

N-1

BRIHANMUMBAI MAHANAGARPALIKA  
No. DyChE/BPI 2094/ES dated

25/5/17

Sub : Revalidation of IOD in cases where CC is not granted within a period of one year.

This office is receiving no. of proposals for the revalidation of IOD where CC is not granted within a period of one year from the date of issuance of IOD. There are many instances where Architect is unable to obtain CC within a period of one year under Section 44/69 of MRTP Act 1966 for the reasons beyond their control.

As per DCR 5(6) the extract of the same is as below.

*"Commencement of work - A commencement certificate/ development permission shall remain valid for four years in the aggregate, but shall have to be renewed before the expiry of one year from the date of its issue. The application for renewal shall be made before expiry of one year, if the work has not already commenced. Such renewal can be done for three consecutive terms of one year each, after which proposals shall have to be submitted to obtain development permission afresh"*

DCR 5(6) mentions about renewal of commencement of work but not about revalidation of IOD.

Reference is requested to the detailed report submitted by Dy.Ch.Eng.(B.P.)City in one of the cases in the year 2007 and Hon. M.C.'s endorsement thereon (at Pg. C-3). In the said report, it was represented that where there is no material change in the original approval not involving additional concessions, in such proposals IOD revalidation can be considered at the level of Dy.Ch.E.(B.P.) E.S. In the said case, the approval was granted by Hon'ble M.C. to revalidate the IOD and to make it as a policy for future to treat all such cases where competent sanction as per the present policy is already obtained for the concessions granted.

As a practice the procedure for revalidation is followed in some offices & some of the offices insist on issuing fresh IOD with fresh application.

The recent Hon'ble High Court Order under Civil application no. 221 of 2013 in PIL No.217 of 2009, states that -

*"(a) The development permissions/IOD shall not be granted by either the said Municipal Corporation or the State Government on the Applications/proposals submitted from 1<sup>st</sup> March 2016 for construction of new buildings for residential or commercial use including Malls, Hotels and Restaurants. Such Applications shall be processed, but the IOD and/or commencement certificate shall not be issued. It is obvious that in view of this restraint, no one can take advantage of deeming provisions in the DCR and MRTP Act. Needless to state that this condition will not apply to all the redevelopment projects covered by the clauses (5), (6), (7) (8), (9) and (10) of the DCR No. 33. This condition will not apply to the buildings proposed to be constructed for the hospitals or educational institutions. The condition shall not apply for consideration of the proposals for repairs/reconstruction of the existing buildings which do not involve use of any additional FSI in addition to the FSI already consumed. These restrictions shall apply only to the Applications/ proposals submitted from tomorrow i.e. 1<sup>st</sup> March 2016." (pg C-42 to C-43)*

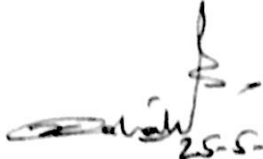
In case the IOD cannot be revalidated then in view of the recent Hon'ble High Court Order mentioned above, further questions arise that can the application date

made prior to the Hon'ble High Court Order be considered as date of submission where the IOD approved earlier is continued.

In view of above, the following clarifications are requested -

- 1) Whether the development permissions as mentioned in DCR 5(6) of DCR 1991 can be treated as IOD. In case the same is in affirmation then the revalidation of IOD can be done by Dy.Ch.E. (B.P.) at Zonal Level in those cases where there is no material change in the original approval not involving additional concessions as per the endorsement of Hon'ble M.C. (copy at pg. C-3 )
- 2) Whether the application date made prior to Hon'ble High Court Order mentioned above be considered as date of submission for cases where IOD is approved earlier.

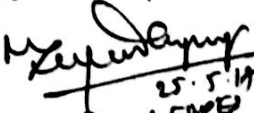
Submitted for order of Dy.Ch.E.(B.P.) E.S. / Ch.E.(D.P.) please.

  
25-5-17  
Executive Engineer  
(Building Proposal)E.S.-I

~~Dy.Ch.E.(B.P.) E.S.~~

Ch.E.(D.P.)

Sir,

Submitted please  
  
25.5.17  
Dy.Ch.E.(B.P.)

बृहन्मुंबई महानगर पालिका  
प्रमुख अभियंता (विकास नियोजन)  
यांचे कार्यालय

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मा. अधि.	टिडीआर	लेखा	आरथा

Chief Engineer (B.P.)

**MUNICIPAL CORPORATION OF GREATER MUMBAI**  
 No.ChE/DP/6214 /City Date 3.6.17

**Subject :** Revalidation of I.O.D. in cases where C.C. is not granted within period of one year.

**Reference :** DyChE(BP)/2094/ES dated 25.07.2017. (N/1-2)

Reference is requested to the note of Dy.Chief Engineer (Building Proposal)/E.S. seeking clarification / direction regarding revalidation of I.O.D. The note contains the provisions of DCR 5(6), policy adopted for revalidation of I.O.D. as per then Hon.Municipal Commissioner's approval in the year 2007 and order of Hon'ble High Court Order in Civil application No.221 of 2013 in PIL No.47 of 2009. "The provision of Act 5(6) described in the note and the exact of the same as below.

*"Commencement of Work :- A Commencement Certificate / development permission shall remain valid for four years in the aggregate, but shall have to be renewed before the expiry of one year from the date of its issue. The application for renewal shall be made before the expiry of one year, if the work has not already commenced. Such renewal can be done for three consecutive terms of one year each, after which proposal shall have to be submitted to obtain development permission all afresh".*

The above provision of the DCR is applicable in case where development permission has been granted as per provision of M.R.& T.P. Act 1966 i.e. C.C. The provision is not applicable to the cases where I.O.D. is granted but C.C. is yet to be granted.

The I.O.Ds. are issued as per provisions of 346 of M.M.C. Act. The commencement of work & validity of I.O.D. is described in Section 347 of M.M.C. Act. which is as below –

*"347 (1) No person shall commence to erect any building or to execute any such work as is described in Section 342 -*

- (a) Until he has given notice of his intention as hereinbefore required to erect such building or execute such work and the Commissioner has either intimated his approval of such building or work or failed to intimate his disapproval thereof within the period prescribed in this behalf in Section 345 or 346;*
- (aa) until has given notice to Municipal City Engineer of the proposed date of commencement, where the commencement does not take place within seven clear days of the date so notified, the notice shall be deemed not to be given;*

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(b) after the expiry of the period of one year prescribed in Sections 345 and 346 respectively, for proceeding with the same.

(2) If a person, who is entitled under Section 345 or 346 to proceed with any building or work, fails so to do within period of one year prescribed in the said sections, respectively, for proceeding with the same he may at any subsequent time given a fresh notice of his intention to erect such building or execute such work and thereupon the provision hereinbefore contained shall apply as if such fresh notice were a first notice of such person's intention".

As per detailed report submitted by Dy.Chief Engineer (Building Proposal) City in one of the cases in 2007 (C/1-3) and then Hon'ble Municipal Commissioner endorsement thereon (C/3), where it is approved that where there is no material change in the original approval not involving additional concessions, revalidation of I.O.D. for further period of one year can be considered at the level of Dy.Chief Engineer (Building Proposal), in cases where competent sanction is already obtained and approved as a policy of revalidation of I.O.D.

The High Court Order under Civil application No.221 of 2013 in PIL No.217 of 2009 stated that –

*"(a) The development permission / I.O.D. shall not be granted by either the said Municipal Corporation or the State Government on the Application / Proposal submitted from 1<sup>st</sup> March 2016 for construction of new buildings for residential or commercial use including malls, Halls and restaurants. Such applications shall be processed, but the I.O.D. and / or Commencement Certificate shall not be issued. It is obvious that in view of this restraint, no one can take advantage of deeming provisions in the DCR and M.R. & T.P. Act. Needless to state that this condition will not apply to all the redevelopment projects covered by the Clauses (5), (b), (7), (8), (9) and (10) of the DCR No.33. This condition will not apply to the buildings proposed to be constructed for the Hospitals or Educational Institution. The conditions shall not apply for consideration of the proposals for repairs / reconstruction of the existing buildings which do not involve use of any additional FSI in addition to the FSI already consumed. These restrictions shall apply only to the application / proposal submitted from tomorrow i.e. 1<sup>st</sup> March 2016 (C/42 -43)."*

The validity of I.O.D. as per M.M.C. Act is one year and, if owner / developer fails to obtain Commencement Certificate for the work within one year, need to apply

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as fresh as if fresh notice of intention. The application for revalidation / new I.O.D. for said proposal as per M.M.C. Act need to be considered as a fresh application.

However, on going through the High Court Order, the said order is not applicable to the application / proposal submitted prior to 1<sup>st</sup> March 2016. The application for revalidation of I.O.D. may be after 1<sup>st</sup> March 2016, the said proposals are submitted prior to 1<sup>st</sup> March 2016 and the status of 'Proposal Submitted' remains prior to 1<sup>st</sup> March 2016. So also, once the I.O.D. issued, compliance of I.O.D. conditions to obtain the C.C., is needed. The compliance of some of the I.O.D. conditions may be beyond absolute control of the owner / developer and in such circumstances, the owner / developer fails to obtain C.C.

A As such proposals wherein I.O.D. was granted prior to 1<sup>st</sup> March 2016 remains submitted before 1<sup>st</sup> March 2016, in such cases, the revalidation of I.O.D. may be done for one year as per policy already approved in year 2007, at the level of Dy.Chief Engineer by ensuring that there shall be no material change in original approval, not involving additional concessions and where there is no change in the provisions of the D.P. / DCR, applicable to proposal

If agreed, Municipal commissioner's approval is requested to the para 'A' above and same will be intimated to all Dy.Chief Engineers (B.P.).

Submitted please.

*(Vineet P. Chithore)*  
Chief Engineer (Development Plan)

(Ajoy Mehta)  
Hon' Municipal Commissioner  
Sir, :-

We may take opinion of Sr. Counsel in the matter.

बृहन्मुंबई महानगरपालिका  
आयुक्तांचे कार्यालय  
- 3 JUN 2017  
समय ११, १२, १३, १४  
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कमांक M/19204

*Aj Mehta*  
5/6/12  
Municipal Commissione

*Dy.CE (BP) ES*  
for n.a. please.

*CHES (BP)*

*16/6/12*  
मुख्य अभियंता  
(विवरण नियोजन)