

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

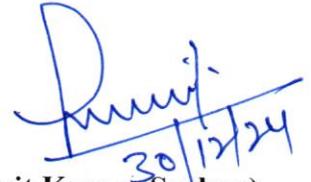
Vanijya Bhawan, New Delhi
Dated the 30th December, 2024

OFFICE MEMORANDUM

Subject: 1st meeting (2025 series) of the Board of Approval for Export Oriented Units and 126th Meeting of the Board of Approval for Special Economic Zones - regarding.

The undersigned is directed to refer to this Department's O.M. of even number dated 26th December, 2024 on the subject cited above and to inform that 1st meeting (2025 series) of the Board of Approval for Export Oriented Units and 126th Meeting of the Board of Approval for Special Economic Zones, **earlier scheduled for 03rd January 2025, has been postponed until further notice.**

2. The Supplementary Agenda 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.



(Sumit Kumar Sachan)

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 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 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, 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.
14. Joint Secretary, Ministry of Environment and Forests, PariyavaranBhavan, CGO Complex, New Delhi – 110003 (Fax: 24363577)
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 for the 126th meeting of the Board of Approval for
Special Economic Zones (SEZs)**

Agenda Item No. 126.7:

Request for extension of LoA of SEZ Unit [1 proposal – 126.7(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.

126.7(i) Proposal of M/s. BEML Limited, a unit in KIADB Aerospace Special Economic Zone, Bangalore for extension of validity of Letter of Approval for a further period of three months from 05.01.2025 to 04.04.2025 (13th Extension).

Jurisdictional SEZ - Cochin SEZ (CSEZ)

Facts of the case:

Name of the Unit : M/s. BEML Limited
 LoA issued on (date) : 06.01.2012
 Nature of business of the unit : Manufacture and export of Aerospace Mechanical Components
 No. of extensions granted : 12 extensions (by DC, CSEZ & BOA)
 LoA Valid upto (date) : 04.01.2025
 Request for : Extension of validity of LoA for a further period of three months from 05.01.2025 to 04.04.2025.

Present Progress:

a. Details of Business plan:

| Sl. No. | Description | Proposed Investment (₹ in crore) |
|--------------|--|-------------------------------------|
| 1 | Land | 51.26 |
| 2 | Compound wall | 0.90 |
| 3 | Machinery | 13.00 |
| 4 | Other statutory fee etc. | 0.78 |
| 5 | Investment on facilities (proposed & planned) | 25.00 |
| Total | | 90.94 |

b. Total Investment made so far and incremental investment since last extension:

| Sl. No. | Description | Total investment (₹ in crore) | Incremental Investment since last extension (₹ in crore) |
|---------|---------------|----------------------------------|---|
| 1 | Land | 51.26 | Nil |
| 2 | Compound wall | 0.90 | Nil |

| | | | |
|---|---|--------------|-------------|
| 3 | Machinery | 13.00 | Nil |
| 4 | Other Statutory fee etc | 0.78 | Nil |
| 5 | Construction of 5000 sq.ft. Hangar for warehousing, storage, including office & material handling equipment | 1.80 | 1.80 |
| | Total | 67.74 | 1.80 |

c. **Details of physical progress till date: -**

| Sl. No. | Activity | % Completion | % Completion during last one year | Deadline for completion of balance work |
|---------|---|--------------|-----------------------------------|---|
| 1 | Land, Construction of Compound wall | 100 | Nil | |
| 2 | Construction of 5000 sq.ft. Hangar for warehousing, storage, including office and allied support services | 60 | 60 | By end of January 2025 |
| 3 | Material handling equipments | 95 | 95 | Materials will be received from December 2024 to March 2025 |

Detailed reasons for delay: -

- They have made an investment of ₹67.74 crore towards land, construction of compound wall in the allotted area and purchase of machinery.
- Obtained building approval from KIADB.
- To start the construction activities, they have awarded contract to M/s. URC Construction Private Limited. The Contractor has not fulfilled the contractual conditions like third party certification of design & shop drawings, adhering to manufacturing standard for PEB structures and submission of Project Evaluation & Review Techniques (PERT) charge with resource commitments. Hence, the project came to standstill leading to arbitration. The Sole Arbitrator appointed by the Arbitration Centre of Hon'ble High Court of Karnataka issued order on 20.08.2016 in favour of M/s BEML.

- The Contractor had filed an application before the Hon'ble City Civil Court, Bangalore challenging the award passed by the Arbitral Tribunal with a prayer to set aside the Arbitral award dated 20.08.2016 & modified order dated 07.11.2016. The Hon'ble Court dismissed the petition filed by the Contractor vide judgment dated 09.06.2021.
- the Contractor filed an appeal against the judgment dated 09.06.2021 before the Hon'ble High Court of Karnataka (Commercial Appeal Nos. 137/2021 & 139/2021), which is pending for adjudication.
- Now, the unit has broad-banded their items of manufacture by including additional services/activity (warehousing, storage and allied support services) in the LoA. BEML has placed a contract for construction of 5000 sq.ft. Warehouse including office in January 2024. The construction is expected to be completed by the end of December 2024. Incessant rains in September & November 2024, hampered the construction work with an anticipated delay of 2 months.
- All the steel columns have been erected alongwith cross Beams. 4.5 mtrs. of all round wall have been completed. Flooring, Security buildings in two sides have been completed.
- The unit has placed purchase order for material handling equipment worth ₹76.00 lakh, which is expected to be received between January & March 2025.
- On completion of the construction work, the KIADB will inspect the building for adherence of safety and regulatory norms and issue necessary certificate.
- The unit submits that on receipt of the occupancy certificate from the KIADB, they will commence their operation immediately.

Recommendation by DC, CSEZ:

Considering the investment made by the unit and progress in implementation of the project, the request for extension of validity of Letter of Approval for a further period of **3 months** (14th year, 13th extension) from 05.01.2025 to 04.04.2025 is recommended for consideration of BoA.

Agenda Item No. 126.8:

Request for Co-Developer status [2 proposals – 126.8(i) to 126.8(ii)]

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.*

126.8(i) Proposal of M/s. Soujanya Color Private Limited for Co-Developer status in Jawaharlal Nehru Port Authority-SEZ, Raigad, Navi Mumbai.

Jurisdictional SEZ - SEEEPZ 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. Soujanya Color Private Limited, Plot No. 315, Sector 3, Jawaharlal Nehru Port Authority-SEZ, Raigad, Navi Mumbai – 400707 |

| | | |
|-----|--|--|
| 8. | Details of Infrastructure facilities/ authorized operations to be undertaken by the co-developer | Construction of Buildings and Infrastructure for SEZ/FTWZ units, Manufacturing, Trading, Warehousing, Commercial and Other Service units with Associated Civil, Structural Infrastructure including Mechanical, Electrical, Instrumentation work, Equipment related to process and utilities, piping, Software and IT systems, Offices, Canteen, Materials Storages systems, Racks, material handling equipment, Water purification and waste water disposal systems, Public Health MEP, Firefighting System, and Alarm Systems and alike systems and facilities required to set up and maintain chemical manufacturing unit, 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 | 36,788.47 SqMtr (3.67 Hectare) |
| 10. | Proposed investment by the Co-developer (Rs. in Cr.) | Rs. 46.92 crore |
| 11. | Net worth of the Co-developer (Rs. in Cr.) | Rs. 80.95 Crore |
| 12. | Date of the Co-developer agreement | 25 th Nov 2024 |

The following supporting documents have been submitted: -

- i. "In principle approval" issued by M/s Jawaharlal Nehru Port Authority, the Developer dated 22.08.2024.
- ii. Copy of Co-Developer agreement dated 25th Nov 2024 for the proposed area.

Recommendation by DC, SEEPZ:

The request of M/s. Soujanya Color Private Limited for granting Co-Developer status in Plot No. 315, Sector 3, Jawaharlal Nehru Port Authority-SEZ, Raigad, Navi Mumbai – 400707 for Construction of Buildings and Infrastructure for SEZ/FTWZ units, Manufacturing, Trading, Warehousing, Commercial and Other Service units with

Associated Civil, Structural Infrastructure including Mechanical, Electrical, Instrumentation work, Equipment related to process and utilities, piping, Software and IT systems, Offices, Canteen, Materials Storages systems, Racks, material handling equipment, Water purification and waste water disposal systems, Public Health MEP, Firefighting System, and Alarm Systems and alike systems and facilities required to set up and maintain chemical manufacturing unit, and undertaking other default authorized operations as per MOCI Instruction No. 50 dated: 15.03.2010 in 36,788.47 Sq Mtr (3.67 Hectare) area, is recommended, in terms of Section 3(11) of SEZ Act 2005 & Rule 3-A of SEZ Rules 2006 for consideration of the BoA.

126.8(ii) Proposal of M/s. MariApps Marine Solutions India Private Limited, Co-Developer for approval of construction of IT building with additional facilities in lieu of Multi-Level Car Parking on the additional land of 0.3966 Ha (98 cents) approved by BoA.

Jurisdictional SEZ – Cochin SEZ (CSEZ)

Facts of the case:

M/s. MariApps Marine Solutions India Private Limited was granted Co-Developer status in the above SEZ vide approval No. F.2/74/2006-SEZ dated 16.04.2018 for development of IT/ITES infrastructure and its operation and maintenance in an area of 0.58674 Ha (145 cents) in the SEZ. Subsequently, BoA was granted approval for expansion of area of 0.04047 Ha and 0.3966 Ha. The details of area allotted are under:

| Sl. No. | Approval No. & Date | Area allotted (in Ha) | Activities |
|--------------|---------------------------------------|-----------------------|---|
| 1 | F.2/74/2006-SEZ dt. 16.04.2018 | 0.58674 | IT/ITES infrastructure and its operation & maintenance with car parking facilities in 1 st and 2 nd Floor |
| 2 | F.2/74/2006-SEZ dt. 01.12.2021 | 0.04047 | Maritime Training Centre |
| 3 | F.2/74/2006-SEZ dt. 28.06.2023 | 0.39660 | Construction of Multi-Level Car Parking to shift the existing car parking facilities at Phase –I building and convert the same to office space, subject to standard terms and conditions as per the SEZ Act and Rules. |
| Total | | 1.02381 | |

| | | |
|----|----------------------------------|--|
| 1. | Name of the Developer & Location | M/s SmartCity (Kochi) Infrastructure Private Limited Block-09, Kakkanad Village, Kanayanoor Taluk, Ernakulam District, Kerala |
| 2. | Date of LoA to Developer | 21 st April 2008 |
| 3. | Sector of the SEZ | IT/ITeS |
| 4. | Date of Notification | 01.03.2011 & 26.02.2014 |

| 5. | Total notified area (in Hectares) | 93.9165 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|-----------|--|--|-----------|-----------|-----------|-----------|-----------|-----------|-----------|--|-----------|--|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|-------|--------|-------|--------|-------|--------|------|--------|------|
| 6. | Whether the SEZ is operational or not | Operational | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | (i). If operational, date of operationalization | 17.06.2016 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | (ii). No. of Units | 37 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | (iii). Total Exports & Imports for the last 5 years (Rs. in Cr.) - | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | | <table border="1"> <thead> <tr> <th colspan="2">2019-2020</th> <th colspan="2">2020-2021</th> <th colspan="2">2021-2022</th> <th colspan="2">2022-2023</th> <th colspan="2">2023-2024</th> </tr> <tr> <th>Export</th> <th>Import</th> <th>Export</th> <th>Import</th> <th>Export</th> <th>Import</th> <th>Export</th> <th>Import</th> <th>Export</th> <th>Import</th> </tr> </thead> <tbody> <tr> <td>262.51</td> <td>21.20</td> <td>332.24</td> <td>30.60</td> <td>393.87</td> <td>19.81</td> <td>639.08</td> <td>8.62</td> <td>962.97</td> <td>6.21</td> </tr> </tbody> </table> | 2019-2020 | | 2020-2021 | | 2021-2022 | | 2022-2023 | | 2023-2024 | | Export | Import | 262.51 | 21.20 | 332.24 | 30.60 | 393.87 | 19.81 | 639.08 | 8.62 | 962.97 | 6.21 |
| 2019-2020 | | 2020-2021 | | 2021-2022 | | 2022-2023 | | 2023-2024 | | | | | | | | | | | | | | | | | | | | | | | | |
| Export | Import | Export | Import | Export | Import | Export | Import | Export | Import | | | | | | | | | | | | | | | | | | | | | | | |
| 262.51 | 21.20 | 332.24 | 30.60 | 393.87 | 19.81 | 639.08 | 8.62 | 962.97 | 6.21 | | | | | | | | | | | | | | | | | | | | | | | |
| | (iv). Total Employment (In Nos.) | 7129 Nos. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 7. | Name of the Co-Developer sought approval for Co-Developer status (existing Co-Developer) – For change of approved activity | M/s. MariApps Marine Solutions India Private Limited | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 8. | Details of Infrastructure facilities/ authorized operations to be undertaken by the co-developer | Construction of a new IT building containing additional facilities comprising of IT office space, parking facility and temporary accommodation facility for trainees during the time of their marine training in the additional land of 0.3966 Ha which was approved by the BoA for construction of Multi-Level Car Parking facility. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 9. | Total area (in Hectares) on which activities will be performed by the co-developer | 0.3966 Ha (area already allotted to the Co-Developer for construction of MLCP) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 10. | Proposed investment by the Co-developer (Rs. in Cr.) | Rs.109.45 crore Source of funds for the new project – New capital investment (Foreign Direct Investment by the sole holding company – Schulte Maritime Services Pte Ltd) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 11. | Net worth of the Co-developer (Rs. In Cr.) | Rs.100.52 crore | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

| | | |
|-----|------------------------------------|------------|
| 12. | Date of the Co-developer agreement | 26.05.2023 |
|-----|------------------------------------|------------|

In this regard, the Co-Developer has submitted the following documents: -

- i. Request for change in approved activity
- ii. NOC from the Developer
- iii. Co-Developer Agreement

Recommendation by DC, CSEZ:

The request of M/s. MariApps Marine Solutions India Private Limited, Co-Developer of SmartCity (Kochi) Infrastructure Pvt. Ltd. SEZ, for construction of new IT building with additional facilities in lieu of Multi-Level Car Parking in the additional land area of 0.3966 Ha (98 cents) which was approved by the BoA is recommended for consideration of the BoA.

Agenda Item No. 126.9:

Miscellaneous [1 case – 126.9(i)]

126.9(i) Proposal in respect of M/s. Shree Bhomika International Limited for Revival/Renewal of LOA of sick unit, Broad-banding of authorized operations, renewal of Lease deed.

Jurisdictional SEZ – Noida SEZ (NSEZ)

DC, NSEZ has submitted the proposal in respect of M/s. Bhomika International Limited for revival of LOA in terms of Rule 72 of SEZ Rules, 2006.

Brief history of M/s. Shree Bhomika International Limited: -

- i. M/s. Shree Bhomika International Ltd. was granted LOA dated 17.02.1995 for manufacturing & export of Cotton Knitted Fabrics and Knitwears. The Unit commenced production on 28.03.2000 and the LoA was valid upto 30.04.2002. The unit has not been doing any export activities since April, 2003.
- ii. The Plot No. 59-I, NSEZ measuring 16100 sq. mtrs. was allotted to the unit on 24.03.1995 and possession was given on 07.06.1995.
- iii. The sub-lease deed executed on 26.10.1995 was valid upto 31.05.2010.
- iv. The mortgage permission was granted to the unit in favor of IDBI, New Delhi on 24.06.1996.
- v. The unit is not paying the lease rent since 1999.
- vi. Notice under Section 7 of P.P. Act, 1971 was issued on 27.10.2000 & 10.09.2002.
- vii. Order under Section 7 of P.P. Act, 1971 was issued on 13.11.2000 & 02.07.2003.
- viii. Notice under Section 4 of P.P. Act, 1971 was issued on 11.09.2002.
- ix. Eviction Order under Section 5 of P.P. Act, 1971 was issued on 02.07.2003.
- x. The LOA of the unit was valid upto 30.04.2005 and hence stands cancelled w.e.f. 01.05.2005.
- xi. The unit filed a reference to BIFR. The Hon'ble BIFR had been requested vide NSEZ letters dated 25.04.2005 & 17.05.2005 to permit eviction proceedings against the unit under P.P Act, 1971 during the pendency of BIFR proceedings.
- xii. BIFR vide its order dated 19.06.2006 declared the unit as sick and appointed M/s. IDBI as Operating Agency for sale of building at Plot No. 59-I, NSEZ.
- xiii. Stressed Assets Stabilization Fund (SASF) vide letter dated 29.09.2009 proposed to take possession of the assets of the company under Section 13(2) of SARFAESI Act, 2002 and took the possession of the assets of the company on 10.05.2010.
- xiv. Despite of several opportunities given by BIFR to SASF and IDBI, they were not able to conduct successful auction of the building till 21.11.2016.

- xv. SASF submitted the valuation report on 25.10.2017 for Rs. 10.61 Crores and the Sale Notice, Tender documents etc. on 07.02.2018.
- xvi. The lease rent dues were informed to SASF vide NSEZ letter dated 04.07.2018 & breakup of dues was provided vide letter dated 31.10.2018.
- xvii. Vide e-mail dated 20.08.2019, Sh. Manish Agarwal informed that he has been appointed as the Insolvency Resolution Professional and CIRP (Corporate Insolvency Resolution Process) has been initiated against the unit under the provisions of Insolvency and Bankruptcy Code, 2016 by an order of National Company Law Tribunal (NCLT) with effect from 11.07.2019.
- xviii. The status of the dues was conveyed to Resolution Professional vide NSEZ letter dated 05.09.2019 and the claim of the dues was also filed in the prescribed format i.e. Form B. Resolution Professional has also been requested vide NSEZ letter dated 02.09.2020 to intimate the current status of the case.
- xix. Sh. Anshul Rawat, Advocate, M/s. Surana&Surana International Attorneys (Legal Firm of NSEZ) has been requested vide NSEZ e-mail dated 25.09.2019 and letter dated 02.09.2020 to present the case before NCLT and intimate the current status of the case.
- xx. Sh. Anshul Rawat, Advocate vide e-mail dated 04.09.2020 has informed that in the CIRP process of M/s Shree Bhomika International Ltd, pending before NCLT, New Delhi, the total accepted Resolution Plan amount is Rs 4.5 Crore and out of which IDBI Bank will get Rs. 4 crores against their claim of Rs. 325 crore and NSEZ will get Rs. 50 Lacs against their claim of Rs. 6.29 crores. The amount will be disbursed after NCLT, New Delhi's approval.
- xxi. Hon'ble NCLT, New Delhi vide order dated 05.10.2020 passed the resolution plan submitted by resolution Applicant of Shree Bhomika International Ltd. i.e. M/s. Commodities Trading.
- xxii. An application was filed by NSEZ to contest for their rejected claim of Rs.5.79 Crore.
- xxiii. Hon'ble NCLT dismissed the appeal filed by NSEZ for dismissal of NCLT Order dated 05.10.2020 in the matter of Shree Bhomika International Ltd. vs Stressed Assets Stabilisation Fund.
- xxiv. M/s. Commodities Trading has deposited an amount of Rs. 50 lacs in NSEZ Authority account as per NCLT order dated 05.10.2020.
- xxv. Lease rent amounting to Rs.7,03,79,009/- is outstanding upto 31.12.2020 in respect of Plot No. 59-I, NSEZ.
- xxvi. There are no outstanding customs dues and labour dues against the unit as informed by Customs Wing and Labour Department.
- xxvii. An email dt. 17.10.2023 received from M/s Surana and Surana regarding above mentioned matter. The said legal firm has forwarded copy of Order passed by NCLT, New Delhi. The said order has been examined as under: -

“...Considering the lack of a stay order and the circumstances, the court directed the Respondent to grant all approvals and renewals as per the approved Resolution Plan dated 05.10.2021, declaring the Resolution Plan of M/s Commodities Trading as approved by this Hon’ble Adjudicating Authority in the CIRP of the Corporate Debtor as binding on the Respondent under Section 31 of the Code. Consequently, IA-2637/2022 was allowed”

xxviii. Surana & Surana Legal Opinion:

"Considering the above referred points and order dated 01.06.2023 passed by the Hon’ble National Company Law Tribunal, New Delhi. We are of the opinion that since the Hon’ble NCLT, New Delhi has approved the Resolution plan which mentions-

“10.9. Exemptions from Noida Special Economic Zone (NSEZ):

There should be exemption of payment to the NSEZ of any types of fees/penalty for renewal of the sublease and/or transfer charges due to change in 100% directorship/shareholding or both in favour of resolution applicant irrespective of the fact that the original Allottee has obtained completion certificate or not.”

Therefore, NSEZ should approve their application/request for renewal and/or transfer.

Aside, since the case is pending and the above referred clause 10.9 of the Resolution plan has already been challenged along with other disputes before the Hon’ble Supreme Court of India. This issue can again be raised at the time of hearing before the Hon’ble Supreme Court of India.”

2. Proposal submitted by M/s. Shree Bhomika International and consideration by Approval Committee: -

M/s Shree Bhomika International Ltd. submitted a proposal for broad-banding, renewal of LOA, and lease deed for Plot No. 59-I in NSEZ. The proposal includes warehousing services for textiles and other OGL products and software design activities. The promoters, experienced in warehousing and software exports, explained their plan during the Approval Committee meeting on 15.05.2024, stating that legal formalities for the takeover of the sick unit by M/s. Commodities Trading a warehousing unit in Kandla SEZ, are ongoing.

The proposal was placed before the Approval Committee in its meeting held on 15/05/2024. The decision of Approval Committee is reproduced as under:

“2.9 Shri Devendra Bansal, partner of M/s. Commodities Trading appeared before the Approval Committee and explained the proposal. He informed that

they were running a warehousing unit in Kandla SEZ for many years successfully. He also informed that previously they were also running an EOU in the name of M/s Digisoft Outsourcing for export of software and operations but the said EOU are now closed. He informed the Approval Committee that appeal filed before the Hon'ble NCLT/NCLAT by NSEZ Authority had already been dismissed and they are waiting for revival of project in NSEZ for last four years. He further informed that as of now the application for LOA renewal/amendment etc in respect of instant proposal had been signed by him in the capacity of partner of Commodities Trading which has taken over M/s. Shree Bhomika International Ltd. by way of revival plan approved by Hon'ble NCLT. However, they were in the process of completion of MCA formalities reg. change in directors and shareholding and shall submit the necessary documents to NSEZ at the earliest.

2.10 It was further informed that Rule 72 of SEZ Rules, 2006 provides as under:

"(1) A unit which has been declared sick by the appropriate authority shall submit revival package through Development Commissioner to Board for consideration and the Board shall consider the extension in the period for fulfillment of Positive Net Foreign Exchange for a further period up to a maximum of five years at the prevalent norms.

..

(3) In case a new entity is willing to take over all the assets and liabilities of a sick Unit, transfer of such assets and liabilities as provided under sub-rule (1) shall be considered by the Board."

2.11 The Approval Committee went through the case history, application submitted by the resolution applicant, provisions of Rule 72 of SEZ Rules, 2006, informal inputs of the legal firm and after due deliberations, directed the unit to submit the following:

(i) Clear & complete details of proposed authorized operations giving therein description and 8-digit HS Code as per ITC HS Classification 2022 in respect of proposed warehousing goods and CPC code of proposed services.

(ii) Clear projections of exports, forex outgo, NFE Earnings, imported & indigenous capital goods, raw materials, input services etc. in Form-F1 along with Board Resolution in favour of authorised signatory of the Company.

(iii) Complete and updated details of directors & shareholding pattern of M/s. Shree Bhomika International Limited including w.r.t. compliance with

MCA formalities (before and after change in directors consequent upon taking over this sick company by M/s. Commodities Trading).

2.12 The Approval Committee further directed the Project Division, NSEZ that on receipt of reply/documents from the unit, the proposal may be examined on file for forwarding the same to DOC with a UAC recommendation for revival of LOA in terms of Rule 72 of SEZ Rules, 2006 for supply of services related to Designing of Textile related software & other softwares related to all other industries. Further, UAC directed to take a report from KASEZ regarding track record of the unit on warehousing, including any violations of SEZ Act, Rules, Customs Act and FTP. It was also directed by the Committee that facts of NCLT approved Resolution plan along with disputes related to exemption from payment to the NSEZ Authority of any types of fees/penalty for renewal of the sublease and/or transfer charges due to change in 100% directorship/shareholding or both and appeal filed by NSEZ Authority before the Hon'ble Supreme Court, may also be informed to DOC."

3. Details/information received from M/s. Shree Bhomika International in compliance to decision of Approval Committee: -

(A) The unit in compliance with UAC decision vide its letter dated 28/05/2024 has submitted following:

(i) That proposed amendment in authorized operations as under:

"(A) Warehousing Services Activity as per Rule 18(5) and Rule 76 of the SEZ Rules, 2006. List of proposed products (56 items) for warehousing has also been given.

(B) Computer Software Development and Information and Technology Enabled Services (BPO and KPO Services)"

(ii) Clear projections of exports, forex outgo, NFE Earnings, imported & indigenous capital goods, raw materials, input services etc. in Form-F1 have not been given. Instead, unit has stated that they do not have online access to submit Form-F1 as they do not have renewed LOA and their operations were discontinued in 2002.

(iii) As regards complete and updated details of directors & shareholding pattern of M/s. Shree Bhomika International Limited, unit has stated that they are in process of completing take over process with ROC and all their approvals are pending with Regional Director, ROC, Delhi which they are expecting to be completed very soon. They shall submit the same as soon as it is completed.

(iv) It has further been stated that M/s. Commodities trading has taken over 100% shareholding of M/s. Shree Bhomika International Limited under Indian

Bankruptcy Code 2016 Scheme of Govt. of India and Partners of M/s. Commodities Trading shall hold the shareholding as per partnership share in Commodities Trading.

(B) Taking into account incomplete reply submitted by applicant and the alleged violations by the applicant firm/promoters, as reported by Kandla SEZ/Customs, the unit vide NSEZ letter dated 03/10/2024 was again requested to provide complete reply along with additional information.

(C) The unit in reply to NSEZ letter dated 03/10/2024 vide its letter dated 21/10/2024 has submitted its reply as under:

| Query | Reply | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---------------------------------------|-------------------------|---------------------|--|------------------------------|---------------------|--|--|--|---------------------|--|--|--|---------------|-------------------|----------------------|------|--------|--|---------------------|--|--|-------------|---------------|--------------------|---------------------|-----------------|--------|------|--------|-----------------|--------|------|--------|-----------------|--------|------|--------|-----------------|--------|------|--------|-----------------|--------|------|--------|--------------|----------------|-------------|----------------|
| (i) Signed copy of Form-F1 duly filled in all respects as per format of Form-F1 attached. | <p>Unit has submitted copy of Form-F1 showing following details:</p> <table border="1"> <tr> <td>Proposed authorized operations</td> <td colspan="3">IT/ITES Services</td> </tr> <tr> <td>Employment envisaged.</td> <td colspan="3">Men – 35 Women – 15</td> </tr> <tr> <td rowspan="3">Projections of Investment/ Procurement during a block of five years</td> <td colspan="3">Values in Rs. Lakhs</td> </tr> <tr> <td></td> <td>Import</td> <td>Indigenous</td> </tr> <tr> <td>Capital Goods</td> <td>0.00</td> <td>197.99</td> </tr> <tr> <td rowspan="3">Projections of export/forex outgo/NFE Earnings for five-year block period</td> <td colspan="3">Values in Rs. Lakhs</td> </tr> <tr> <td>Year</td> <td>Export</td> <td>Forex Outgo</td> <td>NFE Earnings</td> </tr> <tr> <td>1st</td> <td>180.00</td> <td>0.90</td> <td>179.10</td> </tr> <tr> <td>2nd</td> <td>252.00</td> <td>1.26</td> <td>250.74</td> </tr> <tr> <td>3rd</td> <td>288.00</td> <td>1.44</td> <td>286.56</td> </tr> <tr> <td>4th</td> <td>324.00</td> <td>1.62</td> <td>322.38</td> </tr> <tr> <td>5th</td> <td>360.00</td> <td>1.80</td> <td>358.20</td> </tr> <tr> <td>Total</td> <td>1404.00</td> <td>7.02</td> <td>1396.98</td> </tr> </table> <p>As per separate details submitted, forex outgo have been shown against 'Foreign Travel'</p> | Proposed authorized operations | IT/ITES Services | | | Employment envisaged. | Men – 35 Women – 15 | | | Projections of Investment/ Procurement during a block of five years | Values in Rs. Lakhs | | | | Import | Indigenous | Capital Goods | 0.00 | 197.99 | Projections of export/forex outgo/NFE Earnings for five-year block period | Values in Rs. Lakhs | | | Year | Export | Forex Outgo | NFE Earnings | 1 st | 180.00 | 0.90 | 179.10 | 2 nd | 252.00 | 1.26 | 250.74 | 3 rd | 288.00 | 1.44 | 286.56 | 4 th | 324.00 | 1.62 | 322.38 | 5 th | 360.00 | 1.80 | 358.20 | Total | 1404.00 | 7.02 | 1396.98 |
| Proposed authorized operations | IT/ITES Services | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Employment envisaged. | Men – 35 Women – 15 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Projections of Investment/ Procurement during a block of five years | Values in Rs. Lakhs | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | | Import | Indigenous | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Capital Goods | 0.00 | 197.99 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Projections of export/forex outgo/NFE Earnings for five-year block period | Values in Rs. Lakhs | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Year | Export | Forex Outgo | NFE Earnings | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | 1 st | 180.00 | 0.90 | 179.10 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2 nd | 252.00 | 1.26 | 250.74 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3 rd | 288.00 | 1.44 | 286.56 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4 th | 324.00 | 1.62 | 322.38 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 5 th | 360.00 | 1.80 | 358.20 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Total | 1404.00 | 7.02 | 1396.98 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (ii) Clear year-wise projections of exports, forex outgo, NFE Earnings, imported & indigenous | As above. Besides, unit has also submitted list of capital goods for the values proposed in Form-F1. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

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| <p>capital goods, raw materials, input services etc. physically (since sez online login ID is not available) in F1 format duly ink signed by authorized signatory of M/s Bhomika, for next five years.</p> | |
| <p>(iii) Board Resolution in favour of authorised signatory of the Company</p> | <p>Board Resolution in favour of Mr. Rakesh Trikha has been given. However, Form_F 1 has been signed by Mr. DevendraPramod Bansal, Director</p> |
| <p>(iv) Details of cases/investigations currently going on against applicant M/s Commodities Trading by Kandla SEZ/Customs and / or any other authority, if any.</p> | <p>Unit has stated as under:</p> <ol style="list-style-type: none"> 1. that M/s. Commodities Trading are a unit having LOA for warehousing operations at Kandla SEZ from Year 2013 and achieved NFE of Rs. 17.67 Crores until 31.03.2024. They are a law-abiding entity having a clean and unblemished track record of compliance and have never been penalized under any Indian law for the time being in force, since commencement of our operations in the Kandle SEZ. 2. Of late however, they have been named as a co-noticee in the SCN No.GEN/ADJ/COMM/269/2024-Adjn-O/o Commr-Cus-Kandla dated 28/09/2024, issued by the Commissioner of Customs, Kandla to some of their DTA clients in a case of duty evasion investigated by the DRI. 3. That they are denying and contesting all the allegations raised against them in the said SCN and they are in the process of preparing and submitting a detailed reply to each and every allegation levelled in the said SCN and all the penal actions proposed in the said SCN are liable to be dropped in view of the fact that the investigating agency, the DRI, has not adduced any material evidence of their involvement in the case of alleged duty evasion by some of their DTA clients and there has been no contravention of any provision of law either under SEZ Act, 2005 or the Customs Act, 1962. 4. Be that as it may, it is a settled and well recognised law that a Show Cause Notice per se cannot form a basis for depriving the noticee of any rights to which he is entitled to until the charges have been proved and confirmed by way of an adjudication order issued by the competent authority. This legal principle has been laid down by the Apex court in |

| | <p>catena of cases. In support of their contention, unit has mentioned some cases related to other parties.</p> <p>5. Unit has further submitted that a pending SCN cannot form a ground for denial of a benefit unless the charges are proved and confirmed by the Jurisdictional adjudicating authority.</p> | | | | | | | | | | | | | | | | | | |
|--|--|----------------------------|-----------------------|------------------------|--------|----------------|-------|---------------|-------|---------------------|-------|--------------|-------|----------------|-------|----------------------|-------|--------------|-------------|
| <p>(v) Details of directors & shareholding pattern of M/s. Shree Bhomika International Limited prior to and updated after its taking over by M/s Commodities Trading, including status of compliances of formalities with Ministry of Corporate Affairs.</p> | <p>Unit has enclosed list of Directors of M/s. Shree Bhomika International as per MCA as under:</p> <p>(i) Mrs. Bina Sharma (ii) Mr. Hare Krishan (iii) Mr. Basant Sen Sharma (iv) Mrs. ShaliniDevendra Bansal (<i>w.e.f.</i> 02/04/2024) (v)Mr. Shravan Jorabhai Prajapati (<i>w.e.f.</i> 02/04/2024) (vi) Mr. Devendra Pramod Bansal (<i>w.e.f.</i> 02/04/2024)</p> <p>Unit has stated that MCA is in process of retiring Old Directors (i) Bina Sharma, (ii) Hare Krishan and (iii) Basant Sen Sharma as per NCLT order.</p> <p>Unit has stated that all Shares of newly reconstituted company are with partners of Commodities Trading and not even a single share is owned by any old directors. Details of current shareholding pattern as on 31/03/2024 has been given as under:</p> <table border="1"> <thead> <tr> <th>Name of shareholder</th> <th>% shareholding</th> </tr> </thead> <tbody> <tr> <td>Devendra Pramod Bansal</td> <td>97.60%</td> </tr> <tr> <td>Shalini Bansal</td> <td>1.00%</td> </tr> <tr> <td>Tanish Bansal</td> <td>1.00%</td> </tr> <tr> <td>Ashok Kumar Agarwal</td> <td>0.10%</td> </tr> <tr> <td>Usha Agarwal</td> <td>0.10%</td> </tr> <tr> <td>Shweta Agarwal</td> <td>0.10%</td> </tr> <tr> <td>Nilesh Ashok Agarwal</td> <td>0.10%</td> </tr> <tr> <td>Total</td> <td>100%</td> </tr> </tbody> </table> <p>Unit has also submitted old shareholding pattern of the company as on 30/09/2014 consisting of 29 shareholders.</p> | Name of shareholder | % shareholding | Devendra Pramod Bansal | 97.60% | Shalini Bansal | 1.00% | Tanish Bansal | 1.00% | Ashok Kumar Agarwal | 0.10% | Usha Agarwal | 0.10% | Shweta Agarwal | 0.10% | Nilesh Ashok Agarwal | 0.10% | Total | 100% |
| Name of shareholder | % shareholding | | | | | | | | | | | | | | | | | | |
| Devendra Pramod Bansal | 97.60% | | | | | | | | | | | | | | | | | | |
| Shalini Bansal | 1.00% | | | | | | | | | | | | | | | | | | |
| Tanish Bansal | 1.00% | | | | | | | | | | | | | | | | | | |
| Ashok Kumar Agarwal | 0.10% | | | | | | | | | | | | | | | | | | |
| Usha Agarwal | 0.10% | | | | | | | | | | | | | | | | | | |
| Shweta Agarwal | 0.10% | | | | | | | | | | | | | | | | | | |
| Nilesh Ashok Agarwal | 0.10% | | | | | | | | | | | | | | | | | | |
| Total | 100% | | | | | | | | | | | | | | | | | | |
| <p>(vi) Complete details of LOA in respect of your firm which was registered as EOU, including details of</p> | <p>Unit has submitted details of firm which was registered as EOU as under: “Digisoft Outsourcing” a partnership firm with partners as Devendra Pramod Bansal (50%) and Pramod Radheshyam</p> | | | | | | | | | | | | | | | | | | |

| | |
|---|--|
| jurisdictional DC, SEZ from where the LOA was issued. | Bansal (50%) was issued LOA No. STPIG/EXIM/S/599/DSO/3646 dated 21-Jul-2009 for |
| Details of violations of FTP provisions by the said firm, if any, may also be shared. | IT/ITES Services (BPO and KPO services) from Software Technology Park of India, Infocity Complex, Gandhinagar, Gujarat by the Director – Mr. Ajay Sharma on 21/07/2009. There were no violations of the FTP by the said firm and hence Final Debonding letter No. STPIG/EXIM/S/599/DSO/FD/3485 was issued by the said office. Unit has also submitted copy of LOA, Final Debonding letter, APR filed by them for above said STPI unit. |

4. Legal and Procedural Updates regarding Resolution Plan received by NSEZ: -

(A) An email dated 07.11.2024 was received from Manish Agarwal, Resolution Professional for Shree Bhomika International Limited, conveying the dismissal of Civil Appeal No. 5918-5919/2022 by the Hon'ble Supreme Court of India, as per the judgment dated 05.11.2024. Mr. Agarwal has reiterated his request for expedited processing of the Renewal of Letter of Permission and Broad Banding Permission, which was previously applied for by the Resolution Applicant. He urged to facilitate these approvals to renew the Lease Deed for Plot No. 59-I within NSEZ and complete the handover of the premises to the Resolution Applicant. Additionally, Mr. Agarwal mentioned that M/s Commodities Trading, the Resolution Applicant, had made a payment of INR 50 lakh to NSEZ on 26.10.2020 and substantial payments to IDBI Bank on 28.10.2020. He emphasized that these payments were made almost four years ago and requests the authorities' cooperation in concluding the necessary formalities.

(B) In this matter Legal opinion from M/s Surana&Surana and YP (Legal) have been obtained: -

A. Legal Opinion provided by Mr. Anshul Rawat from Surana&Surana International Attorneys Delhi:

"We have gone through the attached order. As the order does not favour NSEZ, you would have to comply with Hon'ble NCLT's order for transfer procedure. However, we wish to update, while admitting the SLP the Hon'ble Supreme Court had categorically considered our argument that:

a. the clause 10.9 of the Resolution plan which states:

"10.9. Exemptions from Noida Special Economic Zone (NSEZ):

There should be exemption of payment to the NSEZ of any types of fees/penalty for renewal of the sublease and/or transfer charges due to change in 100%

directorship/shareholding or both in favour of resolution applicant irrespective of the fact that the original Allottee has obtained completion certificate or not”

b. The clause 10.9 of the approved Resolution Plan was not in conformity with Section 30(2) (e) of the Insolvency and Bankruptcy Code, 2016. Additionally, Transfer charges (exempted as per clause 10.9 of the resolution plan) are the future charges and cannot be considered and covered under **principle of clean slate**:

The clean slate theory in Insolvency and Bankruptcy refers to a provision in IBC, 2016, encoded explicitly in section 31, according to this clean slate theory, once an approved resolution plan is in place, it is binding on all stakeholders, preventing **past claims** from resurging and providing a fresh start for the debtor without the **burden of past liabilities**.

However, the transfer charges are future liability and could not have been considered and exempted (without NSEZ's permission) in the resolution plan.

In view of the above NSEZ may try contesting the final Judgment passed by the Hon'ble Supreme Court of India dated 05.11.2024 by filing a review petition before the Hon'ble Supreme Court of India.

Further, there are few grounds for seeking a review of a Supreme Court's Judgment:

- a. the **discovery of new and important matter** or evidence which, after the exercise of due diligence, was not within the knowledge of the petitioner or could not be produced by him;
- b. mistake or error apparent on the face of the record; or
- c. any other sufficient reason: - “any sufficient reason” means a reason that is analogous to the other two grounds.

Keeping the above in mind, exempting the future claims as past claims under the principle of clean slate, seems to be an error apparent on the face of it.

Also please note- the present review petition (if filed) would be an uphill task, also the same would be heard through circulation by judges in their chambers, and not in an open court.”

B. Legal Opinion provided by Sonakshi Gandotra, Young Professional Legal:

“Background: The Hon'ble Supreme Court's judgment dated 05.11.2024 dismissed NSEZ's appeal against the approved Resolution Plan for Shree Bhomika International Limited. The ruling emphasized the overriding effect of the Insolvency and Bankruptcy Code, 2016 (IBC), over other statutes, including the SEZ Act, 2005 under Section 238 of the IBC. This section stipulates that IBC provisions take precedence over any other conflicting laws, thereby rendering the Resolution Plan supreme once it has been approved by the Adjudicating Authority.

Key Judgment Observations Relevant to NSEZ's Claim for Transfer Charges:

1. Overriding Effect of IBC:

The Court held that the IBC provisions, once a Resolution Plan is approved, override any conflicting claims under other laws, including SEZ regulations. This ruling effectively confirms that statutory dues, renewal fees, or transfer charges mandated by the SEZ Act or other regulations are unenforceable if they conflict with the terms of an approved Resolution Plan under the IBC.

By virtue of Section 238 of the IBC, the Code is given an overriding effect, allowing the Resolution Plan to take precedence over other statutory claims, limiting the enforceability of such claims once the Plan is approved.

2. Non-Justiciability of Committee of Creditors (CoC) Decisions:

The Supreme Court reaffirmed the paramount importance of the CoC's commercial judgment, emphasizing that the CoC's decisions are non-justiciable. Once the CoC, after deliberation, approves a Resolution Plan, its terms are binding and final, effectively excluding statutory dues that were not expressly included in the Plan.

This decision underscores that the commercial wisdom of the CoC cannot be challenged in relation to statutory dues, including NSEZ's transfer charges, if these charges were not explicitly addressed within the Resolution Plan.

3. Extinguishment of NSEZ's Claims:

The judgment clearly indicates that any statutory or regulatory dues that are not incorporated in the approved Resolution Plan, such as NSEZ's claims for transfer fees or renewal charges, are extinguished upon the Plan's approval.

The Court affirmed that an approved Resolution Plan provides a full and final framework for payments to creditors and stakeholders, leaving no room for additional claims or charges post-approval. This interpretation confirms that any claim not listed in the Plan, including SEZ-related charges, is considered settled and unenforceable once the Plan becomes effective.

Opinion:

Based on the Supreme Court's recent judgement, it is unlikely that NSEZ's claim for transfer charges will hold legal standing. The Insolvency and Bankruptcy Code (IBC) provisions are binding on all stakeholders, including statutory authorities like NSEZ. Under this judgment, any NSEZ claims for transfer fees,

renewal charges, or other SEZ-related dues that were not expressly included in the approved Resolution Plan are now considered extinguished.

It is recommended that NSEZ align with the Supreme Court's judgment, recognizing that the Resolution Plan governs all dues payable. Any further attempt to pursue transfer charges would likely be deemed incompatible with the IBC's framework, which supersedes the SEZ Act through the authority of Section 238.

In light of the Supreme Court's findings, NSEZ should consider the matter of transfer charges as fully settled within the terms of the approved Resolution Plan. Further attempts of filing a review petition to recover these charges may likely result in dismissal, given the IBC's overriding effect and the binding nature of the Resolution Plan.

Moreover, non-compliance with the judgment could lead to contempt proceedings.”

From the above, the following have been observed by DC, NSEZ: -

- (i) That the unit has submitted the details as directed by the Approval Committee dated 15.05.2024 and proposed IT/ITES (*without CPC Code*) as Authorized operations.
- (ii) The antecedents of Commodities Trading have been verified from KASEZ wherein they have been issued a SCN as co-noticee. The Adjudication is under process.
- (iii) Civil Appeal No. 5918-5919/2022 filed by NSEZ Authority has been dismissed by the Hon'ble Supreme Court of India, as per the judgment dated 05.11.2024.
- (iv) Legal opinions from Legal Firm and YP Legal have been received. It appears that the chances of getting favourable order in review petition are rare. The decision on filing an appeal may be taken in due course as per the given timelines.
- (v) The Approval Committee in its meeting held on 15/05/2024 had directed the Project Division, NSEZ that on receipt of reply/ documents from the unit, the proposal may be examined on file for forwarding the same to DOC with a UAC recommendation for revival of LOA in terms of Rule 72 of SEZ Rules, 2006 for supply of services related to *Designing of Textile related software & other softwares related to all other industries.*

Relevant rule position: -

- **Rule 72: Revival of sick Units:**

(1) A unit which has been declared sick by the appropriate authority shall submit a revival package through Development Commissioner to Board for consideration and the Board shall consider the extension in the period for fulfilment of Positive Net Foreign Exchange for a further period up to a maximum of five years at the prevalent norms.

(2) On extension of the period, unutilized raw material and imported or domestically procured capital goods shall be allowed to be carried forward at their original value and the Bond-cum-Legal Undertaking executed by the unit shall be revised accordingly.

(3) In case a new entity is willing to take over all the assets and liabilities of a sick Unit, transfer of such assets and liabilities as provided under sub-rule (1) shall be considered by the Board.

(4) Where a Unit is granted extension of period for fulfilment of Positive Net Foreign Exchange Earning under sub-rule (1), the space would continue to be in its possession.

(5) Where a Unit is taken over by another unit, the liability shall pass on to the new unit which is taking over the sick unit.

Recommendation by DC, NSEZ:

In view of above, the complete facts of the proposal of M/s. Shree Bhomika International Limited for revival of LOA are forwarded herewith with the recommendation of the Approval Committee, NSEZ for revival of LOA in terms of Rule 72 of SEZ Rules, 2006 for IT/ITES Services.
