

Minutes of the 29th meeting of Kandla SEZ Authority to be held on 5th September, 2017 at 1500 hrs. at O/o the Development Commissioner, Kandla Special Economic Zone, Gandhidaham.

Following were present:-

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| 1. Shri Upendra Vasishth, ndc, IOFS | -Chairman |
| 2. Shri Rajesh Kumar, Dy.Development Commissioner, KASEZ | -Member(JDC i/c) |
| 3. Shri Sudesh Zingde, Director, Missionpharma Logistics
(on video conferencing) | -Member |

Others:-

1. Shri Laxmi Kant Meena, Sr. Accounts Officer, KASEZ
2. Shri Devaraj.C, Secretary, KASEZ Authority
3. Shri Umesh Naik, AGM, NBCC,
4. Shri Manoj Kumar, Project Manager (Civil), NBCC Ltd.
5. Ms. Winny Chand, Law Officer, KASEZA
6. Shri Jigar Atha, Asstt. Manager (E&M), KASEZA
7. Shri Shubham Goel, JE, NBCC, KASEZ

29.1 Confirmation of the minutes of 28th meeting of Kandla SEZ Authority held on 13.06.2017:

Minutes of the 28th meeting held on 13/06/2017 were confirmed.

29.2 New Proposals:

29.2.1 Request of M/s. Rama Cylinders Pvt. Ltd. for refund of amount:

The Authority noted that as per the discussions in the special meeting held on 8/8/2017, a letter was sent to Asstt. Solicitor General of India at Ahmedabad communicating the decision of the Authority for refund of the amount deposited by M/s.Rama Clinders Pvt. Ltd., Mumbai towards the auction for the material of M/s.Associated High Pressure Technologies Pvt. Ltd. lying at Plot Nos.543 to 560, New Area, by taking a Bank Guarantee of 10% of the amount from M/s. Rama Cylinders for his ratification and for any conditions to be imposed.

The Authority noted that vide letter dated 21/8/2017 ASG submitted his opinion. The ASG's opinion is that instead of 10% Bank Guarantee, the same should be secured for the full amount before returning the deposited money to Rama Cylinders Pvt. Ltd. on an undertaking from the bidder that their offer would be continued for a reasonable period i.e. 18 months.

Accordingly, the Authority decided to refund the amount deposited by M/s.Rama Cylinders Pvt. Ltd., Mumbai towards auction of the material if following conditions are met:-

1. They shall submit an un-conditional Bank Guarantee for 100% of the deposited amount valid for a period of 18 months from the date of BG.
2. They shall undertake to make the full payment & lift the material if the case is decided within a period of 18 months.



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29.2.2 Re-surfacing of internal roads in Sector-1, Kandla SEZ:

The Authority noted that the proposal is to undertake re-surfacing of roads. The re-surfacing of roads is to be undertaken in a phased manner. To begin with the re-surfacing is proposed to be undertaken in the Sector-I of Kandla SEZ at an estimated amount of Rs.9,52,04,915/- as per letter No.PM(C)/NBCC/KASEZ/2017/707 dated 14/8/2017 submitted by NBCC (India) Ltd. As reported, the internal roads has not be re-surfaced for more than 4 years, the Authority approved the proposal for re-surfacing of roads in Sector-1, Kandla SEZ at an estimated amount of Rs.9,52,04,915/-. Third party inspection shall also be carried out by NBCC during execution of the work. During discussions, the Chairman stated that there are roads which requires urgent re-surfacing in other sectors also. They should also be taken care of. It was also decided in the meeting that if the contract is for a lesser amount than the sanctioned cost, the saving should be utilized for re-surfacing of such damaged roads in other Sectors. Since this is phase-I, NBCC was requested to work out Phase-II also and before completion of phase-I, phase-II also should be contracted out.

29.2.3 Construction of two No. warehouse at Plot No.354 to 356 and 364 to 366 (ph-II) at KASEZ, Gandhidham.

The Authority noted that the proposal is for construction of two Nos. warehouse at Plot No.354 to 356 and 364 to 366 (ph-II) at KASEZ at an estimated cost of Rs.15,21,64,636/- as per estimated submitted by NBCC (India) Ltd. vide their letter No.PM(C)/NBCC/KASEZ/2017/708 dated 14/8/2017. The Authority also noted that internal development work is going on at this site. During discussions, the AGM, NBCC explained the unique features of these warehouses and that such warehouses are not constructed in any other Govt. SEZs. The salient feature of these warehouses are as under:-

- (a) Height of the warehouse is 8 mtrs.
- (b) The temperature difference will be of 3 to 5 degree less than outside temperature.
- (c) Fire fighting and sprinkler system will be in place.
- (d) Arch type proflex roofing system will be there with turbo fans.
- (e) Rain water harvesting system is introduced.

Accordingly, the Authority approved construction of two numbers warehouse at an estimated cost of Rs.15,21,64,636/- (Rupees fifteen crores twenty one lakhs sixty four thousand six hundred and thirty six only). Third party inspection shall be carried out by NBCC during execution of the work.

29.2.4 Charging of new rent on change of partners – M/s.Regent Ropes, KASEZ:

The Authority noted that the change in Partnership of M/s. Regent Ropes was approved vide letter dated 20/7/2017 subject to charging new rent at prevalent rates.

The Authority also considered the following points raised by M/s.Regent Ropes vide their letter dated 27/7/2017:-

- (a) Prior to amendment of the partnership deed, there were three partners, as under, having profit sharing ratio mentioned against each:-



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Sr.No.	Name of the Partner	Profit Sharing Ratio
1	Shri Suresh S. Shah	33.33 %
2	Shri Hiren D. Shah	33.33%
3	Shri Bhavik A. Varaiya	33.33%

- (b) After amendment of the partnership deed from 1/4/2017, two partners namely, Shri Hiren D Shah and Shri Bhavik A Varaiya retired and a new partner, Shri Raj Suresh Shah has been added by continuing one of the existing partner i.e. Shri Suresh S Shah, with major share holding with him. The profit sharing ratio is as under:-

Sr.No.	Name of the Partner	Profit Sharing Ratio
1	Shri Suresh S. Shah	51%
2	Shri Raj Suresh Shah	49%

- (c) They have stated that as more than 50% of the profit sharing and control remains with one of the partners from earlier share holding pattern.
- (d) Earlier three partners were close relatives and the new partner is son of the existing partner and as such the share holding pattern is within the family without diluting the share to any outside parties.

The Authority discussed the issue and found that the issue of transfer of business entities within a family needs a careful consideration. It was noted that the decision to charge new rent to any business entity in Kandla SEZ which undergoes more than 50% change in the ownership, was taken to avoid cases where old units paying lesser rent are taken over by new entrants just to enjoy lower rent. However, in case of a family business, some family members join the business, some family members may leave the business, in some cases some persons have to be taken out because of demise and in some cases family business is re-organized etc. Authority asked the view of the Law Officer also in this regard who opined that any changes in the ownership of family business within the family cannot be equated with a take over of a business by entirely new set of owners.

After detailed discussion with all the Members present, it was decided that all the cases of units in Kandla SEZ where there is a change in the ownership pattern within a family due to demise of partner/director, business re-organization, addition of blood relative like son/daughter etc., and similar cases, there will be no change in the rental structure of the unit on account of this.

29.2.5 Charging of new rent on change in Partnership – M/s. Prasar Enterprises, KASEZ:

The Authority noted that as per practice, where there is a major change in the shareholding, new rent is charged. In the present case of M/s. Prasar Enterprise, the retiring partner later on died. Remaining Partners are his son and daughter-in-law. No new partner has been admitted. Therefore, in this case the share came to the remaining partners through change in partnership deed and not through inheritance at the relevant time. Intimation regarding retiring partner was received before his death. The retiring partner (who died later on) has 65% share in the Partnership firm.

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The Authority deliberated on the issue and decided that this case is also covered as per the decision taken in agenda point No.29.2.4 as above in the matter of M/s.Regent Ropes and that decision holds good in this matter also.

29.2.6 Issue of NOC for mortgaging the lease hold rights for loans:

The Authority noted that we have been issuing NOC for mortgaging the lease hold rights for building constructed by units or capital goods with the financial institutions for obtaining financial assistance by the units in the Zone. Whenever the unit is declared as "Non-Performing Assets" by the Bank, the Bank take symbolic possession under SARFAESI Act or move to the Debt Tribunal/Hon'ble Courts etc. These cases take a long time for settlement and thereby there is loss of rental income to the Authority/Govt.

Following cases are noted by the Authority.

Sr. No.	Name of the Unit	Area occupied in sq.mtrs.
1	M/s. Otoklin Plants & Equipments Ltd. (DRT)	43,890
2	M/s. Hollandia Knitters Pvt. Ltd.	6600
3	M/s. Shree Chakra Udyog	15586.24
4	M/s. Sancia Global	28800
5	M/s. S2M Global (built-up space)	1690

Further, recently one more unit namely, M/s.Vigyan Chemicals Pvt. Ltd. also declared as NPA by the financial institution and symbolic possession has been taken under SARFAESI Act. They occupy an area of 3328.8 sq.mtrs. and the annual rent at present rate of rent is Rs.7,04,873/-. Apart from the loss of potential income, the objective of the SEZ Act, 2005 is also defeated as premises remain idle for years and no exports or economic activity take place.

The Authority deliberated on this issue and decided not to issue NOC for mortgaging the lease hold rights any more. It was also decided to put a condition in the tender of allotment of premises and also in the allotment order that "Kandla SEZ Authority shall not issue any NOC for mortgaging the lease hold rights for obtaining financial assistance".

Following point was issued as table agenda as the next agenda item:

29.2.7 Charging of new rent where no lease deed is executed:-

The Authority noted that in the 28th meeting of Kandla SEZ Authority held on 13/6/2017 due to non-execution of lease deed, Authority had increased their lease rent w.e.f. 1/1/2012 as per the formula fixed for renewal of lease and w.e.f. 1/1/2016, the rent has been revised to prevalent rent.

M/s. Chemical Solutions, one of such units, vide their letter dated 13/8/2017 requested to re-consider the decision of the Authority owing to following reasons and facts:-

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1. There has been non-compliance from their part due to administrative issues and it was only after receipt of the letter they were aware that the lease deed for the allotted plot was not executed.
2. At present they are paying rent @Rs.25.38 per sq.mtr./p.a and the new rent charged is Rs.102/- per sq.mtr./p.a. with 10% revision every year from 2012 onwards which is very exorbitant for a small scale units like theirs. The revised rent is 6 times of their present rent.
3. The allotment order for the plot is having a lease period of 15 years and revision of rent is at an interval of three years. As per the allotment order, the new rent will be applicable upon completion of 15 years i.e. year 2022. (Their date of allotment is 31/3/2007).
4. They are a small scale trading unit engaged in import and export of chemicals and solvents which is a very competitive market and a thin margin business. Any escalation cost will have major financial implication on their business model and they are competing with Countries like China, Singapore, Srilanka and Middle East.

During discussions, Law Officer informed that lease is given based on the allotment letter. When the allotment letter contains a specific period of lease and the revision of rent, etc. within the validity of that allotment, we cannot take a decision to revise the rent based on the fact that the allottee has not executed lease deed. She also informed that such a decision will not stand before any Court of Law. JDC (i/c) also expressed the same view.

Chairman agreeing to the above views stated that there are other means under the SEZ Act to suspend/cancel the LoA for non-execution of lease deed and there appears to be no justification in increasing the lease rent within the validity of allotment period for non-execution of the lease deed. It was, therefore, decided not to increase the lease rent as per the earlier decisions instead we should write to the units to execute the lease deed within 30 days, failing which action will be taken to withdraw their LoA under the relevant provisions of SEZ Act and Rules framed thereunder including eviction proceedings.

If the units are not coming forward for execution of lease within this period, the position may be reviewed and such cases needs to be intimated to the Industrial Approval Section, for taking further action under SEZ Act, 2005.

The meeting ended with thanks to all present.


(Upendra Vasishth)
Chairman,
Kandla SEZ Authority.