

5th April 2022

For
Modi Properties Pvt. Ltd.
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M.G.Road, Secunderabad
500 003

QUERY: The Querist has sought for an opinion on the requirement of obtaining a prior Environment Clearance for Building and Construction Projects.

A. EIA NOTIFICATION, 2006 DT. 14.09.2006

1. The procedure for grant of Environmental Clearance (“**EC**”) for construction of new projects or expansion or modernization of existing projects is governed by the **Environmental Impact Assessment Notification, 2006** (“**EIA Notification, 2006**”) issued by the Ministry of Environment and Forests, Government of India (“**MoEF**”) under Section 23 of the Environment Protection Act, 1986 by way of S.O. No. 1533 E dated 14th September 2006.
2. This notification classifies 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).
3. As per the notification, 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 EIA Notification, 2006.
4. The Schedule to the EIA Notification, 2006 provides for a detailed list of projects or activities requiring prior EC as well as the threshold limit of the project for which prior EC would be required

(**“Schedule”**). The Schedule also delineates activities into Category A or Category B on the basis of their threshold limit. Item No. 8(a) of the Schedule pertains to ‘Building and Construction Projects’ and threshold limit prescribed for the same was between 20,000 sq. mts and 1,50,000 sq. mtrs of built-up area. Building and Construction Projects between 20,000 sq. mts and 1,50,000 sq. mtrs of built-up area are classified as Category B, requiring prior EC from the SEIAA.

5. Thus, as on 14th September 2006, a prior EC was to be obtained for Building and Construction Projects having more than 20,000 sq. mts of built-up area.

B. AMENDMENT NOTIFICATION DT. 09.12.2016

6. The Ministry of Environment, Forest and Climate Change (**“MoEF&CC”**), Government of India, issued a notification to amend the EIA Notification, 2006 by way of S.O. No. 3999 E dated 9th December 2016. By way of this notification, Paragraph 14 was inserted in the EIA Notification 2006. As per Paragraph 14, the requirement of obtaining a separate prior EC was waived, **provided:**

- a. the concerned State Government incorporated the objectives and monitorable environmental conditions given at Appendix XIV of the EIA Notification, 2006 in the approvals given for building construction by the local authorities
- b. the local authorities made the said conditions legally enforceable.
- c. In such cases, the local authorities were required to follow specific procedures provided under this notification while granting building approvals.

7. Thus, as on 09.12.2016, the requirement of obtaining a prior EC for undertaking Building and Construction Projects was provisionally waived subject to the aforementioned conditions.

C. NOTIFICATION DT. 14.11.2018

8. The Ministry of Environment, Forest and Climate Change (“**MoEF&CC**”), Government of India, issued a notification being S.O. No. 5736 E dated 15th November 2018 by way of which, the power to ensure compliance of environmental conditions (as specified in the Appendix to this Notification) was delegated to local bodies such as Municipalities, Development Authorities, District Panchayats etc (“**Local Authorities**”) while granting building approvals for projects with built up area between 20,000 sq mts to 50,000 sq mts.

D. AMENDMENT NOTIFICATION DT. 15.11.2018

9. Immediately after the notification dt. 14.11.2018, the MoEF & CC issued a notification to amend the EIA Notification, 2006 by way of S.O. No. 5736 E dated 15th November 2018. By way of this notification, Paragraph 14 inserted by way of S.O. No. 3999 E dated 9th December 2016 was substituted as follows:

*“14 Local bodies such as Municipalities, Development Authorities and District Panchayats, shall stipulate environmental conditions while granting building permission, **for the Building or Construction projects with built-up area 20,000 sq. mtrs and <50,000 sq. mtrs** and industrial sheds, educational institutions, hospitals and hostels for educational institutions from built-up area _ 20,000 sqm to <1,50,000 sqm as specified in Notification S.O. 5733(E) dated 14th November, 2018”.*

10. Further, the threshold limit for Building and Construction Projects requiring prior EC was increased to projects between 50,000 sq. mts and 1,50,000 sq. mts. of built-up area.

11. It is crucial to note that all other requirements and procedures as provided under the Amendment Notification dated 09.12.2016 were removed.
12. Thus, as on 15.11.2018 the requirement of obtaining a prior EC for undertaking a Building or Construction Project between 20,000 sq. mts. and 50,000 sq. mts. of Built-up area was completely dispensed with and Local Authorities granting building permissions were delegated the power to stipulate environmental conditions.

E. CHALLENGE TO THE AMENDMENT NOTIFICATION DT. 15.11.2018

13. On 3rd December 2018, the Hon'ble National Green Tribunal (NGT) Delhi issued an order suspending the Notification dated November 14, 2018.
14. On 8th February 2019, the Hon'ble Supreme Court of India in *Tamil Nadu Pollution Control Board v. 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.
15. In view of the aforesaid order of the Hon'ble Supreme Court, the NGT Order suspending the Notification dated 14.11.2018 is without jurisdiction and thus not valid.

F. DRAFT ENVIRONMENT IMPACT ASSESSMENT NOTIFICATION, 2020

16. On 23rd March 2020, the MoEF & CC has issued a Draft Environment Impact Assessment Notification by way of S.O. 1199 (E). By way of this notification, the MOEF & CC proposes to supersede the EIA Notification, 2006 with the provisions contained therein. As per this notification, Building and Constructions Projects with built-up area between 20,000 sq. mts. and 50,000 sq. mts would fall within the 'B2' Category and would require a 'Prior Environment Permission ("EP") to be obtained from the State Environmental Impact Assessment Authority.

17. However, the notification dated 23.03.2020 is still in the draft stage and objections or suggestions on the 'draft' have been invited from the general public. Until such time as the draft notification dated 23.03.2020 is finally notified by the MOEF & CC, the process as stipulated in the notifications dated 14.11.2018 and 15.11.2018 remain valid and applicable to Building and Construction Projects with built-up area between 20,000 sq. mts. and 50,000 sq. mts.

G. OPINION

In conclusion, as on the date of this opinion, the notifications dated 14.11.2018 and 15.11.2018 remain in force and are applicable to buildings admeasuring 20,000sq. mts. to 50,000 sq. mts in built-up area. As per the said notifications, the entire power and authority to grant building permits including the applicable environmental conditions vests with the local authorities and the local authorities shall stipulate applicable environmental conditions while granting approval. No prior Environmental Clearance would be required for the same.

Therefore, no prior Environment Clearance is required to be obtained for building and constructions projects ranging between 20,000sq. mts. to 50,000 sq. mts. of built-up are and prior Environment Clearance must necessarily be obtained for building and construction projects with built up area more than 50,000 sq. mts.



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