

Delhi State Industrial & Infrastructure Development Corporation Ltd.

“Press Release”

It has been in the news that Anti- Corruption Branch, Govt . of NCT of Delhi has registered a case on the issue of purported Freehold of Built-up Industrial Sheds allowed by DSIIDC in irregular manner and without the approval of Govt..

DSIIDC has given its clarification on the issues raised by various sections of Media vide various “Press Releases” issued in the meantime and also through the official website www.dsiidc.org.

However, once again owing to the commitment and responsibility of services provided in complete fairness to its allottees/citizens within the National Capital Territory of Delhi, DSIIDC further clarifies the issue as under:-

The Government of NCT of Delhi launched the scheme of conversion from leasehold to freehold for the Industrial Properties/Plots/Sheds in the year 2005 after taking approval of Hon’ble LG, Delhi on the basis of Conversion Scheme notified by the Ministry of Urban Development, Govt. of India in the year 1992 and modified in the year 2003 thereby extending the scheme to all built-up Industrial, Commercial and mixed land use leases also.

The brochure of the conversion scheme containing detailed guidelines for conversion from leasehold to freehold was also issued after the approval of Hon’ble LG, Delhi. The Scheme also included the Industrial Sheds constructed under different schemes by DSIIDC.

In the year 2010, the Delhi Industrial Development Operational & Maintenance (DIDOM) Act, 2010 was passed by the Govt. of Delhi. As per the provisions of the Act, DSIIDC became the single nodal agency to operate, maintain and manage the Industrial Estates/Areas notified under the Act. Key feature of the DIDOM Act, 2010 was that all the notified Industrial Estates/Areas were to be transferred to the DSIIDC for purposes of operation, maintenance and management including Lease administration of the properties/plots allotted in these Areas. The draft DIDOM Bill was referred to the Ministry of Home Affairs for their consent and approval. The Ministry of Home Affairs referred the matter to different Ministries of Govt. of India like Ministry of Urban Development, Ministry of Law etc. Depending upon the comments they received from different Ministries the Ministry of Home Affairs, Govt. of India communicated their consent and approval to the draft DIDOM Bill. After the bill was passed

by the Assembly the President of India granted his assent and thereafter the bill was notified on 08.06.2010, now known as DIDOM Act, 2010.

Few Industrial Estates/Areas notified under the Act were being managed under the control of Industries Department (Commissioner of Industries), Govt. of Delhi namely Okhla Industrial Estate (Ph-III), Okhla Industrial Area (Ph-II, A & S Block), F.I.E. Patparganj, Badli Industrial Estate, Flatted Factories Complex at Okhla and Jhandewalan and Wazirpur Leather Goods Complex at Wazirpur Industrial Area.

After the notification and enactment of the Act, the Lease Administration of the Industrial Estates/Areas under the authority of Industries Department, Govt. of Delhi was transferred to DSIIDC for purposes of operation, maintenance, management including Lease Administration as per the provisions of the Act. The Ministry of Home Affairs, Govt. of India directed MCD to handover all industrial estates/ areas under their control for maintenance and operation to the DSIIDC by 31st July, 2011. As a result 17 nos. of industrial areas were transferred by MCD to DSIIDC for maintenance purpose.

Since, the lands allotted by DDA, on which the DSIIDC had constructed the Industrial Sheds under various schemes were already under the control and authority of DSIIDC and DSIIDC was carrying out all the functions of the lease administration of these sheds including allotment, disposing off the sheds through public auction, cancellation, change in constitution, transfer, executing Conveyance Deeds (Leasehold & Freehold), passing eviction orders under PP Act, 1971, the work of Conversion of these sheds was started after the date on which DIDOM Act, 2010 came into force.

The Legal Opinion taken from the Law Department. GNCT of Delhi clearly states that Lease Administration of all The Industrial Estates/Areas notified in the act shall be with the DSIIDC after the enactment of Act. The opinion of Law Department, GNCTD is reproduced below:

“There is no dispute that the work related to maintenance of industrial areas, industrial estates and flatted factory complexes was discharged by MCD whereas the work relating to collection of ground rent and monies from conversion from leasehold to freehold in respect of the said industrial plots and sheds was with separate agencies, namely DDA, DSIIDC and the Industries Department. After the commencement of the said Act, all these functions and powers are to be transferred maintained and operated by DSIIDC alone. It is also correct

that DDA has been established and functioning. Under the Delhi Development Act, 1957 which being a former law, may be said to be a general law whereas the Delhi Industrial Development Operation and Maintenance Act, 2010, a latter law, may be said to be a special law. Both these Acts have been assented to by the President of India. Thus, in the opinion of this Department, the specific provisions of the special law would prevail over the provisions of a general law. As per sub-clause (a) of clause (ii) of section 4 of the said Act, DSIIDC has been empowered to establish, operate, maintain and manage industrial estates including the existing industrial areas and industrial estates etc. in Delhi. Section 8 further provides for collection of ground rent and conversion charges of industrial plots and sheds by DSIIDC. These provisions make it clear that the lease administration in respect of all industrial areas and industrial estates including the existing industrial areas and industrial estates shall be with DSIIDC after the commencement of the said Act.

In these circumstances, we are in agreement with the views of the administrative Department that DDA should have no objection to making compliance with the request of the Industries Department to transfer the lease management of the industrial estates and transfer the ground rent and conversion charges to the DSIIDC in accordance with the provisions of the special law, namely, the Delhi Industrial Development Operation and Maintenance Act, 2010.”

It establishes the fact that the Act being a special Act had overriding influence over the Delhi Development Act, 1957 for all the functions to be carried out in the Industrial Estate/Areas as was earlier being performed by the DDA.

After the notification of rules of DIDOM Act, 2010 in the year 2011, DSIIDC has actually become the Lease Administrating Authority of all the Industrial Estates notified in the Act under the jurisdiction of DDA or any other authority in terms of exercising the powers of a ‘Lessor’. The same fact was also endorsed through different legal opinions taken on the issue from Mr. Soli. J. Sorabjee, Senior Advocate, Supreme Court of India and Mr. Gopal Subramaniam, the then Solicitor General of India . The extract of opinions is given below:

Opinion of Mr. Soli. J. Sorabjee, Senior Advocate

“Under Section 2(e) of the Act the querist is defined as the Corporation Section 3 of the Act provides for empowerment of the Corporation, i.e. the Querist. Under Section 4(1) of the Act the functions of the Querist are generally to promote and assist in the rapid and orderly establishment, growth and development of industries in Delhi Section 4(ii) inter alia

provides that “all industrial estates/ areas of Delhi will stand transferred to the Corporation for this purpose within prescribed time frame”. Section 8 provides for creation of Industrial Development, Operation and Maintenance Fund to which are to be credited inter alia ground rent collected with effect from the date on which the Act comes into effect from industrial plots and sheds by the Delhi Development authority constituted under the Delhi Development Act 1957, the Corporation and the Industries Department of the Government.

Certain queries are posed for my opinion, which I shall now answer:

Q.1 Under the facts and circumstances as narrated above, whether DSIDC has sufficient rights to be treated as owner of all 29 industrial estates as discussed in the Delhi State Industrial Operation and Maintenance Act 2010?

Ans. In view of the facts stated in the case for opinion and set out above it is clear that the Querist is the transferee of all industrial estates/ areas of Delhi vide Section 4 (ii) (a) of the Act and can rightly be regarded as the owner.”

Opinion of Mr. Gopal Subramaniam, the then Solicitor General of India

“Section 3 of the Act provides that for the purpose of securing and assisting in the rapid and orderly establishment and organization of industries in industrial areas, industrial estates and flatted factory complexes, the Querist shall be empowered by a suitable notification. The functions of the Querist would be to operate, maintain and manage industrial estates. Section 4 (ii) (a) provides that “....all industrial estates/ areas of Delhi will stand transferred to the Corporation for the purpose of within the prescribed time frame.....”. Thus, it would be clear that in order to effectively maintain these industrial areas, a transfer in favour of the Querist has been stipulated by a statute. Thus, it is a statutory transfer. Consequent to the transfer, the Querist does become the owner. Considering the fact that it has acted as an instrumentality of the State, there is no further requirement of passage of consideration. It must also be stated that under Section 8 of the Act, ground rent can be collected and similarly conversion charges can also be collected in respect of plots which are of leasehold status. Thus, the plain words of sub-section (2) of Section 8 clearly indicates that the properties vest in the Querist and the Querist is the lessor and the allottee is only the lessee.

Query-1

Under the facts and circumstances as narrated above, whether DSIIDC has sufficient right to be treated as owner of all 29 industrial estates as discussed in the Delhi State Industrial Operation and Maintenance Act, 2010?

Reply to Query 1

In that view of the matter, the Querist can be treated as an owner of all 29 industrial estates subject to suitable orders of transfer and vesting passed in favour of the Querist. Once such consequential orders are passed recognizing the effect of Section 4 (ii) (a) of the Act, the ownership in favour of the Querist would be complete.”

It establishes the fact that the Act was so designed to have confer all the powers of “Lease Administration” to the DSIIDC within the Industrial Estates/Areas notified in it, after its enactment and the same fact was endorsed by legal opinion of Law Department, GNCTD as well as prominent senior lawyers.

Recently, the matter was again examined in depth by DSIIDC and in the same sequence the matter was referred to the Law Department, Govt. of NCT of Delhi. The Senior Standing Counsel (Civil) after examining the whole issue in conformity of the Law gave an explicit opinion , the concluding part of the same is being reproduced as under:-

Conclusions:-

- i. That the DSIIDC is the transferee of all the industrial estate/areas that were also under the MCD, DDA and Industries department by operation of the clear mandate under Section 4 of the DIDOM Act.
- ii. That the DSIIDC has the power of collect and appropriate the money received in terms of the conversion from leasehold to freehold, towards the fund maintained under Section 8 by the DSIIDC under the DIDOM Act.
- iii. That pursuant to the 2005 Scheme and the provisions under the DIDOM Act enacted in the 2010 read along with the Rules framed in 2011, the DSIIDC is the transferee and has the right to carry out the conversion exercise from leasehold to freehold.

As the Indian Economy continues to grow by leaps and bounds, Delhi aptly epitomizes the growth story of India. In keeping with this spirit, DSIIDC continues to drive Delhi on the roads

to infrastructure and Industrial Development thereby catalyzing all round economic growth in the National Capital, right from provision of state-of-the-art infrastructure to facilitation, DSIIDC ensures a smooth start up support to the new enterprises and providing various related services with a sense of responsibility/commitment towards the common citizen of the nation.

All the deliberations and facts presented above, clearly establish and confirm that the Conversion allowed by DSIIDC in respect of its Built-up Industrial Sheds were absolutely as per the Law and with the approvals from the Government/Competent Authority and thus DSIIDC will continue to allow conversions as per Law in the public interest.

Further to these clarifications, the detailed facts on this issue have already been uploaded on our web-site www.dsiidc.org under “**What’s New**” Section under the link “**FACTS ABOUT FREEHOLD OF DSIIDC SHEDS**”.