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To,

Smt. Vinita Vaid Singal [I.A.S.],

Principal Secretary,

Environment & Climate Change Department,

Government of Maharashtra,

Mantralaya, Mumbai - 400032

Sub: Processing of Environmental Clearances ("EC") in projects under Schedule 8 of the EIA 2006 Notification wherein there are certain changes in conceptual plans owing to statutory requirements which are in the nature of "permissible changes" under OM dated 5 May 2022

Respected Ma'am,

1. The instant representation is being addressed with a request to process applications for EC when there is only a change in scope of the project which is in the nature of amendment/modification in the existing EC without treating such cases as "violations" under the Office Memorandum dated July 7, 2021 ("**Violation OM**") issued by the MoEF&CC which has been stayed by the Hon'ble Supreme Court *vide* Order dated 2 January 2024 passed in Writ Petition No. (Civil) No. 1394 of 2023 titled "Vanashakti v. Union of India"
2. This good office had issued OM dated 5 May 2022 bearing no F.No.IA-22/10/2022-IA.III ("**5 May 2022 OM**") for Building and Construction projects and Townships covered under Item 8 to the Schedule of the EIA Notification 2006 titled "**Clarification with regard to non-requirement of EC amendment due to change in conceptual plan arising out of statutory requirements in building and construction sector-regarding.**"
3. Paragraph 7 of the 5 May 2022 OM refers to a category of "permissible changes" to state that it is only those projects which fall outside the scope of "permissible changes" in Paragraph 5 and which result in an increase in pollution levels beyond what has been approved under the EIA/EMP that are to be treated/processed under the Violation OM. Paragraph 5 of the 5 May 2022 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 Ratio (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)."
4. CREDAI-MCHI had sought an opinion on the interpretation of the 5 May 2022 OM from Hon'ble Mr. Justice S.J. Kathawalla (Retd.), an excerpt of which 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.***

Maharashtra Chamber of Housing Industry

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- 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 not required 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 OM's 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.

5. 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 Paragraph 7 of the 5 May 2022 OM. Hence, when an application for amendment/modification of EC is made for such projects, the same should be processed under the EIA 2006 Notification and shouldn't be treated as "violation cases" under the Violation OM. The 5 May 2022 OM categorically states that projects involving "permissible changes" without any consequent change in environmental parameters are not violation cases.
6. We hope that our representation will be considered, and such projects involving permissible changes are processed under the provisions of EIA 2006 Notification for amendment/modification of EC and not treated as falling under the Violation OM by the authorities. We sincerely request that this representation is considered at the earliest given that many stakeholders are involved, and a large number of projects which contemplate permissible changes are not being processed due to the stay on the Violation OM even though they do not fall within the ambit of the Violation OM.

Thanking you,

Yours sincerely,
For CREDAI-MCHI



Dominic Romell
President



Dhaval Ajmera
Hon. Secretary

CC:

Shri Devendra Fadnavis ji
Hon'ble Chief Minister
Government of Maharashtra
Mantralaya, Mumbai - 400032

Smt. Pankaja Munde ji,
Hon'ble Minister for Environment and Climate Change,
Government of Maharashtra,
Mantralaya, Mumbai. 400032

Enclosed:

1. OM dated 7 July 2021
2. OM dated 5 May 2022
3. Legal Opinion of J. Kathawalla

PS: Contact Person Mr. Sanjay Phope - +91 9619345193