

Minutes of the **31st Meeting** of the Approval Committee for Sector Specific Special Economic Zone of **M/s. Persipina Developers Pvt. Ltd. - SEZ**, at Village Telegaon and Panshil & Taluka Khalapur and Village Bhokarpada, Taluka - Panvel, Dist - Raigad, under the Chairmanship of Development Commissioner, SEEPZ-SEZ held on **21.05.2021** through Video Conferencing.

1. Name of the SEZ : M/s. Persipina Developers Pvt. Ltd. - SEZ.
2. Sector : IT/ITES
3. Meeting no : 31st
4. Date : 21.05.2021

Members Present:

1. Shri. C. P. S. Chauhan : Member
Jt. Development Commissioner,
SEEPZ-SEZ
2. Shri. Shibi Singh Gaharwar : Nominee of Commissioner of Customs,
Dy. Commissioner, Customs
General, Air Cargo, Sahar.
3. Shri. Avil D'Mello : Nominee of the DGFT,
Asstt. DGFT
Mumbai.
4. Shri. Chaitanya Anjaria : Nominee of Income Tax office, Kautilya
Addl. Commissioner Income Tax
Bhawan, Bandra, Mumbai.
5. Shri. Sanjay Nanaware : Nominee of MPCB, Mumbai.
Field Officer

Special Invitee:-

Shri. Durgesh Tiwari : Specified Officer, Persipina-SEZ.

Shri. Anurag Agarwal, DDC, Shri. Keshav Jadhav, ADC, Shri. Raju Kumar, ADC, Shri Ravindra Kumar, UDC, Smt. Rekha Nair, Asstt., also attended for assistance and smooth functioning of the meeting.

Agenda Item No. 1: Confirmation of Minutes of the 30th meeting held on 06.04.2021.

The Minutes of the 30th Meeting held on 06.04.2021 were confirmed with consenses.



Agenda Item No. 02: Approval for Change in Entrepreneur by way of Business Asset Transfer from M/s. Yotta Infrastructure Solutions LLP to M/s. NMDC Data Centre Private Limited as going concern basis.

The unit has submitted a proposal for Change of Entrepreneur from M/s. Yotta Infrastructure Solutions LLP to M/s. NMDC Data Centre Private Limited as a going concern under Business Asset Transfer agreement, claiming that the same is covered under 3rd proviso to Rule 19(2) of SEZ Rules, 2006.

Decision - The said issue was discussed at length in the Committee and following was observed:-

1. 3rd Proviso to Rule 19(2) states that:-

[Provided also that, subject to the provisions of Rule 74-A,] the Approval Committee may also approve change of the entrepreneur of an approved unit, if the incoming entrepreneur undertakes to take over the assets and liabilities of the existing Unit.

It clearly shows that the change of Entrepreneur can be considered by UAC subject to provisions of Rule 74A.

2. BOA in its meeting dated 23.02.2016 issued following instructions :-

"The Joint Secretary (GPM) explained to the board that representations have been received on the applicability of Rule 74A of SEZ Rules, 2006 in cases where the operational SEZ units continue to operate as such, i.e on a going concern basis as a result of a change of name, court approved merges/de-mergers, slump sale, change of constitution from proprietorship to partnership & vice-versa, change of constitution from public limited company to private/limited liability company and vice-versa, company to partnership & vice-versa, change in shareholding upto 50 percent, etc. and per se are not opting out/existing out of the SEZ scheme.

With a view to promote the ease of doing business in India and that restricting of entity/business is a fairly common occurrence, BOA decided that provisions of Rule 74A shall not apply to SEZ units that do not exit or opt out of the SEZ scheme by transferring its assets and liabilities to another person and SEZ unit continues to operate as a going concern in the situations mentioned above. The UACs concerned, may consider such requests under Rule 19(2) of the SEZ Rules, 2006.

In so far as Business Transfer Agreement is concerned, it was explained that certain acquisitions happen globally as a result of Business Transfer Agreement which result in transfer of the SEZ unit of the Indian Company on a going concern basis to the acquire. The BOA decided that such cases resulting in change of ownership would be decided on merits by the Board of Approval on a case to case basis."

BOA has clearly instructed that provisions of Rule 74A shall not be applicable in certain cases as mentioned in para one above like name change, change of constitution, slump sale, etc.

The instant case is not merely restricted to the scope of change of entrepreneur for consideration under Rule 19(2), but it involves transfer of assets and liabilities through 'Business Asset Transfer' agreement between two independent legal entities. Such cases are more appropriately covered under Rule 74A and do not appear to be covered by the guidelines of BOA dated 23.02.2016.

If all the transfer of assets and liabilities through 'Business Asset Transfer' Agreements are to be covered under Rule 19(2), then Rule 74(A) becomes redundant. BoA has included only some cases, as, mentioned therein, to be covered under Rule 19(2) as a measure of ease of doing business.

The Committee had decided to defer the matter for further deliberation and to make a reference to DoC for guidance in the matter.

However, the consultant appearing on behalf of the applicant unit, insisted on approval or rejection, the Committee decided to reject the proposal as the same is not covered under Rule 19(2) and under BoA guidelines dated 23.02.2016.

Meeting ended with the vote of thanks to the Chair.

Approved by Dev. Commissioner



27/5/21

Sd/-
Chairperson-cum-
Development Commissioner