

SUBJECT NO.38

Sub : VUDA – Projects – Development of Commercial Complex with Multiplex at Vizianagaram on BOT basis– request for waiver on the interest on late payment of Additional Development Premium and Lease Rent-Reg

AGENDA NOTE :-

An extent of land measuring 3,597.12 Sq.Yards situated at Old Balaji Complex Site, Vizianagaram Town Survey No.683/1 of Vizianagaram, Opp.RTC Complex, Vizianagaram District has been awarded to M/S Ambica Agarbathies & Aroma Industries Ltd., Eluru on BOT(Built-Operate-Transfer) basis for a period of 33 years on PPP Mode Vide this office letter of award even No. Dated 31.3.2007. Subsequently, as per the conditions of the Letter of Award, they have formed Special Purpose Vehicle (SPV) and the following are the developers incorporated in the SPV.

1. M/s Ambica Infra Ventures Pvt.Ltd., Hyderabad
2. M/s Ambica Agarbathies & Aroma Industries Pvt Ltd., Eluru
3. M/s Chaya Lakshmi Creations Pvt Ltd., Chennai.

As per the Development and Management Agreement and Lease Agreement the developer has to pay lease rentals and Additional Development Premium to VUDA for a period of 33 years. After completion of the Lease period, the developer has to handover the site along with structures to VUDA. The developer has furnished plans for construction of shopping mall - cum - Multiplex with Sub-Cellar, Cellar, Ground + 4 floors.

VUDA, vide Rc.No.195/05/PMU, dated: 2-11-2008 informed M/s Ambica Infra Ventures Pvt.Ltd., that as per mandatory period the Development and Management Agreement and Lease Agreement are lapsed for having not registered the agreement in the concerned Sub-Registrar's office, Vizianagaram and requested to pay an amount of Rs.14,557/- towards interest for belated payments on Lease Rent for the period 1.7.2008 before 30-11-2008.

As a reply to this letter M/s Ambica Infra Ventures Pvt.Ltd., vide letter dated 30-11-2008 informed that when they approached the registration department for registration of the Agreement, they came to know that the registration department didn't have any proper knowledge regarding Stamp duty for the BOT Projects, and there is lot of variation in the calculation between various departments and there were no any impressions at all for Lease agreement registrations for any BOT Project in their enquiries and from stamp duty enquiries they came to know that Vizianagram project can be a Tourism Project. The Developer company has requested VUDA to issue fresh Lease Agreement and Development & Management Agreement, with retrospective effect, to enable them to submit the Lease Agreement Document before Sub-Registrar, Vizianagaram to conclude necessary registration formalities, as the original lease Agreement entered on 11-04-2008 has been lapsed.

VUDA vide Rc.No.195/05/PMU dated 13/3/1009 requested APITCO to examine the request of the developer for consideration of issue of fresh Lease Agreement with retrospective effect and furnish a report with legal opinion in the mater so as to take further action in the matter since, allowable period of 120 days for registration of the document has been lapsed as per the registration procedure.

APITCO has given the legal opinion vide letter APITCO/KLN/VUDA/VZNM/MSM&M/2087/2009 dated 30-03-2009 as.

1. Regarding execution of fresh Lease Agreement and Development & Management Agreement (DMA), while registration of DMA is optional, registration of Lease Agreement is compulsory.
2. In the present case 120 days time for Registration from the date of execution prescribed u/s.-23 of the Indian Registration Ac.1908, is lapsed.
3. There is no impediment to execute fresh Agreements now giving 'Retrospective Effect' in which case, the Lessee have to pay the stamp duty on the Lease value calculated from the previous date (Date of Retrospective Effect).

While Re-executing the Agreements with the current dates, an additional Clause will be added to the existing Agreements, clearly indicating the Retrospective Effect for all milestones in the Agreement.

While the matter stood thus, Vide letter dated 16.05.2010 the developer submitted the reasons for delay in commencement of the project as

- Delays arose on account of water logging at the time of earth excavation immediately after the site was handed over to them
- There were delays on account of encroachments on the site which they got cleared for the work to commence. This took them nearly six months.
- There were problems that arose on account of the drainages flowing across a portion of the land given to them.
- Damage of the pipes and drainage during the time of conducting the earth work near the adjacent masjid .
- Relaying of the road leading to the APAIDC .
- Delay in the registration of the lease deed because of the ambiguity in the quantum of stamp duty to be paid.

Keeping in view the above the developer requested VUDA to permit the extension of the COD on the strength of the power bestowed upon VUDA in accordance with Clause 2.4 of the Development and Management Agreement Dated 1/04/2008 and to grant an extension of the holiday for payment of ADP upto 27/10/2011.

VUDA vide Rc.No.195/05/PMU dated 18.06.2010 requested APITCO to examine the request of the developer and to furnish report in the matter for taking further necessary action in this matter.

APITCO'S vide APITCO/KLN/VUDA/VZNM/Multiplex/1270/2010 has made the following Observations

(i) As per the Lease Agreement (a) VUDA was to hand over vacant land for project development (A.2.1) ; (B) It is vuda's obligation to handover the physical possession of the project site together with necessary right of way to the lessee free from any encumbrance, and to ensure peaceful use of the project site by the lessee under and in accordance with the provisions of the agreement without any let or hindrance from the VUDA or persons claiming through or under it (Art.3.2 (a) and (c); and (c) it will be an event of default on the part of VUDA if It fails to hand over the site as per the Agreement (Art 6.1 (b)).

(ii) As per the Development Agreement, (a) COD is defined as the date on

which the VUDA issues the Completion/Occupancy Certificate or the Provisional Certificate upon completion of construction of the project and trial run of the Multiplex operations successfully and which shall be subject to the provisions of the Agreement, (b) Commencement Date is defined as the date of the Agreement or the date on which physical possession of the project site is delivered by VUDA to the Developers whichever is earlier, (c) The ADP is payable after one year holiday from COD and irrespective of the fact whether the COD took place on the due date or not unless extension for COD, for whatever reasons, is obtained in writing from the VUDA by the Developer (Art.2.4); (d) it is VUDA's obligation to hand over the physical possession of the site together with necessary right by way to the developer along with the agreement or within one month from the date of agreement free from any encumbrance, and to ensure peaceful use of the site by the developer under and in accordance with the provisions of the Agreement without any let or hindrance from VUDA or persons claiming through or under it (Art.5:3 (ii) and (v)); (e) the project is deemed to be complete and open to public only on issue of completion certificate by VUDA, the project completion to be achieved by the developer on a date not later than 18 month from the commencement date, any delay in achieving the scheduled project completion date exceeding 3 months invites penalties, if the COD does not occur within 120 days from the scheduled project completion date, VUDA is entitled to terminate the Agreement subject to the provisions of the Agreement; and if the COD does not occur as scheduled, the financial obligations will remain the same with reference to the scheduled COD (art.7.2 (a), (c), (d) and (e)); (f) VUDA's acts of commission or omission that created circumstances that have a material adverse effect on the performance of its obligations by the Developer and has failed to cure the same within 60 days of notice thereof by the Developer (art.12.1 (b) (3); (g) VUDA's indemnity to the Developer (Art.17.2 (a) (ii))."

After perusing the observations APICTCO's Opinioned as

"From the observations in Para-3 above, it may be concluded that there is delay attributable to (i) vesting of legal rights pertaining to the site due to late registration of the lease agreement for whatever reasons resulting in delay in securing the finances from the financial Institutions; (ii) encroachments ; (iii) relaying of water and drainage lines, etc., The Art.2.4 provides for extension of COD and consequently the holiday period. The said factors deserve consideration by VUDA for granting extension of COD and consequently for payment of ADP as requested by the Developer."

When the matter was referred to Sri.L.Satyanarayana, Standing Counsel, VUDA, he opined vide his letter dater 04-04-2011as "the opinion submitted by APITCO is based on the presumption if VUDA admits the factors that are narrated by the developers for the delaying implementation of the project and I find no objection by VUDA in the entire correspondence. The reasons shown by the developer is his letter dated:16.05.2010 for extension of COD for one year holiday for payment of ADP are not the result of any omissions and commissions of VUDA as such there is no necessary to consider the request of the developer for extension of COD and holiday for ADP" .

When the matter stood thus, the developer requested vide letter dated 05-02-2013 to approve and release occupancy certificate. VUDA, vide Rc.No.195/05/PMU dated26.03.2013, informed the developer company that "as per the additional condition 8.13 of the Lease Agreement, " The lease Agreement shall be deemed to have come into force from 11-04-2008 with retrospective effect and the Lease period shall also be deemed to be effective from 01-07-2007 with retrospectives effect in all respects with reference to Lease period, Payment of Lease, Commencement date (Zero date), Implementation Period, Commercial Operations Date (COD) and all other related terms & conditions of the Lease Agreement " and as per Clause No. 2.4 specifies that " The Additional Development Premium payable shall be the minimum amount as shown in the schedule D or 3 percent of the gross revenue less tax, whichever is higher. There shall be three years holiday for

payment of ADP. The payment of ADP shall commence from the first day after availing of one year holiday from COD, irrespective of the fact whether the COD took place on the due date or not unless extension for COD, for whatever reasons, is obtained in writing form the VUDA by the developer “. Since, VUDA has not issued written permission for extension of COD, to the Developer, it is to inform that the extension of COD and Holiday for Additional Development Premium for the Project of Commercial Complex with Multiplex at Vizianagaram on BOT basis cannot considered. Hence the intimation.”

,A demand notice was served upon the developer vide Rc.No.195/05/PMU dated 26.03.2013 informing to pay the following lease rent and Additional Development Premium (ADP) amounts payable to VUDA as follows by 24-04-2013

Dues period	ADP per Annum dues Rs	No. of days	Interest Rs	Dues Period lease rent for % yealy	Int. for the period	Lease Rent dues Rs.	No. of days	Interest Rs.	Grand Total Dues for Lease Rent and ADP Rs.
7/2010-3/2013	1512000	1005	999163	July-12	07/2012 - 3/2013	332843	274	59966	2903972
7/2011 - 3/2013	61107	640	25715	Jan-13	01/2013 -3/2013	332843	90	19697	439362
7/2012-3/2013	1512000	274	272409						
Total	3085107		1297286			665686		79663	5127742

In response to the demand notice served by VUDA, the developer vide the letter dated 28-03-2013 agreed to pay the entire due amount at a time, but requested waiver of the interest of Rs.13,76,949 on the outstanding due amounts, since the accumulated interest has become a burden for them as

they are paying interest on the amount of Rs.25.00 Crores they have borrowed from financial institutions in connection with the subject project.

The developer had cleared all the dues on Additional Development Premium and other dues to VUDA and also agreed to withdraw his request on extension of COD and holiday for ADP. In compliance to the assurance given by the developer, all the dues have been remitted to VUDA except interest .

In view of the above, the matter is placed before the VUDA Board for perusal of the developments and for taking an appropriate decision on the request M/s Ambica Infra Ventures Pvt.Ltd. Vizianagaram for waiver of interest.

Sl No	Subj ect No	Subject	RESOLUTIONS
38	38	VUDA - Projects - Development of Commercial Complex with Multiplex at Vizianagaram on BOT basis- request for waiver on the interest on late payment of Additional Development Premium and Lease Rent-Reg.	Perused the issue. The request for interest waiver is not considered.
39	39	Revenue Section - VUDA - Vysakhi Jala Udyanavanam (P) Ltd - Sri Sai Raghavendra Engineers & Contractors - Licence period expired by 31-1-2013 - Renewal of Licence period as per the recommendations of the committee - Reg.	It is directed to refer the issue to the Committee as constituted in the Agenda No.36
40	40	VUDA - Bulk land allotment - Auction of Government Bulk Lands to give budgetary support to the Government - Allotment of site for an extent of Ac.4.50 Cts. In Sy.No.336/p at Madhurawada Village, in Rushikonda Satellite Township Visakhapatnam District - Exclusively allotted for Hospital Purpose - Development Agreement concluded with M/s. Adithya Construction Company India Private Limited for construction of Residential Building - Proposal -	Except for the allied purpose of the utility, it is not allowed to revise the approved layout. Moreover, since the powers are already delegated to urban local body, the VUDA need not process for giving building plan approvals within GVMC.



CHAIRMAN, VUDA

