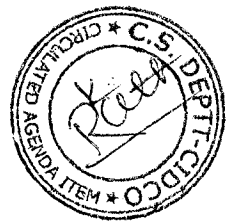


C/735

P/1



BOARD NOTE



| | |
|-------------------|--------------------|
| Item No | |
| Board Meeting No. | 620 |
| Date of Meeting | 19.07.2019 |
| Sponsoring HOD | M(Town Services-I) |

A) Sub: Amendment to BR No 11885 dated 07.07.2017 in respect of policy for Grant of Extension in time for completion of construction.

B) Issue of Consideration:-

- The Regulation 8 of the NMDL(A)R 2008 has the provision for grant of extension in time period for completion of construction. Accordingly the Board has approved the Policy vide BR No 11885 dated 07.07.2017 in this regard.
- The VC&MD vide his Order dated 21.05.2019 constituted a Committee to review the said policy.
- The Committee deliberated upon various aspects of the prevailing policy and accordingly the Committee has recommended certain amendments
- The Committee report is submitted to the Board for a suitable decision.

C) Nature of Approval :

| Appraisal note | Allotment | Administrative approval | Financial approval | Policy | Other (please specify) |
|----------------|-----------|-------------------------|--------------------|--------|------------------------|
| ---- | ---- | ---- | ---- | ✓ | ---- |

D) Details of proposal:-

1. The Board has approved the policy for grant of extension in time period for completion of construction vide BR No 11885 dated 07.07.2017. Refer

G. Phani Page 1 of 11

e/737

P/3

ANNEXURE-I. The proposals being received in Estate Department are being processed, since then, on the basis of the said policy. During the implementation of the said policy, it was felt that some improvements in the said policy need to be done. Further the Corporation has been receiving representations from many licensees stating that the present waiver of one year on account of delay in obtaining mandatory clearance from various government authorities, especially MCZMA and Airport Authority is not commensurate with the actual time taken for grant of such approvals. Hence it was felt that a holistic view needs to be taken to review various provisions of the said policy and incorporate certain amendments/ modifications.

2. In view of the above, VC&MD vide his Order dated 21.05.2019 constituted a Committee to review the said policy. The Committee met on 10.06.2019 and again on 17.06.2019 and deliberated upon various aspects of the prevalent policy in its meeting and suggested various amendments, elaborated below, so as to bring more clarity and ease of implementation. The Committee Report is placed at ANNEXURE-II for kind perusal. Accordingly, the following issues are put forth for the consideration of the Board:

a. Amendment to para 13 (e). Acceptance of Architect's Completion Certificate instead of Occupancy Certificate as proof of completion.

The issue of cut off date for levy of additional lease premium for grant of Extension in Time, has been deliberated in detail in the past on many occasions. The Board has decided, vide BR 11750 dated 24.11.2016 (Refer ANNEXURE-III) which was reiterated in BR 11885 dated 07.07.2017, that the date of Occupancy Certificate shall be the cut off date for levy of ALP. As elaborated in these BRs, it was also decided to take cognizance of the Architect Completion certificate and accordingly as per the BR No 11885 a rebate of 25% in Additional Lease Premium is granted from the date of Architects Completion Certificate till the applicable date as considered for grant of time extension. Further the rebate of 50% is offered from the date of Architects Completion Certificate if refusal issued by Planning Authority on administrative grounds only.

However, it has been observed that in some cases, there is a huge time gap from the date of the Architect Completion Certificate to the date of refusal from the



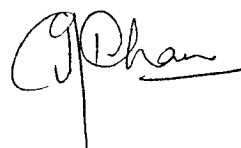
c/739

P/5

Planning Authority. Thus it creates a doubt on the veracity of the said Architect's Completion Certificate, further there is no mechanism to check veracity of such Certificates issued in the distant past.

Hence, it is proposed to amend the clause 13 (e) of BR No 11885 as follows:

| Sr. No. | Scenario | Proposal |
|---------|--|--|
| 1 | Legacy cases wherein the intending Lessee claims to have completed the construction on the basis of the Architect's Completion Certificate but not applied for OC to the Planning Authority. | No rebate |
| 2 | Legacy cases wherein the intending lessee claims to have completed the construction on the basis of Architect's Completion Certificate and applied for grant of Occupancy Certificate but the Planning Authority upon receipt of application for OC has neither granted the OC till date nor communicated any reason for the same to the intending lessee. | a) To offer a rebate of 25% of applicable Additional Lease Premium payable from the date of such Architect's completion Certificate till the applicable date as considered for grant of No Dues Certificate. Provided the Licensee has submitted the application for Occupancy Certificate to the Planning Authority within a period of 3 months from the completion date mentioned in the Architect's Completion Certificate. |
| 3 | Legacy cases wherein the intending Lessee claims to have completed the construction on the basis of Architect's Completion Certificate and applied for grant of Occupancy Certificate but request for OC was refused by the Planning Authority | a) To offer a rebate of 50% of applicable Additional Lease Premium payable from the date of such Architect's completion Certificate till the applicable date as considered for grant of No Dues Certificate, in case their request for grant of OC has been refused for administrative reasons. Provided the Licensee has submitted the application for |



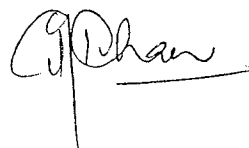
c/741

9/13

| | | |
|---|---|--|
| | | <p>Occupancy Certificate to the Planning Authority within a period of 3 months from the completion date mentioned in the Architect's Completion Certificate.</p> <p>b) Where the refusal issued by the Planning Authority is for technical reasons elaborated above which pertains to actual construction on ground, no rebate/ concession shall be granted to the intending Lessee.</p> |
| 4 | <p>Present day cases wherein the intending lessee claims to have completed the construction and approached the Corporation for grant of No Dues Certificate for procuring OC, by duly submitting the Completion Certificate issued by the Architect of the project.</p> | <p>The addl. Premium shall be calculated considering the date of Architect Completion Certificate as the cutoff date</p> |

Note:

- In case of Sr. no 2 and 3 it will be mandatory for the intending lessee to obtain OC within 06 (Six) months from the date of issue of such 'No Dues Certificate' failing which the addl. premium at full rate shall be charged retrospectively till the date of grant of OC in such cases.
- In case of Sr. No. 4, it will be mandatory for the intending lessee to obtain OC within 06 (Six) months from the date of issue of such 'No Dues Certificate' failing which the addl. Lease premium at full rate shall be charged retrospectively as per case 1, 2 and 3 as applicable.
- In case of Sr. No. 4, if the OC is refused due to deviation in the Architects Completion Certificate with respect to completion of construction on ground, then the concerned Architect will be blacklisted by the Corporation and this will be communicated suitably to the Council of Architects by the Building Permission Department of the Corporation. This clause shall be specifically mentioned in the NOC to be issued in respect of case 4 above.



b. **Rectification of typographical error in para 13 (f)(1).**

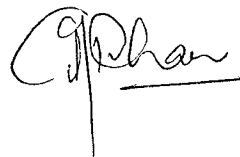
It has been observed that due to inadvertent typographical error, the meaning being derived from the first paragraph of the said para is not consistent with the spirit of the said para. Hence, the following modification is proposed:

"For Delay in approvals from Statutory Government Agencies, namely CZMA and MPCB, Airport Authority, Railways, etc, as per prevailing policy vide BR No. 11402 dated 20/7/2015 in respect of waiver as per Para No. 7 (d) of Resolution no. 11175 dated 19/8/2014, reasonable period for getting any approval from any Government authority is taken as six months period and he will get waiver of Additional Lease Premium only for the period arrived at after deducting reasonable period of 6 months provided he has adequate proof to show that he has NOT violated due procedure and applied well within time in the prescribed manner and issued with diligence."

c. **Amendment to para 13(f)(1). For Delay in approvals from Statutory Government Agencies namely CZMA, MPCB, Airport Authority, Railways etc.**

The issue of grant of waiver to the Licensee for delay in obtaining the statutory Government clearances has been discussed in details in the past and the same has been part of the BR No 11175 dated 19.08.2014 (Refer ANNEXURE -IV) and also part of the BR No 11885 dated 07.07.2017. The Board vide BR No 11885 dated 07.07.2017 has recommended maximum 1 year waiver. Refer para 13(f)(1) of ANNEXURE-I

In case of WP No 3632 of 2016, in respect of plot no 75 & 76, sector 15, CBD Belapur, regarding delay in obtaining CRZ approvals, the Hon'ble High Court has directed CIDCO to grant 37 months to the petitioner for completion of construction on the subject plots from the date of communication of grant of clearance by MCZMA without charging Additional Lease premium. Refer ANNEXURE-V. Moreover, it is observed that in majority of the cases where time extension is being sought due to delay in obtaining MCZMA approval, invariably the time taken by the Competent Authority for granting the approval is much more than 1 year.



Further, to cite another specific instance, in case of Parsik Hills Belapur, the Airport Authority is refusing the mandatory clearance. As a result, some Licensees are unable to procure commencement certificate from the NMMC. Further, those licensees, who have obtained the CC earlier and completed the construction, are unable to obtain the Occupancy Certificate from the NMMC, for the same reason. Such Licensees are unable to obtain the CC/ OC for reasons beyond their control.

Considering the above aspects and after thorough discussion, the Committee has recommended that for cases within the purview of clause 13 (f) (1), the waiver in Additional Lease Premium shall be granted for a maximum period of 3 years provided that the delay has occurred due to the delay in processing the request of the Licensee by the respective Competent Authority. For any delay beyond 3 years, the proposal may be submitted to VC & MD for taking a suitable decision for granting waiver for a period more than 3 years based on the merits of the case, provided that licensee is able to demonstrate the effective steps taken by him to obtain the permission from the Competent Authority.

d. Amendment in clause 13 (f) (2). Delay due to Inquiry/ Audit/ Court cases

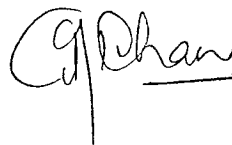
Regarding clause 13(f) 2, it is felt necessary to clarify that if the delay has occurred due to litigation wherein either CIDCO was not made a party or the delay has not occurred due to reasons attributable to CIDCO, then the licensee shall not be granted any waiver of ALP on account of the same.

The clause 13(f) 3 of BR 11885 shall remain unchanged.

e. Amendment to para 13(g). Delay in processing applications received for extension in time by the Estate Dept.

The Board vide BR No 11885 dated 07.07.2017 Para 13 (g) - reads as under:

"The Committee deliberated this issue and it was of the opinion that a period of 90 days is the reasonable time period required to process the application. Any additional time required beyond this period shall not be considered for calculation of the Additional Lease Premium for extension in time, provided there are no breaches committed by the licensee of the conditions of the Agreement to Lease. The Jt. MD shall be authorized to approve each case on merits."

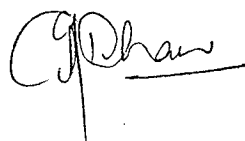


It was observed that some Licensees, on the basis of mere submission of application in the distant past, are demanding that in cases where the Corporation has not taken a decision regarding extension in time within 90 days and/or not communicated to the Licensee in the past, then such cases should be granted waiver under this para. However, it is difficult to ascertain the reason for delay in processing such cases, especially when the licensee himself has been lax in following up with the Corporation for obtaining the necessary time extension permission. This will ultimately result in loss of revenue to the Corporation and thus, may attract audit queries. Hence, it is necessary to clarify that the said clause shall only be applicable prospectively and the benefit of this para shall not be granted in cases wherein the licensee has submitted the time extension application prior to the said Board Resolution No. 11885 ie. prior to 07.07.2017. Further, to curb misuse of this provision, it is proposed to restrict such waiver for a period of not more than 180 days beyond the reasonable time period of 90 days (for processing the request) from the date of submission of application. It is proposed to provide clarity to this para by amending it as follows -

"The Committee deliberated this issue and it was of the opinion that a period of 90 days is the reasonable time period required to process the application. Any additional time required beyond this period, shall not be considered for calculation of the Additional Lease Premium for extension in time, provided there are no breaches committed by the licensee of the conditions of the Agreement to Lease. This policy shall come in force prospectively and will not be applicable to cases wherein application for extension in time was made to the Corporation on a date prior to 07.07.2017. Further the maximum waiver under this clause shall be restricted to 180 days. The Jt. MD shall be authorized to take appropriate decision in each case on merits."

- f. **Interpretation of waiver granted under the BR No 11885 dated 07.07.2017 in respect of applicability of multiplying factor after end of waiver period.**

In one of the cases of City Builders Nerul, wherein the Govt. had granted waiver of 7 years due to attachment of plot by Income Tax Dept., there was a difference of interpretation in respect of calculation of Additional Lease Premium for extension in time in respect of applicability of multiplying factor after end of



C/749

P/15

waiver period. The BR No 11885 is silent on whether the multiplying factor after a period of waiver should be considered as the next applicable factor, For example if a waiver is granted from 3rd year to 10th year, then the issue to be decided was whether the slab for calculation of ALP for 11th year should be 15% i.e. for the third year of extension or it should be the applicable factor for 11th year, i.e. 95%.

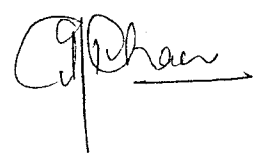
In this matter, a committee comprising Jt. MD-II, CAO, M(TS-1) and Sr. Law Officer had detailed deliberations, after which it was decided that the underlying principle of granting waiver is that the ALP for the said period of waiver should not be charged. In case the multiplying factor is taken corresponding to the applicable year then due to the increased multiplying factor, the effect of the waiver gets diluted which is against the spirit of the Board Resolution.

Accordingly the ALP was calculated and communicated to the Government after due approval of MD. At the time of granting approval in this matter, MD had directed that since this interpretation has financial implications, this decision should be submitted to the Board of Directors for appraisal subsequently

The Committee agreed with the decision taken in the matter of City Builders and recommended that in case waiver of ALP is granted for a particular intervening period, then for calculation of ALP the next applicable slab shall be considered, as if that period was not in existence.

- g. **Amendment in clause 13 (d). ALP in case of plots where the Licensee cannot consume entire FSI due to GDCR/ LPDP/ Agreement provisions.**

In case of plots allotted for Petrol Pump use, the same are being allotted to Government sector Oil companies such as HPCL/ IOC/ BPCL etc. which have been granted the concession of nominal rate of 3% for calculation of the Additional Lease Premium towards extension in time. Further the BR 11885 resolved to calculate the ALP on the basis of the Lease Premium paid and not on the prevailing Base Price as per earlier policy. Additionally the licensee is also



deriving the benefit of levy of Additional Lease Premium only on proportionate permissible built up area as well. Considering these facts, the Committee has recommended that in case of petrol pump plots, the total Lease Premium paid at the time of Agreement shall be considered for calculation of the Additional Lease Premium for extension in time and not the on proportionate lease premium calculated on the basis of permissible built up area.

h. Amendment to column '4' of Table 'E'. Inclusion of category pertaining to Plots with area upto & including 40 sqm.

In order to simplify the calculation of additional Lease Premium, the Committee recommended that multiple categories for levy of Additional Lease Premium for grant of time extension shall be reduced. Accordingly only 4 categories were retained in BR 11885. However, it was later realized that the category of Plots with area upto & including 40 sqm need special consideration, being plots allotted to EWS category (which was earlier a separate category - Refer Table 'D' of BR 11885 Annexure I). However, this was inadvertently left out in the previous Committee's recommendations and thus did not appear in the Table 'E' of BR 11885. The issue was deliberated in the present committee meeting and it was decided to include this category in column '4' of Table 'E' of BR 11885, for the plots with area up to and including 40 sqm. Thus, revised heading for column '4' of the said table shall read as "Religious plots as defined in Regulation 4 (iii) (b) of NMDL(A)R, 2008 and for plots having area upto & including 40 sqm"

i. Clarification regarding Amnesty Scheme

The Board accepted the recommendations of the Committee vide para 13 (i) of BR 11885 and accordingly, the Corporation has implemented an Amnesty Scheme for cases wherein the Licensee has not obtained CC nor commenced the development, even after 16 years from the date of Agreement to Lease. The Scheme was advertised on 16.02.2019 and duration of the scheme is 6 months. The Corporation is receiving applications from the licensees intending to avail the benefit of the scheme. However, while processing different applications received, it is felt that there is a need to clarify certain administrative aspects of the scheme in order to ensure more clarity. The issues are listed as under:



1. The Amnesty Scheme is only applicable for cases where, even after 16 years after the date of Agreement to Lease (including the initial 4 years construction period), the licensee has not commenced the development and/or not obtained development permission from the concerned Planning Authority or the development permission obtained has lapsed as per the provisions of MR & TP Act, 1966 or the respective GDCR.
2. In cases where the licensee has obtained development permission which is valid as on date, and the construction is in progress, such cases will be processed as regular applications for grant of time extension as per the prevailing policy of the Corporation and not under Amnesty Scheme. In such cases of ongoing construction, it is clarified that for the period beyond that specified in Table-'E' of BR 11885, Additional Lease Premiums shall be levied with maximum % envisaged in the table for the respective category, for all subsequent years covered under the proposed time extension.
3. All cases under Amnesty Scheme shall be processed as per prevailing Delegation of Powers. However, in respect of plots allotted for essential city level facilities like social facility/ health/ hotel plots, the proposals under Amnesty Scheme shall be submitted to VC & MD for consideration, irrespective of the size of the plot.
4. If the licensee does not avail the benefits of this Amnesty scheme, within the stipulated time, then in such cases, the Corporation shall resume the plot as per the provisions of the Agreement to Lease and NBDLR 1973/ NMDLR 2008, as the case may be.

Proposal:

The Committee report is hereby submitted to the Board seeking suitable directives.

- D) **Financial Implication:** As per recommendations.
- E) **Legal Requirements/Implications/Provisions:** Nil
- F) **Date of Approval of the Agenda Note by the VC & MD:** 12.07.2019



C/755

P/21

- G) Whether continuation of Deferred item/or Fresh Item : Fresh item.
- H) Whether to provide the Board Note and Board resolution under RTI Act, 2005 -
Yes

DRAFT RESOLUTION:

~~"RESOLVED THAT the Board do and hereby approve the amendment to the BR No 11885 dated 07.07.2019 as proposed in para D. 2 of the Board Note"~~

2017

~~"RESOLVED FURTHER THAT VC&MD/ JMD / MTS are hereby authorized to implement the above Resolution".~~

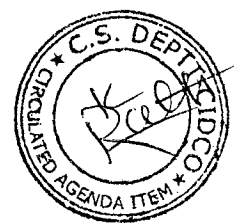
Initiated by :

Signature :



Name : Faiyaz Khan

Designation : Manager (Town Services-1)



P. T. O.

c/1757

Item No.5/620 BM: Amendment to BR No.11885 dated 7.7.2017 in respect of policy for Grant of Extension in time for completion of construction.

A Power Point Presentation was shown to the Board, indicating the comparison between Existing Policy as per B.R.No.11885 and proposed amendment in the said policy.

During discussion at length, following further revisions were approved against the proposed amendments in the Board Note:

- (i) In Para 13 (f)(1) – The waiver in ALP shall be granted for a maximum period upto 2 years (instead of 3 years proposed in the Board Note) for delay in obtaining Statutory Government clearances.
- (ii) For Amnesty Scheme, in respect of plots for essential city level facility :- at clause (iii), the following words shall be deleted viz; Social Facility/Health/Hotel Plots.

After discussions, the Board unanimously passed the following Resolution:

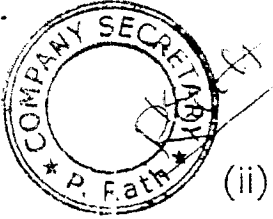
RESOLUTION NO: 12209

"RESOLVED THAT the Board do and hereby approve the amendment to the BR No.11885 dated 07.07.2017 as proposed in Para D.2 of the Board Note with following revision :-

- (i) In Para 13 (f)(1) – The waiver in ALP shall be granted for a maximum period upto 2 years (instead of 3 years proposed in the Board Note) for delay in obtaining Statutory Government clearances.

P. T. O.

e/759



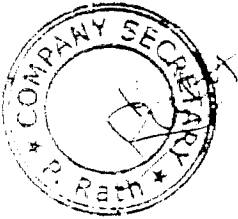
CIN-U99999MH1970SGC014574



(ii)

For Amnesty Scheme, in respect of plots for essential city level facility :- at clause (iii), the following words shall be deleted viz; Social Facility/Health/Hotel Plots."

"RESOLVED FURTHER THAT VC&MD/ JMD/ M(TS-I)/ M(TS-II)/ M(TS-III) be and are hereby authorized to implement the above Resolution."



Passed by the Board vide Resolution No. 12209 of Board meeting held on 19-7-2019.
P. Rath
Company Secretary
Emp. No. 34023

