Most industries in Delhi face closure by deadlines starting 07.09.04 set by Supreme Court order of 07.05.04 arising from orders since 1995 or, more accurately, from failure in spite of them to solve the problem of units in places not meant for them with space meant for them under Delhi Master Plan (DMP). National Common Minimum Programme (NCMP) provided a window of opportunity to view the court's deadline as one for enforcing the DMP solution. With inertial initiatives headed to closing units in unlawful ways, this window is closing.

Although implementation of NCMP commitments for industries and employment (reiterated by NAC identifying these as priority areas for policy papers for its second meeting on 31.07.04) are predicated in the Capital upon survival of units and central government has responsibility for DMP solutions, neither has UPA budget made provision for industries facing closure nor has MoUD taken steps to rectify unlawful DMP revision on basis of 'DMP2021 guidelines' about which Supreme Court has made adverse remarks. Delhi's Congress government's budget is unmindful of NCMP and fails to make any sensible provision for industries, while its Industries Minister has been quoted about 'bhagidari self-financing', presumably referring to maintenance of select estates by their associations with state funds and/or tax waivers. Congress-led MCD, far from worrying about industries it illegally licensed, is gearing up to profit from their closure, with media reports on 23.07.04 of plans to identically illegally license commercial use in residential areas. It seems also unperturbed by 'bhagidari self-financing' eating into property tax base, having assumed powers to raise resources from illegalities, such as by allowing commercial misuse of farmhouses at a price (though Supreme Court quashed in 2002 identical proposal for misuse of industrial space, mentioned in judgment of 07.05.04).

The first deadline set by court – for Delhi government to announce incentives in six weeks – passed on 19.06.04 without incentives being announced. Instead, in disregard of High Court orders, DSIDC had hiked prices in Bawana, while ministers and CM had been quoted about regularization / DMP2021 options that the court has rejected and about NCR options that do not figure in the instant case since central government was directed to finalize steps for these in 6 months whereas closure deadlines for nearly all units were set at 4 or 5 months.

The next deadline – for central government to finalize list of household industries by 07.08.04 – is also poised to pass without positive steps. MoUD Public Notice of 21.06.04 proposes 23 new entries in DMP A-category, calling A-category household units, with text on restrictions (otherwise elsewhere in DMP) in terms of pollution. 14 and variants of 7 of these are already in A-category and the proposal is not so much to expand the list of household industries within ambit of DMP parameters as to remove scale restrictions for A-category to function in households, which is nothing short of 'regularization' that the court has rejected.

07.08.04 is also deadline for MCD to consider withdrawal of exemptions in Lal Dora areas – a direction that seems aimed only at pre-empting hurdles to closure of units in urban villages since the exemption of 1963, meant only till MCD had framed special building byelaws, did not extend to use relaxations but under its garb rampant misuse (especially commercial) has come to pass (and continues to be proposed, notably in touristy schemes). MCD (since it has in the last year assumed powers to 'reform', or to serve as conduit for private American firms to 'reform', Delhi's byelaws) could have taken the opportunity to initiate positive steps for industries under this direction, but has not done so.

The next court deadline is for filing of first progress report by the court-appointed Monitoring Committee (on 31.08.04), when the window of opportunity to convert the closure order to one for enforcing DMP solutions may well close, with first deadline for closure (of F-category / extensive units) on 07.09.04, followed by the next ('B' to 'E' category / light and service units) on 07.10.04, leaving only impermissible A-category units in homes (to be closed by 07.11.04) and 6000 units wait-listed for industrial plot allotments (to be closed by 07.11.05).

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A note of 06.06.04 had identified NCMP-DMP imperatives for lawful compliance and suggested that different DMP categories of units be offered full choice of all their DMP options in industrial / commercial / mixed use / housing / redevelopment areas in locations throughout the city / urban extensions (Dwarka, Rohini, Narela). In view of possible need for special budget provision and of reports of inertial initiatives, urgent consideration was sought in a letter of 24.06.04. In response of 10.07.04 to Public Notice about household industries, suggestions were reiterated with further suggestion of public debate on compliance plan to ensure it is better than DMP solution. On 18.07.04, with an application for investigation into roles of DDA, MCD and GNCTD vis-à-vis Public Notice of 2003 for land use change to industrial in walled city after contrary Supreme Court order of 14.07.04, suggestions were again reiterated and request made for a meeting with DMP2021 expert group for industries.

The 'suggestions' of debate on overall compliance plan and offering units all their DMP options are no sundry opinion but techno-legal imperatives of DMP and the judgment based on it. On basis of due consideration of "the question of conforming / non-conforming and overall compatibility of industries in the city" DMP, by due process, expanded industrial permissibility to non-industrial areas. Neither the definition of "non-conforming" (in the context of 'overall compatibility of industries in the city') nor use of DMP space meant for industries (or, for that matter, use of public land for development of industrial space) is open to 'alternatives' outside the ambit of DMP provisions and processes (including due process for DMP modification). Closure of units without offering them their DMP space would amount to their forcible eviction (that NCMP has promised even slums will be spared) for malafide purpose of its misuse, precluded also by the same judgment. For F-category this is imminent, with no legal option on offer to them at all – with maximum plot size of 250 sqm in Bawana being short of minimum of 400 sqm stipulated for them in DMP. For B-to-E-categories, likewise, the only option on offer (Bawana) is, besides grossly short of DMP quantum and range, illegal for being in excess of maximum size (proxy for concentration) of 100 Ha permissible for light and service industrial estates under DMP. It is noteworthy that the judgment says that "an illegality would not become a legality on inaction or connivance of the Government authorities", making the so-called relocation plans contrary to it.

Of course, the judgment obliges government to close industries, not to relocate them (except 6000 wait-listed units to be allotted plots by 07.05.05) and government is free to abandon its illegal relocation. The real problem it will face is with compliance of closure orders for which it seems to have, after ignoring / rejecting suggestions for DMP solutions, no lawful options.

The court has ordered closure of industries in "residential / non-conforming areas". At the out set it is clarified that closure of units in "non-conforming areas" (a phrase that the judgment suggests, at end of second para, crept into proceedings through an affidavit filed by Delhi Government) is not possible since "non-conforming areas" do not exist. DMP uses, since 1962, the term "non-conforming" for individual uses existing prior to notification of Master Plan / Zonal Plan in places subsequently designated for a Use Zone that does not permit them, both Use Zone and permissibility being duly defined by DMP Development Code. Use Zone is defined in clause-2(1) as "area for any one of the specific dominant uses of the urban functions as provided for in clause-4" (which designates 37 use zones classified into 9 categories) and, as per clause-2(5), indicated in DMP Land Use Plan. Permissibility (and, therefore, "non-conformity") of various uses in various use zones is defined by clause-8(ii) A (Permission of use premises in use zones). There is no "non-conforming" use zone or area or permissibility stipulations for it in DMP and no industries can be identified or closed in it on grounds of DMP. (Obfuscation of "non-conforming" in terms of areas and uses is matched by obfuscation of [pre-Plan] "non-conforming" and [post-Plan] unauthorized, resulting in 'cut-off' date of 01.08.1990 that is untenable, especially in view of precedents set by the court in its orders for H-category units, but that argument is not pursued here). The court's directions must be read as those for closure in "residential / non-residential use zones" and, as demonstrated in the following paragraphs, government is in no position to lawfully comply with them and clearly poised to misuse them for malafide closure of Delhi's industries.

Residential areas, for instant purpose, fall in three categories – planned, pre-Plan (walled city, urban villages) and unauthorized. The government can not apply the closure directions, arising from questions like whether those "who are using the premises in accordance with the permissible use in the Master Plan must continue to suffer at the hands of those who are functioning in violation of the Master Plan", to unauthorized colonies (especially not while considering 'regularization' of these colonies). The judgment arguably applies only to other, especially planned, residential areas, but even in these government cannot now close units without kicking up dust about Article 14 with MCD gearing up to license commercial use in residential areas in violation of DMP, MoUD/DDA announcing plans to modify the Plan (in line with so-called 'DMP2021 guidelines') to allow the same, MCD continuing to prevaricate about Lal Dora, Delhi and State governments making touristy plans in disregard of Master Plan / Zonal Plans for urban villages / Walled city, etc.

Of the 8 non-residential use zone categories, 5 preclude industries – Recreational (Regional Park, District Park, Play ground / stadium and sports complex, Historical monument), Utility (Water, Sewage, Electricity, Solid waste), Government (President Estate and Parliament House, Government office, Government Land (use undetermined)), Public / Semi Public (Hospital, Education and research, Social and cultural, Police, Fire, Communication, Cremation and burial, Religious) and Transportation (Air / Rail / Bus / Truck terminal and road / rail circulation – which, incidentally, allows service and repair at terminals, which is commerce but in view of current obfuscation of auto shops and industries needs mention here). Government can lawfully close units, if they exist, in these Use Zones. In the other 3 non-residential Use Zones (Commercial, Industrial and Agricultural), cases of which the court has not quite heard, it cannot do so in bonafide manner under present circumstances.

In commercial areas government cannot close units before providing evidence of how it has 'promoted' in them A-C category units as per DMP provisions in general and, in particular, in 'additional 2% area earmarked for service sectors / establishments' in lieu of dispensing with 6-7% provision for industrial space in urban extensions vide 'policy' of 17.09.91, mentioned in judgment of 07.05.04. This is especially so since disposal of planned commercial, and even mixed use, space for unrestricted up-market use, complete with liberty for illegal amalgamation, is going on (despite challenges in PIL in High Court, in responses to s.11A Public Notices for DMP modification to relax mixed use restrictions, allow unfettered 'metro property development', etc, in PIL against unrestricted disposal of space in 'malls' and service centres, etc) and extra-legal 'plans' for redevelopment / pretty-fication of commercial areas (in ways clearly meant to make them 'up-market' in violation of DMP and to detriment to residential / city quality of life) are underway.

In industrial estates in the city government can hardly close industrial units as per directions of May 2004 before closing commercial units as per directions of October 2002 in the same matters and also explaining decision of February 2003 to 'regularize' all (including F-category) units in special industrial areas, including Lawrence Road, from where this banquet hall picture appeared in a news paper on 16.06.04.

In other DMP industrial use zones within the city (sites for flatted factories, redevelopment areas, etc), likewise, government cannot close units on grounds of them being "non conforming" as they are more "conforming" than any other use of those sites.

In Agriculture / Rural Use Zone government cannot close industries since the judgment makes no reference to G-category (rural area) units, since government failed to respond to offer to brief counsel made pursuant to proceedings on 19.11.03 when counsel appearing for MCD and DDA defined 'urban extension' with no basis in law, and – most significantly – since government's own development in this Use Zone (at Bawana) is contrary to DMP. DMP requires 1800 Ha industrial space to be developed in outlying zones. "Non-conforming" decisions were taken in 'policy' of 1991 to not carry out this mandatory development (with

promise of non-industrial economy and employment, belied by quantum of industrial activity being as anticipated by DMP) and in 'guidelines' of 27.07.03 to change DMP to respond to "growing variation between the plan for Delhi and city on the ground" (both mentioned in judgment of 07.05.04). It is these "non-conforming" decisions that call for closure rather than units in outlying zones that are as anticipated by and in conformity with DMP. Two further clarifications would be required of government if it attempts to close industries in outlying zones. One, how come much touted 'studies' by Delhi government, DDA DMP2021 expert group, MoUD appointed committee, etc, to advocate 'regularisation' of units in residential areas (in negation of DMP) failed to capture possibilities of redevelopment (within ambit of DMP provisions based on consideration of non-conformity and overall compatibility) of industrial clusters in outlying zones, such as this one, that are, besides in conformity with DMP policies, superior in terms of DMP standards to, say, Bawana:



Two, in absence of duly prepared Zonal plans for outlying zones – certain to find such industrial estates redevelopable and other DMP industrial options necessary – how can closure of units be tenable in terms of s.21(2) at zonal level, defensible in view of ongoing DMP revision and bonafide in view of (besides 'policies' to allow misuse of farmhouses and regularize unauthorized colonies) massive government schemes that are illegal in absence of zonal plan / DMP modification by due process and have, among other problems, possible environmental implications in terms of ground water depletion and seismicity:

Supreme Court cannot and has not ordered shutting down bulk of Delhi's industrial activity to drive the Capital to economic and employment crisis only to spare DMP industrial space for misuse by government decisions devoid of any basis in law or sense. It has arguably only directed (with obvious exasperation about lawlessness and senselessness of government's protracted hit-or-miss 'management') closure of units functioning in DMP violation in ways that infringe DMP entitlements of others to safe, healthy, planned environment, while leaving scope for government to enforce DMP entitlements of industries to function lawfully, efficiently and productively in the interest of the city. Facts and law are stacked heavily against government that cannot lawfully comply with Supreme Court's directions for closure almost anywhere in the city and for it to misuse them in inertial pursuit of its shenanigans would now amount also to betrayal of the mandate of the people as acknowledged in NCMP. That the odds still seem stacked heavily against industries still facing closure by government is only on account of the so-called 'discourse' about them, which really must be made to answer either for its utter incompetence or for its incredible collusion or both.

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25.07.2004

Smt Sonia Gandhi
Chairperson, NAC
c/o
10, Janpath
New Delhi – 110001

Sub: Industries in Delhi facing closure in name of Supreme Court orders

Dear Madam,

I am enclosing herewith a note about Delhi's industries for consideration of NAC in its deliberations about manufacturing, employment and perhaps also governance and would deeply appreciate NAC's view on the same.

Thanking you,

Yours sincerely
sd/-
Gita Dewan Verma / Planner

B.Arch (SPA, gold medalist); M.Planning (SPA, gold medalist); PG Dip-Research (IHS-Rotterdam, top rank); Dip-Training (DoPT)
Formerly: Senior Fellow (HUDCO-HSMI), Visiting Faculty (SPA, TVB SHS), Consultant (DfID, IHSP, Nuffic, UNICEF, etc)
Currently: Independent researcher / writer and consultant to citizens' groups synergising on Master Plan Implementation Support Group

cc: for intervention
- PMO, in continuation of letter of 25.06.04 (enclosed for ready reference), with request for favour of perusal by Prime Minister
- Mr A Samuel, Under Secretary, President's Secretariat (with request for President's intervention in view of no response from MoUD to letters about Delhi Master Plan violations kindly forwarded for appropriate action by yourself on 11.02.04 and 18.06.04)
- Mr K Chakraborty, Deputy Secretary, Lok Sabha Secretariat (with request for urgent hearing by Standing Parliamentary Committee on response to public notice of 22.06.04 inviting views on functioning of DDA pursuant to DDA scam)

cc: with request for comment and for arranging discussion if you consider it appropriate
- School of Planning and Architecture (DoPP), wrt especially to M-Zone studio in 2003
- Federation of Industries of India, wrt especially to proposal of discussion with SPA, etc
- Delhi Science Forum, wrt DSF publication, etc, in the matter