. Furthermore, if the Board is satisfied that the appellant had sufficient cause for not preferring the appeal within the aforesaid period, it may for reasons to be recorded in writing, admit the appeal after the expiry of the aforesaid period but before the expiry of forty-five days from the date of communication to him of the order of the Approval Committee.

120.14(i) Appeal filed by M/s. Nara Exim Pvt. Ltd. against the decision of UAC, Falta SEZ.

Jurisdictional SEZ – Falta SEZ (FSEZ)

Brief facts of the case:

M/s. Nara Exim Pvt. Ltd. was issued LoA dated 18.12.1996 for setting up a plastic recycling unit in Falta SEZ. The LoA of the unit was renewed from time to time and valid upto 26th August, 2022. The request of the unit for further renewal of its LoA was last considered in the 182nd meeting of the UAC, FSEZ held on 27.08.2024. The UAC, after deliberations, decided not to renew the LoA as the unit failed to meet the conditions as specified by the BoA in its 112th meeting held on 29.10.2022. The decision was conveyed to the unit vide FSEZ's letter dated 23.09.2024.

Being aggrieved with the decision of the UAC, the unit has filed the instant appeal in Form J dated 02.11.2024 before the BoA in terms of Rule 55 of the SEZ Rules, 2006. Further, in terms of Rule 56, the unit has also filed an application to condone the delay in filing the appeal within the prescribed time limit.

GROUNDINGS OF THE APPEAL:

a) For that the Ld. Competent Authority has not considered further renewal of LOA on wrong findings that they have not fulfilled the conditions as specified in the letter dated 14.12.2022.

b) For that the Ld. Competent Authority failed to understand that the Appellant was prevented to continue smooth production due to renewal of LOA for short period. The Appellant in hardship condition accepted the direction of BOA. The BOA also travelled beyond the scope of SEZ Act, 2005 R/W SEZ Rule, 2006. As per SEZ Act, 2005 R/W SEZ Rule, 2006 the LOA has to be renewed for 5 years. Therefore, non-renewal of LOA is arbitrary and suffers from legal infirmity.

c) For that the Ld. Competent Authority failed to appreciate that the unit was in smooth operation up to 30th November, 2019, since last twenty years and achieved positive NFE, by doing regular production and exports. Therefore, LOA was continued to be renewed for every five years. Thereafter, due to force majeure of Covid-19 Lock down the Appellant was not able to continue production. In May, 2020 due to force majeure Cyclone Amphan, the Appellant faced substantial damage in the factory shed; hence the Appellant's unit was closed for a long period. During that situation the Appellant's LOA was extended for a short period of time (viz one year, six months, six months, one month etc.), in that situation the Appellant was not in position to convert shed in workable condition without securing the renewal of LOA for five years.

d) For that the Ld. Competent Authority erred in holding that in absence of five years renewal of LOA, the Appellant is unable to obtain long term export order.

e) For that the Ld. Competent Authority failed to appreciate that in absence of valid LOA, the Appellant is incurring fixed expenditure like lease rent of the factory (updated), minimum electricity demand charges, staff salary, security charges etc.

PRAYER:

- a. In the circumstances, it is humbly prayed that Your kind self may graciously be pleased to expeditiously dispose of the captioned appeal based upon the documents and records annexed hereto and/or referred to and/or relied upon herein upon dispensing with all formalities;
- b. Pass such other order or orders and/or give such direction or directions as deemed appropriate in the facts and circumstances of the given case.

- c. Opportunity of Personal hearing may kindly be granted: And your appellant/petitioner, as in duty bound shall ever pray.

INPUTS RECEIVED FROM DC, FSEZ:

The said appeal has been examined in FSEZ. Various factual information is as given below:

- a. Earlier, M/s. Nara Exim Pvt. Ltd., a Plastic Unit of Falta SEZ, holding LOA No. FEPZ/LIC/A-23/96/3847 dated 18.12.1996, had requested to renew their LOA beyond 26.08.2022 for a period of 05 (Five) years.
- b. However, as per directions of the Board of Approval in its meeting held on 29.10.2022, LOA of M/s. Nara Exim Pvt. Ltd. could not be extended for a further period of 5 (Five) years as they failed to conform to BOA's guidelines. M/s. Nara Exim Pvt. Ltd. has made 'Nil' production and 'Nil' Exports during the prescribed 18 months period from 27.01.2021 upto 26.07.2022. This (non-renewal of their LOA) was intimated to them vide this office letter dated 14.12.2022.
- c. Subsequently, with reference to an appeal filed by M/s. Plastic Process & Exporter Pvt. Ltd before BOA on 05.09.2023, DOC vide letter dated 25.09.2023 requested the details of the units in KASEZ and Falta SEZ, which were operational and effecting exports prior to the stipulated period 18 months, but were not in operation during this stipulated 18-month period.
- d. FSEZ, based on FSEZ Customs ISN dated 02.11.2023, vide letter dated 02.11.2023 forwarded the name of M/s. Nara Exim Pvt. Ltd, which had done exports and DTA sale prior to 27.01.2021, but had not exported/ produced during the prescribed 18 (eighteen) months period.
- e. Further, vide letter dated 07.11.2023, the following reasons submitted vide their letter dated 22.11.2022 for non-operation of the unit were also forwarded to DOC:
 - i. During Cyclone Amphan, their factory shed got damaged, which could not be repaired, as it was 20 years old.
 - ii. Since full sheeting of the factory Shed was required to be changed, Investment in repairing was also substantial. The unit also felt that there is also a need for investment in upgradation of machines for technological advancement.
 - iii. As they got the LOA in May 2021 upto August,2022 i.e. 14 (fourteen) months and estimated time required for repairing works was 06 (six) months, so they decided not to restart till they get LOA for 05 (five) years.
 - iv. Further, without long term 05 (five) years LOA, they could not obtain export order to fulfil LOA conditions.
 - v. The unit has also mentioned that since their major export country was China, due to high cost of freight, it was not feasible to export. Also, due to

Covid-19, advisory international travel was difficult and no physical international exhibition was held to obtain export orders.

- f. The name and performance of M/s. Nara Exim Ltd. before 27.01.2021 was placed before 117th BOA held on 17.11.2023.
- g. DOC vide their letter O.M. dated 08.12.2023 formed a committee including DC, FSEZ to examine the aspects of M/s. Plastic Processors & Exporter Pvt. Ltd. and other similarly placed units, who are affected by force majeure situation.
- h. DOC vide their Office Memorandum dated 21.12.2023 intimated the Record of discussions of the Committee held on 14.12.2023 as given below:
 - i. M/s. Plastic Processors & Exporter Pvt. Ltd. appears to be the only SEZ unit which claim to be affected by force majeure as there are no other similarly placed units as reported by DC/Kandla SEZ and DC/Falta SEZ.
 - ii. As such, a unit affected by accidental fire (force majeure) incident which curtailed their operations cannot be considered or placed on par with other SEZ recycling units.

Keeping in view of the above observations, the committee decided to recommend that the unit, M/S. Plastic Processors & Exporter Pvt. Ltd. May be given an opportunity and renewal of LOA may be considered for a period of 05 (five) years.
- i. In response to M/S. Nara Exim's letter dated 17.01.2024 to DC, FSEZ for renewal of LOA, it was intimated to the unit vide letter dated 19.01.2024, that the decision for non-renewal of LOA has already intimated to them vide letter dated 14.12.2022.
- j. Then, an appeal dated 29.02.2024 was filed by M/S. Nara Exim Pvt. Ltd, against the decision communicated vide Falta SEZ letter dated 14.12.2022 followed by letter dated 19.01.2024. DOC vide letter No. K-43019/9/2024-SEZ-Part(1) dated 25.06.2024 requested Falta SEZ to examine and consider the matter in the UAC, if required
- k. Accordingly, the matter was discussed in 182nd UAC meeting held on 27.08.2024. The Committee gave concurrence to the position of the o/o DC, Falta SEZ in the matter including conveyance of non-renewal of Letter of Approval of the unit as it failed to meet the BOA conditions. The decision of the 182nd UAC was communicated to DOC vide Falta SEZ letter No. FSEZ/LIC/A-23/96/942 dated 23.09.2024.

PARA-WISE COMMENTS OF DC, FSEZ:

S. No.	Grounds of Appeal	Observations/Comments
a)	For that the Ld. Competent Authority has not considered	The O/o the DC, Falta SEZ examined the records available, report of Specified

	<p>further renewal of LOA on wrong findings that they have not fulfilled the conditions as specified in letter dated 14.12.2022.</p>	<p>Officer, FSEZ, data of NSDL and the documents submitted by the unit and found that the unit has not fulfilled the Terms & Conditions as specified by the BOA in it's meeting held on 29.10.2022 for renewal of LOA of Plastic Recycling Units for a period of 5 (five) years w.e.f. 27.08.2022 to 26.08.2027 on temporary basis.</p> <p>M/S. Nara Exim Pvt. Ltd. has made 'Nil' production and 'Nil Exports during the prescribed 18 months period from 27.01.2021 upto 26.07.2022. Hence, as per BOA guidelines O/o the DC, FSEZ vide letter dated 14.12.2022 intimated the unit about the decision of non-renewal of LOA.</p> <p>Hence, the contention of the appellant that the decision of the Competent Authority of not renewing the LOA was based on wrong findings is baseless.</p>
b)	<p>For that the Ld. Competent Authority failed to understand that the Appellant was prevented to continue smooth production due to renewal of LOA for short period. The Appellant in hardship condition accepted the direction of BOA. The BOA also travelled beyond the scope of SEZ Act, 2005 SEZ Rule, 2006. As per SEZ Act, 2005 SEZ Rule, 2006 the LOA has to be renewed for 5 years Therefore, non-renewal of LOA is arbitrary and suffers from legal infirmity.</p>	<p>The hardship as stated to be faced by the unit due to damage by cyclone Amphan (in May 2020) is without any evidence, as no final claim was filed with insurance company, no formal assessment of damage was made.</p> <p>An SEZ cannot be made responsible for their non-up gradation/ renewal of machineries, which is their internal matter.</p> <p>Unfavourable Chinese market is also a factor for which SEZ cannot be held responsible. Also, most of the Falta SEZ units continued their production/ export during/post Covid 19 lockdown.</p> <p>Its LOA was extended for 6 months (01.01.2021 30.06.2021) vide Falta SEZ Letter No. FSEZ/LIC (A23/96/3033-3035</p>

		<p>dated 22.01.2021, for 1 year (01.07.2021 to 26.07.2022) vide Falta SEZ Letter No. FSEZ/LIC/A-23/96/286 -288 dated 03.06.2021 and for 1 month (27.07.2022 - 26.08.2022) vide Falta SEZ Letter No. FSEZ/LIC/A 23/1996/722-724 dated 16.06.2022. It is not clear as to how this worked against the smooth production of the unit.</p>
c)	<p>For that the Ld. Competent Authority failed to appreciate that the unit was in smooth operation up to 30th November, 2019, since last twenty years and achieved positive NFE, by doing regular production and exports. Therefore, LOA was continued to be renewed for every five years. Thereafter, due to Force- Majeure of Covid -19 Lock down the Appellant was not able to continue production. In May, 2020 due to Force Majeure Cyclone Amphan, the Appellant faced substantial damage in the factory shed; hence the Appellant's unit was closed for a long period. During that situation the Appellant's LOA was extended for a short period of time (viz one year, six months, six months, one month etc.), in that situation the Appellant was not in position to convert shed ill workable condition without securing the renewal of LOA for five years.</p>	<p>The said facts were forwarded to the DoC vide FSEZ letter dated 07.11.2023 DOC vide their O.M. dated 08.12.2023 formed a Committee including DC, FSEZ to examine the aspects of M/s. Plastic Processors & Exporter Pvt. Ltd. and other similarly placed units, who were affected by force majeure situation. From RoD of the said Committee meeting held on 14.12.2023, it was evident that the Committee has not considered the unit M/s. Nara Exim Pvt. Ltd. at par with the case of M/s Plastic Processors & Exporters Pvt. Ltd. The contention that the appellant faced substantial damage in the factory shed due to Amphan Cyclone has not been corroborated, as no proof of final claim payment was filed by the company.</p> <p>Also, the contention that the appellant was not in position to convert condition shed in without workable securing renewal of LOA for five years is completely illogical conclusion.</p>

d)	For that the Ld. Competent Authority erred in holding that in absence of five years renewal of LoA, the Appellant is unable to obtain long term export order	1-2-year period is sufficient enough to restart and establish reputation with a view to have continued export orders. Nothing substantial in support of the claim of not being able to secure export orders due to short renewal has been brought out
e)	For that the Ld. Competent Authority failed to appreciate that in absence of valid LOA, the Appellant is incurring fixed expenditure like lease rent of the factory (updated), minimum electricity demand charges, staff salary, security charges etc.	No comments

The appeal is being placed before the Board for its consideration.

126.14(ii) Appeal filed by M/s. Jiwanram Sheoduttrai Industries Limited under the provision of Section 16(4) of the SEZ Act, 2005 against the Order-in-Original dated 17.10.2024 passed by DC, FSEZ.

Jurisdictional SEZ – Falta SEZ (FSEZ)

Brief facts of the Case:

M/s. Jiwanram Sheoduttrai Industries Limited (formerly M/s. Jiwanram Sheoduttrai Industries Private Limited) was issued a LoA on October 11, 2012, for setting up a unit for manufacturing industrial garments, safety wear, and leather products in Falta SEZ. The unit commenced operations on July 20, 2013, and the LoA was initially valid until July 19, 2026. However, following a Show Cause Notice dated June 6, 2024, the DC, FSEZ, issued an Order-in-Original on October 17, 2024, cancelling the LoA under Section 16 of the SEZ Act, 2005. Aggrieved by this decision, the unit has filed the present appeal dated 25.11.2024 in accordance with Rule 55 of the SEZ Rules, 2006. Further, in terms of Rule 56(2), the appellant has also filed one application for condonation of the delay of five days in filing the appeal.

Brief on the Fire incident in the Falta SEZ:

The appellant has submitted that on June 8, 2016, a massive fire broke out in the basement of the building occupied by another unit, M/s. Gupta Infotech, and rapidly spread to the appellant's premises on the first floor. The fire, which lasted five days, caused extensive damage to the appellant's factory, machinery, and goods, rendering the premises unfit for occupation. Despite the fire being an irresistible force, the FSEZ Authority failed to promptly repair the damages or provide alternate arrangements, leaving the appellant's operations suspended for years. The prolonged delay and substandard repairs further aggravated the appellant's financial losses, with the total damages assessed at over ₹4.1 crores by certified insurance surveyors.

GROUND OF THE APPEAL: -

The appellant has submitted the following grounds in the appeal:

1. Failure to Fulfill Statutory Obligations

The Falta SEZ Authority failed to fulfill its statutory duties under the SEZ Act, SEZ Rules, and the Transfer of Property Act, 1872. Despite the fire rendering the premises unfit for use in June 2016, the authority did not promptly carry out repairs, leaving the appellant's factory inoperable for over four years.

2. **Non-Repair of Premises Post-Fire**

The damage caused by the fire in June 2016 was extensive. The appellant's repeated requests for repairs, alternate safe storage, and restoration of the premises were ignored or inadequately addressed until 2020. Even then, the repairs were incomplete, leaving the premises unfit for full-fledged operations.

3. **Coercion for Payment of Rent During Non-Operational Period**

Despite the premises being unfit for use due to fire damage, the Falta SEZ Authority coerced the appellant into submitting undertakings to pay rent for the non-operational period (2016–2021). This is contrary to the principle that rent is not payable for periods when the premises are uninhabitable due to no fault of the lessee.

4. **Economic Duress and Unconscionable Demands**

The appellant was forced to submit various undertakings under severe economic duress to secure the renewal of the LoA. The authority demanded payment of back rent for the period the factory remained non-operational, despite this being legally untenable.

5. **Unlawful Rejection of Requests for Rent Waiver**

The appellant's legitimate requests for waiving back rent, given the extraordinary circumstances of fire damage and subsequent economic hardship, were arbitrarily rejected by the Falta SEZ Authority. This exacerbated the appellant's financial difficulties.

6. **Persistent Delays in LoA Renewal**

The renewal of the appellant's LoA was delayed multiple times, causing additional financial strain and operational setbacks. The authority failed to act promptly and demanded compliance with onerous terms before processing renewals.

7. **Bias and Non-Acceptance of Submissions During Personal Hearings**

During the personal hearing on June 19, 2024, the Zonal Development Commissioner acted in a biased manner, refusing to consider the appellant's submissions or acknowledge the statutory breaches and economic distress faced by the appellant.

8. **Cancellation of LoA Without Justification**

The Development Commissioner cancelled the appellant's LoA on October 17, 2024, arbitrarily and without addressing the appellant's valid concerns about statutory breaches and coercive practices. This action further violated the principles of natural justice and fair play.

9. Violation of Provisions of Transfer of Property Act, 1872

As per Section 108(e) of the Transfer of Property Act, the lease becomes void at the lessee's option if the property is rendered permanently unfit for the intended purpose due to events like fire. The authority's demand for rent despite this legal provision is unsustainable.

10. Continued Damage to Property Due to Incomplete Repairs

Even after partial repairs, ongoing issues such as water leakage and lack of adequate roofing caused additional damage to the appellant's goods and raw materials. The authority failed to address these issues adequately, further hindering the appellant's ability to resume operations.

11. Financial Loss and Impact on Export Obligations

The appellant suffered significant financial losses due to the fire, delays in repair, and inability to fulfill export obligations. This situation was further exacerbated by the Falta SEZ Authority's inaction and coercive demands.

12. Conditional LoA Renewal and Alleged Non-Compliance

The appellant's LoA renewal on March 13, 2024, was conditional on clearing outstanding lease rentals. Despite submitting an undertaking on April 22, 2024, it was rejected, and the appellant was summoned for a hearing. A show-cause notice dated June 6, 2024, alleged lease rent obligations regardless of premises functionality, contrary to SEZ laws. At the hearing on June 19, 2024, the authority acted with bias, disregarding the appellant's valid submissions.

13. Non-Consideration of Insurance Litigation Outcome

The appellant had proposed paying outstanding rent once its insurance claim was settled. This reasonable request was ignored by the authority, demonstrating an arbitrary and unreasonable approach.

REASONS AS TO WHY THE DECISION NEEDS REVIEW: -

The appellant submitted the following reasons to review the decision:

1. Order Not Tenable in Facts and Law

The Impugned Order is not tenable in law and lacks a proper basis in facts.

2. **Failure to Consider Fire Incident**

The Development Commissioner failed to acknowledge that a massive fire on June 8, 2016, caused extensive damage to the appellant's premises, rendering them unfit for occupation or use.

3. **Delay in Repair and Restoration**

It was the statutory and contractual duty of the Development Commissioner to repair and restore the premises promptly. However, repairs were delayed for more than four years, leaving the premises unfit for use.

4. **Delay in LoA Renewal**

Even after the premises were repaired and the appellant applied for renewal of the LoA, the renewal process was delayed by more than a year.

5. **Inability to Operate**

From June 8, 2016, until the issuance of the renewal letter on October 6, 2021, the appellant could not operate due to no fault on its part.

6. **Reciprocal Obligations Under Lease**

A lease deed involves reciprocal obligations. Without fulfilling the obligation to provide premises fit for occupation and use, the lessor cannot demand lease rent from the lessee.

7. **Failure of Consideration**

The appellant cannot be held liable for lease rent from June 8, 2016, to October 6, 2021, due to the failure of consideration and unavailability of the premises for use during this period.

8. **Undertakings Obtained Under Duress**

The undertakings for payment of lease rent for the period of June 8, 2016, to October 6, 2021, were obtained under extreme duress and coercion, rendering them null and void.

9. **Post-Renewal Damages**

Even after the renewal on October 6, 2021, the appellant suffered significant losses due to inadequate repairs, including lack of a proper roof, water supply, and sanitation.

10. **Violation of Transfer of Property Act**

The Impugned Order violates Section 108(e) of the Transfer of Property Act, 1872, which absolves a lessee of liability when the premises are unfit for the intended use due to irresistible forces like fire

11. Violation of SEZ Act and Rules

The Impugned Order contravenes provisions of the SEZ Act, 2005, and SEZ Rules, 2006.

12. Arbitrary and Unreasoned Order

The Impugned Order is arbitrary, irrational, and lacks reasoning, making it unsustainable in law.

13. Excess of Jurisdiction

The Authority exceeded its jurisdiction in passing the Impugned Order.

14. Misinterpretation of Facts

The findings in the Impugned Order are misconceived and based on a misinterpretation of the material facts.

15. Perversity in the Order

The Impugned Order is perverse in law, erroneous, and liable to be set aside.

16. Final Consideration

The Impugned Order, in any view, is untenable and must be set aside.

COMMENTS RECEIVED FROM DC, FSEZ: -

DC, Falta SEZ has submitted the following comments/inputs on the appeal:

1. Establishment and Initial Operations of the unit

The appellant was issued LoA dated October 11, 2012 for setting up a unit. The premises were handed over on January 18, 2013, following an Allotment Letter dated January 9, 2013. The unit commenced operations on July 20, 2013, as per records, though the appellant claims it started in 2014 after completing its capital investments.

2. Fire Incident and Damages

A massive fire broke out on June 8, 2016, causing severe damage to the appellant's premises on the first floor of the SDF General Building. The fire rendered the premises unfit for use, with damage to materials and facilities

recorded. However, lease rent was outstanding for the period before the fire incident, as communicated in January 2016.

3. Repair Delays

The repairing work was assigned to M/s. WAPCOS Limited on December 31, 2020. Completion was reported on November 29, 2022. During this period, the premises remained unfit for use. The appellant did not request alternate storage for materials during repairs.

4. Lease Rent and Waiver Requests

- Rent was assessed for periods before the fire, during the inoperable period, and post-repair completion.
- The period from June 8, 2016, to November 29, 2022, was considered eligible for rent waiver due to the premises' unfitness for use.
- The SEZ Authority has no power to waive rental dues before June 2016 or after November 2022.

5. Undertakings for Renewal

The appellant submitted an undertaking in 2021 to clear dues to renew the LoA, as required by SEZ rules. The renewal process was delayed due to non-compliance with these requirements.

6. Personal Hearing and Show Cause Notice

In a hearing on June 19, 2024, the appellant's submissions were rejected due to their failure to comply with LoA renewal conditions and pay outstanding dues. A show cause notice dated June 6, 2024 issued to the appellant stating their obligation to pay rent irrespective of premises functionality.

7. Cancellation of LoA

The LoA was cancelled vide Order-in-Original dated October 17, 2024. The decision followed the 182nd UAC's resolution, citing non-payment of dues and failure to fulfil statutory obligations.

8. Rejections of Waiver Requests

Multiple requests for waiving old lease dues, citing fire damage and financial duress, were rejected. The appellant's proposal to defer dues until the settlement of an insurance claim was also denied.

9. Allegations Against SEZ Authority

- Claims of coercion and duress for undertakings were dismissed as unfounded.

- Allegations of negligence in repair were countered with records of WAPCOS completing the repair work.
- FSEZ Authority acted within the provisions of the SEZ Act, SEZ Rules, and the lease agreement.

10. Justification for Impugned Order

The cancellation order was in compliance with SEZ rules, justified, and based on rational considerations. Allegations of arbitrariness and violations of statutory provisions were deemed unsubstantiated.

Relevant provisions under the SEZ law:

• **Section 16. Cancellation of letter of approval to entrepreneur –**

(1) The 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 and conditions or its obligations subject to which the letter of approval was granted to the entrepreneur, cancel the letter of approval:

Provided that no such letter of approval shall be cancelled unless the entrepreneur has been afforded a reasonable opportunity of being heard.

(2) Where the letter of approval has been cancelled under sub-section (1), the Unit shall not, from the date of such cancellation, be entitled to any exemption, concession, benefit or deduction available to it, being a Unit, under this Act.

(3) Without prejudice to the provisions of this Act, the entrepreneur whose letter of approval has been cancelled under sub-section (1), shall remit, the exemption, concession, drawback and any other benefit availed by him in respect of the capital goods, finished goods lying in stock and unutilised raw materials relatable to his Unit, in such manner as may be prescribed.

(4) Any person aggrieved by an order of the Approval Committee made under sub--section (1), may prefer an appeal to the Board within such time as may be prescribed.

The appeal is being placed before the Board for its consideration.
