

RTI REQUEST DETAILS**Registration No. :** CPTRS/R/E/22/00004**Date of Receipt :** 31/01/2022**Type of Receipt :** Online Receipt**Language of Request :** English**Name :** S P KAMATH**Gender :** Male**Address :** AMALGAM HOUSE, BRISTOW ROAD, WILLINGDON ISLAND, KOCHI, Pin:682003**State :** Kerala**Country :** India**Phone No. :** +91-9895570014**Mobile No. :** +91-9895570014**Email :** spkamath@amalgamfoods.in**Status(Rural/Urban) :** Urban**Education Status :** Above Graduate**Is Requester Below Poverty Line ? :** No**Citizenship Status :** Indian**Amount Paid :** 10)**Mode of Payment :** Payment Gateway**Does it concern the life or Liberty of a Person ? :** No(Normal)**Request Pertains to :****Information Sought :** Please issue me the Minutes of the LAC meeting held on 13th Janu 2022 issue of request for consent of Port Trust for creation of Mortgage as Co-borrower by Amalgam Foods Limited.

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Encl - No RTI cell/1489/SPK/2022-S Dated : 31/01/2022

Copy of RTI request is forwarded to Dy. AECCE, Estate Division, GAD, COPT for furnishing the details sought for by the applicant subject to the provisions under RTI Act 2005 to the RTI cell on or before 07/02/2022 PL.

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(GAD)
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ISPS COMPLIANT PORT

कोचिन पोर्ट ट्रस्ट
COCHIN PORT TRUST
W/Island, Cochin-682009.
Phone: 2582119, 2582118
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Email: rticell@cochinport.gov.in
Website: www.cochinport.gov.in



मंख्या /No. GAD/RTI Cell/SPK/1489/2022-S

दिनांक: 25.02.2022

सेवा में/To

Shri. S.P. Kamath
Amalgam House
Bristow Road
Willingdon Island
Kochi - 682003

Sir,

विषय /Sub : Information under the RTI Act, 2005- reg.
संदर्भ /Ref : Your application dated 31.01.2022

With reference to the above application, the required information is attached herewith -
(4 pages)

The details of the Appellate Authority under the RTI Act for Cochin Port Trust are
given below.

Shri. S.K. Sahu
Financial Advisor & Chief Accounts Officer
Cochin Port Trust, Cochin - 682009.

Yours faithfully,

(Jijo Thomas)
Central Public Information Officer
General Administration Department

UAD
M/T
2/22

PROCEEDINGS OF THE LAND ALLOTMENT COMMITTEE (LAC) MEETING ON 13.01.2022 IN FURTHERANCE OF THE JUDGEMENT OF HONOURABLE HIGH COURT OF KERALA TO RE CONSIDER THE MATTER DECIDED IN THE EARLIER PROCEEDINGS OF THIS LAC DATED 12.10.2020 FOR CONSIDERING THE REQUEST REGARDING MORTGAGING OF LEASE HOLD INTEREST IN RESPECT OF 100 CENTS (0.4047 HA) ALLOTTED TO M/S AMALGAM FOODS LIMITED FOR 30 YEARS AT W/ISLAND.

1. The Hon'ble High Court of Kerala vide Judgment dated 11.10.2021 in Writ Petition No. 9325/2021 had set aside the proceedings of LAC dated 12.10.2020 and CoPT's letter dated 23.10.2020 and directed the 2nd Respondent Secretary, Cochin Port Trust to reconsider the matter after affording necessary opportunity of being heard to the competent officials of the petitioner company. It was also ordered that the afore exercise shall be completed by the respondent as expeditiously as possible, but not later than two months from the date of receipt of copy of the judgment.
2. In compliance with the judgment, Secretary, CoPT afforded an opportunity of hearing on 06.12.2021 to the petitioner company in the Chamber of the Secretary.
3. As per PGLM, the Board of Trustees may permit the mortgage on collection of nominal fee commensurate with the size and lease value of the land to be fixed by the Trust Board. All proposals for grant of NOC for mortgage may be duly recommended by the Land Allotment Committee and approved by the Chairman. Accordingly, Secretary has referred the matter to the Land Allotment Committee, for considering the proposal of granting NOC for mortgage.
4. Accordingly, the Land Allotment Committee (LAC) consisting of FA & CAO, Secretary, and Traffic Manager, met at 15.30 hrs. on 13/01/2022 to consider granting NOC for mortgage of lease hold rights of M/s Amalgam Foods Limited in 100 cents (0.4047 Ha) of land, for availing loan of Rs.2.30 crores as working capital facility by M/s Amalgam Foods Limited as Co-borrower along with M/s Amalgam Frozen Foods Pvt. Ltd. from Federal Bank Ltd., Ernakulam North Branch.
5. The committee has gone through the records and the judgment of the Honourable High Court of Kerala setting aside the proceedings of this Committee dated 12.10.2020.
6. The brief history of the issue involved and considered are as follows.
 - 6.1. A land area of 0.4047 ha (100 cents) at W/Island was allotted by CoPT to M/s Amalgam Foods Limited on annual lease rent basis for a period of 30 years through tender cum auction basis, vide order No EM/T/141/Renewal/Amalgam/ Commercial/2016 dated 05.07.2018 for Port related commercial/office purpose and they have executed the lease deed on 22.05.2020.
 - 6.2. Thereafter M/s. Amalgam Foods Limited vide letter dated 15.05.2020 has intimated that, they are in the process of raising loan of Rs.2,00,00,000 for funding their BUFFET brand frozen food business from Federal Bank Ltd. by mortgaging the Corporate Office building situated in 0.4047 Ha of land leased at Willingdon Island and have requested consent of CoPT for creating mortgage in favour of "The Federal Bank Ltd." Ernakulam North Branch, Ernakulam -682018.



M

Manager (Estate)

- 6.3. For granting NOC for mortgaging, the lessee as well as the Bank has to accept the terms and conditions of CoPT. The same was informed to the lessee vide letter dated 01.06.2020 and also to clear all dues.
- 6.4. Subsequently the lessee, M/s Amalgam Foods Limited submitted letter dated 30.07.2020 enclosing letters dated 29.07.2020 from M/s Amalgam Foods Limited and M/s Federal Bank Ltd confirming on acceptance of the terms and conditions stipulated by CoPT for mortgaging the lease hold interest. However, in that enclosed letter of M/s Amalgam Foods Limited it was stated that the proposed loan is availed by M/s Amalgam Frozen Foods Pvt. Ltd. Also, the letter dated 29.07.2020 of M/s Federal Bank Ltd, stated that the proposed loan is to be availed by M/s Amalgam Frozen Foods Ltd as borrower and M/s Amalgam Foods Ltd. as Guarantor, by mortgaging the lease hold interest of 0.4047 ha of land leased to M/s Amalgam Foods Ltd. Also, it was mentioned that the proposal is to advance working capital facility of Rs.2,30,00,000/- (Rupees Two crore and thirty lakhs only) instead of Rs. 2,00,00,000/- earlier communicated.
- 6.5. On bringing into the notice about the above inadequacy, M/s Amalgam Foods Ltd., vide letter dated 10.08.2020 requested consent of CoPT for creation of charge on the lease hold interest in favour of Federal Bank Ltd., for raising loan, as a co-borrower along with M/s Amalgam Frozen Foods Pvt. Ltd. and as guarantor by mortgaging the lease hold interest of 0.4047ha (100 cents) of land at W/Island, leased to M/s Amalgam Foods Limited by CoPT.
- 6.6. Thereafter, M/s Amalgam Foods Ltd. vide letter dated 11.09.2020 submitted acceptance of terms & conditions stipulated by CoPT for availing loan of 2.30 crores as co-borrower along with M/s Amalgam Frozen Foods Ltd. by mortgaging the lease hold interest of 0.4047 ha (100 cents) of land at W/Island, leased to M/s Amalgam Foods Ltd. by CoPT for the period from 27.10.2017 to 26.10.2047. It was also enclosed with the confirmation letter dated 10.09.2020 of their lending bank, M/s Federal Bank, accepting the terms & conditions stipulated by CoPT for advancing working capital facility of Rs.2.30 crores, and accepting that Port will retain first charge and second charge of the bank is confined to Rs. 2.30 Crores.
- 6.7. As per Policy Guidelines for Land Management by Major Ports, 2014 – clarifications in Clause No 12(D) states that "NOC can be granted for mortgage of leasehold land, along with the permissible structures erected by the lessee thereon in favour of reputed financial institutes / scheduled banks, subject to the Port retaining the first charge on them. The Board of Trustees may permit the mortgage on collection of nominal fee commensurate with the size and lease value of the land to be fixed by the Trust Board. All proposals for grant of NOC for mortgage may be duly recommended by the Land Allotment Committee and approved by the Chairman of the Port".
- 6.8. Clause 3 (c) of the lease deed states that "The lessee shall not create any charge in respect of the leased premises or its lease hold interest in the leased premises or the building constructed on the same without the prior written consent of the lessor, it being clearly understood that such consent will not be granted, except in case of charges in favour of scheduled banks/central financial institutions".



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 Manager (Estate)

- 6.9. Clause 3(d) specifies that "The lessor shall retain the first charge on the leased premises or its leasehold interest on mortgaging the leased property. The lessee shall be liable to pay such charges, fees or levy as are prescribed from time to time by the lessor for written consent for mortgaging the leased premises or its leasehold interest".
- 6.10. Hence, in compliance with above stipulations, the proposal for grant of NOC for mortgage was placed before the Land Allotment Committee (LAC) for consideration and the first meeting of LAC was convened on 12.10.2020. The committee after deliberation decided that, "As per PGLM 2014, there is no provision to mortgage the lease hold interest as Co borrower in favour of a company who are not a lessee, the request of the lessee for availing loan of Rs. 2.30 crores for working capital facility by M/s Amalgam Foods Limited as Co-borrower along with M/s Amalgam Frozen Foods Pvt. Ltd. by mortgaging the lease hold interest in respect of 100 cents (0.4047 Ha) of land allotted to M/s Amalgam Foods Limited in favour of Federal Bank Ltd. Ernakulam North Branch, cannot be considered favourably".
- 6.11. Accordingly, CoPT vide letter dated 23.10.2020, informed M/s Amalgam Foods Ltd, that their request cannot be considered favourably for the reasons mentioned therein.
- 6.12. M/s Amalgam Foods Ltd. challenged the same before Hon'ble High Court of Kerala in Writ Petition No. 9325/2021 and the Court vide judgment dated 11.10.2021 had set aside the proceedings of LAC dated 12.10.2020 and CoPT's letter dated 23.10.2020, observing that CoPT did not take into account this particular offer of M/s Federal Bank to grant a loan to M/s Amalgam Foods Ltd. as also their subsidiary company, and that CoPT proceeded on the assumption that the loan was being taken by another company and that the petitioner was guarantying it by executing the mortgage on the property in question.
7. In the subsequent hearing conducted by Secretary as per the direction of Court, the lessee, had submitted the following and LAC perused the same.
- 7.1. The mortgage is proposed in favour of reputed scheduled bank by M/s Amalgam Foods Ltd. as co borrower with their subsidiary company M/s Amalgam Frozen Foods Private Limited for raising the fund of their subsidiary company working in Aroor.
- 7.2. M/s Amalgam Foods Ltd. and the Bank have accepted all the terms and conditions as stipulated by CoPT. Moreover, there is no restriction in the lease deed, in the Policy Guidelines or under Transfer of Property Act that can be relied on to reject the request for NOC. If there is a prohibition intended, the same should have been specifically given in the lease deed or in the Policy Guidelines.
- 7.3. In the absence of clear and unambiguous provision to contrary, it will not be in public interest or in the interest of commerce to impose a ban or to refuse NOC.
- 7.4. The rejection of NOC does not state as to how any of the interest of Port Trust would be adversely impacted by providing the NOC or in permitting Amalgam to create the mortgage in favour of Bank.
- 7.5. The lessee requested to consider their written submission dated 06.12.2021.



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Manager (ES&K)

8. LAC also considered the submission that there is no restriction in PGLM to reject the request for NOC. However Clause 12D of the PGLM, only specifies that NOC can be granted for mortgage of leasehold land, and it doesn't mandate granting of NOC. Further, it provides that Board of Trustees 'may' permit the mortgage on collection of nominal fee and same indicates that Cochin Port Trust has the discretion in granting NOC for mortgaging leasehold land. Hence, CoPT is entitled to deny granting of NOC at its discretion considering facts involved.
9. With regard to the submission that as per Section 108(j) of Transfer of Property Act, 1882, the lessee has the right to mortgage interest in the property, it is seen that the said section would prevail, in the absence of contract or local usage to the contrary. As the lease deed clearly specifies that the lessee shall not create any charge in respect of the leased premises or its lease hold interest in the leased premises or the building constructed on the same without the prior written consent of the lessor, the mandate of Section 108(j) would only read as subject to such clauses in lease deed.
10. LAC noted that Clause 3(c) of the lease deed make it clear that the lessor has the discretion to grant consent on creation of any charge on leased premises.
11. LAC observed that the land has been leased only for the purpose of commercial/office activity. Further the lessee must also perform Port related activity. Cochin Port has been granting NOC for mortgage of lease hold premises to lessees alone, considering that same would benefit Port activities. Therefore had the lessee alone requested for granting NOC, CoPT might have provided NOC subject to fulfillment of other conditions by lessee. However, in the instant case, the lessee has requested NOC for mortgage of leased land for availing loan as Co-borrower along with M/s Amalgam Frozen Foods Pvt. Ltd. Such granting of NOC for availing loan also for M/s Amalgam Frozen Foods Pvt. Ltd., which has no relation with lessor, may not be benefiting Port Activities, for which CoPT leases its land.
12. After deliberation of the above LAC found that there is no provision to mortgage the lease hold interest by the Lessee as Co borrower. For the above reasons, the application submitted by the lessee, M/s Amalgam Foods Limited for granting No Objection Certificate (NOC) for availing loan of Rs.2 30 crores for working capital facility by M/s Amalgam Foods Limited as Co-borrower along with M/s Amalgam Frozen Foods Pvt. Ltd. by mortgaging the lease hold interest in respect of 100 cents (0.4047 Ha) of land allotted to M/s Amalgam Foods Limited in favour of Federal Bank Ltd., Ernakulam North Branch, cannot be considered favorably.


SECRETARY


TRAFFIC MANAGER(i/c)


FA & CAO




Manager (Ernak)