

Agenda for 126<sup>th</sup> meeting of Unit Approval Committee for Dahej SEZ to be held on Tuesday, 25<sup>th</sup> February, 2025 at 12:00 PM through hybrid mode (Webex Video Conferencing/ physical) under the Chairpersonship of Shri Lokesh H.D, ITS, Development Commissioner, Dahej SEZ.

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**Ratification of Minutes of 125<sup>th</sup> UAC Meeting.**

**126.1 Fresh Cases for Dahej -SEZ: - NIL**

**126.2 Deferred cases for Dahej -SEZ: - One**

**126.3 Other cases for Dahej - SEZ: - NIL**

<b>Sr. No.</b>	<b>Name of Applicant/Unit</b>	<b>Proposal/Request</b>
<b>1.</b>	<b>M/s. ONGC Petro additions Limited, Dahej SEZ</b>	<b>Request of M/s. ONGC Petro additions Limited for exit from the SEZ</b>

**Item No. 126.2 Deferred cases for Dahej -SEZ: - One**

**Item No. 126.02.01 M/s ONGC Petro additions Limited, Dahej SEZ  
Request of M/s ONGC Petro additions Limited for exit from the SEZ**

M/s ONGC Petro additions Limited (OPaL) was issued Letter of Approval No. KASEZ/P&C/6/28/07-08 dated 17<sup>th</sup> October, 2007. M/s. ONGC Petro additions Limited has set up a Greenfield 1.1 MMTPA Petrochemicals Complex in the Special Economic Zone, Dahej, Gujarat. The principal business of OPaL is to manufacture, purchase, process, market, distribute, import, export and trade petrochemicals, petrochemicals products and its by-products.

2. The unit has commenced commercial production w.e.f. 31.08.2015.

3. M/s. OPaL vide their letter dated 13.09.2018 had requested in-principal approval for exit of the unit (OPaL) from Dahej SEZ on following grounds:

- a) Increased demand in the domestic market leading to net import situation.
- b) Import substitution will save country' foreign exchange outlays.
- c) Availability of polymers from domestic sources will help domestic industry.
- d) Negative NFE on account of fulfilling domestic demand.
- e) Improvement in operating margins of OPaL

4. The unit was granted in-principle approval for exit from Dahej SEZ under Rule 74 of SEZ Rules, 2006 in 98<sup>th</sup> Unit Approval Committee Meeting held on 05.11.2020.

5. The UAC is competent to authorize the exit of the unit from the SEZ Scheme. Rule 74 of SEZ Rules, 2006 provides conditions for exit of a Unit from SEZ, which is reproduced below: -

74. Exit of Units. —

*(1) The Unit may opt out of Special Economic Zone with the approval of the Development Commissioner and such exit shall be subject to payment of applicable duties on the imported or indigenous capital goods, raw materials, components, consumables, spares and finished goods in stock: Provided that if the unit has not achieved positive Net Foreign Exchange, the exit shall be subject to penalty that may be imposed under the Foreign Trade (Development and Regulation), Act, 1992.*

*(2) The following conditions shall apply on the exit of the Unit, namely:—*

*(i) Penalty imposed by the competent authority would be paid and in case an appeal against an order-imposing penalty is pending, exit shall be considered if the unit has obtained a stay order from competent authority and has furnished a Bank Guarantee for the penalty adjudicated by the appropriate authority unless the appellate authority makes a specific order exempting the Unit from this requirement;*

*(ii) In case the Unit has failed to fulfil the terms and conditions of the Letter of Approval and penal proceedings are to be taken up or are in process, a legal undertaking for payment of penalties, that may be imposed, shall be executed with the Development Commissioner;*

*(iii) The Unit shall continue to be treated a Unit till the date of final exit.*

*(3) In the event of a gems and jewellery unit ceasing its operation, gold and other precious metals, alloys, gem and other materials available for manufacture of jewellery shall be handed over to an agency nominated by the Central Government at a price to be determined by that agency.*

*(4) Development Commissioner may permit a Unit, as one time option, to exit from Special Economic Zone on payment of duty on capital goods under the prevailing Export Promotion Capital Goods Scheme under the Foreign Trade Policy subject to the Unit satisfying the eligibility criteria under that Scheme.*

*(5) Depreciation norms for capital goods shall be as given in sub-rule (1) of rule 49.*

*(6) The Unit opting out from Special Economic Zone shall execute a legal undertaking in Form L*

6. In the light of above Rule provision for exit of a Unit from SEZ, the status of compliance in the present case is placed below:

- a. Compliance with 74(1) --Exit shall be subject to payment of applicable duties on the imported or indigenous capital goods, raw materials, components, consumables, spares and finished goods in stock:

In this regard the firm has stated that they have made the payment of duties on provisional basis and requested for final assessment to be considered after exit. The firm has informed that they will back their certifications/declarations by way of Bank Guarantee and Bonds to protect the interests of the Government.

The SO has vide his office letter dated 18.02.2025 shared the details of duty payment and duty payment to be made and documents to be submitted by the firm by

74(1) If the unit has not achieved positive Net Foreign Exchange, the exit shall be subject to penalty that may be imposed under the Foreign Trade (Development and Regulation), Act, 1992

In this regard, the firm has not fulfilled the NFE criteria and hence with the approval of the 123<sup>rd</sup> UAC vide meeting dated 06.01.2025, a SCN dated 07.01.2025 was issued by the

Development Commissioner to the firm. The firm has provided its response on 09.01.2025 and the same is pending for adjudication. The same will be adjudicated on the basis of data pertaining to imports/exports made as on the date of exit since the cumulative NFE of the firm is to be calculated as on the exit date of the firm. The firm has vide its letter dated 16.10.2020 and letter dated 26.10.2020 submitted Form L (Legal Undertaking) to this office for exit from the SEZ.

- b. Compliance with 74(2) (i)--No Penalty is pending for payment.
- c. Compliance with 74 (2) (ii) – No cases of failure to fulfill the terms and conditions of the Letter of Approval and penal proceedings are have been initiated (except the non fulfillment of NFE). However, the firm has executed an undertaking in Form L with the Office of Development Commissioner that penalties imposed by appropriate authority under the Foreign Trade (Development & Regulations) Act, 1992 for non-fulfillment of the conditions of approvals would be paid.
- d. Compliance with 74 (2) (iii)--The Unit shall continue to be treated a Unit till the date of final exit.
- e. Compliance with 74(3)- Firm is not a gems and jewellery unit and hence this provision is not applicable in the case of the firm.
- f. Compliance with 74(4)-Development Commissioner has vide letter dated 01.10.2020 permitted the Unit, to exit from Special Economic Zone on payment of duty on certain capital goods under the prevailing Export Promotion Capital Goods Scheme under the Foreign Trade Policy. Subsequent to this firm has obtained 24 No of EPCG authorizations from Regional office of DGFT, Vadodara for clearance of capital goods.
- g. Compliance with 74(5)-The Specified Officer shall brief the members on the status of compliance with this sub rule.
- h. Compliance with 74(6)- The Unit has executed a legal undertaking in Form L

**7. Other facts relevant to the case are placed below: -**

- a) The quantum of land allotted to OPaL by DSL is 529-45-86 Hectares.
- b) Along with the application for SEZ exit by the unit, the Developer has also submitted application for partial de-notification of the land on which the unit is located. This is being processed and will be sent to the BoA for action as appropriate.
- c) DSL had earlier informed the DC's office that they have demanded payment of fees, charges, refund of concessions etc. to OPAL amounting to Rs. 1034 Crore. The developer may like to comment on this issue.
- d) DSL vide letter dated 27.10.2020 had stated that OPAL has laid down the 15 MT wide storm water channel in Dahej SEZ area without permission from DSL and office of the DC, Dahej SEZ. The developer may like to comment on this issue.
- e) DSL vide letter dated 01.10.2020 has stated that they had allotted 22 Hectares of land to OPAL for smooth exit from the SEZ. DSL vide letter dated 11.12.2020 has stated that additional land allotted to OPAL is 21.50 Hectares, out of which 11.76 Hectares of land falls into CRZ area. The Developer may like to comment on this issue.

f) Gujarat Maritime Board vide email dated 23.12.2020 has stated that structure of M/s OPAL falls in GMB port limits, and they have also stated that their NOC along with CRZ clearance would be required prior to commencement of activities.

g) This office vide letter dated 30.12.2020 has approved the request of the firm for additional allotment of 2,20,000 sq. mts of land subject to NOC/Clearance from GMB.

h) The Enforcement Directorate, Ahmedabad vide their letter dated 06.07.2017 had requested the DC's office to provide information regarding Complaint received from Shri Ashok Patel about misuse of provisions of Foreign Exchange Management Act, 1999 and Income Tax Act, 1961, by way of over invoicing (transfer pricing) of goods and services being imported by the consortium of M/s Samsung Engineering Company Ltd Korea & M/s Linde AG, Germany working under EPC Contract for execution of Dual Feed Cracker & its associate units at M/s ONGC Petro Additions Ltd (OPAL) in Dahej SEZ, Dahej, Gujarat. This office has provided the information vide letter dated 25.10.2017 and final assessment order of BOEs issued by the office of the Specified Officer, Dahej SEZ was forwarded to the ED. The Specified Officer, Dahej SEZ vide letter dated 22.11.2017 has also forwarded copy of 01 BOE pertaining to M/s Linde AG and copy of 02 BOE pertaining to M/s Samsung Engineering Co. Ltd. No further development till 31.12.2024. This DC's office vide letter dated 31.12.2024 has sought inputs from the Enforcement Directorate, Ahmedabad to be considered while finalizing the exit order. The DC's office has not received any response to letter dated 31.12.2024 from the ED as on date.

i) Pending Audit matters: -

The Specified Officer, Dahej SEZ vide letter dated 04.02.2025 has stated that 08 audit paras are raised via CRA/LAR -28/2021-22 related to M/s OPAL. Out of these, 07 audit paras are recommended for closure by the Specified Officer, Dahej SEZ and 01 audit para is not applicable. Further, the SO has stated that has deputed one P.O to CRA office to obtain the progress in the matter. The Specified Officer, Dahej SEZ vide letter dated 06.02.2025 has stated that 01 para is settled, 01 para is partially closed and 06 paras are unsettled. The SO may like to comment on this issue

j) Pending Court Cases: -

- i. WPA 17560 of 2024 filed by M/s Softrose Petrochemicals Private Limited, Kolkata, West Bengal is a petitioner and the Development Commissioner, Dahej SEZ is named as Respondent No. 4 and M/s OPAL is named as Respondent No. 5. Assistant Commissioner of Revenue, Post bazar and Burtola Charge has demanded Input Tax Credit under IGST head from M/s Softrose Petrochemicals Private Limited, Kolkata, West Bengal.
- ii. WPA 29911 of 2024 wherein M/s Hind Distributors Private Limited, Kolkata, West Bengal is a petitioner and the Development Commissioner, Dahej SEZ is named as Respondent No. 7 and M/s OPAL is named as Respondent No. 6. Superintendent of CGST & CX, Kolkata has filed the case against M/s Hind Distributors Private Limited, Kolkata, West Bengal.
- iii. R/SCA No. 4148 of 2022 (converted from SCA/5857/2022 dated 23.02.2022) M/s ONGC Petro Additions Limited is a petitioner and Union of India (through Secretary, Ministry of Commerce and Industry) is named as Respondent No. 1, the Development Commissioner, Dahej SEZ is named as Respondent No. 9. The State tax authorities has demanded 1049.47 Crores as refund for exemptions availed as a unit.

- iv. R/SCA No. 17673 of 2022 (converted from SCA/26396/2022 dated 05.09.2022) M/s ONGC Petro Additions Limited is a petitioner and Union of India (through Secretary, Ministry of Commerce and Industry) is named as Respondent No. 1, the Development Commissioner, Dahej SEZ is named as Respondent No. 7. The issue challenged in this matter is reversal of Stamp duty benefit availed by the firm.
  - v. SCA No. 7121 of 2019 M/s ONGC Petro Additions Limited is a petitioner and Union of India (through Secretary, Ministry of Commerce and Industry) is named as Respondent No. 1, the Development Commissioner, Dahej SEZ is named as Respondent No. 2. The issues pertain to availment of fiscal benefits for laying of feed/raw materials (naptha) pipeline from Hazira ONGC (DTA) to OPAL (SEZ).
- k). DSL has vide its written comments dated 18.02.2025 specified the following:
- a. With regard to Para 7(c) above, it has been informed that as per the decision taken in 68th meeting of Board of Directors of the company-Dahej SEZ Ltd. held on 25-08-2023, it was resolved that “M/s. OPaL be and is hereby directed to pay 50% of Rs. 103.32 crore i.e. Rs. 51.66 crore towards demand charges as interim settlement subject to final decision of the Finance Department, Government of Gujarat with further direction to M/s. OPaL to give a legally binding agreement & undertaking to abide by the final decision of the Government of Gujarat in the matter. DSL informed that OPaL has to construct SEZ boundary wall to comply the norms of SEZ. In this regard, M/s. OPaL has submitted letter dated 30-07-2020. DSL has no objection to de-notify M/s. OPaL.
  - ii. With regard to Para 7(d) above, DSL has informed that M/s. OPaL has to complete the RoU (Right of Use) formalities as per the policy of DSL.
  - iii. With regard to Para 7(e) above, it has been informed that DSL has allocated land on RoU basis to lay the services / pipelines / utilities etc. Hence, OPaL has to permit concern authority to carry out activity as per the approval accorded by DSL Authority. No any charges for payment to be levy by M/s. OPaL for the same. Further, DSL informed that OPaL has to obtain permission from DSL authority to carry out any activity in the additional land allocated to M/s. OPaL.
- l). The 125<sup>th</sup> UAC held on 17.02.2025 had deliberated in detail the proposal made by the firm in light of the above facts and comments provided by the participating members. Therefore, it was decided that the following be communicated to the firm for compliance after which the issuance of NDC will be considered by the SO’s Office.
- i. In respect of Para 6(a)(ii), the firm shall submit PD Bond with Surety for Rs.460 crores (20% of the Duty involved) supported by Bank Guarantee for Rs.115 Crore, with auto renewal clause.
  - ii. In respect of Para 6(a) (iii), the firm shall submit PD Bond (with surety) for Rs.132 crores, supported by Bank Guarantee for Rs.35 Crore, with auto renewal clause.
  - iii. In respect of Para 6(a) (iv), the firm shall discharge duty liability amounting to Rs.195 crores
- m). Further, the CEO, DSL vide letter dated 17.02.2025 has stated that as per clause no 3(d) of offer cum allotment letter dated 13.01.2025 issued to M/s OPAL, the unit has to make the payment of Rs. 3,24,79,480/- + applicable taxes towards boundary wall constructed by the DSL.

The request of the firm for issue of final exit order is placed before the UAC for decision as appropriate

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