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CREDAI - MCHI

Ref. No. MCHI/PRES/23-25/158
Date: 24/11/2023

To,
Shri Pravin Darade (I.A.S)
Principal Secretary
Environment & Climate Change Department
Government of Maharashtra
Mantralaya, Mumbai - 32

24/11/23 लिपीक, प्रधान सचिव कार्यालय, पर्यावरण व [illegible] विभाग, मंत्रालय, मुंबई-४०० ०३२.

Sub: Clarification on Interpretation of Office Memorandum dated 5 May 2022 bearing no F.No.IA-22/10/2022-IA.III issued by the Ministry of Environment and Forest and Climate Change ("MOEF")

Respected Sir,

1. This is with reference to the OM dated 5 May 2022 bearing no F.No.IA-22/10/2022-IA.III issued by the MOEF (said "**OM**"). MOEF has issued the said OM for Building and Construction projects and Townships covered under Project / Activity No. 8 to the Schedule to the Ministry of Environment and Forests Notification No. S.O. 1533(E) dated 14 September 2006 ("**EIA Notification 2006**") which requires prior Environmental Clearance ("**EC**") from the State Environment Impact Assessment Authority ("**SEIAA**") for Building and Construction projects with built up area of 20,000 sq. mts. to 1,50,000 sq. mts.

2. The OM had been issued after representations were received from various stakeholders that when minor changes are being made in building projects (covered under Project / Activity No. 8 to the Schedule to the EIA Notification 2006) at the time of execution/implementation of the projects and when such changes do not consequently impact the environmental parameters of the project, then in such cases amendment of EC should not be insisted upon.

3. The letter and spirit of the OM is to be found in the EIA Notification 2006 and the OM dated 19 June 2013 issued by MOEF, which have clearly set out the scope and power of the SEIAA and SEAC when appraising projects under Schedule 8 of the EIA Notification 2006. Hence, when conceptual changes are being made to projects owing to statutory requirements and when the same do not in any way change the parameters contained in the Environment Management Plan, such project proponents need not once again approach the SEIAA for amendment in EC. The reason and logic behind such exemption is that SEIAA and SEAC have been constituted under the EIA Notification 2006 for a specific purpose i.e. to appraise the environmental sustainability of 'Building and Construction' and 'Township and Area Development' projects. The scope of appraisal of projects by the SEIAA and SEAC is limited to testing the environmental impact of such projects.

4. The MOEF *vide* OM dated 11.12.2012, had constituted a Committee under the Chairmanship of Dr. K. Kasturirangan, to review the provisions of the Environment Impact Assessment Notification, 2006. One of the terms of reference (ToR) of the Committee was to review the requirement of environment clearance for buildings and real estate projects to avoid duplication considering that such projects will be covered by the local civic authorities and under the relevant building control regulations. The Committee laid down guidelines to be followed by SEIAA/SEAC to focus only on thrust areas of environmental sustainability while appraising the 'Building and Construction' and 'Township and Area Development' projects. Clause 2(iii) of the MoEF OM dated 19 June 2013 enlists all these factors. Importantly, the Committee has stated that "*The SEIAA/SEAC need not focus on the other issues which are normally looked after by the concerned local bodies/State Government Departments/SPCBs*". This has been reiterated by the MOEF vide OM dated 10 November 2015.

5. Clause 5/Paragraph 5 of the OM is being reproduced below:

> ***"5. Accordingly, matter is being examined and it has been decided that any change in configuration/planning/design of the appraised building Project for which EC was granted shall not require amendment of EC subject to no change in (i) Built Up Area (ii) Floor Area Ration (FAR) (iii) change in exterior spaces/green belts, parking, walkways and driveways that are covered including attics and outdoor sports courts. Further there shall be no change in the designated use of the building, number of dwelling units, height of the building, number of floors & basements and total excavation of earth of the building/construction/township/area development project so as not to require any changes in the already approved Environmental Impact Analysis (EIA) and Environmental Management Plan (EMP)."***

6. At present, the SEIAA and SEAC are insisting on an amended EC for projects which have undergone conceptual and minor changes even though these changes/additions/alterations do not cause a change in the approved EIA and EMP. Hence, there is an incongruency in the way the said OM is being interpreted by the SEIAA/SEAC and overall objective of the and the EIA Notification, 2006 and OM dated 19 June 2013.

7. Importantly, any changes on account of change in built up area, floor area ration, change in spaces, green belts, parking, walkways, driveways, change in use of designated building, number of dwelling units, height of building, number of floors and basements that do not resultantly change the environmental parameters like EIA and EMP of a Project are within the ambit of ***permissible changes*** as provided under Clause 7/Paragraph 7 of the OM dated 5 May 2022.

8. Since there is an evident conflict between the purpose the said OM was issued to achieve and the way it is being interpreted by the Authorities, we approached Hon'ble Mr. Justice S.J. Kathawalla (Retd.) to give a legal opinion on certain queries relating to the interpretation of the said OM. The primary query raised for which the legal opinion was sought is reproduced hereinbelow:

> ***"Whether, on a fair reading of the of the Office Memorandum dated 5th May 2022 bearing no. F. No. IA3-22/10/2022-IA.III issued by the MOEF, more so when viewed against the backdrop of the EIA 2006 Notification and the OM dated 19th June 2013 issued by the Ministry of Environment and Forest and Climate Change (MOEF), a project proponent is required to obtain an amendment of the Environmental Clearance granted to the Project Proponent, when changes are made, owing to statutory requirements or changes in market conditions, to the conceptual plans of the project on the basis of which EC has been obtained, where such changes do not consequently impact the environmental parameters contained in the Environment Management Plan"***

9. By way of the legal opinion dated 13 November 2023 issued by Hon'ble Mr. Justice S.J. Kathawalla (Retd.), the query raised was answered and the purport of the said OM has been clarified against the backdrop and objective of the EIA Notification, 2006, OM dated 19 June 2013 and OM dated 10 November 2015. The most relevant portion of the legal opinion is being reproduced hereinbelow:

> 5.14. ***"Therefore, on a combined reading of the EIA Notification, the recommendation of the Kasturirangan Committee, the OM dated 19 June 2013, and a contextual reading of paragraphs 3, 4 and 7 of the 2022 OM, it appears that the 2022 OM does not contemplate amendment of the EC where changes are made to conceptual plans of the Project (on the basis of which the EC has been granted), so long as those changes do not adversely impact the Project's Environmental Parameters of the nature specified in the OMs dated 19th June 2013 and 10th November 2015.***
>
> 5.15. ***The aforesaid construction of paragraph 5 of the 2022 OM is also fortified by the fact that the EIA Notification 2006 and the OM dated 19 June 2013 clearly provide that SEIAA is <u>not required</u> to focus on issues which are normally looked after by the concerned local bodies/ State Government Departments / SPCBs. This is also in consonance with the intent of the EIA Notification and the OM dated 19 June 2013 which restrict the scope and power of SEIAA or SEAC to only ascertain environment parameters/environmental sustainability of projects while granting the EC.***

5.16. ***Any other construction or interpretation of paragraph 5 of the 2022 OM would defeat the very purpose of issuance of that OM as adumbrated in paragraphs 3 and 4 of the same OM, and would also amount to a negation of the spirit of the OMs dated 19th June 2013 and 10th November 2015, which clearly does not appear to be the intent or purpose of the 2022 OM."***

A copy of the Legal Opinion dated 13 November 2023 issued by Hon'ble Mr. Justice S.J. Kathawalla (Retd.) is annexed hereto as **Annexure A**.

10. On the basis of the legal opinion, the intent and purport of the said OM has been clarified in the backdrop of the EIA Notification 2006, OM dated 19 June 2013 and OM dated 10 November 2015. The sum and substance is being summarised below:

    i. Under the OM dated 5 May 2022, an amendment in EC is not required where changes are made to conceptual plans of the Project (on the basis of which the EC has been granted), so long as those changes do not adversely impact the Project's Environmental Parameters. This is clear on a combined reading of the EIA Notification 2006, the recommendation of the Kasturirangan Committee, the OM dated 19 June 2013 and a contextual reading of Para 3,4 and 7 of the OM dated 5 May 2022. **Hence, it is requested that in such cases a revision/amendment in EC is not insisted upon**.

    ii. Changes in (i) Built Up Area (ii) Floor Area Ration (FAR) (iii) change in exterior spaces/green belts, parking, walkways and driveways that are covered including attics and outdoor sports courts, (iv) change in user, etc. which are conceptual changes and do not resultantly change the Environmental Parameters of a Project are permissible and do not require an amendment in EC.

    iii. **Hence, in light of what has been stated hereinabove, the cases set out in (i) and (ii) hereinabove do not qualify as "violation cases" and the SEAC/SEIAA should act accordingly.**

11. We request you to inform the concerned authorities i.e. SEAC/SEIAA to not insist on an amendment in EC when the conceptual changes do not consequently impact the environmental parameters contained in the Environment Management Plan.

Thanking you,

Yours sincerely,
For **CREDAI-MCHI**

Domnic Romell
President

Dhaval Ajmera
Hon. Secretary

Also Enclosed:
1. Legal Opinion of Hon'ble Mr. Justice S.J. Kathawalla (Retd.) – Annexure A
2. EIA Notification, 2006 – Annexure B
3. OM dated 19 June 2013 – Annexure C
4. OM dated 10 November 2015 – Annexure D