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**BRIHANMUMBAI MAHANAGARPALIKA
LEGAL DEPARTMENT**

Date – 31/08/2017

Subject :- Re-validation of I.O.D. in case where C.C. is
not granted within period of one year.

Ref :- Dy.Ch.E./BP/3011/ES-I Dated 30/06/2017

Reference is requested to the note of Dy.Ch.E.(BP) E.S. at Pg.No. N/7 where by given detailed notes regarding issue pertaining to re-validation of lapsed I.O.D. and requested to go through the papers, examine the legal position and take the opinion of Sr. Counsel as per Hon'ble Municipal Commissioner's order dated 15/06/2017 and communicate the same to this office at the earliest.

It appears from the note of Ch.E. (D.P.) at Pg.No. N/3 to N/5 that the note contains the provisions of the DCR 5 (6), policy adopted for re-validation I.O.D. as per the Hon'ble Municipal Commissioner's approval in the year 2007 and the order of Hon'ble High Court in Civil Application no. 221 of 2013 in PIL no. 47 of 2009. The provisions of DCR is applicable in case where Development Permission has been granted as per provisions of MRTP 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.D.s are issued as per provision of 346 of MMC Act. The commencement of work and validity of I.O.D. is described in Section 347 of the MMC Act. As per the report submitted by the Dy.Ch.E.(B.P.) City in one of the case in 2007 (C/1-3) and then Hon'ble Municipal Commissioner's endorsement thereon (C/3) where it is approved that where there is no material change in the original approval not involving additional concessions, re-validation of I.O.D. for further period of one year can be considered at the level of Dy.Ch.E.(B.P.), in cases where competent sanctioned is already obtained and approved as per policy of the re-validation of the I.O.D.

The Hon'ble 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 1st 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 MRTP 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. 1st March, 2016.(C/42-43.)”

Further it appears that the validity of I.O.D. as per the MMC Act is one year and if owner / developer fails to obtain commencement certificate for the work within one year, need to apply a fresh as if fresh notice of intention. The application for re-validation / new I.O.D. for said proposal as per the MMC 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 1st March, 2016. The application for re-validation of I.O.D. may be after 01st March, 2016. The said proposal are submitted prior to 1st March, 2016 and the status of the proposal submitted remains prior to 1st 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 / developers fails to obtain C.C.

As such proposal wherein I.O.D. was granted prior to 1st March, 2016 remains submitted before 1st March, 2016, in such cases the re-validation of I.O.D. may be done for one year as per the policy already approved in the year 2007 at the level of Dy.Ch.E. by insuring that there shall be no material change in the original approval, not involving additional concession and where there is no change in the provisions of the D.P./D.C.R. applicable to the proposal.

In the instant case, the opinion has been sought from Sr.Advocate Shri. Anil Sakhare as opined that where the main proposal / application for construction /development as envisaged under the MRTP Act and MMC Act was submitted prior to 01/03/2016 and where the same has already been approved subject to conditions

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by issuance of I.O.D., the status of the main application /proposal for construction/ development remains submitted prior to 01/03/2016 upon which conditional development permission under section 45(1) (ii) and section 346 of MMC Act in the nature of IOD has already been granted. Thus, since the status of the application /proposal is retained as submitted prior to 01/3/2016, the restraint contained in the said order dated 29/02/2016 shall not be applicable to mere application for re-validation of IOD where there shall be no material change in original approval, not involving additional concessions and where there is no change in the provisions of D.P./DCR applicable to the proposal. The Corporation shall be entitled to process /approve such application for re-validation of IOD submitted after 01/03/2016.

The copy of opinion of Sr.Advocate Shri. Anil Sakhare is annexed herewith at Pg.No.C/53 to C/77 for your perusal and further necessary action.

File papers received under no. LOP/2286 dated 03/07/2017 are returned herewith please.

lop/2286
4/9/17

Dy.Ch.E. (BP) E.S.

Polanshi
Jt.Law Officer (I/C)
City Civil Court & Con-I

बृहन्मुंबई महानगर पालिका
उपप्रमुख अभियंता इमारत प्रस्ताव
(पूर्व उपनगरे)यांचे कार्यालय

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वेळ:-
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कार्य. आभि. (इ. प्र.) पू. उप. I

pl. spk.

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उप. प्रमुख आभि. (इ. प्र.) पू. उप.

१) सहा. अभि (इ.प्र) एल/एन-
२) सहा. अभि (इ.प्र) एस/टी-
३) सहा अभि (इ.प्र) एम/पू.प-
४) मु. लि. (इ.प्र) पू. उप-
५) मु. लि. (आस्था) पू. उप-

कार्य. अभि. (इ. प्र) पू. उपनगरे १/२

ANIL SAKHARE
Sr. ADVOCATE

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Mob. : 98190 19048 / 93200 19048

Date : 10.8.2017

Docket No.

To,
The Law Officer
Municipal Corporation for Greater Mumbai
Mahapalika Marg, Opp. C.S.T.,
Mumbai- 400 001.


Querist : Municipal Corporation for Greater Mumbai
Sub : Revalidation of I.O.D in cases where C.C is not
granted within period of one year.

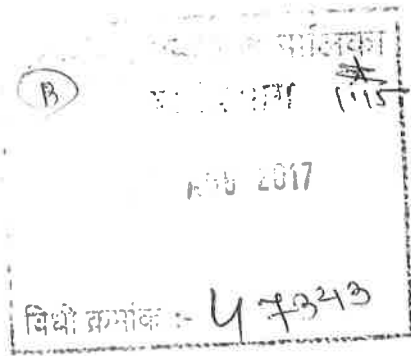
Dear Law officer,

Find enclosed herewith my opinion and original file in the
above matter.

Thanking you,

Yours sincerely,


A.Y. SAKHARE
(Sr. Advocate)



(Sup (SC)) (CC)

ANIL SAKHARE
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Date : 10.8.2017

OPINION

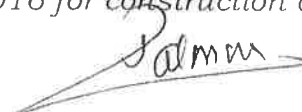
Querist : **Municipal Corporation for Greater Mumbai**
Sub : Revalidation of I.O.D in cases where C.C is not
granted within period of one year

Statutes referred:

1. The Maharashtra Regional Town Planning Act, 1966
2. The Development Control Regulations for Greater Mumbai, 1991
3. The Mumbai Municipal Corporation Act, 1888
4. Interpretation of Statutes

The present case for opinion has been advanced in the back drop of the order dated 29.02.2016 passed by the Honourable Bombay High Court in Civil Application No. 221 of 2013 in PIL No. 17 of 2009. The order dated 29.02.2016 (hereinafter referred to as the 'said order') passed by the Division Bench of Hon'ble Bombay High Court comprising Hon'ble Justice Mr. A.S Oak and Hon'ble Justice Mr. C.V Bhadang in Civil Application No. 221 of 2013 in PIL No. 217 of 2009. Vide the said order, several directions were issued to the Querist Corporation and the State Government in order to curb the threat caused to the environment due to dumping of solid waste. The said order has restrained the Querist Corporation from issuing IOD and/or Commencement Certificate with respect to the proposals submitted after from 1st March, 2016 for construction of new buildings for residential or commercial use including Malls, Hotels and Restaurants. The nature and ambit of the restraint for which clarification is sought, is reflected in the operative part of the said order viz. paragraph 30(i)(a). The same is reproduced hereinbelow for ready reference:

Paragraph 30 (i)(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 1st March 2016 for construction of*



new buildings for residential or commercial use including Malls, Hotels and Restaurants. Such applications shall be processed but 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 the MRTTP Act. Needless to state that this condition will not apply to all the redevelopment projects covered by clauses (5), (6), (7), (8), (9) and (10) of DCR 33. This condition will not apply to the buildings proposed to be constructed for the hospital 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 that is 1st March 2016.'

The issue involved in the present case for opinion is that where IOD has been granted earlier prior to the date of the said order and where Commencement Certificate could not be granted within a period of 1 year from the date of issuance of the IOD and where application for revalidation of IOD has been submitted after 1.03.2016, whether such application for revalidation of IOD can be considered by the Querist Corporation or not. It has to be thus ascertained as to whether the said order operates as a restraint upon the consideration for approval of the applications submitted for revalidation of IOD where IOD has been approved earlier and commencement Certificate (CC) is not granted within a period of one year.

Now, it is highly incumbent to discuss the background in the backdrop of which the Querist Corporation has sought the opinion in light of the said order. The facts are enumerated hereinbelow:

- The Querist has received a proposal 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 as provided under MRTTP Act 1966 for the reasons beyond their control.
- Regulation 5(6) of Development Control Regulations for Greater Mumbai, 1991 (DCR) provides as follows:
DC Regulation 5(6)- '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) seems to be applicable in cases where development permission has been granted as per provisions of MRTP Act, 1966 i.e (Commencement Certificate) / C.C. The provision does not seem to be applicable to the cases where IOD is granted but C.C is yet to be granted.

➤ The IOD is issued as per provisions of Section 346 of Mumbai Municipal Corporation Act, 1888 (MMC Act). The commencement of work and validity of IOD is provided under Section 347 of the MMC Act. Section 347 provides for follows:

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 he 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 have been given;

(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 the period of one year prescribed in the said sections, respectively, for proceeding with the same he may at any subsequent time give a fresh notice of his intention to erect such building or execute such work, and thereupon the provisions 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 and then Hon'ble Municipal Commissioner endorsement thereon, where it is approved that where there is no material change in the original approval not involving additional concessions, revalidation of IOD for further period of one year can be considered at the level of Dy. Chief Engineer (Building Proposal), in case where competent sanction is already obtained and approved as a policy of revalidation of IOD.

➤ By order dated 29.02.2016 ('said order') passed by the Division Bench of Hon'ble Bombay High Court in Civil Application No. 221 of 2013 in PIL No. 217 of 2009, the Querist Corporation is restrained from issuing IOD and/or Commencement Certificate with respect to the proposals submitted after from 1st March, 2016 for construction of



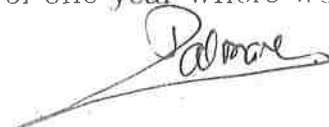
new buildings for residential or commercial use including Malls, Hotels and Restaurants.

- As per MMC Act, validity of IOD is one year and if owner/developer fails to obtain CC for the work within one year, then he has to apply as fresh as if its a fresh notice of intention. The application for revalidation/new IOD for said proposal as per MMC Act needs to be considered as a fresh application.
- The said order dated 29.02.2016 is not applicable to the application/proposal submitted prior to 1st March 2016. The application for revalidation of IOD may be after 1st March 2016 , the said proposals are submitted prior to 1st March, 2016 and the status of 'Proposal Submitted' remains prior to 1st March, 2016. So also, once the IOD is issued, compliance of some of IOD conditions may be beyond absolute control of the owner/developer and in such circumstances, owner/developer fails to obtain CC.
- As per policy already approved in 2007, where IOD was granted prior to 1st March, 2016, the proposal remains submitted before 1st March, 2016 and in such cases revalidation of IOD can be done 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 D.P/.DCR applicable to the proposal.

In the milieu of the aforesaid factual matrix, the issue involved in the present case for opinion is that where IOD is granted prior to the date of the order dated 29.02.2016 ('said order') passed by the Division Bench of Hon'ble Bombay High Court in Civil Application No. 221 of 2013 in PIL No. 217 of 2009 and where Commencement Certificate (CC) could not be issued within period of one year, whether application for revalidation of IOD submitted after the date of the said order i.e 1.03.2016 where there shall be no material change in original approval, not involving additional concessions and where there is no change in the provisions of D.P/DCR applicable to the proposal, can be approved by the Querist Corporation or not. Another issue which needs to be considered is the interpretation of Regulation 5(6) of Development Control Regulations for Greater Mumbai, 1991 to determine whether it includes IOD or not.

The said issues have to be invariably considered in light of the following:

- (a) DCR 5(6) provides that development permission/Commencement certificate shall remain valid for four years and application for renewal has to be made before the expiry of one year where work has not commenced.



- (b) Section 347 of the Mumbai Municipal Corporation Act, 1888 (MMC Act) envisages that where IOD is issued but Commencement Certificate (CC) is not issued within period of one year, the person intending to carry out development is required to submit fresh notice which will be processed as if it's a fresh notice of intention.
- (c) Policy approved by the Querist Corporation in 2007 provides for revalidation of IOD 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 D.P/.DCR applicable to the proposal.
- (d) By order dated 29.02.2016 ('said order') passed by the Division Bench of Hon'ble Bombay High Court in Civil Application No. 221 of 2013 in PIL No. 217 of 2009, the Querist Corporation is restrained from issuing IOD and/or Commencement Certificate with respect to the proposals submitted after from 1st March, 2016 for construction of new buildings for residential or commercial use including Malls, Hotels and Restaurants.

In order to consider the said issues involved herein, the following issues shall have to be exhaustively dealt with:

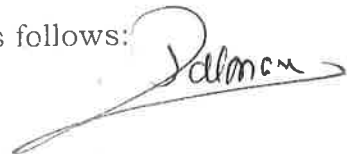
Issue (A): Provisions for IOD as provided under Section 346 and 347 of the MMC Act and whether the term 'development permission' postulated under DCR 5(6) takes IOD within it's sweep.

Issue (B): Statutory regime for renewal/extension of IOD under the MMC Act, MRTP Act and DCR

Issue (C) : MCGM Policy for revalidation of IOD

Issue (D): Whether the restraint contained in the said order dated 29.02.2016 passed by the Division Bench of Hon'ble Bombay High Court in Civil Application No. 221 of 2013 in PIL No. 217 of 2009 shall apply to applications for revalidation of IOD where IOD is issued prior to 1.03.2016 and where CC could not be issued.

I now proceed to deal with the aforesaid issues as follows:



Issue (A): Provisions for IOD as provided under Section 346 and 347 of the MMC Act and whether the term 'development permission' postulated under DCR 5(6) takes IOD within it's sweep.

In order to discuss the said issue, it is necessary to advert to Sections 346 and 347 of the MMC Act which are reproduced hereinbelow for ready reference:

Section 346. Building or work which is disapproved by the Commissioner may be processed with subject to terms.

(1) If the Commissioner disapproves of the building or work of which notice has been given as aforesaid or of any portion or detail thereof, by reason that the same will contravene some provisions of this Act or some bye law made hereunder at the time in force or will be unsafe, he may, at any time within thirty days of the receipt of the notice or of the plan, section, description or further information, if any, called for under Section 338, 340 or 343, as the case may be, by a written notice intimate to the person who gave the notice first hereinbefore in this section mentioned his disapproval and the reason for the same, and prescribed terms subject to which the building or work may be deemed to be approved by him.

(2) The person who gave the notice concerning any such building or work may proceed with the same, subject to the terms prescribed as aforesaid but not otherwise, at any time within one year from the date of receipt by him under sub-section (1) of the written notice in this behalf, but not so as to contravene any of the provisions of this Act or any by-law made hereunder at the time in force.

Section 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 he 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 have been given;

(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 the period of one year

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prescribed in the said sections, respectively, for proceeding with the same he may at any subsequent time give a fresh notice of his intention to erect such building or execute such work, and thereupon the provisions hereinbefore contained shall apply as if such fresh notice were a first notice of such person's intention.

From Section 346(2) of the MMC Act, it is discernible that IOD is notice for intimation of disapproval which prescribes certain conditions, which if complied then the person intending to carry out development shall be entitled to proceed with the work within period of one year from issuance of notice. Thus, on the basis of IOD, the person is entitled to proceed with the development if the conditions prescribed in IOD are complied. It shall be therefore apposite to deduce that IOD is essentially permission for development subject to conditions.

Now, in order to substantiate the said interpretation, it shall be necessary to consider the provisions for application for permission for development and grant of permission for development as provided under the MRTP Act. Section 44 of the MRTP Act deals with application for permission for development and Section 45 deals with grant or refusal of permission. Sections 44 and 45 are reproduced hereinbelow for ready reference:

44. Application for permission for development:- (1) *Except as otherwise provided by rules made in this behalf, any person not being Central or State Government or local authority intending to carry out any development on any land shall make in application writing to the Planning Authority for permission in such form and containing such particulars and accompanied by such documents, as may be prescribed:*

Provided that, save as otherwise provided in any law, or any rules, regulations or bye-laws made under any law, for the time being in force, no such permission shall be necessary for demolition of an existing structure, erection or building or part thereof, in compliance of a statutory notice from a Planning Authority or a Housing and Area Development Board, the Bombay Repairs and Reconstruction Board or the Bombay Slum Improvement Board established under the Maharashtra Housing and Area Development Act, 1976.

(2) *Without prejudice to the provisions of sub-section (1) or any other provisions of this Act, any person intending to execute a Special Township Project on any land, may make an application to the State Government, and on receipt of such application the State Government may, after making such inquiry as it may deem fit in that behalf, grant such permission and declare such project to be a Special Township Project by notification in the Official Gazette or, reject the application.*

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Section 45. Grant or refusal of permission:-(1) On receipt of an application under section 44 the Planning Authority may, subject to the provisions of this Act, by order in writing-

- (i) grant the permission, unconditionally;
- (ii) grant the permission, subject to such general or special conditions as it may impose with the previous approval of the State Government; or
- (iii) refuse the permission.

(2) Any permission granted under sub-section (1) with or without conditions shall be contained in a commencement certificate in the prescribed form.

(3) Every order granting permission subject to conditions, or refusing permission shall state the grounds for imposing such conditions or for such refusal.

(4) Every order under sub-section (1) shall be communicated to the applicant in the manner prescribed by regulations.

(5) If the Planning Authority does not communicate its decision whether to grant or refuse permission to the applicant within sixty days from the receipt of his application, or within sixty days from the date of receipt of reply from the applicant in respect of any requisition made by the Planning Authority, whichever is later, such permission shall be deemed to have been granted to the application on the date immediately following the date of expiry of sixty days.

Provided that, the development proposals, for which the permission was applied for, is strictly in conformity with the requirements of all the relevant Development Control Regulations framed under this Act or bye-laws or regulations framed in this behalf under any law for the time being in force and the same in no way violates either the provisions of any draft or final plan or proposals published by means of notice, submitted for sanction under this Act.

Provided further that, any development carried out in pursuance of such deemed permission which is in contravention of the provisions of the first proviso, shall be deemed to be an unauthorized development for the purposes of sections 52 to 57.

(6) The Planning Authority shall, within one month from the date of issue of commencement certificate, forward duly authenticated copies of such certificate and the sanctioned building or development plans to the Collector concerned.

From the aforesaid provisions viz. Sections 44 and 45 of the MRTP Act, it is discernible that development permission envisaged under Section 45 of MRTP Act is two fold viz. Unconditional permission under S.45(1)(i) and



Permission subject to conditions under S.45(1)(ii).

CONCLUSION I: Thus , upon a conjoint reading of Section 45 of the MRTTP Act and Section 346 and 347 of the MMC Act, it can be deduced that IOD is a development permission subject to conditions granted under the MRTTP and MMC Act and the person is entitled to proceed with the work if all the conditions prescribed therein are complied.

Having discussed as aforesaid, in order to consider whether DCR 5(6) includes IOD, I shall now consider DCR 5(6) which deals with commencement of work (reproduced hereinbelow):

DC Regulation 5(6)- '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) employs the term commencement certificate or development permission.

CONCLUSION II: Thus, DCR 5(6) is not confined only to CC. As discussed hereinabove, since IOD is also a conditional development permission under Section 45 of the MRTTP Act read with Section 346 and 347 of the MMC Act, the term 'development permission' shall include IOD within it's sweep.

Now, having discussed thus, it is necessary to consider the next issue viz. statutory provisions for extension/renewal of such development permission.

Issue (B): Statutory regime for renewal/extension of IOD under the MMC Act, MRTTP Act and DCR

MMC ACT- As provided under Section 347(2) of the MMC Act reproduced hereinabove, where a person entitled to proceed under Section 346 of the MMC Act fails to do so within a period of one year, he is required to apply by way of fresh notice and such notice would be treated as first notice of such person's intention.

DCR 5(6)- As provided under DCR 5(6) reproduced hereinabove, development permission needs to be renewed before the expiry of one year if work has not commenced.

MRTTP Act- Section 48 of the MRTTP Act is reproduced hereinbelow:



48. Lapse of permission:- Every permission for development granted or deemed to be granted under section 45 or granted under section 47 shall remain in force for a period of one year 4 [from the date of receipt of such grant], and thereafter it shall lapse:

Provided that, the Planning Authority, may on application made to it extend such period from year to year; but such extended period shall in no case exceed three years:

Provided further that, if the development is not completed upto plinth level or where there is no plinth, upto upper level of basement or stilt, as the case may be, within the period of one year or extended period, under the first proviso, it shall be necessary for the applicant to make application for fresh permission.

CONCLUSION III: From the aforesaid provisions, it is explicit that Section 347 of the MMC Act, Section 48 of the MRTTP Act and DCR 5(6) envisage that where conditional development permission i.e IOD is granted under Section 45 of the MRTTP Act and 346 of the MMC Act, where work has not been commenced, the conditional development permission i.e IOD is required to be renewed/extended before the expiry of one year failing which the person intending to carry out development will be required to issue a fresh application which will be treated as a fresh notice of intention.

Now, it is necessary to consider the policy approved by the Querist Corporation for revalidation of IOD.

Issue (C): MCGM Policy for revalidation of IOD

As set out hereinabove in the factual matrix, it is discernible that policy approved by the Querist Corporation in 2007 provides for revalidation of IOD 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 D.P/.DCR applicable to the proposal. It appears that the said policy is adopted to facilitate persons to extend IOD where it is not practically possible to obtain CC due to non-compliance of certain conditions which is beyond their control.

Conclusion IV: On a perusal of Section 48 of the MRTTP Act reproduced hereinabove, it can be deduced that the MCGM policy providing for consideration of proposals for revalidation of IOD 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 D.P/.DCR applicable to the proposal shall be in consonance with



Section 48 of the MRTP Act which empowers the Querist Corporation being Planning Authority to extend development permission subject to conditions granted under Section 45 of the MRTP Act from year to year. Moreover, the same shall be in accordance with DCR 5(6) which postulates provision for extension/renewal.

Now, it has to be considered whether the applications for revalidation of IOD where IOD is already granted prior to the said order fall within the purview of the said order or not.

Issue (D): Whether the restraint contained in the said order dated 29.02.2016 passed by the Division Bench of Hon'ble Bombay High Court in Civil Application No. 221 of 2013 in PIL No. 217 of 2009 shall apply to applications for revalidation of IOD where IOD is issued prior to 1.03.2016 and where CC could not be issued.

From the relevant observation of the Hon'ble Bombay High Court as contained in paragraph 30(i)(a) which has been reproduced hereinabove, the following can be deduced:

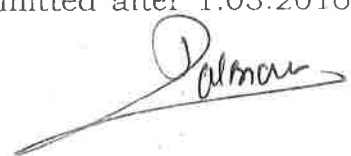
The said order operates as a restraint upon the Querist Corporation or the State Government from consideration of only certain category of applications/proposals. As per the said order, the criteria in order to determine that the applications/proposals fall within the ambit of restraint are two-fold namely:

- (A) The applications/proposals should have been submitted after 1st March, 2016 and
- (B) Such applications or proposals should be for construction of new buildings for residential or commercial use including malls hotels or restaurants.

It is specifically held by the Bombay High Court in paragraph 30 (1)(a) that the 'These restrictions shall apply only to the application/proposal submitted from tomorrow i.e 1st March, 2016.

CONCLUSION V: The Applications/proposals submitted prior to 1.03.2016 are wholly outside the purview of the restraint contained in the said order dated 29.02.2016 passed by the Division Bench of Hon'ble Bombay High Court in Civil Application No. 221 of 2013 in PIL No. 217 of 2009.

Now, it has to be ascertained that where IOD has been issued prior to the said order, whether application for revalidation of IOD which is to be treated as a fresh notice of intention under Section 347 of MMC Act can be treated as an application/proposal submitted after 1.03.2016 for



construction of new buildings so as to fall within the purview of the restraint in the said order.

As discussed hereinabove, the said order applies only to applications/proposals submitted after 1.03.2016. In the present case, IOD has already been issued prior to the said order upon an application/proposal for construction submitted prior to 1.03.2016 and now, since CC could not be issued, the IOD needs to be renewed/extended/revalidated. Though the application for revalidation may be submitted after 1.03.2016, it is in connection with an application/proposal for construction which was submitted prior to 1.03.2016. An application for mere revalidation of IOD where conditional development permission has been granted earlier cannot be equated to a fresh application/proposal for construction of new building. From the aforesaid discussions and conclusions as mentioned hereinabove, it is explicit that renewal/extension/revalidation of IOD is in accordance with Section 48 of the MRTP Act and Section 347 of the MMC Act.

CONCLUSION VI: Where the main proposal /application for construction/development as envisaged under the MRTP Act and MMC Act was submitted prior to 1.03.2016 and where the same has already been approved subject to conditions by issuance of IOD, the status of the main application/proposal for construction/development remains submitted prior to 1.03.2016 upon which conditional development permission under Section 45(1)(i) and Section 346 of MMC Act in the nature of IOD has already been granted. Thus, since the status of the application/proposal is retained as submitted prior to 1.03.2016, the restraint contained in the said order dated 29.02.2016 shall not be applicable to mere application for revalidation of IOD where there shall be no material change in original approval, not involving additional concessions and where there is no change in the provisions of D.P./DCR applicable to the proposal. The Querist Corporation shall be entitled to process/approve such applications for revalidation of IOD submitted after 1.03.2016.

In view of the aforesaid discussion, I now proceed to deal with the following queries:

Query (1): Whether the development permission as mentioned in DCR 5(6) of DCR 1991 can be treated as IOD?

Opinion: In light of the discussion with reference to ISSUE (A) and in light of CONCLUSION I and II, the said query is answered in the affirmative.



Query (2): Whether the application date made prior to Hon'ble High Court Order dated 26 and 29 February, 2016 can be considered as date of submission for cases where IOD is approved earlier?

Opinion: *In light of the discussion with reference to ISSUE (D) and in light of CONCLUSION V and VI, the said query is answered in the affirmative.*

Query (3): Whether the revalidation of IOD where CC is not granted within a period of one year from the date of issuance of IOD can be considered.

Opinion: *In light of the discussion with reference to ISSUE (B), ISSUE (C), ISSUE (D) and in light of CONCLUSION III, IV, V and VI, the said query is answered in the affirmative.*

Query (4): Anything in general.

Opinion: *No.*



ANIL SAKHARE
SENIOR ADVOCATE