

SPECIAL ECONOMIC ZONE

PUNE CLUSTER

AGENDA FOR

**MEETING OF THE UNIT APPROVAL COMMITTEE FOR EXPORT
ORIENTED UNITS UNDER THE JURISDICTION OF DEVELOPMENT
COMMISSIONER, SEEPZ-SEZ.**

VENUE : Maratha Chambers of Commerce Industries and Agriculture,
505, Wing-A, Trade Tower, ICC Complex, 403,
Senapati Bapat Road, Pune-411 016.

DATE : Thursday, 17th May, 2018.

TIME : 12.00 P.M onwards.

**MEETING OF THE UNIT APPROVAL COMMITTEE FOR
EXPORT ORIENTED UNITS UNDER THE CHAIRMANSHIP OF
DEVELOPMENT COMMISSIONER, SEEPZ-SEZ 17th May, 2018.**

INDEX

Agenda Item No.	Subject
Agenda item No. 01 : -	Application for amalgamation of M/s. Sigma Electric Manufacturing Corporation Pvt. Ltd., and Sigma Electric Manufacturing Pvt. Ltd.,

**OFFICE OF THE DEVELOPMENT COMMISSIONER,
SEEPZ SPECIAL ECONOMIC ZONE, GOVT. OF INDIA,
ANDHERI (E), MUMBAI**

AGENDA NOTE FOR CONSIDERATION OF UNIT APPROVAL COMMITTEE

a) Proposal :-

Application for amalgamation of M/s. Sigma Electric Manufacturing Corporation Pvt. Ltd, and Sigma Electric Manufacturing Pvt.Ltd.,and thereafter change in name.

b) Specific Issue on which decision of UAC is required :-

The unit has submitted the application for Change of Implementing Agency consequent upon Amalgamation by virtue of Merger order passed by National Company Law Tribunal Bench, Mumbai with parent company i.e. M/s. Sigma Electric Manufacturing Pvt. Ltd. (Formerly known as Sunk Rock Metal Foundries India Pvt. Ltd.). **The proposal of the unit submitted before the UAC meeting, and noted that their request for change in name consequent to merger has been differed by UAC and the UAC directed the Dy. Commissioner GST Pune - I to submit the detail report and his observation on this matter and also view of income Tax has been sought on the matter on receipt from the Deputy Commissioner, GST, Pune - I.**

c) Relevant Provisions of FTP/HBP :-

In terms of Para 6.34 (6) of HBP, 2015-2020, "Authorize change in name of company or implementing agency and change from a company to an other provided new implementing agency/company undertakes to take over assets and liabilities of existing unit".

d) Other Information :-

M/s. Sigma Electric Manufacturing Corporation Pvt. Ltd., Pune-I, had been issued LOP No. PER:36(1997)/EOB/587/96 dated 30.01.1997 as amended for manufacture and export of electrical Wiring Accessories & Parts thereof including Dies, Moulds, Jigs, Fixtures, Tooling and parts hereof etc. at Gat No. 154/1 & 155/1, Post Mahalunge, Village Chakan, Talegaon Road, Khed, District Pune - 410 501. The unit commenced production w.e.f. 01.10.1997. The validity of LOP is upto 31.03.2022.

The unit vide letters dated 04.10.2017, 09.10.2017 & 27.10.2017 submitted the application for Amalgamation and stated the following :-

- (i) The unit has pursuant to a Scheme of Amalgamation approved by its shareholders and sanctioned vide the order of the National Company Law Tribunal, Mumbai Bench (NCLT) dated September 14, 2017 has merged and amalgamated in its entirety into its parent company M/s. Sigma Electric Manufacturing Pvt. Ltd.
- (ii) As a result of Amalgamation, the entire business, undertaking, interests, rights and liabilities of Sigma stand transferred and amalgamated into its Parent and the Parent shall be deemed to be automatically substituted in place of Sigma by virtue of the Parent being the successor in interest of

Sigma, in accordance with, and as per the terms of the Scheme of Amalgamation sanctioned by the NCLT vide its Merger Order.

- (iii) The Amalgamation was carried out for internal corporate restructuring purpose and as a part of the Scheme of Amalgamation as approved by the Merger Order the amalgamated company shall continue its business activity with the same shareholders and under senior management team as before.
- (iv) As per the terms of the Scheme of Amalgamation approved by the NCLT, the amalgamated entity shall continue with the name "Sigma Electric Manufacturing Corporation Pvt. Ltd." after undertaking all procedural requirements under applicable laws relating to change in its name.
- (v) This process for change in name of the amalgamated company is currently under process in line with applicable laws and with effect from October 6, 2017 and until this name is changed they would be undertaking their business and operations under the name of the Parent i.e. "Sigma Electric Manufacturing Corporation Pvt. Ltd."
- (vi) The tax registration details of the amalgamated company with effect from 06.10.2017 are as set out in the annexure and they would request to kindly note and utilize the tax registrations for all intents and purpose w.e.f. 06.10.2017.
- (vii) Since there is change in name, they will be migrating their business transaction IEC Code, GSTIN number, Pan Number, CIN number etc. of Sigma Electric Manufacturing Pvt. Ltd.
- (viii) During the transaction period there will be overlapping of some transactions on old statutory registration number & name of the company.
- (ix) Being all assets and liabilities "Sigma Electric Manufacturing Corporation Pvt. Ltd." has been taken over by parent company, kindly all transactions done on old registration numbers as new company transactions and tax credits and other benefits/liabilities shall be passed on to parent company.
- (x) They have requested to issue new LOP & Green Card incorporation the details of parent company as per policy HBP 2015-2020 Chapter 6.34 (6) being all assets and liabilities of existing company has been taken over by parent company.

It may be mentioned that the unit has submitted the following documents for amalgamation :-

- (i) Merger order passed by National Company Law Tribunal Bench, Mumbai
- (ii) IEC Code of Parent Company
- (iii) GSTIN of Parent Company

- (iv) Pan Card of parent Company
- (v) CIN of parent company
- (vi) Board Resolution of Both Company
- (vii) An undertaking confirming that all liabilities of merged company has been taken over.
- (viii) List of existing directors.

The details of export and NFE in last five year period are as follows :-

Year	Export (Rs. in Lakhs)	NFE (Rs. in Lakhs)
2012-13	26,012.88	11,618.63
2013-14	46,296.26	35,722.16
2014-15	52,607.61	61,182.96
2015-16	52,238.53	89,579.03
2016-17	57,026.04	1,20,593.78

There is no outstanding export proceed pending for realization for the period 2016-17.

1. As per the letter dated 03.01.2018 Asst. Commissioner has stated that if EOU unit is amalgamated with DTA unit then identity and PAN of EOU will be laps and duty on closing stock should be paid by EOU.
2. If any EOU unit is amalgamation into DTA then first de-bounding of EOU is required to protect government revenue.

The existing matter to be amalgamated are having conational rate of duty must be refunded.

The amalgamated of both units with DTA is related to company act, CGST act & IT act is formed within the 6 month only same address of EOU unit. As per central Excise procedure to manufacturing unit never exist for same address

The newly formed DTA Company is only on paper. It has not any assets financial worth to buy the EOU unit. It is need to clarify the source of fund.

In this case NCLT has accepted the transfer an amalgamation and after amalgamation the new entity is generated but in this case no third new entity is generated.

The parent company's name was changed within a month of formulation. Last year. They have no field any balance sheet/return to the ministry of corporation affair. The sunk rock metal foundries India Pvt.Ltd., was name of the parent company it was formulated by selling equity to sunk rock

Mauritius acquisition company by selling share at premium of 2000 per share. This transaction also is check by income tax Department. Hence this office is of view that all above verification and rectification, compliances such as de-bonding needed to be carried out first before issuing fresh LOP another company having different PAN as well as different status.

Vide letter dt.04.05.2018 the Income tax Authority has given comments on the Dy. Commissioner GST. The details are as follows:-

Sr no.	Dy. Commissioner Observation	Comments of Income Tax Authority
1	The de-bonding of EOU into DTA unit is necessary in the case of amalgamation and the procedure duty forgone must be repaid by EOU first.	Issue of de- bonding of EOUS into DTA unit and collection of procedure duty buy the EOU, falls in the domain of law Department of central Tax (GST) this office has no role in the levy/collection of procedural duty.
2.	As per the procedure of Central Excise, it is required that the EOU unit and DTA unit (said entries involved in for amalgamation) should be isolated, but the address for these unit in this case is same and hence not treated as isolated.	For the requirement of two separate isolated entries in the case of amalgamation is as per the procedure of central excise the said procedural requirement is as per the Law /procedures administrated by Department of Central Tax, hence this office has no role for the same.
3	The newly formed DTA Company should be resultant third new entity, as per the above mentioned letter, but in this case it is a paper company with no financial assets and net worth to buy the EOU unit. The fund raised by the investment buyer is through sale of its shares at highest premium value to a Mauritius based Company and there is need to identify the source of this fund from Mauritius	The issue of the identification and verification of source of Fund from Mauritius in this case and said sale of shares by the Foreign entries are regulated by the RBI, the entries transaction being approved by competent government authorities cannot be questioned, in absence of any cogent evidence in records to suggest contrary

Income Tax authority has stated that the Honable High Court has passed the order of amalgamation dated 14.09.2017 and the NCLT has accepted the transfer of amalgarnations. Further , they have stated that the case is not selected for scrutiny as of now. Hence, the verification of the said issue cannot be effected presently. In case this office receives any concrete information, it will be ensured that these issues are verified in future, as per the procedures of Income Tax Act.

The proposal of the unit for Change of Implementing Agency consequent upon Amalgamation by virtue of Merger order passed by National Company Law Tribunal Bench, Mumbai with parent company i.e. M/s. Sigma Electric Manufacturing Pvt. Ltd. (Formerly known as Sunk Rock Metal Foundries India Pvt. Ltd.), is re-submitted before the Unit Approval Committee for consideration.



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

OFFICE OF THE
ASSTT. COMMISSIONER OF INCOME-TAX
CIRCLE-10, PUNE.

Pratishthakar Bhavan, Sec 26, Dr. Ambedkar Marg, Akurdi
Pudhikaran, Pune-411044, Phone No. 020 27640920
Email:pune.deit10@incometax.gov.in

No/PN/ACIT Cir-10/Sigma Electric/2018-19/

Date: 04.05.2018

To,

The Dy. Commissioner of Income Tax,
TDS Circle, Thane.

Madam/Sir,

*Shri Chandharp
A. Kharne by Put up
14/5*

Sub: Submission of report sought by Assistant Development Commissioner, SEEPZ from Income Tax Department related to Amalgamation of Sigma Electric Manufacturing Corporation Pvt Ltd with its Parent Company Sigma Electric Manufacturing Pvt Ltd (PAN:AAXCS4352F) formerly known as sunk Rock Metal Foundries India Pvt Ltd-reg

Kindly refer to the above

As per the letter dated 03.01.2018 by DC-Chakan Division, Central tax Pune-I, Compite the opinion is sought in regard to following points:

- i. The de-bonding of EOU into DTA unit is necessary in the case of amalgamation and the procedure duty foregone must be repaid by EOU first.
- ii. As per the procedures of Central Excise, it is required that the EOU unit and DTA unit (said entities involved in for amalgamation) should be isolated, but the address for these units in this case is same and hence not treated as isolated.
- iii. The newly formed DTA Company should be resultant third new entity, as per the above mentioned letter, but in this case, it is a paper company with no financial assets and net worth to buy the EOU unit. The fund raised by the investment buyer is through sale of its shares at highest premium value to a Mauritius based Company and there is need to identify the source of this fund from Mauritius.

The reply for the respective points is as follows.

The Hon'ble High Court has passed the order of amalgamation dated 14.09.2017 and the NCLT has accepted the transfer & amalgamations.

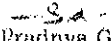
- (i) Issue of de-bonding of EOU into DTA unit and collection of procedure duty by the EOU falls in the domain of Law Department of Central Tax (GST), this office has no role in the levy/collection of procedural duty.
- (ii) For the requirement of two separate isolated entities in the case of amalgamation is as per the procedure of Central Excise, the said procedural requirement is as per the law/procedures administered by the Department of Central Tax, hence this office has no role for the same.
- (iii) The issue of the identification and verification of source of funds from Mauritius in this case and said sale of shares by the investment buyer relates to AY 2017-18. The subscription of shares by the foreign entities are regulated by the RBI, the entire, transactions being approved by competent government authorities cannot be questioned, in absence of any cogent evidence on records to suggest contrary.

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10/5/18*

Moreover, the case is not selected for scrutiny as of now. Hence, the verification of the said case cannot be effected presently. In case this office receives any concrete information, it will be ensured that these issues are verified in future, as per the procedures of Income Tax Act.

Thank You.


Yours faithfully,


(Pradnya Gholap)

Asstt. Commissioner of Income- Tax
Circle - 10, Pune.

Copy for kind information to:

- (i) The Pr. Chief Commissioner of Income Tax, Pune.
- (ii) The Development Commissioner SEZ, SREPZ, Mumbai


Asstt. Commissioner of Income- Tax
Circle - 10, Pune



केन्द्रीय कर के उप आयुक्त का कार्यालय, चाकण मंडल,
 OFFICE OF THE DEPUTY COMMISSIONER, CENTRAL TAX, CHAKAN DIVISION,
 पुणे। आयुक्तालय, दूसरी मंजिल, एक्साइज भवन, आकुर्डी, पुणे-411044
 PUNE I COMMISSIONERATE, SECOND FLOOR, EXCISE BHAWAN, AKURDI, PUNE-411044
 TELEPHONE: 020-27658962 FAX: 020-27641300

F. No. V(Tech)30-20/EOU-STP/CKN-IV/17-18
 Akurdi, the Jan, 2018.

The Assistant Development Commissioner,
 SEZ, Andheri (East),
 Mumbai - 400 096.

Sub : Application for amalgamation - reg.....

Please refer to your office letter F. No. SEEPZ-SEZ/IA-II/28/11/197/12-13/Vol. VII/28265 dated 18.12.2017 on the above subject.

The sigma Electric Manufacturing Corporation Pvt. Ltd (EOU) is going to amalgamate to Sigma Manufacturing Pvt. Ltd. When EOU is amalgamated to a DTA unit which exist already, the duty on closing stock is needed to be paid. EOU is going to merge into a DTA unit because an identity and PAN of EOU is going to lapse. Hence the de-bonding of EOU is necessary with payment of dues as fresh EOP is demanded by the assessee. Though NCLT order says that all tax liabilities will be taken over by the new parent company, it is contradictory to the provision of Handbook of procedure of new foreign trade policy 2015-20.

EOU has different status in terms of rules and regulation when compared with DTA unit, hence whenever there is amalgamation of EOU to any DTA unit, first de-bonding of EOU into DTA unit is necessary to protect government revenue. All stocks of EOU are paying concessional rate of duty, when such stock is taken over by a DTA unit as per the procedure duty foregone must be repaid by EOU first.

The second issue with the amalgamation of EOU with a DTA unit is related with the procedures of Company Act, Central Excise & Income Tax Act. Here DTA unit is formed 6 months back on the same address, where there is address of an EOU unit. EOU unit should be isolated from DTA unit as per the policy of FTP. Also as per Central Excise procedure two manufacturing unit never exist on same address. The assessee has violated the rules & procedures of Central Excise.


The newly formed DTA Company is a Company on paper only. It doesn't have any financial assets & net worth to Eq. the EOU unit. The fund raised by the investment buyer is through sale of its shares at the highest premium value to a Mauritius based company. It means the money is coming from Mauritius with whom India has double taxation avoidance treaty. It need to identify the source of fund for Mauritius based company also by transfer pricing method.

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 2/1/18

of income tax. More because the NCI has accepted the transfer and amalgamation, taxation department can't overlook his concern about revenue forgone. The amalgamation always involve two or more parties which give birth to third entity. However here no such third entity is associated. In fact new company is going to have same name as parent company.

The parent company's name was changed within a month of formation, last year. They have not filed any balance sheet return to the ministry of Corporate Affairs. The Sunk stock metal business had. Pvt. Ltd was name of the parent company. It was formulated by selling equity of Sunk stock Metal acquisition company by selling share at premium of 2000 per share. This transaction also to be checked by Income Tax Department. Hence, this office is of view that all above mentioned transaction, compliance such as de-bonding needed to be carried out first before transfer of BOP to another company having different PAN as well as different Status.

Yours faithfully,


3.1.15

(P. S. Patil)
Deputy Commissioner,
Chakan Division,
Central Tax, Pune-I Commr

**OFFICE OF THE DEVELOPMENT COMMISSIONER,
SEEPZ SPECIAL ECONOMIC ZONE, GOVT. OF INDIA,
ANDHERI (E), MUMBAI**

AGENDA NOTE FOR CONSIDERATION OF UNIT APPROVAL COMMITTEE

a) Proposal :-

Application for amalgamation from M/s. Sigma Electric Manufacturing Corporation Pvt. Ltd.

b) Specific Issue on which decision of UAC is required :-

The unit has submitted the application for Change of Implementing Agency consequent upon Amalgamation by virtue of Merger order passed by National Company Law Tribunal Bench, Mumbai with parent company i.e. M/s. Sigma Electric Manufacturing Pvt. Ltd. (Formerly known as Sunk Rock Metal Foundries India Pvt. Ltd.).

c) Relevant Provisions of FTP/HBP :-

In terms of Para 6.34 (6) of HBP, 2015-2020, "Authorize change in name of company or implementing agency and change from a company to another provided new implementing agency/company undertakes to take over assets and liabilities of existing unit".

d) Other Information :-

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The unit vide letters dated 04.10.2017, 09.10.2017 & 25.10.2017 submitted the application for Amalgamation and stated the following :

- (i) The unit has pursuant to a Scheme of Amalgamation approved by its shareholders and sanctioned vide the order of the National Company Law Tribunal, Mumbai Bench (NCLT) dated September 14, 2017 has merged and amalgamated in its entirety into its parent company M/s. Sigma Electric Manufacturing Pvt. Ltd.
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- (x) They have requested to issue new LOP & Green Card incorporation the details of parent company as per policy IIBP 2015-2020 Chapter 6.34 (6) being all assets and liabilities of existing company has been taken over by parent company.

It may be mentioned that the unit has submitted the following documents for amalgamation :-

- (i) Merger order passed by National Company Law Tribunal Bench, Mumbai
- (ii) DTC Code of Parent Company
- (iii) GSTIN of Parent Company

- (iv) Pan Card of parent Company
- (v) CIN of parent company
- (vi) Board Resolution of Both Company
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2015-16	52,238.53	89,579.03
2016-17	57,026.04	1,20,593.78

There is no outstanding export proceed pending for realisation for the period 2016-17.

e) DC's Recommendation :-

The proposal of the unit for Change of Implementing Agency consequent upon Amalgamation by virtue of Merger order passed by National Company Law Tribunal Bench, Mumbai with parent company i.e. M/s. Sigma Electric Manufacturing Pvt. Ltd. (Formerly known as Sunk Rock Metal Foundries India Pvt. Ltd.) is placed before the Unit Approval Committee for consideration.

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MINUTES OF THE 6th MEETING (2017 SERIES) OF THE UNIT APPROVAL COMMITTEE FOR EXPORT ORIENTED UNIT HELD UNDER THE CHAIRMANSHIP OF DEVELOPMENT COMMISSIONER, SEEPZ SEZ ON 05.12.2017 AT 11.30 A.M.

The following were present

1. Shri. J. P. Shukla, Joint Development Commissioner, SEEPZ-SEZ.
2. Shri. Ganesh Chandra, Joint Development Commissioner, SEEPZ-SEZ
3. Smt. S. R. Motwani, Additional DGFT, Mumbai.
4. Shri. V. D. Shetye, Dy. Director of Industries, MMR.
5. Shri. Vimal Chakwad, Income Tax Officer, Mumbai.
6. Smt. Shreeta Pachaury, Dy. Commissioner of CGST, Nashik.
7. Smt. Prashant Patil, Dy. Commissioner of CGST, Pune I.
8. Shri. Faraz Zachariah, Assst. Commissioner of CGST, Mumbai.
9. Shri. V. K. Saraga, Assst. Commissioner of CGST, Mumbai (East).
10. Shri. Kamaljit Singh, Assst. Commissioner of CGST, Raigad.
11. Shri. Anil Dasgaoankar, Assistant, SEEPZ- SEZ

1. Confirmation of Minutes of the 5th Meeting (2017 Series) held on 27.10.2017

The Unit Approval Committee ratified the minutes of its 5th meeting held on 27.10.2017.

2. **M/s. Phoenix Innovative Healthcare Manufacturers Pvt. Ltd.,**

The proposal of the unit was placed before the UAC for discussion. The UAC comprising Committee observed that the item proposed to be included in the LOP, do not have a backward / forward linkage to the existing items of manufacture. Also, the manufacturing process of the proposed item for manufacture is not similar to the existing approved items of manufacture. The unit has not furnished the requirement of details of additional requirement of capital goods.

The representative of the unit explained that they will require the additional capital goods of Rs. 1.5 Crores approximately and the same would be met within the existing approved limit of imported capital goods.

After deliberation, the Committee deferred the proposal with a direction to the representative of the unit to intimate the details of additional capital goods requirement as well as additional export generated after inclusion of additional item viz. Machine Cap.

3. M/s. Teva Pharm India Pvt. Ltd.,

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The proposal of the unit was placed before the UAC for discussion. During the meeting Committee observed that :

1. The unit has not submitted the approval of Director of Boiler, Mumbai for sharing of boiler facility.
 2. The unit has not submitted the details of commercial terms in respect of sharing of the facility proposed by the unit.
 3. The unit has not submitted the clearance from the Pollution Control Board.
- The Committee also directed the nominee of Income Tax Authority to report the status of income tax benefit with respect to Section 10A of Income Tax Act regarding sharing of boiler facility.

In view of the above, the Committee deferred the proposal.

4. M/s. Sigma Electric Manufacturing Corporation Pvt. Ltd.,

The proposal of the unit was placed before the UAC for discussion. During the meeting the Dy. Commissioner of GST, Pune - 1 region raised his concern about the said amalgamation stating that M/s. Sigma Electric Manufacturing Pvt. Ltd., parent company was incorporated just 6 months before and no manufacturing activities are carried out by the said parent company.

After deliberation the Committee deferred the proposal with a direction to Dy. Commissioner of GST, Pune - 1 to submit the detailed report and his observations on this issue. The Committee also directed the nominee of Income Tax Authority to submit their views after receipt of report from the Dy. Commissioner of GST, Pune - 1.

Meeting ended with vote of thanks to the Chair.



CHAIRMAN - CUM- DEVELOPMENT COMMISSIONER