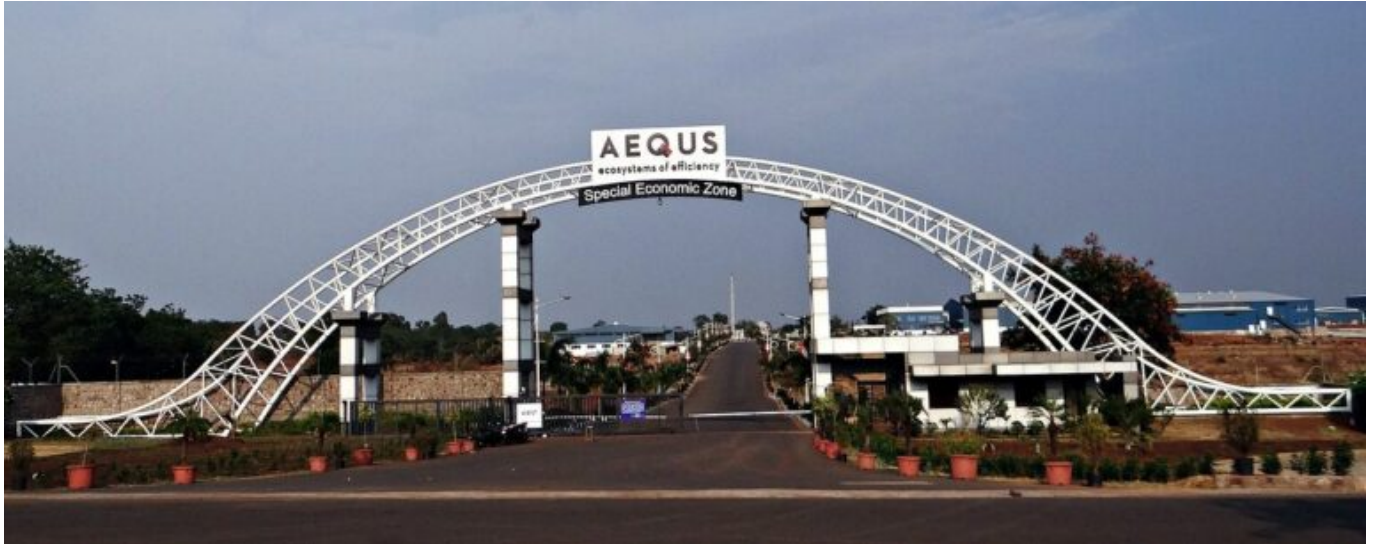


Deferment Or Waiver: Interim Relief To SEZs Amidst Outbreak Of Covid-19
written by Smita Paliwal | May 16, 2020



A Much Required Payment Waiver Relief to the SEZs by the GOI
The outbreak of the Coronavirus (COVID-19) has rapidly spread across the globe and has now become the biggest health crisis affecting billions of lives worldwide. This outbreak has fast morphed into an economic crisis adversely affecting several business operations. In order to tackle this unprecedented crisis, the Government of India, as a safety measure, treated the situation as an epidemic and has invoked the Epidemic Diseases Act, 1897. The Central Government has notified this event as a “disaster” under the Disaster Management Act, 2005 on March 14th, 2020. Thereafter, Order No. 403/2020-DM-I (A) passed by the Government of India, Ministry of Home Affairs, resulted into the countrywide lockdown of commercial establishment with effect from March 24th, 2020 extended vide order dated April 14th, 2020 (*amended vide order dated April 15th, 2020*) up to May 3, 2020, and the same was extended vide order dated 1st May 2020 for a further period of 2 weeks with effect from May 4, 2020.

Impact of COVID-19 on SEZs

Due to the imposition of the lockdown, production and business operations in the Special Economic Zones (hereinafter referred to as “SEZ”) have been impacted disproportionately and the exports from the operational SEZs are also at a standstill due to various international constraints.

There are 7 (Seven) Central Government SEZs which are located in Kandla, Mumbai, Noida, Chennai, Cochin, Falta, and Vishakhapatnam. All these zones are headed by a Development Commissioner, who is the ex-officio chairperson of the Approval Committee. As per the recent data from the official website of the Ministry of Commerce & Industry, Department of Commerce, there is a total of 231 Operational SEZs in India as of 22-01-2019.[1]

These all SEZs are major export-hubs in India since several governmental incentives are afforded to these zones and a single-window clearance has been set-up for the smooth functioning of their business and trade operations.

Interim relief measures

The Ministry of Commerce and Industry, Department of Commerce- SEZ Division, on 11th May 2020 provided relief measures to SEZs units issued vide File No.: K-43014(16)/5/2020-SEZ.

The Under Secretary to the Government of India, Mr. Sumit Kumar Sachan, in the said directive stated that the Department of Commerce SEZ Division in

consultation with the Department of Expenditure had examined proposals to provide interim relief measures to the SEZ units in respect of the payment of the Lease Rentals. In furtherance to the same, the Department has decided on granting the following reliefs for SEZ units on account of the outbreak of COVID-19.

Firstly, the Union Ministry has directed that there shall be no increase in the lease rentals for the SEZ units for the Financial Year 2020-21, on account of the outbreak of COVID-19.

Secondly, the payment of lease rentals for the first quarter is to be deferred up to July 31, 2021. It is further clarified that such deferment may not invite any interest thereof.

Advisory to Developers of State Government/Private Sector SEZs

The Under Secretary in the said directive also requested the Development Commissioners to further advise developers of the State Government and Private Sector SEZs to consider the similar measures in their respective zones.

The said advisory dated May 11, 2020, has been issued and addressed to all the Development Commissioners of the respective Economic Zones with the directions laid down therein.

Judicial Perspective

It is pertinent to note that the expression "*similar*" carries significant importance in the said directive herein. For understanding the meaning of the expression "*similar*" in its correct legal perspective, a careful examination is required of the said expression on the touchstone of the legal precedents. The Hon'ble Supreme Court in its judgment dated January 19, 1988, in the case of *NAT Steel Equipment Pvt. Ltd. v. Collector of Central Excise*^[2] had settled the confusion regarding the expression "*similar*".

The Hon'ble Apex Court observed in paragraph no.4 of the said judgment that "*The expression 'similar' is a significant expression. It does not mean identical but it means corresponding to or resembling in many respects; somewhat like; or having a general likeness.*"

Conclusion

This directive is definitely a pro-active approach of the Central Government to make available some sort of relief in way of interim measures to various Special Economic Zones. However, this directive dated 11th May 2020 vide File No.:K-43014(16)/5/2020-SEZ issued by the Ministry of Commerce and Industry, Department of Commerce SEZ Division, is in form of an advisory laying down certain interim relief measures which are applicable to the SEZs set-up under the Central Government.

The Union Ministry has further requested and advised the other Development Commissioners of the State Government SEZs and that of the Private SEZs to consider similar reliefs. In light of the aforesaid and based on the analysis of the directive dated 11-05-2020, it can be construed that in absence of any order or notification expressly making it mandatory to provide deferment of rent or other relief measures, the same is not mandatorily applicable on the State Governments SEZs and the Private SEZs.

These SEZs under the State Governments and the Private SEZs however, can come up with various other similar remedial measures, suitable to the respective SEZs, as the case may be, which is left to the option of these SEZs.

Consequently, it can be concluded that the said directive is not mandatory but directive in nature.

- [\[1\]http://sezindia.nic.in/upload/uploadfiles/files/Operational%20SEZs.pdf](http://sezindia.nic.in/upload/uploadfiles/files/Operational%20SEZs.pdf)

- [\[2\]](#) (1988) 1 SCC 605.

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