

OPINION**Querist: G.V. Research Centre Pvt Ltd/ Modi Properties Pvt Ltd.*****Query***

The short question which arises for consideration is whether the project of the Querist measuring 43,538 Sq.mts., would require prior Environmental Clearance (EC) under the EIA Notification dated September 14, 2006 issued by Ministry of Environment and Forests, Government of India?

Background

1. The relevant facts are as follows:
2. On September 14, 2006, the Ministry of Environment and Forests, Government of India ("MoEF") issued a Notification under Section 23 of the Environment (Protection) Act, 1986 requiring prior Environmental Clearance ("EC") for construction of new projects or expansion or modernization of existing projects (vide S.O. 1533). ("**2006 Notification**")
3. The 2006 Notification classified activities and industries in two categories. Category A includes those projects which require prior EC from the Central Government and its authorities. Category B includes those projects which require prior EC from the State level authority, i.e. the State Environment Impact Assessment Authority (SEIAA).
4. Under this Notification, the EC is to be obtained before any construction or preparation of land by the project management. All activities ranging from new projects and/or expansion or modernization of existing projects etc would be categorized for permissions in a manner laid down in the said 2006 Notification. Under the Schedule to this 2006 Notification, "buildings and construction projects" between 20,000 Sq.mts., and 1,50,000 Sq.mts., would require prior Environmental Clearance from State Authorities.
5. On April 29, 2016, the Ministry of Environment Forest and Climate Change, Government of India ("MoEF & CC"), issued a draft notification, whereby buildings and construction projects between 20,000 Sq.mts., to 1,50,000 Sq.mts., the requirement of separate environmental clearance was dispensed with. However, the local authorities (including Municipal Corporations and State Pollution Control Boards) would have to certify the compliance of these environmental conditions prior to issuance of the Completion Certificate. (vide S.O. 1595(E)).

6. Again on March 13, 2018, (“**March 2018 Notification**”), the MoEF & CC proposed to make further amendments to the aforementioned draft notification. As per the proposed notification, buildings and construction of projects between 5000 Sq.mts., to 50,000 Sq.mts., the applicant applying for permission had to give a self-declaration form stating that the environmental conditions as specified under Appendix XIV were complied with and submit it at the time of application for building permissions. The local authority was required to ensure compliance of these environmental conditions. (S.O.1595(E)). The relevant para is noted below:

“14. Integration of environmental condition in building permissions

A Self Declaration Form to comply with the environmental conditions as given at Appendix XIV shall be submitted online by the project proponent besides application for building permission to the local authority for building permission to the local authority for the Building and Construction projects >5,000 Sq.Mts., and <50,000 Sq.Mts. Thereafter, the local authority may issue the building permission incorporating the environmental conditions specified in Appendix XIV and allow the project to commence based on the conditions. The local authority shall ensure the compliance of the environmental conditions through existing mechanism. However, no changes in the environmental conditions specified in Appendix XIV shall be permitted”.

7. On November 14, 2018, (“**November 2018 Notification**”)the MoEF issued a notification revising the threshold limit for buildings and construction projects between 20,000 Sq.Mts., to 50,000 Sq.Mts. and clarified the procedure as per the draft notification by stating that the obligation to ensure compliance of the environmental conditions is on the Municipal development authorities. The Municipal development authorities are required to ensure compliance before granting Occupancy Certificate (vide S.O. 5738(E)).
8. On December 3, 2018, the Hon’ble National Green Tribunal (NGT) Delhi issued an order suspending the Notification dated November 14, 2018.
9. On February 18, 2019, the Hon’ble Supreme Court of India in “*Tamil Nadu Pollution Control Board vs Sterilite Industries (I) Ltd & Ors, Civil Appeal No. 4763/ 4764 of 2013*” held that the Hon’ble NGT only has appellate jurisdiction and it cannot entertain and exercise jurisdiction over the validity of Notifications issued by MoEF.

10. Applying this principle, NGT Order suspending the Notification dated 14.11.2018 is without any jurisdiction.
11. In the light of the above, I am of the view that for buildings and construction projects between 20,000 Sq.Mts., to 50,000 Sq.mts., there is no need for a prior Environmental Clearance from the Government of India. The EIA Notification dated September 14, 2006 has been subsequently amended as per the Notification dated November 14, 2018 and the same continues to be in operation by the Order of the Hon'ble Supreme Court of India.
12. Accordingly, a Self Declaration Form by applicant as per the draft notification dated 13.03.2018 of the MoEF & CC (vide S.O.No.1595(E)) would be sufficient. Therefore, in response to the query dated March 26, 2019 raised by Telangana State Industrial Project Approval & Self Certification System (TS-IPASS), Government of Telangana, the Querist is advised to respond as follows:
13. Since, the total built-up area of the project is less than 50,000 Sq.mts., which is within the threshold limits prescribed under the MoEF Notification dated 14.11.2018, a Self Declaration Form by the Querist under draft notification dated 13.03.2018 is sufficient. Therefore, the requirement of prior Environmental Clearance from MoEF does not apply to the Querist under the present conditions.

April 30th, 2019



[For K. VIVEK REDDY]