

Item Nos. 1 to 3

(Kolkata Bench)

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA**
[THROUGH PHYSICAL HEARING
(WITH HYBRID OPTION)]

Original Application No. 93/2024/EZ
(IA No. 80/2024/EZ, I.A. No. 110/2025/EZ, I.A No.111/2025/EZ)

WITH

Original Application No. 95/2024/EZ
(I.A No. 108/2025/EZ, I.A No. 109/2025/EZ)

WITH

M.A No. 23/2024/EZ
In
Appeal No. 32/2022/EZ

Ashish Kothari

Applicant

Versus

MoEF& CC & Ors.

Respondent(s)

Date of completion of hearing and reserving of order: 21.11.2025

Date of pronouncement of order: 16.02.2026

CORAM: **HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON**
HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER
HON'BLE MR. ISHWAR SINGH, EXPERT MEMBER

Applicants: Mr. Yogeshwaran, Adv. with Ms. Poongkhulali B, Advocate for the Applicant in O.A. No. 93/2024/EZ, 95/2024/EZ and M.A. No.23/2024/EZ, (physically present)

Respondents: Ms. Aishwarya Bhati, ASG, Ms. Suhasini Sen, Advocate, Masooma Rizvi, Advocate, Ms. Sista Srinivas, Advocate Ms. Aanya Shrotriya, Ms. Supraja V., Advocates and Shri Amardeep Raju, Scientist, MoEF&CC for R-1, Ms. Manisha Chava, Advocate, Ms. Smita Salve, Advocate, Mr. Apurba Ghosh, Advocate for Respondent No.1 in O.A. No.93/2024/EZ, O.A. No.95/2024/EZ and M.A. No.23/2024/EZ (through VC).
Mr. Ashok Prasad, Advocate for Respondent No.2 in O.A. No.93/2024/EZ, O.A. No. 95/2024/EZ and M.A. No.23/2024/EZ (through VC).

ORDER

1. This order will govern the disposal of OA No. 95/2024/EZ, OA No. 93/2024/EZ and M.A No. 23/2024/EZ in Appeal No. 32/2022/EZ as the issues involved in these OAs and MA are common.

2. In these OAs and MA applicant has objected to the proposed International Container Transshipment Terminal, township and area development and a 450 MVA Gas and Solar based Power Plant in Great Nicobar Island.

3. In OA No. 93/2024/EZ, the Applicant has raised a grievance that the Respondent No. 1 has failed to examine that the projects such as ports, airports, townships are not permitted in ICRZ-IA areas and the Respondent No. 1 does not have power to permit such prohibited activities in ecologically sensitive areas. The Applicant has made a prayer for excluding certain areas of the project claiming that they fall under ICRZ-1A in Island Coastal Regulation Zone (ICRZ) Notification, 2019.

4. In OA No. 95/2024/EZ, the Applicant has alleged that the Respondent No. 1 has failed to comply with the judgment of the Tribunal dated 03.04.2023 in Appeal No. 32/2022. The Applicant had earlier filed the Writ Petition (Civil) No. 16431/2023 before the High Court of Delhi seeking implementation of the order of the Tribunal dated 03.04.2023, but on 20.12.2023, he had withdrawn the Writ Petition with liberty to approach the Tribunal. In the OA, the prayer of the Applicant is to punish the Respondent for willful violation of the order of the Tribunal dated 03.04.2023 in Appeal No. 32/2022 and further direction to the respondents to revisit the environmental clearance as per the direction of the Tribunal.

5. M.A. No. 23/2024/EZ has been filed by the Applicant raising the same grievance and with the same prayer as has been raised/made in the OA No. 95/2024/EZ. All these three applications have been filed the same applicant.

6. This is the second round of litigation by the Applicant. Earlier Appeal No. 29/2022/EZ was filed by the Applicant against the Stage-I clearance dated 27.02.2022 granted by the MoEF&CC for diversion of 130.75 Sq. Km of forest land in Great Nicobar Island under the Forest (Conservation) Act, 1980. Appeals No. 30 to 32/2022/EZ were filed challenging the environmental clearance dated 04.11.2022 issued for the project by the MoEF&CC. All these appeals were disposed of by the Tribunal by the common order dated 03.04.2023.

Details of the Project:

7. An integrated development of International Container Transshipment Terminal, township & area development and a 450 MVA Gas and Solar based Power Plant is proposed in Great Nicobar Island by M/s. Andaman and Nicobar Islands Integrated Development Corporation Limited. Environment and CRZ Clearances were sought for the project. The proposal was considered by the Expert Appraisal Committee (EAC) in several meetings and the Terms of Reference (TOR) was granted on 25.05.2021. The Forest Clearance over the area 130.75 Sq.Km was accorded by the MoEF&CC on 27.10.2022. Three new wildlife sanctuaries were identified at Little Nicobar Island, Menchal and Meroe Islands for conservation and protection of Leatherback turtle, Megapode and Corals respectively. Ministry of Home Affairs had accorded approval for creation of new wildlife sanctuaries which include (i). Leatherback turtle sanctuary of 13.75 sq.km at Little Nicobar Island (ii). The entire Menchal Island of 1.29 sq.km as a Megapode Sanctuary. (iii). The entire Meroe Island of 2.73 sq.km as a Coral Sanctuary. The Wildlife Institute of India (WII) was identified as a scientific agency to prepare and implement conservation plan for leatherback turtles and saltwater crocodiles. In respect of Nicobar Megapode, coordinated and collaborative research was

found to have better outcome in the larger interest of the endemic species of Nicobar megapode and for facilitating movement of wildlife between the forest and the sea shore, safe wildlife corridors were proposed. The public hearing was conducted. The suggestions of WII were considered and EAC had recommended the proposal for grant of environmental and CRZ clearance with the specific conditions. The MoEF&CC had considered the proposal based on the recommendations of EAC and had granted the environmental clearance to the project on 11.11.2022.

Importance of the Project:

8. The project is important for India from the defence and the strategic point of view. The EC mentions strategic benefits of the project as under:

“41. Benefits of the Project: Strategic benefits:- Strong presence in Indian Ocean Region to counter the pressure being built by foreign powers growing presence. Capturing the Strategic location to develop a new Economic hub in India Ocean region. Improving connectivity with Indian mainland and other global cities. Socio-economic benefits: Promoting sustainable tourism. The proposed ICTT will allow India to participate in the regional and global maritime economy by becoming a major player in cargo transshipment. A Mixed-use urban development in the vicinity of these major infrastructure works will also be necessary to support quality of life for the residents that will generate and enable growth in the various economic sectors over time. This will require the development of simultaneous primary and secondary urban infrastructure networks such as roads, public transport, energy and electrical power, as well as water, wastewater, and storm water facilities and services, which will form the skeleton of the proposed township master plan. It is estimated that after the project is fully implemented, it has the potential to generate around 1,28,558 jobs opportunity. Socio-economic growth of local population. Development of social infrastructure supporting existing population and proposed population.”

9. The Tribunal in the first round of litigation had considered the issue of strategic importance of the project and had found the following in the order dated 03.04.2023 passed in Appeals No. 29 to 32/2022:

“Finding

26. From above resume, it is patent that the project has great significance not only for economic development of the island and

surrounding areas of strategic location but also for defense and national security. Even the appellants have not joined issue on these aspects. **While the Tribunal's consideration is confined to material on record, we have also noted (without any comment) media reports that the area is located in China's 'string of pearls' strategy¹ which is sought to be countered by Indian Authorities under India's 'Act East' policy. Indian Ocean has emerged as a key intersection zone of Indian and Chinese strategic interests. There are further media reports of huge poaching of environmental marine resources of Andaman by poachers from Myanmar for which number of people have been arrested. Poaching activities include destruction of corals, killing of sharks, taking away of valuable fishes². The project will help bridge infrastructural gap in island and promote international trade saving huge amount on transshipment cargo³.**"

10. The Respondent No. 2 in its counter affidavit dated 23.07.2024 had disclosed the importance of the project as follows:

“xxxxxx.....xxx
6. It is respectfully submitted that Government of India considering the strategic importance of Great Nicobar Island situated in the southernmost point of the country which is about 40 km from the major international sea route passing through Malacca Strait conceived the project for holistic development of Great Nicobar Island. The holistic development of Great Nicobar Island project is a project of national importance in view of the security, socio economic benefit and strategic location. The prestigious project of holistic development of Great Nicobar Island will transform the archipelago. There is pressing urgency and this great project of national importance may not be held up on the basis of mere unsubstantiated and unfounded apprehension.”

11. That apart, while opposing the applicant's prayer to place the report of the High-Powered Committee in public domain, the stand of the Respondent No. 1 in the affidavit dated 21.10.2024 was as under:

“24. Additionally, it is humbly submitted that the Report of the HPC is of strategic, defence and national importance and has confidential and privileged information and has therefore, been categorized accordingly by the competent authority. Further, it is respectfully submitted that in accordance with the Clause 8(1)(a) of the Right to Information Act, 2005, relating to the defence, strategic and national security, the details and Report of the HPC have

¹ <https://idsa.in/askanexpert/why-has-india-necklace-diamonds-strategy-indian-ocean-region>

² <https://www.reuters.com/article/environment-india-poaching-andaman-dc-idUSDEL4606520070607>
<https://link.springer.com/article/10.1007/s11852-018-0640-y>

³ <https://www.financialexpress.com/business/infrastructure-government-to-build-international-container-transshipment-port-in-great-nicobar-island-2961754/>
<https://economictimes.indiatimes.com/news/economy/infrastructure/centre-prepares-for-rs-41000-crore-international-transshipment-port-at-great-nicobar-island/articleshow/97379332.cms>

cannot be placed in public domain or made available to public. The provision mentioned above is detailed as follows:-

"8. Exemption from disclosure of information-

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;"

12. The above disclosures reveal that the project is very important for India from the strategic point of view.

Earlier Round of Litigation before NGT:

13. The environmental clearance dated 11.11.2022 was granted by the MoEF&CC (Impact Assessment Division) after considering the requirements of ICRZ Notification and the issue of coral conservation, protection of leatherback turtles and megapode and other wildlife habitats.

14. Challenge to the EC dated 11.11.2022 raised by the Appellant in Appeals No. 30 to 32/2022 was examined by the Tribunal while passing the order dated 03.04.2023. Various conditions of the EC were noted and examined by the Tribunal. The Tribunal in the first round had found the tribals were duly represented at the public hearing and they will not be displaced. The project does not fall within the boundary of any national park or wildlife sanctuary or their eco sensitive zone and diversion of forest for the Project was as per the provisions of National Forest Policy, 1988. Accordingly, the Tribunal had found as under:

*"10. The Tribals were duly represented at the public hearing and they will not be displaced. **The EAC has inter alia noted that - (i) the project will not disturb or displace any Shompen/Nicobari tribal or their habitation (ii) there will be a clear demarcation of land so that there is no scope of conflict arising in future, and (iii) the habitat rights of the tribal persons will be duly taken care of as per the provisions of***

Forest Rights Act in the unlikely event that any issue in this regard should arise. Further, the Environmental Clearance mandates that Project Proponent constitutes a specific committee to oversee all issues related to welfare of the Tribal population.

11. Further, **the project area does not fall within the boundary of any National Park or Wildlife Sanctuary or their Eco-Sensitive Zones and therefore, the project is not proposed to be established in any Eco Sensitive Zone of any Protected Area contrary to what has been claimed in the present appeal.** The Project Proponent further submitted that the project site is outside the Ecologically Sensitivity Zone (ESZ) notified around the two National Parks. The EAC, therefore directed the Project Proponent that **parts of the proposed master plan for Ports which are falling within CRZ IA and IB areas shall be excluded from the revised layout of master plan in order to safeguard the ecological sensitive areas of the coastal areas.** Inland Coastal Regulation Zone plans of Great Nicobar island as per ICRZ Notification, 2019 has been approved by the answering Respondent vide letter dated 1st June, 2021 i.e. before the grant of EC/CRZ clearance.

12. The diversion of forest for the instant project is as per the provisions of the National Forest Policy, 1988, which says that in hills and in mountain regions, the aim should be to maintain two-third of the area under forest cover. **Despite the diversion of proposed forest land for this project in Great Nicobar Island, the remaining forest cover still be more than two-third of the geographical area of island.** Moreover, if the proposed area with respect to the entire forest area of the A&N island is considered, it amounts to only 1.82%. It is also respectfully submitted that the area proposed for development is approximately 18% of the total area in Great Nicobar island. Remaining area of 82% covered under Protected Forests, National Parks, Eco Sensitive Zones and Biosphere Reserve and managed for conservation of biodiversity at ecosystem, species and genetic levels. Thus, 82% of Great Nicobar Island will be protected and conserved to take care of ecosystem structure, functions and services. The Answering Respondent is also monitoring the steps being taken towards Compensatory Afforestation in this regard. Stage- 1 Clearance under the Forest Conservation Act, 1980 has been correctly accorded. In this regard, the answering Respondent respectfully submits that the proposal received from the UT administration was placed before the Forest Advisory Committee (FAC) in its meeting held on 21.09.2022. Keeping in view the strategic nature of the project, the meeting of the FAC was held separately and the minutes of the said meeting are therefore not available in public domain.”

15. The Tribunal had also examined the issue of Forest Clearance and after assigning due reasons had reached to the following conclusion:

“29. Considering the above, we do not find any ground to interfere with the FC.”

The legality of FC (Forest Clearance) has been concluded and no longer an issue in this second round of litigation.

16. The Tribunal had duly considered the issue of violation of ICRZ, 2019 for location of the port in prohibited area, ignoring soil erosion, damage to corals, wildlife habitats and tribals and had observed hyper technical approach should not be adopted ignoring ground reality and national security while finding as under:

“Environmental Clearance

30. Issues in this regard are alleged violation of ICRZ, 2019 for locating the port in prohibited area, ignoring soil erosion, damage to corals, wildlife habitats and tribals. Further issue is compliance of laid down procedure under the EIA notification, including public hearing. While it is true that EIA procedure is mandatory, it does not however follow that hyper technical approach should be adopted ignoring ground realities about need of the country for development and national security. Every developmental activity is bound to have some adverse impact on environment but if impact can be mitigated and advantages to the society are greater, such project have to be allowed in larger public interest. In the present case, laid down procedure has been followed, public hearing held, EIA prepared, EAC evaluation undertaken, wildlife habitats protection, Tribal welfare considered and necessary conservation measures planned. MoEF&CC and the PP have stated that area proposed to be part of Port, falling in prohibited area as per CRZ notification will be left out, there will be no coverage of eco sensitive areas, corals will be protected and all other necessary measures taken.”

17. In the first round of litigation by order dated 03.04.2023, the Tribunal had formed a High-Powered Committee to examine the issues relating to destruction of the corals which were prohibited under ICRZ regulations, collection of impact assessment only for one season as against the alleged requirement of three seasons and part of the project being in ICRZ-1A area where the port is prohibited, by directing as under:

“33. However, there are some unanswered deficiencies pointed out by the appellants which need to be addressed. By way of instance,

it is pointed out that out of 20668 coral colonies, 16150 are proposed to be translocated without any mention of threat to remaining 4518 coral colonies. It is pointed out that ICRZ Regulations prohibit destruction of corals. Further, data collected for impact assessment is only of one season as against requirement of three seasons. It is also shown that part of the project is in CRZ IA area where Port is prohibited. These aspects may call for revisiting the EC by a High-Powered Committee (HPC) which we propose to constitute. The same will be headed by Secretary, MoEF&CC, GoI. Other members will be Chief Secretary, Andaman & Nicobar, Zoological Survey of India, Botanical Survey of India, Central Pollution Control Board, nominee of Vice Chairman of Niti Aayog, nominee of Secretary, Ministry of Shipping and Director, Wildlife Institute of India. Secretary, MoEF&CC may appoint a nodal officer, not below the rank of Joint Secretary, for facilitating functioning of the Committee. The Committee may meet within two weeks from today and finalise its proceedings within two months. It will be open to the Committee to associate any other institution/expert. In the light of report of the Committee, the EC or its conditions may be re-looked into by the competent authority. Till then, further work in pursuance of impugned EC may not proceed except for the work which may not be of irreversible nature.”

Report of the High-Powered Committee and Decision of the Government:

18. In pursuance of the above order of the NGT, vide OM dated 13.04.2023, the Respondent No. 1 had constituted a High-Powered Committee comprising of the following:

- i. The Secretary, MoEF&CC, Government of India- Chairperson
- ii. Chief Secretary, Andaman & Nicobar
- iii. Additional Secretary, MoEF & CC - Member Secretary
- iv. Director, Zoological Survey of India
- v. Director, Botanical Survey of India
- vi. Member Secretary, Central Pollution Control Board
- vii. Nominee of Vice Chairman of Niti Aayog
- viii. Nominee of Secretary, Ministry of Shipping
- ix. Director, Wildlife Institute of India
- x. Shri Amardeep Raju, Scientist-E-MS, EAC, Infra-I
- xi. Any other Institution/Expert as deemed appropriate by the Chairperson.

19. By the same Office Memorandum, following Terms of Reference were recorded for the Committee:

“5. The Terms of Reference of the Committee shall be as follows:

- i. To review the proposal related to coral translocation submitted by the project proponent and regulatory provisions under ICRZ Notification, 2019 with respect to corals.*
- ii. To review the data collection requirement for the project as per the EIA Notification, 2006.*
- iii. To review CRZ boundaries of the port project with respect to ICRZ Notification, 2019.”*

20. The Committee had convened meetings and deliberated upon the terms of reference. The details of the course of action adopted by the High-Powered Committee in respect of TOR and the findings of the Committee have been placed on record by the Respondent No. 1 in the affidavit dated 21.10.2024

Scope of the Present Matter:

21. In the first round of litigation, the Tribunal by the order dated 03.04.2023 has already concluded that:

“32 that “... by and large the project is compliant and EC does not call for interference”

22. Thus, the Tribunal had refused to interfere in the environmental clearance granted to the project. The EC has been revisited by the Respondent No. 1 in the light of the report of the High-Powered Committee. The EC is no longer under challenged in these proceedings.

Balanced approach required

23. It is a clear case where neither strategic importance of the project can be denied nor the conditions of ICRZ Notification can be ignored or marginalised. Hence, a balanced approach is required to be adopted while considering the issue of allowing development of the port on a strategic location, the importance of which has already been stated in the previous paragraphs of this order and taking adequate steps to carry out the

activity strictly in terms of the ICRZ Notification, 2019 instead of prohibiting the activity if the objection is based on apprehension. Hon'ble Supreme Court in the matter of ***M.K. Ranjitsinh & Ors. vs. Union of India & Ors.***, reported in ***2024 SCC OnLine SC 570*** while dealing with the issue of laying of transmission line for solar power and at the same time protecting the endangered Great Indian Bustard has emphasised to adopt a holistic approach in such matters.

Submissions, Discussion and Conclusion:

24. The Counsel for the Applicant has submitted that Respondent No. 1 had committed an error in limiting the terms of reference to the three issues which were truncated and factually incorrect and the issues of protection of corals, basing the decision on one season data and presence of the project in CRZ-1A, have not been properly examined. As against this, the stand of Respondents No. 1 and 2 is that these issues have been duly examined by the High-Powered Committee and the safeguards have been provided in the EC itself.

25. Before examining these issues, we make it clear that this order is confined to the pleadings on record and details of High-Powered Committee decision as disclosed in the reply of MoEF&CC.

26. The Island Coastal Regulation Zone (ICRZ) Notification dated 08.03.2019 was issued by the MoEF&CC, Govt. of India in exercise of the powers conferred under Section 3 of the Environment (Protection) Act, 1986 and in supersession of the Island Protection Zone Notification, 2011. Clause-2 of the ICRZ Notification, 2019 provides for the classification of ICRZ in ICRZ-I, IA, IB, II, III, IV, IVA and IVB. Following ecologically sensitive areas are included within the ICRZ-IA:

“(ii) ICRZ-IA:

- (a) *The ICRZ-I A shall constitute the following ecologically sensitive areas and the geo- morphological features which play a role in the maintaining the integrity of the coast viz.:*
- (i) *Mangroves. In case mangrove area is more than 1000 square meters, a buffer of 20 meters along the mangroves shall be provided and such area shall also constitute CRZ-1 A.*
 - (ii) *Corals and coral reefs:*
 - (iii) *Sand Dunes:*
 - (iv) *Biologically active Mudflats;*
 - (v) *National parks, marine parks, sanctuaries, reserve forests, wildlife habitats and other protected areas under the provisions of Wild Life (Protection) Act, the Forest (Conservation) Act or Environment (Protection) Act; including Biosphere Reserves;*
 - (vi) *Salt Marshes;*
 - (vii) *Turtle nesting grounds;*
 - (viii) *Horse shoe crab's habitat,*
 - (ix) *Sea grass beds;*
 - (x) *Seaweeds,*
 - (xi) *Nesting grounds of birds;*
 - (xii) *Areas or structures of archaeological importance and heritage sites.*
- (b) *A detailed environment management plan shall be formulated by the Union territories for such ecologically sensitive areas (ESAs) in respective territories, as mapped out by NCSCM, based on guidelines as contained in Annexure-I and integrated in the ICRZ Plans.”*

27. Clause-3 of the ICRZ Notification, 2019 provides the prohibited activities within the ICRZ as follows:

“3. Prohibited activities within ICRZ.- *The following activities shall be prohibited, in general, within the entire ICRZ. Exceptions to these and other permissible or regulated activities in specific ICRZ categories viz. ICRZ-1, II, III & IV, shall however be governed by the provisions under para 5 of this Notification:*

- (i) *destruction of corals.*
- (ii) *mining of sand from in and around coral areas, nesting and breeding grounds of endemic and endangered species.*

- (iii) *shore protection works (hard constructions) on the seaward side of the corals.*
- (iv) *setting up of new industries and expansion of existing industries, operations or processes.*
- (v) *manufacture or handling of oil, storage or disposal of hazardous substances as specified in the notification of Ministry of Environment, Forest & Climate Change.*
- (vi) *setting up of new fish processing units.*
- (vii) *land reclamation, bunding or disturbing the natural course of seawater.*
- (viii) *discharge of untreated waste and effluents from industries, cities or towns and other human settlements.*
- (ix) *dumping of city or town wastes including construction debris, industrial solid wastes, fly ash for the purpose of land filling.*
- (x) *port and harbour projects in high eroding stretches of the coast.*
- (xi) *mining of sand, rocks and other sub-strata materials.*
- (xii) *dressing or altering active sand dunes.*
- (xiii) *in order to safeguard the aquatic system and marine life, disposal of plastic into the coastal waters shall be prohibited. Adequate measures for management and disposal of plastic materials shall be undertaken in the ICRZ.*
- (xiv) *drawal of ground water.”*

28. Clause-8 of the Notification provides for ICRZ clearance for permissible and regulated activities. The relevant extract of which is as under:

“8. Procedure for ICRZ clearance for permissible and regulated activities:

(i) The project proponents shall apply with the following documents to the concerned Union territory Coastal Zone Management Authority for seeking prior clearance under the ICRZ Notification:

(a) Project summary details as per Annexure-V of the notification.

- (b) *Rapid EIA Report including marine and terrestrial component, as applicable, except for building construction projects or housing schemes.*
- (c) *Comprehensive EIA with cumulative studies for projects, (except for building construction projects or housing schemes with built-up area less than the threshold limit stipulated for attracting the provisions of the EIA Notification) if located in low and medium eroding stretches, as per the ICRZP to this notification.”*

The objection of the applicant relates to violation of above provisions.

Safeguards provided in EC conditions:

29. While issuing the Environment Clearance (EC) to the project, the Respondent No. 1 had provided the safeguards by incorporating some important conditions in EC. The Specific Conditions 1A to I were incorporated in the EC for protection of leatherback sea turtle, Nicobar megapode, saltwater crocodiles, impact of invasive species on native flora, impact on inter-tidal flora and fauna, Nicobar Macaque, Robber Crab and other endemic bird species of Great Nicobar Island, Mangrove Restoration, Coral translocation and Welfare of local tribal population of Shompen and Nicobaris. The EC imposes the following “Other Specific Conditions” on the Project Proponent:

“Other Specific Conditions:

- II. *PP should construct all weather good quality two research stations within one year from the grant of EC and CRZ clearance (one each in Campbell Bay and Kamorta) with office space and accommodation facilities. Campbell station should have accommodation facility for 40 research team members (ten double occupancy rooms, and four dormitories) while Kamorta accommodation facility will be for 10 research team members (two double occupancy rooms, and two dormitories). PP will maintain at its own cost both the research stations for the entire project duration. The research station will be exclusively used and shared by WII, BSI, SACON and ZSI teams and other invited scientists. In the meantime, PP will make arrangements of accommodation of researchers at their own cost through the provisions provided in the respective budgets.*

- III. *WII will be overall in-charge of the station and will appoint a focal person (through the funds allocated to them under various components) to oversee the smooth running of the above centers. WII should make adequate financial provision for the same in their proposals under overall administrative costs.*
- IV. *After the completion of the project i.e. after 2052, the research station will be handed over to the A&N Forest Department and maintained by them and will be provided exclusively to the researchers involved with the biodiversity studies of the region and forest department staff for on ground conservation work.*

30. The above EC condition requires the project proponent to construct two all-weather good quality research stations at Campbell Bay and Kamorta which will be maintained by the project proponent at its own cost during the project duration. These research stations are to be exclusively used and shared by the WII, BSI, SACON and ZSI teams. The Project Proponent is also required to provide funds to the A&N Forest Department for complete oversight of the conservation and mitigation work. The following condition is incorporated in the EC requiring the project proponent to provide fund towards Leatherback Sea Turtle, Nicobar Megapod, Saltwater Crocodile management and other endemic flora and fauna conservation:

- V. *PP will also separately provide funds to A&N forest department for complete oversee of the conservation and mitigation work. infrastructure and operation costs towards implementation of Leatherback Sea Turtle, Nicobar Megapod, Saltwater Crocodile management and other endemic flora and fauna conservation. Proposal for the same will be developed by A&N Forest Department. This amount will be over and above the cost recommended for WII (Leatherback Sea Turtle, Salt-water Crocodile related work and Nicobar Megapod); SACON (Nicobar Megapod, Nicobar Macaque, Robber Crab and other endemic bird species of Great Nicobar); Zoological Survey of India (for coral and Giant Clam translocation and restoration work, inter-tidal flora and fauna work); Botanical Survey of India (for invasive species related work); A&N Forest department (for mangrove restoration and supervision of work of WII, SACON, BSI and ZSI); and A&N Tribal Welfare Department (for welfare, protection and other measure for Shompen and Nicobarese). All these funds will be provided by the PP as stated in the specific conditions and within stated time stipulated from sr. no A to I upon receiving the EC and CRZ so that respective agencies can*

initiate uninterrupted conservation action, research and monitoring while the project is being implemented.”

31. The EC also provides for following three independent monitoring committees to oversee the implementation of the Environmental Management Plan – (i) Committee to oversee pollution related matters, (ii) Committee to oversee biodiversity related matters and (iii) Committee to oversee welfare and issues relating to the Shompen and Nicobarese. Clause-IX of the EC specifically provides for the construction activity to be strictly in accordance with the provisions of the ICRZ Notification, 2019, which is as under:

“IX. Construction activity shall be carried out strictly according to the provisions of the ICRZ Notification, 2019. No construction works other than those permitted in Coastal Regulation Zone Notification shall be carried out in Coastal Regulation Zone area.”

32. The above condition in clear terms prohibits any construction other than those permitted in a coastal regulation zone notification in coastal regulation zone area. The respondents are required to carry out the construction activity strictly in accordance with the provisions of ICRZ Notification, 2019.

33. Apart from above, the EC also incorporates several other conditions concerning the compliance of environmental norms.

34. While issuing the environmental clearance, Respondent No. 1 had also considered the employment potential and recorded as under:

*“xxxxxx.....xxx
39. Employment Potential: The project around 6,939 persons directly and 10,408 persons would be employed by 2025, around 24,734 persons directly, 37,101 persons indirectly would be employed by 2040 and 51,423 persons directly and 77,135 persons indirectly would be employed by 2052. Generally, locals are employed by the contractor.”*

Issue No. 1

35. The first issue relates to protection of corals.

36. Ld. Counsel for the Applicant has referred to the maps and the report on Island Coastal Regulation Zone Plan of Great Nicobar Islands and Andaman and Nicobar Islands as per ICRZ Notification, 2019 prepared by the NCSCM while submitting that there is presence of corals in that area.

37. The stand of the Respondent No. 1 is that there is no coral in Galathea Bay where the port is to be set up and, in this regard, learned ASG has relied upon the entry concerning coral reef depicting the absence of a coral reef in Galathea Bay in Table No. 1 to the report of the Zoological Survey of India.

38. Corals are required to be protected and their destruction cannot be permitted in violation of the ICRZ Notification, 2019, but the stand of the respondents is to protect the corals through translocation.

39. The clause 3(i) of the ICRZ Notification, 2019 quoted above prohibits destruction of the corals and by virtue of Special Condition No. IX of the EC quoted above, the respondents have been restrained from violating the ICRZ Notification, 2019 while carrying out the construction activity. To save the corals, the translocation has been accepted and provided for in the EC as under:

“H. Coral translocation: *Zoological Survey of India provided detailed plan for coral translocation with a budget of 55 Crore. EAC noted that the budget is only for 10. years while the project lifecycle is for 30 years. It also does not include several components that will be necessary for this complex work. Accordingly, the Committee advised ZSI to submit revised proposal with budget provisions to PP with copy to Ministry and EAC. Committee also direct ZSI to include translocation of endangered Giant Clams (Tridacnasp) in the same proposal with necessary budget provisions. Project tenure should be consistent with the holistic development plan for GNI and thus will be till the completion of the final phase of the same in the year 2052 and not for 10 years. The Committee direct PP for the release the first five years budget payment to ZSI within three months from the grant of EC and CRZ clearance to undertake the uninterrupted work of preparation of new*

translocation sites and actual translocation of coral heads and giant clams (Tridacnasp) from 10 ha project impact areas as stated in the proposal before project work begins on ground. ZSI will maintain systematic data on translocated coral colonies with GPS tags to each colony to monitor its survival. The proposal may be finalized based on the EMP and consultation with PP. A&NFD will ensure implementation of conservation measures as recommended by ZSI.”

40. In the first round of litigation, Dr. Dhriti Banerjee, Director, Zoological Survey of India had appeared and explained the issue of protection of corals and sustainable management of the environmental impact. Her statement was recorded by the Tribunal in para 23 of the order dated 03.04.2023 as under:

“23. During the hearing, Dr. Dhriti Banerjee, Director, Zoological Survey of India (ZSI) appeared by V.C. and explained that corals can be protected. Environmental impact can be sustainably managed. On being required, she has filed her specific statement as follows:

“The assessment made by ZSI revealed that the environmental impact can be managed sustainably to restore the pristine ecosystem through proper conservatory measures and have suggested long term environmental management plans for that area.

A total of 309 species of scleractinian corals under 66 genera, 19 families are recorded from Great Nicobar Island based on the comprehensive studies for last 14 years across all the coastal areas of this island. However, it has been noted that no major coral reef exists within the work area of the project. Only scattered coral reefs are available at the peninsular part of Galathea Bay. As per the detailed analysis, the environmental status and physicochemical status of the sampling sites are conducive to the oligotrophic environment. Hence, the overall benthic community of Galathea Bay is different from other major reefs. The size of the colonies reported from Galathea Bay is relatively small and most of the species are found scattered with small growth forms which may be due to the presence of an extremely high cover of algae (51.75%). The high density of Halimeda sp. growing in Galathea Bay is known for its quick growth rate and deposit of calcium on a higher scale.

During the construction in seafront areas, the marine ecosystem may be affected especially wherever there are coral reefs. The development of jetties and ports along the coastal areas is likely to have an impact on the entire benthic cover including coral

reefs, seagrass, and seaweed habitats along with associated faunal communities.

Even though there are no coral reefs in the proposed site, coral reefs are recorded in the adjoining areas of the proposed project site. However, as a precautionary measure, to avoid damage to the corals by any means, it is a prerequisite to translocate the corals from the Galathea Bay adjoining up to the depth limit of 15 m.

Any coral colonies which are presumed to be get impacted by the proposed construction has been recommended by ZSI to be translocated to a suitable place where similar environment as well as topographic features prevails in the Great Nicobar.

Reef restoration and coral relocation due to coastal development and/or dredging, are among the most common reasons for transplantation and is world-wide solution, which could be easily executed in Great Nicobar in alternate suitable offshore habitats. Successful coral reef restoration has previously been accomplished by ZSI in Gulf of Kachchh and the transplanted corals had >90% survival and effectively transformed into a functional coral reef.

Rehabilitation, restoration and development of new reef areas by modern technologies can lead to protection and conservation of reef and reef associated fauna of Great Nicobar.”

The above explanation reveals that no coral reef exists within the work area of the project. For existing scattered coral reef, with quick grown characteristic in the adjoining area translocation was suggested by ZSI.

41. In respect of translocation and threat of corals, ZSI had conducted study and submitted the report before the High-Powered Committee. In the ZSI study, no corals were found in the proposed site for the construction of the port and other amenities in Galathea Bay. Translocation was suggested of 16150 colonies found within 15 meters depth in proximity of the project. The study was suggested for remaining 4518 colonies at 15-30 m. depth. The High-Powered Committee has examined this issue and agreed with the recommendation of ZSI. The High-Powered Committee has found as under:

- a. *In respect of the 1st issue regarding the translocation of the 16150 out of 20668 coral colonies and threat to the remaining 4518 coral colonies, a study was conducted by the Zoological Survey of India (ZSI) and in its Report filed before the HPC, the ZSI has stated that no corals have been found in the proposed site for the construction of port and other amenities at Galathea Bay. However, 16150 coral colonies found within 15 metres depth of water column and in proximity of the Project and may get impacted because of the Project, need to be translocate to suitable recipient sites based on sediment trap results. The remaining 4518 coral colonies at 15-30 metres of depth need to be duly studied and observed to analyse the sedimentation load and rate of sedimentation before any decision on translocation or otherwise is taken regarding them.*

The HPC agreed with the recommendations of ZSI and concluded that necessary logistics support shall be provided by ANIIDCO in this regard including provision of building for camp office, office building, manpower, equipment, Running-Operation-Maintenance cost of any research facility that may be required as well as mobility support including travel as has been mentioned in the specific and general conditions of EC for carrying out suitable studies.

42. Annexure-I to the ICRZ Notification, 2019 provides for conservation, protection and management framework for ecologically sensitive areas and in terms thereof, the corals and coral reef plantation activities can be carried out through a recognized research institute.

43. To ensure the full and effective compliance of EC conditions, Respondent No. 1 will undertake all measures to protect the coral reefs along the coastal stretch and will also ensure coral regeneration through proved scientific method for regeneration of coral in appropriate identified areas abutting the project areas. For this purpose, reputed scientific agencies such as zoological survey of India, National Institute of Oceanography may be involved. An implementation plan in this regard shall be prepared and approved by Respondent No. 1.

44. In view of the above, on the basis of material relied upon by the Appellant, it cannot be held that clause 3(i) of ICRZ is violated. Thus, we find that there is no violation of clause 3(i) of ICRZ Notification, 2019.

Issue No. II

45. Counsel for the Applicant has also submitted that the review of three season data is required and there was no direction to the High-Powered Committee by the MoEF&CC to do the review in terms of the EIA Notification. He has submitted that only one season's data has been taken into account and referring to the EIA Guidelines Manual for Ports and Harbours issued by the MoEF&CC, he has submitted that one season data is not enough and three seasons' data should be considered for review. He has also relied upon the OM dated 03.11.2009 (page 1034) which is a part of the guideline in support of this submission. He has also submitted that for the ports and harbours project, comprehensive environment impact assessment is required to be done in terms of Clause 8(c) of the EIA Notification of 2019. He has submitted that more than a half of the Galathea Bay is marked as eroded.

46. The above issue has been responded to and position has been explained by the learned ASG appearing for the Respondent No. 1. She has pointed out the Table-1 of the O.M. dated 03.11.2009 on new policy on expansion of existing port and initiation of new projects and has submitted that in this table sites along the coastal stretches where shoreline changes have been observed are clear, but in Andaman and Nicobar, no shoreline changes have been observed. The table relied upon by the Counsel for the Respondent No. 1 is as under:

“Table:1 – Sites along the Coastal Stretches where Shoreline changes has been Observed

<i>S.No</i>	<i>Name of State</i>	<i>Districts / Division / locations of critical erosion</i>
<i>1</i>	<i>Gujarat</i>	<i>Valsad, Navsari, Surat, Bharuch</i>
<i>2</i>	<i>Maharashtra</i>	<i>Mumbai, Suburban, Thane, Raigad, Ratanagiri, Sindhudurg</i>
<i>3</i>	<i>Goa</i>	<i>South Goa, North Goa</i>
<i>4</i>	<i>Karnataka</i>	<i>Mangalore, Udupi, Kundapur, Bhaktal, Honnavar, Kumta,</i>
<i>5</i>	<i>Kerala</i>	<i>Thiruvananthapuram, Alappuzha, Thale, Manjeri, Kozhi, Kasargod</i>

6	Tamil Nadu	Chennai north, Kovalam, Devanampattinam, Poomuhar, Tharangambadi, Kanyakumari
7	Andhra Pradesh	Uppada, Chinnagollapalem.
8	Orissa	Gopalpur, Rushikulya, Puri, Satbhaya, Chandabali
9	West Bengal	Digha, Shridarnagar, Buraburirttat, Gobardhanpur Frezerganj, Shibpur, Beguakhali, Kusumtala
10	Pondicherry	Along Gandhi Statue stretch
11	Andaman & Nicobar	-
12	Lakshadweep	Agatti, Amini, Androth, Bitra, Chetlat, Kadmat, Kiltan, Kalpeni, Kavratti, Minicoy

47. In view of the above table, it has been submitted that since there is no high erosion site in Andaman & Nicobar, therefore, three season data is not required.

48. So far as reliance of the Counsel for the Applicant upon Annexure A-5, answer of the MoEF&CC in the Lok Sabha is concerned, referring to the table Ld. ASG has pointed out that since the sites of Gujarat are included in the above table, therefore, three season study is required for Gujarat. In this background, she has justified that Clause-8(b) of the ICRZ Notification, 2019 would be attracted.

49. The High-Powered Committee has also examined this issue and found that

- b. Regarding the 2nd issue of collection of the baseline data, the HPC observed that the answering Respondent has issued Guidelines for conducting EIA/EMP studies in 2010 for various sectors. The Environmental Impact Assessment Guidance Manual for Ports and Harbours mentions "One season data should be monitored other than monsoon as per Central Pollution Control Board norms". The abstract of the EIA Guidance Manual for Ports and Harbours dated 05.05.2010 is herewith annexed and marked as **Annexure-V**.*

The HPC further observed that only one season data is collected for other Port Projects also, which are appraised for consideration of Environmental Clearance. Accordingly, the HPC concluded that one season data should be monitored other than monsoon as per CPCB norms.

Thus, found that this issue has been effectively dealt with and does not require interfere. However, it will be the responsibility of Respondent No. 1 to ensure that on account of the proposed constructions which includes foreshore development, there is no erosion/shoreline change abutting the project area and all along the islands. The shoreline of the island will be protected ensuring no loss of sandy beaches as these beaches provide nesting sites for turtles, bird nesting site apart from protecting the islands.

Issue No. III

50. So far as the 3rd issue concerning part of Project area in CRZ-I and protecting the leatherback turtles is concerned, Counsel for Applicant has further submitted that since Galathea Bay is turtle nesting ground and is also a hatching ground for megapode, therefore, it falls in CRZ-I. In support of this submission, he has referred to some of the maps and relied upon the report of WII and National Marine Turtle Action Plan. He has also referred to the recommendation of the Standing Committee of the National Board for Wild Life and its meeting dated 05.01.2021.

51. In reply, the learned ASG has submitted that the above aspect has been duly taken care of. She has referred to the minutes of the 306th meeting of the Expert Appraisal Committee held on 22nd - 23rd August, 2022 wherein the project proponent had furnished the following for excluding the parts of the proposed master plan for ports falling in CRZ-1A and 1B areas:

“(iv) Regarding parts of proposed master plan for Ports which are falling within CRZ IA and IB areas, it has been explained that the same shall be excluded from the revised layout of master plan.”

52. That apart, Standard Condition No. A, I of the EC requires the project proponent to carry out the construction activity strictly in accordance with the provisions of the ICRZ Notification, 2019 and CZMP.

53. The following standard condition of EC relating to statutory compliance is binding on Project Proponent:

“STANDARD CONDITIONS:

A. International Container Transshipment Terminal (ICTT)

I. Statutory compliance:

(i) Construction activity shall be carried out strictly according to the provisions of ICRZ Notification, 2019 and the Coastal Zone Management Plan as drawn up by the State/UT Government. No construction work other than those permitted in Coastal Regulation Zone Notification shall be carried out in Coastal Regulation Zone area.”

54. The stand of Respondent No. 1 is that NCSCM had visited the site and had found that no part of the project is in CRZ-1 area. The Respondent No. 1 in this regard in the counter affidavit dated 21.02.2024 has referred to the NCSCM conclusion arrived at after conducting ground truthing that no part of the project area falls under CRZ-1A area, Ld. ASG has also specifically stated that the project proponent is bound by the above and other specific condition IX in the EC which prohibits any construction work in the coastal regulation zone area other than those permitted in coastal regulation zone (ICRZ) notification.

55. The reply filed by the Respondent No. 1 also reflects that this aspect has been considered by the High-Powered Committee. The conclusion of High-Powered Committee has been disclosed by the Respondent No. 1 in its reply affidavit is as under:

“20. xxxxxx.....xxx
c. *In order to address the 3rd issue, i.e., whether part of the Project is in CRZ-IA area where Port is prohibited, the HPC directed ANIIDCO to submit the layout plans and the*

National Centre for Sustainable Coastal Management (hereinafter referred to as "NCSCM") was required to authenticate the maps to ensure that no part of the Port falls in ICRZ-IA. Therefore, in order to evaluate whether a part of the project is falling inside the CRZ-IA area, the NCSCM visited the project site and its nearby areas on 17th-18th June, 2023 and also interacted with the ANIIDCO Project team as well as with the Forest Officials of UT of Andaman & Nicobar for conducting the ground truthing exercise to determine status of High Tide Line, Low Tide Line and Ecologically Sensitive Areas. Thereafter, taking into consideration the factual position, layout of the project received from ANIIDCO, observations made during the ground truthing exercise and in terms of the clarification received from the Forest Department of UT Administration and Project Proponent, the NCSCM concluded that no part of the project area fell under CRZ-IA area. Moreover, it was also clarified by ANIIDCO that in conformity with Specific and General conditions of the EC dated 11.11.2022, no activity is proposed within ICRZ-IA area.

Based on the Report of the NCSCM, the HPC concluded that no part of the project area is falling under CRZ-IA area.

Thus, High Powered Committee after due verification has found that no part of the Project area is in CRZ-IA area.

56. The doubt expressed by the Counsel for the Applicant regarding the ground truthing by NCSCM is expelled by the specific condition IX of the EC itself. The Respondents are bound by the EC condition and they must ensure that the EC condition is not violated. In any case, if the EC condition is violated at the stage of execution of the project, the same will expose the EC to challenge. The apprehension expressed by the Applicant that the project will violate the ICRZ Notification, is duly taken care of by other specific condition no. IX and standard condition No. A, I of the EC.

57. Though Counsel for the applicant has submitted that TOR to High Powered Committee should not have been confined to three issues only, but he has not pointed out during the course of hearing any other substantial issue which ought to have been examined by the High-

Powered Committee. We also do not find any error in the drafting of TOR while referring the three issues to High-Powered Committee.

58. Thus, we find that adequate safeguards have been provided in the EC conditions and in the first round of litigation the Tribunal had refused to interfere in the EC and remaining issues noted by the Tribunal in the first round of litigation have been dealt with by the High-Powered Committee and considering the strategic important of the Project and taking into account the other relevant considerations, we do not find any good ground to interfere. Accordingly, the OAs and MA are disposed off with a direction to the Authorities/regulatory agency to ensure full and strict compliance of EC conditions.

Prakash Shrivastava, CP

Dinesh Kumar Singh, JM

Arun Kumar Tyagi, JM

Dr. A. Senthil Vel, EM

Afroz Ahmad, EM

Ishwar Singh, EM

February 16, 2026

Original Application No. 93/2024/EZ IA 80/2024/EZ

Original Application No. 95/2024/EZ

M.A No. 23/2024/EZ In Appeal No. 32/2022/EZ

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