

Supplementary Agenda for the 50th meeting of the Board of Approval to be held on 24th January 2012 at 10.30 A.M. in the Room No. 47, Udyog Bhawan

Item No. 50.25: Requests for Authorized Operations

(i) Request of M/s. Artha Infratech Private Limited for authorized operations in the sector specific SEZ for Electronic Hardware and Software including IT/ITES at Greater Noida, Uttar Pradesh

The SEZ stands notified over an area of 10.006754 hectares. In the BoA meeting held on 19th September, 2011 the request of the developer for following authorized operations in the **non-processing area** was considered. The request was deferred and the Board decided that Director (SEZ), Department of Commerce, would visit the SEZ site and submit a factual report before the BoA for facilitating decision in the matter:-

S. No.	Name of the authorized activity	No. of units	Total area (in sqm)	Justification
1	2	3	4	5
1	Residential Activity			Required for the stay of working staff of the SEZ and their family members. Will be developed as per the requirement of the upcoming units in the SEZ
	(i) Studio Apartments	400 (45 sqm each)	18000	
	(ii) Service Apartments	200 (60 sqm each)	12000	
2.	Commercial Activity: Commercial activities like food courts, serviced apartments, guest house and other commercial activities as allowed in SEZ instruction No. 30	NA	12660	Required for the SEZ staff and their various requirement in the SEZ
3.	Facilities: Creche for small children, nursery school for children, school for children, IT/ITES vocational institute, Indoor games, club, yoga stress management centre, preventive health care centre, auditorium for conference etc. mini hospital, swimming pool, banking and financial services.	NA	21100	Required for the staff in SEZ for the welfare of their family members and children facility will be developed as per the requirement of the upcoming units in the SEZ.

In the meantime M/s. Artha have re-submitted a revised proposal for authorized operations in the non-processing area, which was been forwarded to the Department of Commerce by DC NSEZ vide letter dated 13.12.2011. The revised proposal is as under:

Processing area	:	5.503715 Hectares
Non-processing area	:	<u>4.503039 Hectares</u>
Total	:	<u>10.006754 Hectares</u>

S.N.	Proposed Authorized Operation	Admissible Quantum of FAR @ 187.5 sq.mtrs (As per	Quantum of FAR requested (@ 187.5 per sq. mtrs) at NPA of	Total entitlement of the Developer for a particular activity (As per Instruction No.30)	Permissi on given so far

		Instruction No.30) at NPA of 4.503039 hect.	4.503039 hect.	Ground coverage (Restricted at NPA of 5 hect.)	Admissible Ground Coverage at NPA of 4.503039 hect.	Requested Ground Coverage of NPA of 4.503039 hect.	
1.	Residential/Housing Units	50659	30000	30000	27018	16000	Nil
2.	Commercial	12665	20000	7500	6755	10667	
3.	Other Facilities	21108	34400	12500	11257	18363	

The report as per the directions of the Board is at **Annexure – 1**.

The request is placed before BoA for consideration.

(ii) Request of M/s. Canton Buildwell Private Limited for authorized operations in the sector specific SEZ for IT/ITES at Gurgaon, Haryana

Sector specific SEZ for IT/ITES at Gurgaon, Haryana being developed by M/s. Canton Buildwell Private Limited stands notified over an area of 19.3037 hectares. In the BoA meeting held on 19th September, 2011 the request of the developer for following authorized operations in the **non-processing area** was considered. The request was deferred and the Board decided that Director (SEZ), Department of Commerce, would visit the SEZ site and submit a factual report before the BoA for facilitating decision in the matter.

S. No.	Authorized operations	Area (in sqm) with FSI/FAR	Ground Coverage (in sqm.)	Total entitlement of the developer for a particular activity (as per instruction no. 30)	Already sanctioned by BoA vide letter dated 30.05.08	Additional area sought with FAR
1.	Residential					
	Housing and/or service apartment	86934	49677	30000	26467	60467
2.	Commercial					
	a. Office space	30000	38470	7500	10000	20000
	b. IT & Training Spaces in NPZ	45000		20000	25000	
	c. Shopping Arcade and/or Retail	5822		5822	--	
3.	Facilities					
	a. Polyclinic/Diagnostic Centre	2400	4001	12500	2400	--
	b. Gymnasium, Ayurvedic Therapy Centre and Day Care Centre	1600		1600	--	
	c. Creche Club House cum Recreation Centre and Indoor Sports facility	2500		2500	--	
	d. Food services including Cafeteria, food courts, restaurants etc.	500		500	--	
	e. Administrative Block (Non FAR)	2000		1161	--	

	f. Energy Centre (Non FAR)	4390				4390	--
	Total (excluding non FAR)	174756	92148	50000		69289	105467

The report as per the directions of the Board is at **Annexure – 1**.

The request is placed before BoA for consideration.

(iii) Request of M/s. G.P. Realtors Private Limited for authorized operations in sector specific SEZ for IT/ITES at village Behrampur, District Gurgaon, Haryana

The above mentioned SEZ stands notified over an area of 21.59023 hectares. In the BoA meeting held on 19th September, 2011 the request of the developer for following authorized operations in the **non-processing area** was considered. The request was deferred and the Board decided that Director (SEZ), Department of Commerce, would visit the SEZ site and submit a factual report before the BoA for facilitating decision in the matter:-

S. No.	Name of Activity	Allowed	Permissible	Request for 1 st Phase	Applicable FAR/FSI as per state byelaws	Allowed FAR in 1 st Phase
1.	Residential	60%	64322.94 sqm	30000 sqm.	1.75	52500 sqm.
2.	Commercial	15%	16080.73 sqm.	7500 sqm	1.75	13125 sqm.
3.	Social	25%	26801.22 sqm.	12500 sqm.	1.00	12500 sqm.
	Total		107204.89 sqm.	50000 sqm.		

The breakup of residential activity is as under:-

S. No.	Total No. of Units (Nos.)	Area of each unit (in sqm.)	Unit Type	Total Covered area of all units (in sqm.)
1.	224	74	2 Bedroom	16576
2.	200	91	3 Bedroom	18200
3.	160	108	4 Bedroom	17280
			Total	52056

The report as per the directions of the Board is at **Annexure – 1**.

The request is placed before BoA for consideration.

Item No. 50.26: Clarification regarding receipt of INR for supply of IT products in DTA by New Nokia SEZ unit for Trading & warehousing services for mobile phones, parts & accessories

The issue under examination is that concerning Nokia India Sales Private Limited (NISPL). NISPL is a unit in the Nokia SEZ, Sriperumbudur under MSEZ and was issued a LOA on 7.3.2011 to setup a unit for Trading & warehousing services for mobile phones, parts & accessories.

Nokia India Pvt. Ltd already has a manufacturing unit in the SEZ. Presently, the manufacturing SEZ unit supplies mobile phones into DTA and receives INR which is counted as 'positive' for NFE computation as per Rule 53 of SEZ rules as the product is covered under the Information Technology Agreement ITA-I of which India is also a signatory. As per the submission made by Nokia, it has invested over Rs 1300 crores and exports over 60% of its production to various countries from the said plant at Sriperumbudur.

Nokia is now carrying out a restructuring of its business model and in proposed business model; all sales of mobile phones into India DTA market are to be made by the new SEZ unit of NISPL. Thus the original manufacturing entity would exclusively carry out manufacturing activity and sell its entire production to their foreign principal M/s Nokia Corp. Nokia Corp would then invoice the supplies to be made to DTA to the new trading company NISPL, which would then carry out the DTA sales and distribution activities. The new entity NISPL is also part of the Nokia group and is subsidiary of Nokia Corporation, Finland but is a distinct legal entity.

The issues under consideration are as follows:

Issue 1: Can Rule 53 benefits be allowed to NISPL for supplies of ITA-I products into DTA?:

Rule 53 of the SEZ Rules, 2006 provides that "*The Unit shall achieve Positive Net Foreign Exchange to be calculated cumulatively for a period of five years from the commencement of production according to the following formula, namely: Positive Net Foreign Exchange = A - B >> 0 Where A : is Free on Board value of exports,..., by the Unit and the value of following supplies of their products, namely:—*

- (a)...
- (b)...
- (c)....

(1) *supply of Information Technology Agreement items and notified zero duty telecom or electronic items, namely, Color Display Tubes for monitors and Deflection components for colour monitors or any other items as may be notified by the Central Government;*

Earlier Nokia India P Ltd which manufactured the mobile phones etc was also the supplier of these products into DTA. These products being covered under ITA-I were covered by 53(1) above and thus were considered towards positive NFE. Under the changed business model the sales and distribution function would now be carried out by the new entity NISPL. In such circumstances the query raised is – will NISPL not being the manufacturer of the ITA-I products be covered by Rule 53(1) if it supplies the products to DTA.

Issue 2: Can the new entity be permitted to sell goods into DTA without insisting upon the transaction being in foreign exchange.

The SEZ Act Section 2(z) defines Services as follows:

“services” means such tradable services which-

- (i) are covered under the General Agreement on Trade in Services annexed as IB to the Agreement establishing the World Trade Organisation concluded at Marrakesh on the 15th day of April, 1994;
- (ii) may be prescribed by the Central Government for the purposes of this Act; **and**
- (iii) **earn foreign exchange;**

Further Rule 76. Explains “services” for the purposes of Section 2(z) shall be the following, namely: *Trading, warehousing, research and development services, ... distribution services (excluding retail services), ...*

Thus the Services being rendered by NISPL are covered by the above definition of ‘Services’. However the DC, MSEZ has contended that as per Section 2(z)(iii) such services must earn foreign exchange and has imposed a condition while issuing LOA that NISPL would give an undertaking that supply to DTA would only be in foreign exchange. NISPL has given such an undertaking on 1 March, 2011.

Nokia has requested that this condition be removed.

The above two issues can be addressed in the following manner:

Issue 1: As per Rule 53 it is the Unit which has to achieve NFE positive status. In the instant case NISPL is the unit. For this purpose value of supplies of the Unit’s products is to be taken into account. Further 53(1) includes supply of Information Technology Agreement items towards positive NFE of the Unit. Since the requirement is of supply of ITA items as opposed to their manufacture therefore on the issue it can be held that ITA items supplied by NISPL, which is a trading and warehousing services unit (and not manufacturing the ITA items itself) are entitled to the benefit under Rule 53(1). Moreover ITA deals with products and its supply into member countries at zero duty. Thus the nature of product being sold is of material concern and not if it has been manufactured by the supplier himself.

Issue 2: The activities of NISPL are covered under ‘Services’ which inter alia involve transactions in foreign exchange. For a standalone SEZ unit carrying out trading and warehousing activity of importing products in foreign exchange and selling them into DTA in INR, it would not be able to meet the NFE positive criteria. However if one were to consider the two units of Nokia India Pvt Ltd (manufacturer) and NISPL (sales and distribution) carrying out their businesses in close coordination and as a part of a single business model then the entire forex is earned by the manufacturing operations and is supported by the sales and distribution unit.

A conscious decision needs to be taken if NISPL be allowed to sell into DTA in INR and the NFE of the two units (NISPL and Nokia India P Ltd) be calculated in a collective manner. Such an entity would be NFE positive. Also it would perhaps reflect the true nature of the business model being setup by Nokia in India.

Additional investment inflows and increased employment arising due to this may be kept in mind. Nokia has submitted that with the change in business model and streamlined processes, further investment of approx. Rs. 250 crores in aggregate in India operations primarily in India manufacturing facility over 3-year period i.e. by year 2014 as well as creation of additional 500 jobs is expected.

It is also a case that the proposed changes in business model by Nokia of splitting its present business, will be 'revenue neutral' for the State and Central Government when compared with the business model at present.

However the above arrangement can be suitably ring fenced so as to avoid any misuse. We can impose the following conditions:

1. The new SEZ trading & warehousing services unit of Nokia India Sales Private Limited will be permitted to sell products manufactured in Nokia manufacturing unit (under Nokia India Pvt. Ltd.) situated in Nokia Telecom SEZ in Sriprembadur, Tamil Nadu, only.
2. No trading of products manufactured by any other manufacturer will be permitted in NISPL.
3. The NFE status of the combined entity of Nokia India P Ltd and NISPL will be monitored on an annual basis to ensure that positive NFE is maintained.

With the above riders we may issue a clarification regarding waiver of 'receipt of forex requirement' for proposed DTA supplies by new SEZ unit of NISPL.

For consideration of BoA members.