

**COVID 19 AND VALIDITY OF ENVIRONMENT & CRZ CLEARANCES- AN ANALYSIS**

As the effects of the nationwide lockdown imposed in view of the global pandemic of COVID-19 take shape, a crucial talking point which emerges is the fate of Environment Clearances (“EC”) granted under the provisions of the EIA Notification, 2006 and Coastal Regulation Zone Clearances (“CRZ Clearance”) under the provisions of the CRZ Notification, 2011.

**I) REGIME OF EIA NOTIFICATION AND CRZ NOTIFICATION:**

1. The EIA Notification, 2006 was enacted vide S.O 1533 (E) dated 14<sup>th</sup> September 2006 in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986, read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 and in supersession of the notification number S.O. 60 (E) dated 27<sup>th</sup> January, 1994 being the erstwhile EIA Notification, 1994. Under Clauses 2, 6 and 7 of the EIA Notification, 2006 read with the Schedule thereto, the proponents of various categories of projects were required to obtain ECs prior to commencement. Insofar as construction activity is concerned, if the proposed construction is in excess of 20,000 sq. mtrs., it requires prior Environmental Clearance. All new projects or activities listed in the Schedule would require such Environmental Clearance.
2. Clause 9 of the EIA Notification, 2006 provided for the validity of such ECs. In respect of construction projects, the same was pegged at 5 years with a provision for a further 5 years’ extension on an application being made to the concerned authority within the validity period.
3. Similarly, the CRZ Notification, 2011 was enacted vide S.O.19(E) dated 6<sup>th</sup> January 2011, by the Government of India in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 read with clause (d) and sub rule (3) of rule 5 of Environment (Protection) Act, 1986 and in supersession of the Notification S.O.114(E), dated the 19<sup>th</sup> February, 1991, being the erstwhile CRZ Notification, 1991. Under Clause 4 of the CRZ Notification, 2011, the requirement was laid down to obtain CRZ Clearance in respect of permissible activities under the CRZ Clearance; the validity of such CRZ Clearance was laid down as 5 years from the date of grant under Clause 4.2, sub-clause (vi) thereof.

**II) AMENDMENTS AND EXTENSION OF VALIDITY PERIOD:**

1. By an amendment notification bearing S.O. 1141(E) dated 29<sup>th</sup> April 2015, Clause 9 of the EIA Notification, 2006 was amended to change the validity period of a prior EC to 7 years in respect of “all other projects” which included construction projects. Similarly, the permissible extension that could be granted was increased to 7 years, on an application being made within the validity of the original EC. Thereafter, by a notification being S.O. 2944(E) dated 14<sup>th</sup> September 2016, the EIA Notification was further amended. Clause 9 relating to validity of ECs was amended to the extent that the Original EC would be valid for a period of 7 years for construction projects. However, the maximum permissible extension of such validity was 3 years, upon an

application being made to the concerned Authority prior to the expiry of the original validity period.

2. By a notification being S.O. 1002(E) dated 6<sup>th</sup> March 2018, Clause 4 of the CRZ Notification, 2011 was amended whereby the CRZ Clearance would be valid for a period of 7 years from the date of issue with the added proviso that the construction activities shall commence within a period of five years from the date of the issue of clearance and the construction would be completed and the operations be commenced within seven years from the date of issue of such clearance. It was further provided that the period of validity may be extended for a maximum period of three years in case an application is made to the concerned authority by the applicant within the validity period.

### III) **POST COVID-19 DEVELOPMENTS:**

1. Under Section 6(2)(i) of the Disaster Management Act, 2005, the National Disaster Management Authority has issued Order No. 1-29/2020-PP (Pt.II) dated 24<sup>th</sup> March 2020, directing the Ministries/ Departments of Government of India, State/UT Governments and State/UT Authorities to take effective measures so as to prevent spread of COVID-19 in India. In exercise of powers conferred under Section 10(2)(I) of the Act, the Ministry of Home Affairs, came up with guidelines under Order No 40-3/2020-DM-I(A) dated 24<sup>th</sup> March 2020. Under the guidelines all commercial and private establishments except for essential services listed were asked to remain closed for a period of 21 days with effect from 25<sup>th</sup> March 2020. Subsequently, the lockdown has been extended till 3<sup>rd</sup> May 2020.
2. In view of the Orders dated 24<sup>th</sup> March 2020, the Ministry of Environment, Forest & Climate Change ("MoEFCC") has issued Office Memorandum being F.No. 22-25/2020-IA.III dated 25<sup>th</sup> March 2020 (*available at: [http://parivesh.nic.in/writereaddata/Validity\\_ExtensionEC\\_June2020.pdf](http://parivesh.nic.in/writereaddata/Validity_ExtensionEC_June2020.pdf)*), whereby, in view of COVID-19 and subsequent lockdown declared for its control, notwithstanding any condition imposed in the respective prior EC in respect of the validity period, ECs in respect of all category of projects or activities expiring between 15<sup>th</sup> March 2020 and 30<sup>th</sup> April, 2020, stand extended till 30<sup>th</sup> June, 2020, provided that such project or activity is permissible to be carried out as per other relevant extant laws and regulations during the period of such extension.
3. As such, the MoEFCC has acted proactively in view of the nationwide lockdown to ensure that projects whose ECs were nearing expiry and were precluded from carrying out activities in view of the Orders dated 24<sup>th</sup> March 2020, did not end up with expired ECs during such period and has ensured a modicum of relief upto 30<sup>th</sup> June 2020. However, no such fillip has been provided in respect of validity of CRZ Clearances issued under the CRZ Notification, 2011.

### IV) **WAY FORWARD:**

1. Even after the restrictions on construction activities and the Lockdown as such are lifted, the ability of a Promoter to execute the project will be impaired for a greater

period of time. Supply chains are affected and raw material, construction machinery, migrant labour force etc may be scarce in the aftermath of the Lockdown.

2. In view thereof, the extension granted vide the Office Memorandum dated 25<sup>th</sup> March 2020 may not be sufficient and further extension may be required by project proponents to complete their respective projects as implementation of construction activities is expected to be at a slower pace.
3. It may be advisable for Promoters of real estate projects and their representative associations to address representation(s) to the Central Government, highlighting the projected difficulties and longer estimated timelines and in view of the unprecedented situation, seek issuance of requisite notification providing for further extension to the validity of ECs which are nearing expiry or will be nearing expiry in the near future, more so since there exists no power to extend the validity of the EC under the EIA Notification, 2006 as amended from time to time, subsequent to the expiry of the same.

#### **CRITICAL NOTE**

4. As regards CRZ Clearances, there is urgent need for similar relief as given in respect of ECs by the MoEFCC. It would be prudent for Promoters of real estate projects, implementing projects in CRZ areas and their representative associations to address representation(s) to the Central Government, the Environment Department of the State Government and the Maharashtra Coastal Zone Management Authority for extensions to the CRZ Clearances which are nearing expiry or will be nearing expiry in the near future, more so since there exists no power to extend the validity of the CRZ Clearance under the CRZ Notification, 2011 as amended from time to time, subsequent to the expiry of the same. In the event there are project promoters who's CRZ Clearances have expired during the Lockdown period, urgent representations may be addressed seeking issuance of *post facto* extension of the validity of the CRZ Clearances, more so since the CRZ Notification 2011, pursuant to the amendment dated 6<sup>th</sup> March 2018, Clause 4.3 provides for grant of *post facto* clearances to permissible activities.

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  - For any query please contact:  
Mr. Saket Mone      [saket.mone@vidhiipartners.com](mailto:saket.mone@vidhiipartners.com)      9920852247  
Mr. Subit Chakrabarti      [subit.chakrabarti@vidhiipartners.com](mailto:subit.chakrabarti@vidhiipartners.com)      9819927936