

No. K-43014(20)/2/2019-SEZ
Government of India
Ministry of Commerce & Industry
Department of Commerce

Udyog Bhawan, New Delhi
Dated the 11th October, 2021

To

All Zonal Development Commissioners,
Special Economic Zones.

Subject: Alternate method for transfer of space by an exiting unit under Rule 74 of the SEZ Rules, 2006- reg.

Sir

I am directed to refer to the subject cited above and to say that as per existing provisions, an SEZ unit can exit from an SEZ either under the provisions of rule 74 or 74A of SEZ Rules, 2006. Representations were received from stakeholders including SGJMA expressing difficulties in following the extant procedures as the exiting units are not able to recover the value of their financial assets.

2. The matter has been examined in consultation with concerned stakeholders. In order to facilitate smooth operation of business activities by SEZ units and for the ease of doing business, following clarifications are issued for transfer of space under the extant provisions of Rule 74 of SEZ Rules, 2006:-

1. The SEZ Authority shall engage an independent valuer to assess the current value of the physical assets as well as financial assets, in the nature of unutilized portion of any upfront lumpsum payment, if any, in the nature of premium, advance lease rentals etc. made by the exiting unit paid at the time of issuance of LoA.
2. When the exiting unit identifies a potential buyer, such potential buyer shall be required to indicate the periodic lease rent for the space that they are prepared to pay to the Authority for the space being vacated by exiting unit.
3. Thereafter, the SEZ Authority shall advertise the availability of space and conduct an e-auction among eligible bidders for allocation of the said space based on bids to be submitted by such eligible bidders.
4. The lease rent so indicated by the identified buyer shall be disclosed to all bidders as part of the e-auction process.
5. It is pertinent to note that the e-auction terms & conditions shall also include a condition to the effect that the successful bidder in addition to other customary fixed and recurring charges, will have to separately pay to the authority, a pre-determined amount based on depreciated cost / value of usable physical assets existing at the site as well as unutilised portions of financial assets, if any, as assessed by the independent valuer, which would be transferrable to the previous occupant as fair current value of assets being left of the exiting unit.

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6. The bid variable for e-auction shall be the lease rent payable to SEZ Authority and the base rent for the e-Auction shall be the highest rate of lease rent being received by the SEZ Authority in that specific category (SDF/Plot, as the case may be) in the previous quarter.
7. The winning bid shall be the highest bid for lease rent payable.
8. If such winning bid is higher than the amount indicated initially by the potential buyer identified by the exiting unit, the bidder who had submitted the highest bid in the e-auction process shall emerge as the successful entity of the e-auction process and shall be issued a LoA by following due process.
9. If the highest bid in the e-auction process is less than the amount indicated initially by the potential buyer identified by the exiting unit, such identified buyer shall emerge successful in the e-auction process and the lease rent shall be the amount indicated initially by the potential buyer. Such entity shall be issued a LoA by following due process.
10. The e-auction terms and conditions shall clearly indicate the aforesaid position for the benefit of all potential bidders.
11. It shall be mandatory to complete the entire transfer process, including the E-auction process in a time-bound manner and in any case, within 100 days from the date of receipt of complete application from a unit expressing its intent to exit the SEZ.

3. It is pertinent to note that while the aforesaid arrangement entails transfer of assets of an exiting unit to an eligible incoming unit, the exiting unit shall continue to remain liable for any liability pertaining to the period of its operation that may arise in the future. The detailed procedures envisaged hereunder is provided in the Annexure enclosed herewith.

4. This issues with the approval of the Competent Authority.

Yours faithfully,



(Ashish Prakash Sinha)
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Annexure

1. The exiting unit would be required to fulfill other conditions under Rule 74A for minimum number of years of holding a valid LoA as well as minimum number of years for being in operation.
2. The exiting Unit shall be given an "in-principle" approval for exit and the incoming Unit shall also be given "in-principle" approval for the space based on the details provided by them for setting up an SEZ unit by the UAC.
3. On receipt of "in-principle" approval, the exiting Unit shall complete its process of exit by clearing all statutory and non-stutory dues of Customs, Estate and other concerned authorities, if any. In case of any hypothecation, necessary clearance shall be obtained from the bank or ARC or any other agency, as the case may be.
4. The exiting Unit shall furnish a copy each of following documents to the office of the DC:-
 - (a) Copy of the "in-principle" approval of the proposed incoming Unit along with valid LoA and valid sub-lease agreement as on date of the exiting Unit.
 - (b) Certificate from independent valuer in respect of total value of the assets (physical and financial).
 - (c) No Dues certificate from the DC office and Customs.
 - (d) In case of pending litigation / cases, NOC from the department concerned with the litigation.
 - (e) No dues certificate from concerned authorities for water as well as charges payable for other utilities.
 - (f) An affidavit signed by the proprietor / MD / partners / authorised personnel, as the case may be to the effect that labour dues in respect of existing employees have been cleared.
 - (g) An affidavit signed by the proprietor / MD / partners / authorised personnel, as the case may be to the effect that incoming Unit shall be liable for payment of labour dues, if any, determined at a future date, by concerned authority or court.
 - (h) The exiting Unit shall execute a legal undertaking in Form L as stipulated in SEZ Rules, 2006.
5. All these documents will be scrutinised and if satisfied, an "in-principle" debonding permission will be given by the DC office.
6. Thereafter, the exiting Unit can remove all existing material to DTA on payment of duties/taxes as assessed by the Specified Officer. The said goods can also be given to the incoming Unit as inter-unit transfer.
7. The existing procedure for debonding shall be followed and No Dues certificate from Customs Section shall be obtained.

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8. After the debonding procedure is completed, the incoming Unit shall furnish a copy each of all documents referred to (a) to (h) of S.No. 4 above to the DC office and request for grant of LoA.
9. The incoming Unit shall pay to the SEZ Authority the value of the assets - Sdepreciated value of the physical assets left behind as well as fair value of the unutilised portion of financial assets, if any as determined by the independent valuer which would be transferred to the exiting unit by the SEZ Authority.
10. The independent valuer shall follow the following formulation for arriving at the fair value of the unutilised portion of the lumpsum amount made as upfront payment by the exiting unit.
 - The lump-sum amount received at the time of allotment of space could be considered to be in the nature of a lumpsum deposit received from the unit which is to be amortised in equal value per year across the entire tenure of lease based on a straight-line method.
 - Accordingly, the amount to be paid to the exiting unit shall be the value assigned unutilized portion of lease tenure.
 - For example, if Rs. 1,00,000/- is paid as a lumpsum deposit for a long term lease of 100 years, then the deposit is apportioned as Rs. 1,000/- per year on straight line basis. Accordingly, if the unit is exiting in its 30th year of lease tenure, then the residual portion shall be equal to Rs. 70,000/- which is equivalent to the unutilised portion (Rs. 1,000/- X 70 years).
11. The incoming Unit shall be required to pay the actual costs incurred by the SEZ Authority.
12. After obtaining LoA from UAC, the incoming Unit shall be free to set up the Unit in the allotted space following all prescribed procedures viz. execution of BLUT, registered lease deed, etc.
13. In case of allotment of space to an existing Unit, all the procedures mentioned above shall be followed, except "in-principle" approval for setting up of a Unit. However, in this case, the existing Unit has to submit their revised proposal and justification for additional space.
14. After due verification, the DC office will issue an "in-principle" approval for the additional space within 15 days of receipt of their request for additional space.

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