

BEFORE THE NATIONAL GREEN TRIBUNAL (EZ) AT KOLKATA
MEMORANDUM OF APPLICATION

(Under Sections 18 read with Section 14 and 15 of the National
Green Tribunal Act, 2010)

Application No. of 2024 (EZ)

Ashish Kothari

....Applicant

Vs.

MOEF & CC

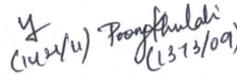
... Respondent

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//Certified to be True Copies of the respective originals//

Dated this the 3rd day of April, 2024 at Chennai


(14/4/24) Prongphulati
(13/3/09)

Through
A. Yogeshwaran
Counsel for the Applicant
Ph : 9566254546

Email : yogeshwaranadv@gmail.com

LIST OF DATES

SL No.	Date	Event
1.	11.11.2022	The Respondent ministry had issued clearance under the EIA Notification, 2006 and the CRZ Notification, 2011
2.	10.12.2022	Appeal filed by the Applicant challenging EC
3.	03.04.2023	Judgement passed by this Hon'ble Tribunal in Appeal 29 to 32 of 2022
4.	13.04.2023	OM was issued by the Respondent
5.	16.06.2023	RTI Reply was received along with the OM by the applicant
6.	09.07.2023 & 05.09.2023	Representations was sent to the respondent
7.	20.12.2023	Order passed by the Hon'ble High Court of Delhi
8.	03.04.2024	Present application filed

SYNOPSIS

- A. The present original application is filed aggrieved by the failure of the respondent ministry to comply with the judgment of this Hon'ble Tribunal dated 03.04.2023 in Appeal No. 32 of 2022.
- B. A special bench of this Hon'ble Tribunal heard the appeal passed an order dated 03.04.2023 constituting a "High-Powered committee (HPC)" to examine.
- C. An OM dated 13.04.2023 was received along with an RTI reply dated 16.06.2023. representations were sent by the applicant dated 09.07.2023 and 05.09.2023 to the respondent stating that the OM was contrary to the judgment of the Hon'ble Tribunal. However, no reply was received to this representation.
- D. The Applicant filed a writ petition on the file of the Hon'ble High court, Delhi seeking a direction to the respondent ministry to consider the representations sent by the applicant asking them to comply with the judgment of the Hon'ble Tribunal and the same was withdraw with a liberty to approach this Tribunal since the grievance was in effect the non-compliance of the judgment of this Hon'ble Tribunal.
- E. Hence, the present application filed.

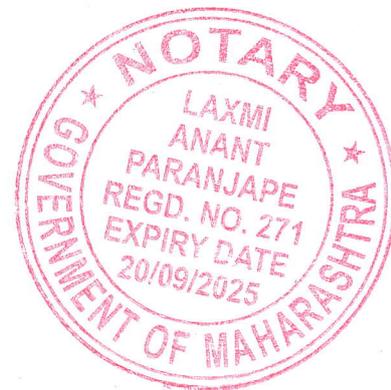
**BEFORE THE NATIONAL GREEN TRIBUNAL (EZ), KOLKATTA
MEMORANDUM OF APPLICATION**

(Under Sections 18 read with Section 14 and 15 of the National
Green Tribunal Act, 2010)

Application No. of 2024 (EZ)

Between:

Ashish Kothari
S/o Rajni Kothari,
G1 Chaitraban Residency, Aundh,
Pune 411007
Email: yogeshwaranadv@gmail.com
Phone No. : 9566254546



....Applicant

Vs.

The Ministry of Environment, Forest and Climate Change
Rep by its Secretary
Indira Paryavaran Bhavan ,Jor Bagh Road, New Delhi 110003
Email: secy-moef@nic.in, Phone: +91-11-23014243

...Respondent

**THE HON'BLE CHAIRMAN AND HIS
COMPANION MEMBERS OF THE
NATIONAL GREEN TRIBUNAL.**

**HUMBLE APPLICATION SUBMITTED
BY THE APPLICANTS ABOVE NAMED**

The applicant is the founder-member of Indian environmental group Kalpavriksh (<https://kalpavriksh.org>), has a Masters in Sociology from Delhi School of Economics, and has been an active member of several social movements in India as also of governmental committees. He has been a Lecturer at Indian Institute of Public Administration, and guest faculty in several universities including as Mellon Fellow at

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Bowdoin College, USA and Professor of Practice at National Law School of India University, Bengaluru, India.



The applicant herein coordinated India's National Biodiversity Strategy and Action Plan process (<https://kalpavriksh.org/our-work/conservation-livelihoods/nbsap/>) on behalf of the Union Ministry of Environment, Forests and Climate Change, and has served on boards of Greenpeace International and India, Indian Society of Ecological Economics, World Commission on Protected Areas, IUCN Commission on Social, Economic and Environmental Policy, Bombay Natural History Society, and Centre for Pastoralism. He helped establish the IUCN Strategic Direction on Governance, Equity, Communities, and Livelihoods (TILCEPA) and the ICCA Consortium (www.iccaconsortium.org). He is a founding member of Global Sustainability University (<https://our-global-u.org/oguorg/en/>), a member of Global Working Group Beyond Development (<https://beyonddevelopment.net>), and of the Global Commission for the Amazon Sacred Headwaters Initiative (<https://sacredheadwaters.org>). He is a judge on the International Tribunal on Rights of Nature. The petitioner has been a member of Indian government committees on National Wildlife Action Plan, Biological Diversity Act, Environmental Appraisal of River Valley Projects, and Implementation of Forest Rights Act.

The address for service of summons, processes and notices on the Applicants is that of their counsel M/s A. Yogeshwaran (MS 1421/2011), Poongkhulali B (1373/2009) having office at M1, Vadhula, No. 18, Brindavan Street, Mylapore, Chennai 600 004.

FACTS IN BRIEF:

1. The present Original application is filed aggrieved by the failure of the 1st respondent ministry to comply with the judgment of this Hon'ble Tribunal dated 03.04.2023 in Appeal No. 32 of 2022.
2. The respondent ministry had issued clearance dated 11.11.2022 under the EIA Notification, 2006 and the CRZ Notification, 2011 for the construction of
 - a. International Container Transshipment Terminal (ICTT)-14.2 Million TEU,
 - b. Township & Area development
 - c. 450 MVA Gas and Solar based power plant

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d. Airport (civilian and defence use)

over an extent of 16610 hectares (Ha) in the Great Nicobar Islands.

3. The Applicant herein filed Appeal No. 32 of 2022 before the National Green Tribunal aggrieved by the above clearance since severe ecological damage would be caused by the implementation of the project and several crucial aspects like projects being sited in prohibited ecologically sensitive CRZ – IA areas, lack of comprehensive studies, the failure to appraise impacts of biodiversity, the failure to assess impact on tribals etc. were not considered in the clearance process. The Applicant filed a detailed memorandum of appeal, a copy of which is annexed as **Annexure- A1**.
4. A special bench of this Hon'ble Tribunal heard the appeal on 03.04.2023 and a judgment was uploaded on the website on 05.04.2023. A copy of the judgment is annexed as **Annexure – A2**.
5. The Hon'ble NGT in its judgment dated 03.04.2023 extracted the report filed by the authorities and disposed the appeal holding at para 32 that " ... *by and large the project is compliant and EC does not call for interference*" and thereafter at para 33 recorded the finding that there were unanswered deficiencies and by way of instance listed three such deficiencies,
- "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."*
6. The Hon'ble Tribunal constituted a "High-Powered Committee (HPC)" to examine the "deficiencies". The Hon'ble Tribunal directed that the committee would 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

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India. Secretary, MoEF&CC may appoint a nodal officer, not below the rank of Joint Secretary, for facilitating functioning of the Committee."

7. It is submitted that it can be seen from para 24 of the judgment that the revised layout of the project as recommended by the Andaman and Nicobar Coastal Zone Management Authority dated 08.07.2022 has been extracted. According to this report, extent of areas classified as CRZ IA earmarked for each component
 - a. Port – 0.57 Sq Km (57 Ha), reclamation area – 0.06 Sq Km (6 Ha)
 - b. Airport – 0.60 Sq Km (60 Ha)
 - c. Township (Defence) – 0.81 Sq Km (81 Ha)
 - d. Township (other land use) – 5.03 Sq Km (503 Ha)
8. The ICRZ, 2019 categorically prohibits any of the above projects in ecologically sensitive CRZ IA areas. The Hon'ble Tribunal at para 33 of its judgment records the finding that ports are not permitted in CRZ IA areas. The other activities are also not permitted by law. The committee constituted by the Hon'ble Tribunal was mandated to examine these issues.
9. In these circumstances, the Applicant tried to find out information as to whether a committee as directed by the Hon'ble Tribunal was constituted but no information was available on the website of the respondent and the Applicant was also not informed of the constitution of the said committee or its meetings.
10. Finally, an OM dated 13.04.2023 was received along with an RTI reply dated 16.06.2023 from the CPCB. The Applicant was shocked to see that the respondent had constituted a committee vide the OM and had limited the terms of reference of the committee in violation of the judgment of the Hon'ble Tribunal.

"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.*

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iii. To review CRZ boundaries of the port project with respect to ICRZ Notification, 2019."

A copy of the RTI reply along with the OM is annexed as **Annexure-A3**.

11. On 09.07.2023, the Applicant addressed a representation to the respondent and the members of the committee, clearly stating that the OM was contrary to the judgment of the Hon'ble Tribunal and annexed copies of the appeal filed by the petitioner and documents for the consideration of respondent and the members of the committee. Copy of this representation is annexed as **Annexure -A4**.
12. However, no reply was received, and the Applicant was not able to find details of further action if any, taken by the respondent. The website of the respondent contains minutes of meetings held by various expert committees but proceedings of this committee were not made available.
13. The Applicant sent another representation to the respondent on 05.09.2023, requesting that the respondent hear the Applicant and take necessary measures to comply with the judgment of the Hon'ble Tribunal. However, no reply was received to this representation as well. Copy of this representation is annexed as **Annexure - A5**.
14. Till date, the respondent has not responded to the representations sent by the Applicant. It is not known whether the committee constituted by the respondent has held meetings to deliberate the issues at hand. However, there have been a series of articles in the media stating that the Detailed Project Report for the transshipment port has been prepared, the tenders are being issued and the Ministry of Expenditure under the Union Ministry of Finance has granted in-principle approval for the project. No information about the same is available on the website of the authorities. Copies of the news articles and media reports in this regard are annexed as **Annexure -A6**.
15. I submit that the Applicant filed a writ petition on the file of the Hon'ble High Court, Delhi seeking a direction to the respondent ministry to consider the representations sent by the applicant asking them to comply with the judgment of the Hon'ble Tribunal and pass orders on the same. The Hon'ble High Court permitted the applicant to withdraw the writ petition and approach this Hon'ble



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Tribunal since the grievance was in effect the non-compliance of the judgment of this Hon'ble Tribunal. Order dated _20.12.2023 in WP (C) 16431/2023 of the Hon'ble High Court is annexed as **Annexure A7**.

16. It is submitted that the applicant thereafter once again tried to locate proceedings of the respondent ministry pertaining to this issue i.e the proceedings of the committee constituted by this Hon'ble Tribunal, the final orders passed by the respondent ministry on revisiting the clearance as per the judgment of this Hon'ble Tribunal etc on the website of the ministry but no information was available. The applicant also learnt that RTIs filed had also not elicited any response from the respondent ministry.
17. It is submitted that till date no information is available on the Respondent's website and no orders have been passed by the Respondent on re-examination of the issue as directed by this Hon'ble Tribunal in its judgement dated 03.04.2023. A search on the Parivesh website also does not contain orders if any passed by the Respondent Ministry.
18. It is submitted that the respondent ministry ought to have complied with the direction to revisit the clearance and considered the objections raised by the applicant. However, by truncating the terms of reference and not convening the meeting or passing orders, the respondent has failed to comply with the judgment of this Hon'ble Tribunal.
19. It is submitted that the respondent ministry has failed to even inform the applicant, the appellant originally, whether meetings were held or if any orders were passed as directed by this Hon'ble Tribunal. The applicant had sent two representations to the respondent ministry exhorting them to comply with the judgment of the Hon'ble Tribunal and to issue terms of reference in compliance with the judgment of this Hon'ble Tribunal. Till date, no reply has been furnished. The applicant is hence filing the present application on the following among other

GROUND

- A. The respondent ought to have complied with the directions of this Hon'ble Tribunal in its judgment dated 03.04.2023 and revisited the environmental and CRZ clearance issued by them dated 11.11.2022.

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- B. The wilful failure of the respondent to comply with the judgment of the Hon'ble Tribunal dated 03.04.2022 amounts to contempt.
- C. The respondent ought to have seen that the three deficiencies mentioned by this Hon'ble Tribunal were "by way of instance" and issued necessary terms of reference to the committee including the contentions and grounds raised by the applicant in the Appeal No. 32 of 2022.
- D. The respondent ought to have constituted the High Powered committee and revisited the clearance issued to the project.
- E. The respondent ought to have communicated the details of proceedings of the HPC to enable the applicant to assist in the process and put forth his contentions, which is the basis on which this Hon'ble Tribunal directed the respondent to revisit the clearance.
- F. The respondent ought to have communicated any decision or order passed as a result of such re-visitation to the applicant.
- G. The respondent has not passed any order after revisiting the clearance as directed by this Hon'ble Tribunal.

LIMITATION

The present application is within the period of limitation prescribed under the National Green Tribunal Act, 2010.

INTERIM RELIEF:

Pending disposal of the present application, the Applicants pray that this Hon'ble Tribunal may be pleased to:

- A. Direct the Respondent to produce the minutes of meetings of the High Powered committee constituted pursuant to the judgment of this Hon'ble Tribunal dated 03.04.2023 in Appeal No. 32 of 2022, the terms of reference issued to the committee, report submitted by the committee, the orders passed on the representations of the applicant and the final order passed by the respondent ministry if any.
- B. Issue such other orders as it deems fit in the interest of the case and render justice.



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PRAYER

It is therefore prayed that this Hon'ble Tribunal may be pleased to:

- A. Direct the respondent to re-visit the environmental clearance dated 11.11.2022 as directed by this Hon'ble Tribunal in its dated 03.04.2023 in Appeal No. 32 of 2022.
- B. Issue such other orders as it deems fit in the interest of the case and render justice.

Y. Prongphulahi
(1424/14) Prongphulahi
(1373/09)

COUNSEL FOR THE APPLICANTS

Ashish Kothari
x

APPLICANT

VERIFICATION

I, Ashish Kothari, the applicant herein, do hereby verify that the contents in the above paragraphs are true to the best of my knowledge and based on legal advice and that I have not suppressed any material fact.

Date : *29 March 2024*

Place : *Pune*

Ashish Kothari x

Signature of the Applicant

BEFORE ME

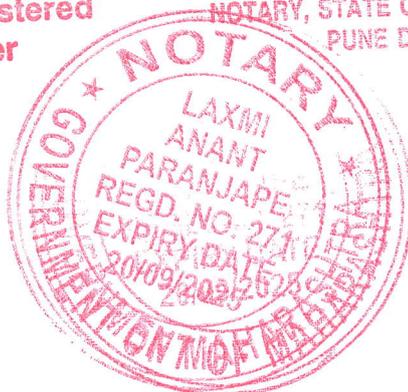
LAP 29-3-24

L. A. PARANJAPE

**NOTARY, STATE OF MAHARASHTRA
PUNE DISTRICT**

**Noted and Registered
at Serial Number**

7/22



to withdraw from the further conduct of the case

IN WITNESS WHEREOF I/We sign and execute this Vakalatnama on this
the 29 day of March 20 24

Y
(1424/4) Poonghuldi
(1373/09)

[Signature]
Appellant

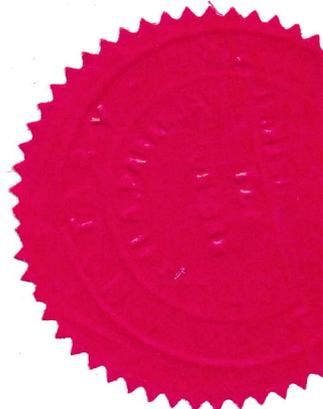
Noted and Registered
at Serial Number

6/24

BEFORE ME

[Signature] 29-3-24

L. A. PARANJAPE
NOTARY, STATE OF MAHARASHTRA
PUNE DISTRICT



**BEFORE THE NATIONAL GREEN TRIBUNAL EASTERN ZONE AT
KOLKATA**

MEMORANDUM OF APPEAL

**(Under Sections 16(h) read with 18(1) of the National Green
Tribunal Act, 2010)**

Appeal No. of 2022

Ashish Kothari,
S/o Rajni Kothari,
G1 Chaitraban Residency, Aundh,
Pune 411007
Email: yogeshwaranadv@gmail.com,
Ph: +91 9566254546

...Appellant

Vs.

1. The Ministry of Environment, Forest and Climate Change
Rep by its Secretary
Indira Paryavaran Bhavan , Jor Bagh Road, New Delhi 110003
Email : secy-moef@nic.in , Phone: +91-11-23014243
2. Andaman and Nicobar Islands Integrated Development Corporation
Limited (ANIIDCO Ltd),
Rep by its Managing Director,
Vikas Bhawan, PB No.180, Port Blair,
Andaman & Nicobar Islands, India Pin – 744101
Phone : 236086, 234108, Email : aniidco@gmail.com ...Respondents

TO,

**THE HON'BLE CHAIRMAN AND HIS COMPANION MEMBER OF THE
NATIONAL GREEN TRIBUNAL.**

HUMBLE APPEAL SUBMITTED

BY THE APPELLANT ABOVE NAMED

1. The Appellant is the founder-member of Indian environmental group Kalpavriksh (<https://kalpavriksh.org>), has a Masters in Sociology from Delhi School of Economics, and has been an active member of several social

movements in India as also of governmental committees. He has been a Lecturer at Indian Institute of Public Administration, and guest faculty in several universities including as Mellon Fellow at Bowdoin College, USA and Professor of Practice at National Law School of India University, Bengaluru, India.

2. The Appellant herein coordinated India's National Biodiversity Strategy and Action Plan process (<https://kalpavriksh.org/our-work/conservation-livelihoods/nbsap/>) on behalf of the Union Ministry of Environment, Forests and Climate Change, and has served on boards of Greenpeace International and India, Indian Society of Ecological Economics, World Commission on Protected Areas, IUCN Commission on Social, Economic and Environmental Policy, Bombay Natural History Society, and Centre for Pastoralism. He helped establish the IUCN Strategic Direction on Governance, Equity, Communities, and Livelihoods (TILCEPA) and the ICCA Consortium (www.iccaconsortium.org). He is a founding member of Global Sustainability University (<https://our-global-u.org/oguorg/en/>), a member of Global Working Group Beyond Development (<https://beyonddevelopment.net>), and of the Global Commission for the Amazon Sacred Headwaters Initiative (<https://sacredheadwaters.org>). He is a judge on the International Tribunal on Rights of Nature.
3. The Appellant has been a member of Indian government committees on National Wildlife Action Plan, Biological Diversity Act, Environmental Appraisal of River Valley Projects, and Implementation of Forest Rights Act. He initiated the Vikalp Sangam (Alternatives Confluence) process and website (www.vikalpsangam.org) to network development alternatives in India, a global dialogue process and website on Radical Ecological Democracy (www.radicalecologicaldemocracy.org), and global processes of

bringing various alternatives together, the Global Tapestry of Alternatives (www.globaltapestryofalternatives.org) and Adelante (<https://adelante.global>). He has also initiated PeDAGoG, the Post-Development Academic-Activist Global Group. (<https://globaltapestryofalternatives.org/pedagog>). He was co-coordinator of the global project 'Academic-Activist Co-generation of Knowledge on Environmental Justice (<http://acknowledgej.org>).

4. The Appellant herein has (co)authored and (co)edited over 30 books, including *Protected Area Governance and Management* (Australian National University Press), *People and Protected Areas in India: Towards Participatory Conservation* (Sage Publications), *Birds in our Lives* (Orient Blackswan), *Sharing Power* (Earthscan), *Churning the Earth* (Penguin India), *Alternative Futures: India Unshackled* (Authors UpFront), and *Pluriverse: A Post-Development Dictionary* (Tulika), and over 700 articles including in journals like *Development*, *Futures*, *Economic and Political Weekly*, *Oryx*, *Scientific American*, and *Sustainability Science*, and newspapers/magazines like *The Guardian*, *The Hindu*, *Indian Express*, *Times of India*, *Hindustan Times*, *Frontline*, *Wall Street International Magazine*, *Outlook* and *Outlook Traveller*. He has been on the Editorial Advisory Board of *Oryx* and other journals and magazines.
5. Kalpavriksh, the environmental group with which the Appellant is actively associated is involved in education, research, policy advocacy and legal interventions in matters related to the environment and indigenous peoples of the Andaman and Nicobar Islands. The organisation has also been involved in environment education in the islands as part of a collaborative initiative with the A&N administration and other NGOs.

6. The Appellant herein has also been involved and has contributed to several public interest litigations in the Supreme Court including the case involving the gas leak at Shriram Chemicals, famously known as the Oleum Gas leak case, reported as M.C. Mehta Vs. Union of India in 1987 1 SCC 395, the Doon Valley case relating to the mining operations and more recently, the challenge to the Central Vista Project of the Government of India. The Appellant has been actively following the recent developments relating to the subject project and his organization has also submitted representations to the MoEF&CC about the subject project.

7. The Appellant is aggrieved by the impugned clearance, which has permitted large scale destruction of forests, turtle nesting grounds, habitat of endangered, endemic species, violation of the rights of indigenous communities etc. in the Great Nicobar Island for the proposed project of the 2nd respondent. The preservation of the environmental rule of law is crucial to ensure sustainable development and the Appellant is aggrieved by the failure of the respondents to appraise the projects as required by law, the inadequate, incomplete EIA studies and the failure to comprehend the impact of the projects on the fragile, sensitive environment and ecology of the Great Nicobar Island. This Appeal is based on information submitted by various stake holders during the environmental clearance process, studies and documents the Appellant has acquainted himself with and information obtained under the Right to Information Act, 2005, information available in the public domain and legal advice.

8. The address for service of summons, processes and notices on the Appellant is that of their counsel M/s A. Yogeshwaran (MS 1421/2011), Poongkhulali B (Ms 1373/2009), Abhishek Sikdar (F/1512/1048, 2011) and

Santanu Chakraborty (KAR/2308/2012) having office at Room No. 33, 2nd floor, No.10, Kiran Shankar Roy road, Kolkatta.

The respondents are

1. The Ministry of Environment, Forest and Climate Change
Rep by its Secretary
Indira Paryavaran Bhavan , Jor Bagh Road, New Delhi 110003
Email : secy-moef@nic.in, Phone: +91-11-23014243

2. Andaman and Nicobar Islands Integrated Development Corporation Limited (ANIIDCO Ltd),
Represented by its Managing Director,
Vikas Bhawan, PB No.180, Port Blair,
Andaman & Nicobar Islands, India Pin – 744101
Phone : 236086, 234108, Email : aniidco@gmail.com

The address for service of service of summons, processes and notices on the Respondent is the same as above.

FACTS IN BRIEF

9. The present appeal has been filed challenging the clearance under the EIA Notification, 2006 and ICRZ Notification,2019 issued by the 1st respondent dated 11/11/2022,bearing EC Identification No. - EC22A033AN125767 in File No. - 10/17/2021-IA-III for the establishment of
 - a. International Container Transshipment Terminal (ICTT)-14.2 Million TEU,
 - b. Township & Area development
 - c. 450 MVA Gas and Solar based power plantOver an extent of 16610 hectares (Ha) in the Great Nicobar Islands by the 2nd respondent.

Copy of the impugned clearance is annexed as **ANNEXURE A1.**

10. It is submitted that the appeal is only concerned with the activities permitted under the clearance such the port, tourism facilities, township, and the power plant and the cavalier manner in which the clearance has been granted without proper assessment studies or appraisal, in violation of inter alia the Precautionary principle.

Area in question

11. It is submitted that the Great Nicobar Island is spread across 910.074 sq km and is the largest island in Nicobar group. It is one of India's four Biodiversity Hotspots and is a part of one the world's most biologically rich Sundaland Hotspot region. The Great Nicobar Island comprises of Tropical evergreen, moist deciduous forests, littoral forests, inland forests and five perennial rivers. With about 648 species of flora comprising of endemic plants like Tree Fern *Cyathea albasetosa* and Orchid *Phalaenopsis speciose* and 695 species of fauna, with endemic animals like the Nicobar Spiny shrew (CR), Nicobar treeshrew (EN), Nicobar long-tailed macaque (VU), Nicobar megapode (VU), Great Nicobar serpent eagle (NT), the island exhibits ~24% endemism. The seas are equally rich with seagrass and fringing coral reefs along with the sandy beaches of the island that make for an ideal feeding and nesting grounds to four species of marine sea turtles, the Leatherback turtle *Dermochelys coriacea* (VU), the Hawksbill turtle *Eretmochelys imbricate* (CE), the Green turtle *Chelonia mydas* (EN) and the Olive ridley *Lepidochelys olivacea* (VU). Six species of cetaceans have been documented from the region; the Bottlenose dolphin, Spinner dolphin, Spotted dolphin, Rissos's dolphin, False Killer whale and the Omura's whale.
12. The island was declared as a Biosphere Reserve under UNESCO's Man and Biosphere Programme in the year 1989. It comprises of two National

Parks that form the core area of the Biosphere reserve – the Campbell Bay National Park in the North and the Galathea National Park in the south. The entire island other than the revenue area was declared as a Tribal Reserve in 1957 under the Andaman & Nicobar Islands (Protection of Aboriginal Tribes) Regulation, 1956. Until recently, the island also had two more Protected Areas, the Megapode WLS and the Galathea WLS for Giant Leatherback turtles. The present project is to be constructed on these lands over an area of over 169.08 sqkm (including the reclamation area), by diverting 130.75 Sq km of forests and reclaiming 2.98 sq km of sea. Details from the webpage of UNESCO is filed as **Annexure A2**.

13. It is submitted that in this biodiversity rich paradise, which is home to the Shompen a particularly vulnerable tribal group (PVTG), the Nicobarese, a scheduled tribe (ST), virgin tropical rainforests with exceptional floral and faunal diversity and high endemism as well as unparalleled marine biodiversity, the respondents have proposed to construct the above projects based on inadequate EIA studies and the 1st respondent has issued clearance despite unequivocally admitting in the clearance document that both the scale of impacts and impacts are largely unknown.
14. It is submitted that the
 - a. The impugned clearance has been issued without consideration of the irreversible damage to the environment and ecology of the Great Nicobar Island.
 - b. The impugned clearance has been issued without regard to the legal prohibitions on diversions of ecologically sensitive areas for such projects.

- c. The impugned clearance has been granted based on incomplete, inadequate impact assessment studies by unaccredited consultants.
- d. The project has not been appraised in accordance with the EIA Notification, 2006.
- e. The EAC and MoEF&CC has failed to see that the EIA report prepared does not conform to the terms of reference issued.
- f. The EAC and the 1st respondent have failed to see that the public hearing conducted is vitiated and in violation of the EIA Notification, 2006.
- g. The EAC and the 1st respondent have failed to apply their mind and scrutinise the project in accordance with the law.
- h. The impugned clearance has been granted without considering the impact of the project on the tribal population in the Great Nicobar island.
- i. The impugned clearance has been granted without cumulative impact assessment and assessment of carrying capacity
- j. The impugned clearance has been granted without considering the grave impact on turtles, megapods, cetaceans and other endemic, endangered species on the island and its waters.
- k. The impugned clearance is in violation of the EIA Notification, 2006, the IPZ Notification, 2011, ICRZ Notification, 2019, the precautionary principle, the principle of sustainable development, eco-centric principles, the Environment (Protection) Act, 1986 and Articles 21, 48 A and 51 A of the Constitution of India.
- l. The clearance is also in violation of the Protection of Aboriginal Tribes Regulation, 1956, the Forest Rights Act, 2006 and the Shompen Policy, 2015.

m. The clearance is in violation of India's commitments under several international conventions including the Convention on Biological Diversity, 1992 and Convention on the Conservation of Migratory Species of Wild Animals, 1979.

Copies of international conventions including the Conventional on Migratory Specials of Wild Animals, 1979, the World Charter for Nature 1985, the UNEP Goals and Principles of EIA 1987, the Rio Declaration, 1992, the Convention on Biological Diversity, 1992 and the Kwon Aichi Guidelines, 2004 are produced as **Annexures A3-A8** respectively. Further, copies of National legislations and notifications including the EIA Notification, 2006, IPZ Notification 2011, the ICRZ Notification 2019, the POTA 1956, the Forest Rights Act, 2006 and the Shompen Police are filed as **Annexures A9-A14** respectively.

Incorrect information provided in Form-I for the issue of ToR

15. It is submitted that the 2nd Respondent has submitted the requisite details for issuance of the Terms of Reference (ToR) to the EAC vide a letter dated 02.03.2021. The Pre-feasibility report and Form-I are replete with false and incorrect information. The details regarding the presence of tribal settlements have not been mentioned and the site for the ICTT has been listed as vacant area with no development when there is presence of tribal settlements. Other important information such as areas protected under International Conventions and areas already subjected to pollution and environmental damage have also not been mentioned. In the Form-1, even against rows where the project proponent has replied in the affirmative, the information provided is incomplete and impacts have been euphemized and suppressed. A table listing and

correcting the misrepresented information has been produced. The ToR issued by the MoEFCC based on these faulty details have therefore some of these crucial aspects missing from them. A copy of the letter dated 02.03.2021 along with the Form-1 is **Annexure A15**, the Pre Feasibility report is **Annexure-A16**, the table listing mis-information in Form-1 is **Annexure A-17**.

EIA report & other studies do not conform to ToR issued by the Ministry

16. It is submitted that the EIA Notification mandates that EIA report prepared by the project proponent should be in strict compliance with the ToR and address all the issues raised therein.
17. Firstly, NITI Aayog has engaged AECOM as the DPR consultant and they in turn have engaged M/s Vimta labs for preparation of the EIA report. AECOM on 14.12.2020 engaged the Zoological survey of India to undertake 'Rapid Environmental Impact Assessment studies on Marine Ecology for the Master Plan of Development of Great Nicobar Island' to fulfill the requirement of Environmental and CRZ clearance. The 2nd respondent who is the project proponent in whose favour the clearance has been issued, has not engaged the consultants in the present process. The capacity in which NITI Aayog is involved in this process is not known.
18. However, in this instant case, the data collection and surveys were completed even before the ToR was issued. The entire exercise has been reduced to a formality.
19. The EAC Infra-I in its meeting on 5-6/04/2021 recommended the issuance of ToR, which was issued on 25.05.2021. However, it is seen

that the EIA report is based on data collected in December 2020 to March 2021, before the issuance of ToR. The EAC has specifically directed the conduct of several studies on the impact on biodiversity and ecology – in light of the port, township and other projects proposed. It is clear from the EIA reports that no further assessment was conducted.

20. ZSI was already engaged by AECOM even prior to the submission of application for ToR – which was on 15.03.2021. ZSI's report is based on data collected between February and March 2021. Therefore no further studies were done by ZSI on marine biodiversity after the EAC meeting on 5-6/04/2021 or 25.05.2021 when the ToR was issued. WII was engaged by AECOM on 09.04.2021 to submit a report on the most suitable location for the port.
21. Therefore, it is not surprising that the EIA report does not conform to ToR issued by the 1st respondent.
22. Crucial ToR – such as Terms of Reference (ii) of the ICTT mandating that *"An independent study for assessment of biodiversity and Wildlife value of all the alternative sites for ICTT port shall be conducted by engaging a nationally recognized institutes such as WII or ZSI or IISc or SACON or consortium of these institutes. Diversity and wildlife value so assessed by these organisations or a team of these organisations shall form one of the criteria for cost benefit analysis of all the alternative sites. The report along with Cost Benefit Analysis shall be incorporated in EIA/EMP report."* remains unfulfilled.
23. The reports prepared by WII and ZSI have not provided any wildlife or environmental valuation. The EAC specifically noted that the PP's site

selection was only based on economic factors and required a specific study on the assessment of biodiversity and wildlife value of the site. However, ZSI's report merely parrots the statements in the Pre-Feasibility Report and EIA report about the necessity of the project and does not even try to comply with the purpose for which the study was directed by the EAC. This was also noticed by the EAC which observed –

“vii. ZSI studies identify environmental impacts that are purely speculative covering 9 bullet points. It seems that there are no impact studies carried out and suggested only generalist measures. Galathea being key Leatherback Turtle nesting and ICTT and the development of support infrastructure on the east and west flank of it will destroy it fully. Thus, the report expected to envisage strong mitigation measures for other nesting sites that are completely lacking currently. WII report also not dwell on mitigation measures and in fact only recommends need for developing and implementing mitigation plans.”

A copy of the comment of the EAC and the response of the 2nd Respondent is available along with the Additional Details submitted in response to EAC comments on 09.05.2022.

24. However, the EAC failed to follow this issue through to its logical conclusion and accepted the reports as presented as gospel truth and recommended clearance to the project. A detailed table containing the TOR issued, response of the consultant in the EIA and the appellant's submissions is filed. The contents of the table may be read as part and parcel of this appeal. The details regarding the engagement of AECOM, VIMTA, ZSI, WII are produced as **Annexure- A18** the details regarding

the periods of collection of baseline data as extracted from the reports is produced as **Annexure A-19**, the terms of reference dated 25.05.2021 is produced as **Annexure A-A20**, table containing ToR issued along with Appellant's submissions is produced as **Annexure A-21** and the additional details submitted by the PP based on the queries raised by the EAC is filed as **Annexure A-22** and **Annexure A-23** respectively.

25. It is submitted that the EIA report and reports by ZSI, WII etc (collectively called "EIA reports") do not address the issue of impact on biodiversity at all. The entire decision making process has been turned on its head – instead of scientifically exploring to identify the least ecologically deleterious alternative and deciding to establish the project, the respondents have first decided on the location of the project (location of port etc) and then have proceeded to prepare studies to justify their decisions. This is evident from the reports submitted. Even the WII report while categorically stating that there will be impacts, proceeds to request mitigation measures.

26. It is submitted that several representations were sent at the stage of public consultation highlighting the non-compliance with ToR. However, the 1st respondent failed to take any action.

Failure to assess alternative sites impartially and suppression of information in the EIA report

27. It is to be noted in Chapter 5 of the EIA report (C5-7, **Annexure-A-24**) which describes the alternate sites considered for the project has omitted the least environmentally destructive site, Campbell Bay and only included the other 3 sites which are as environmentally sensitive to Galathea Bay. It is pertinent to state that Campbell Bay was considered as one of the sites in

the Pre- Feasibility Report. But the same has been completely omitted from consideration in the EIA report. From the data in the PFR, it can be seen that Campbell Bay has fewer ecologically sensitive areas. However, by ignoring Campbell Bay from evaluation in the EIA and WII reports, the project proponent has failed to consider all alternatives. The narrative that Galathea bay is the only possible location for the port is based on suppression of the bay's biodiversity and ecological significance.

28. Secondly, under the description of Galathea Bay, it has been wrongly mentioned that the site falls under ICRZ-IB while the very next column indicates the presence of turtle nests. The statement that there are no megapodes and crocodiles in Galathea Bay is also not correct.

29. A detailed note listing the accurate information and a table of comparison between Galathea Bay and Campbell Bay is given in **Annexure-A25**. A perusal of the annexed table shows that considering the misrepresented ICRZ zone and other factors mentioned in the comments, Campbell Bay is much less environmentally sensitive than Galathea Bay.

The AECOM report of 2016 suggested that Great Nicobar was not a suitable site for a trans-shipment port

30. In a technical note prepared by AECOM for the Ministry of Shipping/Indian Ports Association in July 2016 **Annexure-A26**, has reviewed the suitability of Great Nicobar for the construction of a Transshipment Hub Shipyard, Dry Dock and Ship Repair (Navy and others) Bunkering Hub and Tourism/Cruise facilities. Following are some excerpts from this report pertaining to the limitations of Great Nicobar:

"The major disadvantage for Great Nicobar as a potential transshipment hub is the scale of domestic cargo. All the ports in A&N Islands combined had container traffic of only ~32,000 TEUs in 2013-14 (0.3% of the total

EXIM container traffic in India). Clearly, the domestic cargo traffic is miniscule as compared to that in other contending locations like Vizhinjam and Enayam."

"The key challenges for developing a port are mainly identified as restricted area, proximity to naval facilities, poor connectivity and environmental issues."

"As compared to other contending locations, Great Nicobar is at a disadvantage as it does not have an established base of ancillary units and steel manufacturing unit/s."

The report has concluded as follows:

"This technical note evaluated many options that could be considered for development at Andaman and Nicobar Islands. Development of FTWZ and transshipment hub may not be a favourable option due to the insufficient hinterland demand and supply. While bunkering is also a non-starter as it would involve setting up of fuel supply infrastructure from refineries from mainland of India as Great Nicobar does not have any refining capacity of its own. Setting up of cruise facilities is the only feasible option that look promising at these islands as it will require minimal infrastructure and the exotic locations combined with many water related activities makes it a favourite tourism destination."

31. It is to be noted that the same consulting agency which had cited multiple valid reasons that are indicative of the unsuitability of Great Nicobar as a transshipment port in 2016, had a completely opposite assessment in the 2021 Pre-feasibility report commissioned by NITI Aayog. This is striking, considering that there is no change in the material situation on the islands and no new information is available based on which the recommendation has changed.

The location was pre-determined:

32. It is submitted that a Pre-feasibility Report was prepared by AECOM, India Pvt Ltd., and submitted to the MoEFCC by ANIIDCO for the proposal of Terms of Reference for the EIA study on 2nd March, 2022. This report carried a detailed analyses of the alternative sites considered for the port, the airport and the power plant. But it is noteworthy that the proposal for diverting 130.75sqkm of forest area was sent by the state forest department to MoEFCC on 7th October, 2020 and the de-notification of Galathea Bay (the stated reason being that the area was required for establishment of the port) was communicated on 25th January, 2021; both were done much before the Pre-feasibility report was prepared and submitted. This suggests that conducting the assessment of alternative sites was a mere formality and the sites for the project were finalized much before the EAC issued the ToR for conducting the EIA and mandated a systematic analysis of all sites keeping in mind environmental sensitivity to be done in the EIA. But by that time any analyses done would not have led to alternative conclusions than that of Galathea being the most suitable location for the port as the process of de-notifying Galathea WLS and seeking the diversion of forest area, was already done as per the pre-determined master plan of the proposed projects. In the given scenario it is likely that the EIA consultant and institutes like ZSI and WII would be under a compulsion to not deviate from the already fixed location of the projects regardless of what the analyses of alternatives suggests. Copies of correspondence regarding diversion of forest lands is produced as **Annexure A-27** and the notification for de-notification of the Galathea Bay is produced as **Annexure A-28**.
33. Further, as stated earlier, an independent study of biodiversity and wildlife value of all alternat sites for the ICTT was never done.

34. In the ZSI report included as part of the final EIA report, at page 137, the chapter titled "***Analysis of alternatives***", does not fulfill the ToR. The analysis is limited by the consideration of economic factors and not based on an analysis of the ecological setting, biodiversity and the proximity to tribal settlements of the alternate sites considered.
35. For the other projects like township, no alternatives have been considered and for the power plant, at page 5-26 of the EIA, the stated reason is the proximity to the port and the airport. It is submitted that the entire exercise has been reduced to providing justifications for decisions already taken by the authorities. The very purpose of consideration of alternatives has been defeated by the respondents.

EIA studies inchoate & inadequate – impacts on biodiversity ignored

36. It is submitted that the rich biodiversity of the subject area is not in dispute. The EIA reports prepared for the subject project do not
- a. Provide a true and correct record of the baseline floral and faunal diversity.
 - b. Identify, quantify and report the likely impact of the proposed projects.
 - c. Provide a true and correct record of the anticipated impact on the environment on account of the establishment and operation of the proposed projects.
 - d. Many parts of the EIA report like the Environmental Management Plan, impact of break water on turtles, oil spill contingency plan, the conservation and management reports on corals, mangrove, sea turtles Nicobar Megapode and Salt water crocodile have been

added or updated in response to the Additional Details Sought by the EAC were not available during the process of Public Hearing.

EIA studies based on inadequate data – liable to be rejected

37. It is submitted that the 1st respondent has issued an OM dated 03.11.2009 regarding the siting of ports and harbours. The subject project is in violation of the siting criteria prescribed in this OM and submissions on this aspect have been made below. Copy of OM is annexed as **Annexure A-29**. This OM mandates that port projects in these islands should be preceded by a comprehensive EIA study.

38. Clause 5 (D) of the OM reads thus,

"D. With regard to Andaman & Nicobar and Lakshadweep Islands the port and harbour projects shall be undertaken in accordance with Coastal Regulation Zone Notification, 1991 and approved Coastal Zone Management Plans. The port projects of more than 5 Million Tones per annum in these islands which are to be located in these islands, shall be subjected to Comprehensive Environment Impact Assessment including physical and mathematical modelling and ground verification."

39. It is submitted that the mandate of the law is that a comprehensive EIA should have been conducted for the subject project. "Comprehensive EIA" refers to an EIA report prepared based on at least 3 season data. However, in the instant case, the EIA report submitted is only a rapid EIA, based on one season data. The EIA report states that it is based on baseline data collected during December 2020 to March 2021.

40. In fact, it is seen from the EIA report that the survey of ecology and biodiversity was conducted by one Prof. K.B Reddy between 14 to 22 December 2020 and primary survey of Leatherback turtles was done by Mr. Ravinder of Vimta Labs during 12 to 18 February 2021 (C3-73, Final EIA report).
41. Therefore, it is clear that the EIA report is not even based on 3 months data on biodiversity and ecology but merely based on studies admittedly done for a duration of 8 days in December, 2020 and the assessment on leatherback turtles is based on a 6-day survey in February 2021. At page C3-73 and 74, it is narrated how the survey team was not even able to enter the jungle and limited its survey to areas adjacent to the road.
42. In fact, the WII and ZSI reports relied on by the respondents also suffer from this vice – the ZSI report states that the baseline study was conducted during March 2021 (page 48 of the report) and the WII report is based on baseline data collected between 14th to 19th April, 2021, with helicopter survey on 15th April and night survey at Galathea bay between 15th and 16th of April, 2021 (page 9 of the report).
43. The EIA for the Holistic Development of Great Nicobar Island fails to adequately characterize the extraordinary biodiversity the project would imperil. Starting on page **C3-73** of the Final EIA Report for the Holistic Development of Great Nicobar Island, eloquent passages have been included that describe the awe felt by the authors of the magnificence of the biodiversity they encountered. EIA documents seldom include evocative language. Interestingly, the passages also highlight the scientists' frustration to fully comprehend the true nature of the site because of

inherent study limitations. The following excerpts are worthy of the Hon'ble Tribunal's attention:

"Quick primary survey of the Ecology and biodiversity of the Great Nicobar Island was carried out by Prof. K.B Reddy, Retired Professor of Ecology and Environmental Sciences and a Functional Area Expert (FAE) in Ecology & Biodiversity and Soil Conservation (Category A) of the Vimta Labs Ltd., Hyderabad during December 2020 (14 to 22 December 2020). Primary survey of Leatherback Turtles was done by Mr. Ravinder of Vimta Labs during 12 to 18 February 2021."

"The study area comprises of the west coast of Great Nicobar Island from Campbell Bay to the Indira point and Galathea River mouth in the southern part. It includes all revenue villages and areas approachable and accessible on both sides of the road. Many areas along the coast were not even approachable by sea. Similarly, thick forest vegetation with impenetrable shrubs and climbers was not accessible without clearing the vegetation and making the way. The hills are steep, slippery and totally covered by multi-storeyed vegetation. Whenever we could gain entry through some opening into the dense thick forest, visibility was poor; humidity was high; soil was wet and slippery on account of intermittent sharp showers every day, invisible streams of water under thick carpet of dead leaves and twigs. Added to the problem was biting insects including mosquitoes. Further, when one tries to look upwards to find out what tree it is, it is not just one but many. Most trees are overgrown by heavy climbers and the tree-trunks are covered by epiphytes including mosses, lichens, epiphytic ferns and Orchids. There was no threat of venomous snakes as they do not occur in the Island. It was impossible to use any measuring devices like tape to make any quadrat in the forest vegetation. Hence, intensive survey was carried out on both

sides of the Campbell -Indira Point for four days. It is about 45 Km and the entire stretch was surveyed 8 times in four days. However, towards the sea side (western side of the road) most of the area was accessible but the soil was swampy, and vegetation was thick except in the commercial plantations of Coconut and Areca Nut. Under the guidance of a range officer sent by the D.F.O., we could reach the midst of the Campbell Bay National Park (CBNP). Observations about the Avifauna were made from the bird watching point. We had a couple of detailed discussions with the local D.F.O., who extended full cooperation without which the survey would not have been complete. Every day from 6.00 AM to 8.00, we used to cover one part of the Campbell Bay and in 6 days, Team had covered the entire Campbell Bay through the morning survey on foot. During the morning survey, Team interacted with traders, teachers, fisherman and local residents about different aspects relating to wildlife, cultivation, conflicts with wildlife and issues relating to Ecology. This detailed survey yielded many species of plants that were not reported or recorded earlier. During this period, we could count the numbers of Crab eating macaques in different groups in different parts.

"During the survey, Team had covered a cross section of the CBNP, buffer zone of the Galathea National Park, Areas frequented by Salt water Crocodiles, Mangrove plantations in four different areas, Galathea River Estuary, breeding grounds of the Leatherback Turtles, all villages and coastal areas apart from the forest areas. According to the maps of the forest department, most part of the area towards the west of the Campbell – Indira Point road is a revenue land though there are forests. Towards the east of the road is mostly forest but in many areas the road passes either through either the forest or

revenue land only. Based on the field visit experience briefly mentioned above, there were some limitations to the survey. It is a rapid reconnaissance type of survey and it was not intensive except in non-forest residential areas. As most plant species were not in flowering and could only be seen from some distance either because of height of the trees or because of lack of access, for correct identification of the species, hence, the list provided by forest department as well as the data from different scientific publications were referred and compared with site observations. Nomenclature, where required was updated and hence the names of some species are at variance from the earlier reports. With such practical difficulties, in spite of the sincere effort made there could be a few minor errors. Based on our site observations, it appears that what is uncovered so far is not complete and what is hidden may be even more valuable. Thus, in spite of the best efforts, the survey within the dense forests was feasible only to a limited extent. Hence, the survey was carried out covering the entire stretch from Campbell Bay to Galathea River mouth on both sides of the road covering all accessible areas for seven days from 15th through 21st December 2020. There was no place which was not explored on both the sides of the road. In addition, team had gone in to the Campbell Bay National Park through the west-east road up to the bridge on Galathea River accompanied by a forest officer. The survey covered a stretch of 12 Km within the CBNP. The area included the bird watching point and the watch tower in Campbell Bay National Park (CBNP). The west -east coast road is more like a cart track and it is motorable to a limited extend. It is mainly designed by the CBNP authority for monitoring purposes. The following observations are made on the basis of the survey and the interaction with the Divisional

Forest Officer and his team who were extremely cooperative and willing to share the information. ...

"Some areas towards the east of the road were covered by thick and impenetrable forest but described as revenue forest. There are mixed evergreen forests similar to those in the CBNP and the Galathea National Park (GNP). ...

"The list of species recorded during the current survey surely includes at least a few dozens of species that were not reported from the Island earlier. But the exercise of establishing which species was reported or not reported so far is going to take a long time of intensive and extensive survey of literature and hence, our team cannot make any claims of first report for any species except to state that they are there, and team had documentary proof. One thing is certain that the list is not final and there are bound to be additions or deletion on account of migrations, introductions and extinctions. ..."

44. It is unusual for experts to be this candid about the limits of being able to characterise an area precisely because it is so diverse, and it underscores the profound inappropriateness of the development plan.
45. Objectively, we know the following:
 - a. The Holistic Development of Great Nicobar Island entails clearing 13,075 hectares of very dense forests;
 - b. A handful of experts spent only 9 days (December 14-22) attempting to characterize the biodiversity of this vast terrestrial component of the study area;
 - c. The experts walked along a 45-km road attempting to gauge the biodiversity of the study area, but were stymied by impenetrable shrubs and climbers, steep hills that were slippery and totally

covered by multi-storeyed vegetation, and poor visibility whenever they could gain entry through some opening into the dense thick forest;

- d. The experts characterize their work as a “quick primary survey” and a “rapid reconnaissance type of survey” that was “not intensive”.
- e. During their quick and rapid survey, the experts nonetheless found species that were never before reported to exist on Great Nicobar Island;
- f. The experts warn that “what is uncovered so far is not complete and what is hidden may be even more valuable.”

46. The above baseline data collection exercise and preparation of EIA report based on this data makes a mockery of the process established by law. The ToR issued by the 1st respondent also mandates comprehensive assessment of impact on biodiversity. The following ToRs are extracted for convenience

“ix. Comprehensive study of the impact of dredging and reclamation and port operations including oil spills on marine ecology and marine biodiversity with specific focus on corals, mangroves, sandy shores and mud flat should be done...”

47. However, this has not been complied with. Therefore, the EIA report is vitiated and liable to be rejected. However, this aspect was not noticed by the EAC – Infra I or the 1st respondent. The entire impact assessment exercise becomes meaningless if the baseline data collected is inadequate and incorrect. The prediction of anticipated impact is based on the baseline scenario assessed and a flawed baseline automatically vitiates the anticipated impact

forecasted. In summary, the inadequate assessment of biological resources of the study area represents a potential loss of biodiversity of extraordinary value. Extract of the relevant portions of the EIA report relating to biodiversity is produced as **Annexure A-30**, the report prepared by ZSI is produced as **Annexure A-31**, the report of the Wildlife Institute of India on Turtles is produced as **Annexure A-32** and WII report on Saltwater crocodile is produced as **Annexure A-33**, the report of WII on the Megapode is produced as **Annexure A-34** and the SACON report on the Megapode is produced as **Annexure A-35**.

EIA report's claims on biodiversity and impact are false or underreported

Megapode

48. It is submitted that the EIA reports admit to the existence of Megapode nesting in the project site but underplay its impact. The reports, as expected from studies commissioned by project proponents, recommends the establishment of the projects in question. The below references from peer reviewed studies demonstrate that the assertions made in the EIA report are incorrect.

49. Of the 2 subspecies of Nicobar megapode that occur in the Nicobar archipelago, *Megapodius nicobariensis abbotti* (M. n. a.) is distributed in the Great Nicobar island group (Great Nicobar, Little Nicobar, Kondul, Trax, Treis, Pilo Milo, Menchal, and Meroe) (**Sankaran 1995a**). Megapodes are of Gondwana origin, evolved in the Australian continent during the Late Oligocene period (34-24 Million years ago), and dispersed north to a few Indonesian islands, the Philippines, Fijian islands, Solomon islands, etc. The Nicobar megapode is most likely to

be related to *M. cumingii* (from small islands off Borneo) and represents a relic population of perhaps an extinct population of megapodes in Greater Sundaland (**Dekker, 2007**).

EIA report

50. According to the final paragraph in C1-13 in the Final EIA, 'The megapodes before tsunami mainly used to nest near to the shores. However, as the shoreline got modified after the tsunami, there has been a tendency amongst the megapodes to nest away from the shores'. This is in sharp contradiction to (**Sivakumar 2010a**) who states that 'In 2006, >90% of mound nests were within 30 m of the shore and, of these, c. 16% of mounds were within 5 m of the shore'. This result is stated in the abstract of the article as '>50% of mounds were found closer to the shore in 2006 than in 1994'. It is clear that megapodes did not nest away from the shore post-tsunami but instead, most of their mounds were near the shore.
51. Similarly, **page C3-115 in the Final EIA document** states 'Tillanchong is an unfamiliar name for many. Uninhabited except for a police post holds the largest surviving populations of the endemic Nicobar Megapode (*Megapodius nicobariensis*)'. This statement is false – **Sankaran (1995a, 1995b)** reports the highest megapode population to be in Great Nicobar (1698-2972 individuals) as opposed to 20-35 in Tillanchong WLS. Even if the population after the 2004 tsunami is considered, **Sivakumar (2010a)** reports that the GNI population is estimated to be 203-406 individuals as opposed to 27-54 individuals in Tillanchong WLS. It is to be also noted that the subspecies of megapode are different between the Great Nicobar group (*M. n. abotti*) and the Nancowry group of islands (*M. n. nicobariensis*).

Tillanchong had a nearly as high population estimate of *M. n. nicobariensis* as Trinket post-tsunami (**Sivakumar 2010a; Tillanchong: 27-54; Trinket: 26-56**).

52. Further, the second paragraph in C4-14 under 'Tracking of wildlife through radiotelemetry and satellite telemetry' mentions tracking of megapode through the aforementioned methods. There is no scientific study to date that uses the said telemetry methods on megapodes.

Wrong information about megapode nest activity is considered for making mitigation measures. Mitigation measure 8 in C4-14 mentions 'Therefore, during the construction phase offshore activities to be halted to the possible extent especially during November to February the period in which the Nicobar Megapode, Coconut Crab and Long-Tailed Macaque of Nicobar Islands as well as Leatherback turtles nesting reported'. **Sankaran & Sivakumar (1999)** mention mound/nest activity continues from January to June in most monitored mounds, which is in sharp contrast to suggestions made by EIA consultant.

ZSI Report

54. **Limited information provided on methodology used to assess megapode mounds (2015-2018):** The ZSI report mentions its study to have been conducted from 2015 to 2018 using point-transect and playback surveys. Several crucial details of point-transect sampling like the locations of transects, thumb rule used to place transects, the effort put for each transect, survey duration for each transect, rate of detections, etc. are missing. Since the figure of active mounds is a whole number without any range, it is not expected to emerge from a distance-based estimation method. Moreover, point-transect sampling within the

framework of **Buckland (2006)** has to be conducted within small geographies within a very short time to meet the population and demographic closure arguments. It is a standard practice in biodiversity surveys to cite methodological articles and describe the methods in complete detail but these details have been skipped. Similarly, without methodological details, it is impossible to assess the veracity of the figure of 7 active mounds with 14 breeding pairs in Galathea. Moreover, estimates generated by **Sankaran (1995a, 1995b)** and **Sivakumar (2010a)** followed the same methodology (belt transect method followed by estimation of mound density and extrapolation to the whole island based on suitable coastal habitats) whereas ZSI studies from 2015-2018 followed point-transect and playback.

55.False information and reference in ZSI Report on megapode (Under 'Megapode (3)' in pg. 103, ZSI Report): The report mentions '**Sivakumar (1995)**' and does not list the study in the reference list of the report. Dr. Sivakumar Kuppuswamy was pursuing M.Phil. in 1995 from Pondicherry University and joined Ph.D. at Bharathiyar university to work on megapode under the supervision of Dr. Ravi Sankaran (SACON, Coimbatore) in 1996. The figure it provides of active mounds of megapode in GNI is 195 as opposed to the figure estimated by **Sankaran (1995a, 1995b)** of 515. The report additionally declares detecting 95 mounds in one sentence, and 100 in another sentence and in Table 17, thereby being inconsistent throughout its reporting.

56.Inconsistent reporting of megapode mounds by ZSI based on its study (Final paragraph; last sentence; pg. 110): In contrast to its

own reporting of 100 active megapode mounds (2015-18), this sentence mentions the number of active mounds to be 202.

57. **The ZSI report does not pay heed to suggestions/advice that its literature review reveals:** Despite clearly outlining the broad threats to megapodes such as habitat loss, habitat degradation (conversion to plantation), the influx of mainland settlers, introduced cats, and dogs (**Sivakumar, 2010b**), risk of disease (avian cholera; an outbreak among domestic fowls occurred in 1997) transmission from domestic fowls and ducks (**Sivakumar, 2010b**), etc. the report continuously favors and leans towards the proposed project. It is submitted that such a partial and prejudiced report cannot be considered academic and/or rational.
58. **Failure to mention previous disease transmission to megapode from domestic fowl in GNI (1997) and projected risk to megapode (and other endemic species) from the accidental introduction of alien/invasive predators/competitors/diseases from ICTT: Sivakumar (2010c)** mentions 'the outbreak of avian cholera in domestic fowls in 1997 that transmitted to the highly threatened endemic bird Nicobar megapode'. The chapter also mentions house crows and common mynahs to be competitors (of food and niche) of native birds with the potential to spread diseases to them. Ship-assisted accidental introduction of crows and mynahs have occurred in GNI in the past decade but no information on their effects on native fauna is available in scientific literature. In addition to ballast water from ships, container ships are also carriers of alien and invasive flora and fauna that are often found on the outside of shipping containers as well as in soil, sawdust, wooden materials, and unprocessed/raw materials

(like coal and grains) that the ships might be carrying (**Lydon, 2022**). Using the gravity model of trade, **Sardain et al. (2019)** have projected that the intensification of shipping activities will magnify the risk of the introduction of invasive species and that it is more destructive than the isolated effects of climate change. According to **Sardain et al. (2019)**, one of the surprising results of the study was that the projected increases in invasion risk were high even for sustainable economic scenarios. Endemic species of GNI are thus already extremely vulnerable to the existing threats posed by alien invasive organisms (**Sivakumar, 2010c**), and an ICTT will compound it several folds.

WII Report -Attachment II to EIA report

59. **Limited information on megapode in the report:** The WII report prepared by Dr. Sivakumar based on rapid assessment was primarily aimed at marine sea turtle nesting and all information provided on megapode is at best useable to determine the presence (and not even absence) of the species in the beaches and not its population size. This is additionally because the survey was conducted effectively in a time period of 5 days covering 9 beaches along GNI.
60. **Inconsistent information on the number and location of active megapode mounds in Galathea region among the ZSI report, WII report, and PP's response to EAC:** The map in Enclosure 17 shows just 3 active megapode mounds in the Galathea region (i.e., within the construction site of the ICTT) as opposed to the megapode location map in the WII report prepared by Dr. Sivakumar, which show 6 active mounds. The source of the map in Enclosure 17 is said to be ZSI. However, ZSI has stated there are 7 active mounds in the Galathea region based on its 2015-2018 assessments. The 306th minutes of the

meeting mention that "From the enclosure no 17 provided by PP it is clear that about 51 active nests of Nicobar Megapod are present within the proposed project areas of which appx 30 will be permanently destroyed." Enclosure 17 has been submitted by the 2nd Respondent in response to the queries raised by the EAC vide a letter dated 19.08.2022 and is produced herewith.

Long-term monitoring and conservation of the endemic Nicobar megapode in the Nicobar archipelago (WII) and SACON

61. The SACON critiques methods followed by the three megapode population studies, **Sankaran (1995a, 1995b)**, **Sivakumar (2007, 2010a)**, and **Balasubramanian et al. (2012)** and characterizes them as crude, subjective and arbitrary, and mentions that population stability of megapodes post-tsunami needs to be revisited.

62. The action plan mentions 'how the habitat features are interacting and shaping the megapode population is either poorly understood or unexplored and that this information will be critical to predict how the species will respond to various factors including the envisioned developmental projects in the Nicobar Islands'. The action plan fails to mention **Sivakumar & Sankaran (2012)** that reports the habitat and foraging preferences of Nicobar megapodes in GNI, clearly mentioning the substrate (for building mounds) and microhabitat type the species uses across seasons. In addition, **Sankaran (1995a)** clearly mentions that settlement by mainlanders in GNI has wiped out the megapode in the revenue areas with the closest megapode recorded 11 km away from the anthropogenic area. Therefore, unlike the sentence in the report, it is very well-known what effects deforestation, constructions (ICTT, airport, townships, etc.) and similar land-use changes will have on

existing megapode mounds within the project area. It is odd that habitat restoration in the event of large-scale damage (tsunami) is being mentioned when the context is habitat destruction due to the current construction plan.

63. Dispersal and metapopulation dynamics: Flight capabilities of the Nicobar megapode are not well established and therefore speculation of their dispersal between distant islands is not well founded. As per the baseline information in the action plan, since GNI could be a source population of megapode, the threats from the construction plan on megapodes are likely to be immense with the potential to threaten sink populations away from GNI.

64. Failure to consider risks from the introduction of invasive flora/fauna by the ICTT/Airport/Tourists: Same as mentioned above. **Steadman (1999)** has shown how humans have been responsible for the extinction of several megapode species in the islands of western Polynesia and being a relic population megapode population in GNI could be highly vulnerable. The biophysical-spatial impact of tourism on the degradation of environmental quality (land/sea-based pollution and sedimentation) and enhancing the vulnerability of small islands through nature exploitative activities (reef-walking, diving, snorkeling, fishing) and constructions (hotels, ports, docks, anchorages, etc.) is well established in several small islands worldwide (**Pelling and Uitto, 2001; Barrientos, 2010**)

SACON Plan

65. Under the paragraph, 'Relocation and captive management, the monitoring plan just mentions that 'using the information from various

aspects of its population, social organization, movement pattern, habitat selection, and behavioral ecology the appropriate relocation and ex-situ plan will be prepared'. On the one hand, the SACON plan mentions exactly the same aspects of the megapode that are unknown and need to be systematically studied and on the other it says, this information will be used to prepare a relocation plan. Since the studies to be undertaken will take a minimum of 2-3 years to conclude, how will the existing population of megapodes and perhaps their eggs within the project site will be dealt with? The report has no solution for this.

66. It is mentioned that a large temporary enclosure will be developed at the site with Pandanus and Macaranga, resembling the natural habitat of the megapode, however, it is inconceivable to imagine that large plants like the two mentioned can be included in a cage in the natural habitat.
67. Mention of maintaining captive megapodes ('that are found injured or unable to relocate to wild'), creation of artificial mounds, and an incubation facility but no further details are provided. The authors of the plan have conveniently feigned ignorance and asserted knowledge on the same aspects of megapode ecology, population and biology inconsistently throughout the monitoring plan. Additionally, the monitoring plan is incomplete and unclear in describing approaches to relocation, ex-situ conservation, and captive maintenance of megapodes.
68. Finally, no mention of how the existing design of ducts (elevated crossings) are or are not suitable for megapodes and whether the ducts will facilitate the movement of megapodes given their topologies.

69. It is submitted that Nicobar Megapodes abound in the area and also find the place among the most conducive habitats on all of Great Nicobar Island. The species is protected under Schedule I of the Wildlife Protection Act, 1972 and its habitat will have to be protected. Copies of studies with regard to Megapods are annexed as **Annexure A-36a-Annexure A-36p** respectively.

Leatherback turtles

70. The leatherback nesting population in the Nicobar is one of the four colonies that exceeds 1000 individuals in the Indo-Pacific, and hence of global significance (**Andrews and Shanker, 2002; Andrews et al., 2006**). The southern bay of Great Nicobar is Southeast Asia's largest leatherback turtle nesting site. According to available literature, in Galathea Beach, a total of 255 nests were monitored and estimated that 114 individuals nested during the season between November 2003 and February 2004 and during November 2004, 137 leatherbacks were encountered with 84 nesting (**Andrews et al., 2006**). In Galathea bay, nesting, egg laying and hatchling numbers for Leatherback turtle are higher compared to the other beaches of Great Nicobar Island. The number of nestings, eggs laid and number of hatchlings have been increasing over past four years. The number of hatchlings increased at a rate of 21 % from 2018 to 2019 while it increased at a rate of 147 % from 2019 to 2020.

71. The last five years data shows that, there is an increase in the numbers of nesting and eggs laid in Great Nicobar Island. It is estimated that the succession rate of hatchlings of leatherback turtle are 59% in 2018; 60% in 2019 and 63.5% in 2020.

72. It is submitted that there is no dispute that Galathea bay is one of the most important nesting sites for the leatherback turtles. The statement in the EIA report that there is no nesting on the eastern flank of the Galathea Bay where the berth will be constructed is completely false. Numerous records from the eastern flank are also available which have not been marked on the map in the EIA report. Submissions on this aspect were made in representations sent during the time of public hearing as well, but these issues have not even been noticed by the 1st respondent or the EAC-Infra I.

73. It is necessary to note that considering the importance of the entire bay area for the Giant Leatherback sea turtle protection, the department of environment, A&N Administration issued a notification bearing no CWLW/WL/3/798 dated 15.09.1997. The notification is irrefutable proof of the fact that even according to the administration, the subject area is of "adequate ecological, faunal, floral, geo-morphological, natural and zoological significance" for the purpose of protection of the Leatherback sea turtle. It is submitted that NBWL did not recommend the denotification because the area does not serve as a turtle nesting ground but rather in recognition of the importance of the area directed that a mitigation plan be devised so that "marine turtles continue to nest on the beaches near Galathea Bay during both construction and operational phases of the International Shipment project". The NBWL further observes that "the provisions of the CRZ should be enforced in the area. A Copy of the notification dated 15.09.1997 and proceedings of the NBWL dated 22.01.2021 are produced as **Annexure A-37** and **Annexure A 38** respectively.

74. As mentioned in Chapter 4A, pg. 32, currently the bay mouth is about 3.8km which will reduce substantially (by approximately 12 times) due to construction and land reclamation. This will hinder their entry in the area for nesting as they will have a much smaller approach path to the Galathea beach. The impact of this narrowing has not been considered at all. Further, it has been repeatedly stated that the western flank was left out of the development plan keeping in mind the nesting turtles while there is no analysis done to determine the impact the narrowed route will have on the large bodied leatherback turtles and the other three species of turtles that come to nest at Galathea Bay.

75. The impact on turtle nesting during the operational phase of the project has not been discussed. Moreover, all the assessment is focused on the beach, while the importance of the impact on the nearshore waters which are important feeding grounds for juveniles as well as male turtles during the pre-nesting season for courtship. The shipping traffic introduced on account of the proposed port will lead to the death of turtles approaching the bay.

76. Further, infrastructure is proposed on the western flank of the bay which the report has repeatedly stated, is being left for turtle nesting (C2-106). Even if the development is located away from the beach, crucial details about the distance from the beach, height of the buildings, etc. has not been mentioned.

77. The western flank of the Galathea beach where admittedly the leatherback turtle nests, is about 1.5 km from the edge of the power plant boundary. The EIA states there will be no impact. However, in a study by **Eguchi et, al. (2020)**, a power plant located in the home range

of green turtles led to decrease in turtle density and a shift in activity period from nocturnal to more diurnal. The power plant also caused clustering of green turtles away from the plant and closer to seagrass pastures, where there were higher chances of human-turtle interactions like boat-strikes. Although the impacts of any infrastructure may vary from one species to another, and the above-mentioned study involved Green sea turtle and not leatherback turtle, the EIA consultant should have at least mentioned the basis of their statement that there will be no impact of the power plant on leatherback nesting.

78. It is submitted that the EIA reports cite the example of Dhamra, Paradip, Kakinada, Kolkata ports as successful examples of sporadic sea turtle nesting in the nearby sites in spite of these operational ports. But various research articles and reports from these ports suggest a different narrative. It is to be noted that these ports were established on the strength of EIA reports, mitigation measures and promises by project proponents that the proposed activity would not have any detrimental impact on sea turtles. However, the following records would demonstrate that the impact has been severe.

79. Regarding Dharma port – the port exists at a distance of less than 15km from Gahirmatha Marine Sanctuary one of the world's largest nesting sites for Olive Ridleys. Greenpeace's 40-day ecological survey in 2007 came across 2000+ dead turtles apart from frogs, snakes, horseshoe crabs and dolphins all killed owing to mechanized boats near the port site (**Mukherjee, 2007**). In an article published in February, 2021, it has been mentioned that at least 800 Olive Ridley turtles were reported dead since January 2021 Gahirmatha Marine Sanctuary due to trawling from

illegal fisheries, plastics and polythene (**Senapati, Down to Earth, 2021**).

80. Paradip Port, one of India's major ports was a mangrove forest, nature's barricade against coastal erosions. In 2017, it was demarcated as being "severely polluted" by the Central Pollution Control Board in India. The Gahirmatha beach was 32km long when measured in 1977 versus the drastic reduction to 950 metres by 2010 caused by copious amounts of sand dredging. In 2011, 5-6 turtles were seen grappling for space in a 1sqmt area causing interferences to other dug up nests (**Bera, 2011**). In September, 2009, the port witnessed a major oil spill incident after a vessel carrying 24000 tons of iron ore tipped over into the bottom of the sea. The oil spill threatened destruction to the Olive Ridley nesting site at the Gahirmatha sanctuary since there were already traces of dead marine life surfacing by the shores (**Satapathy, 2009**). However, had the oil spill coincided with the hatching period, it would have without a doubt spelled disaster with the hatchlings crawling through the oil sludge on the coast. January, 2020, officially reported more than 200 dead Olive Ridges on shores near Paradip port due to trawlers in mechanized boats (**Mohanty, Hindustan Times, 2020**) following another massacre in January 2021, with close to 800 bodies of sea turtles were recorded to have collected over the coast of Orissa in the Gahirmatha sanctuary and Nasi beach (**Senapati, 2021**).

81. In January 2017, the beaches on Hope Island saw 54 dead turtles wash up on shore in just a single month owing to illegal trawl nets (**Sankar, 2017**). The consistent dredging activities by Kakinada Sea Ports Limited has caused severe soil erosion at Hope Island. Decrease in distance between the Agha lighthouse and the sea water, fading away of 500

island plantations for the prevention of soil erosion and a significant 50 metre gap between the head and tail ends of the island are all cause for concern from repetitive and relentless dredging (**Srinivas, Times of India, TNN, 2011**).

82. The nesting is the period when a female turtle comes to lay her eggs on the shore. It is not a solitary event and a single female may lay multiple times during one nesting season. Between laying two clutches/nests the female generally uses the nearshore waters of the site to feed and rest. Even after the nesting cycle the female may use the vicinity of the same beach to recuperate before undertaking migrations again. Once the nests start hatching, the hatchlings are known to spend their initial days/months in the nearshore coastal currents. Exposing the turtles to such high levels of anthropogenic activities at such a vulnerable stage will potentially increase the chances of juvenile mortality in the population. And not just the females and the juveniles, even male turtles are known to use the nearshore waters in the pre-nesting season for courtship. The entire cycle of courtship pre-nesting and post-nesting of these turtles are in a lot of areas dependent on the coastal habitat.

83. This EIA treats the nesting beach as the only place which needs to be safeguarded whereas, it is the beach and the surrounding coastal waters which also need to be safeguarded from such habitat modifying activities. The planned project has a radius of 10km into the sea. It is safe to say that the turtles not just use the beach but also the coastal waters for these critical aspects of their life cycle which go on for about 6 months of the year. The EIA is silent about these impacts.

84. The National Marine Turtle Action Plan 2021-26 lists the Andaman and Nicobar Islands as an important Marine Turtle habitat and Galathea bay as one of the most important nesting sites for the Giant Leatherback turtle. The very first objective of the action plan is to "Reduce direct and indirect cause of marine. Turtle mortality". Ironically, the plan also clearly demarcates activities like coastal development (construction of ports, industries, jetties etc) and pollution (plastic debris from port constructions, resorts and tourism etc) as direct threats from on shore activities. And yet, Galathea bay has been approved as the site of the project.

85. Despite recognition that the area is an iconic nesting ground, the reports have suggested mitigation measures that do not even address the issues at hand. Though the EAC notices these issues, it does not act on them but accepts the statements of the project proponent. The fact that the area is a turtle nesting ground is not in dispute – the 1st respondent has failed to see that the area ought to be protected as ICRZ -IA and ports are not a permissible activity in turtle nesting grounds.

86. Copies of academic references and news articles regarding turtle nesting is produced as **Annexure A39a- A39j**, and a copy of the National Marine Turtle Action Plan is produced herewith as **Annexure A-40**.

Corals

87. It is submitted that it is a fact that coral reefs will be impacted due to the proposed project. It is submitted that the final EIA report, citing the report submitted by the ZSI at C5-9 states "Galathea Bay has some ecological and environmental issues like some portion of the designated area is falling under ICRZ Zone 1A; the presence of 117 species of

scleractinian corals (Schedule-I species under IW(P)A, 1972) along with the live coral cover of 17.46% and 8 species of Schedule – I holothurians.

88. Further, the impugned EC at para 37 also states, "No major coral reef exists within the work area of the project. However, scattered coral reefs are available at the peninsular part of the Galathea Bay. As part of the assessment for conservation and management of Coral reefs, the Coral cover required to be translocated from the proposed site is around 10 ha which includes around 20668 Coral colonies out of which approximately 16150 colonies will be translocated."

89. It is submitted that the ZSI report mentions that there are 117 species of Scleractinian corals (Schedule-I species under IW(P)A, 1972) in Galathea. There are also 8 species of Schedule-I Holothurians. The total benthic cover of reef habitat is 116.4173 hectares. Even if the corals exist outside the construction area as suggested in C10-11, the impact of dredging and other construction activities will definitely have an impact. As stated in the report, dredging activities in the nearshore waters of the developmental projects during the construction phase will "apparently" destroy the corals and coral beds.

90. Page 71 of the Zoological Survey of India (ZSI) report titled "The Holistic Development in Great Nicobar Island and Conservation of Island Faunal Diversity" shows seven sites where surveys were made to establish the status of corals. It should be noted that the Pemaya Bay and the Nanjappa Bay which are sites proposed for logistics, institutions and coastal tourism have not been sampled for corals.



Fig. 21. Areas surveyed for coral reefs in Great Nicobar Island

91. Pages 90-91 of the ZSI Report presents the following findings:

"The present study indicates a total of 491.7975 hect. Reef areas across the seven study areas (Fig. 1) including 116.4173 hect. Of reef areas at Galathea Bay which is distributed up to the maximum extent of 1200m (perpendicular) from the coastline while most of the reefs are scattered in distribution within the limit of a mean distance of 500m whereas the reef areas of Shastri Nagar are recorded with the total distributional cover of around 103.8703 hect. Along with the mean distributional range from the coast is 250m (perpendicular) along with the maximum of 500m while Laxman Beach represents the minimum of 34.4921 hect. Of reef areas within the mean proximity of 150m from the coast while the maximum distributional ranges are within 350m (Fig. 22).

"During the present study, a total of 245 species of scleractinian corals are identified while the detailed literature review on the scleractinian corals of Great Nicobar Island and study conducted by the author suggested a total of 309 species of scleractinian corals (Mondal et al.,

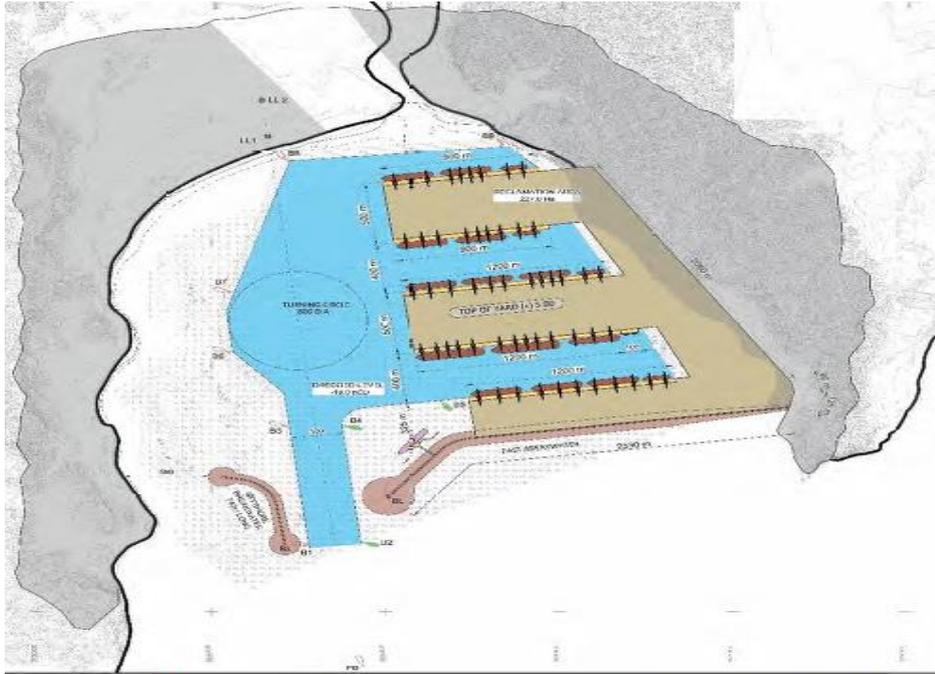
2011, 2016; Raghunathan et al., 2012; Raghunathan, 2015; Mondal and Raghunathan, 2017; Mondal, 2020). A total of 1628 species of scleractinian corals are reported across the world (Hoeksema and Cairns, 2021) while Great Nicobar Island shares around 19% of species among them which defines the presence of healthy species occurrence. The present study also focused on the benthic cover of the reef ecosystems in seven study areas at the eastern coastal sides of Great Nicobar Island and reported 56.71% area cover with different kinds of life forms with the mean live coral cover of 24.37% while the 4.02% cover of dead corals, 6.06% cover of other animals and 22.26% cover of other algae were reported. The study also brought out the findings of 43.29% of the area with abiotic factors. Among all the seven sites, the occurrence of maximum species was recorded from Galathea Bay with the maximum species diversity ($H=4.42$) whereas the percentage cover of live corals was moderately less in comparison with other study areas. The size of the colonies reported from Galathea Bay is relatively smaller and most of the species are found in scattered conditions with small growth form which may be due to the presence of an extremely high cover of algae (51.75%). Galathea Bay is representing the high density of *Halimeda* sp. Which are known for their quick growth rate and deposit calcium on a higher scale. These are known as the calcified green algae which take a proactive role in the formation of Cenozoic–recent reefs across the world oceans especially for the formation of the tropical back-reef carbonate structures (Maxwell, 1973; Orme et al., 1978; Freile et al., 1995). The presence of a high percentage of *Halimeda* sp. Intensified the several growth forms along with the assemblage of scleractinian corals species. The present outcome of the study narrates the status of the coral reef ecosystem of Great Nicobar Island which indeed a piece of baseline information for the scrutiny of sustainable conservational management

plans. Future studies may define more details on the coral reef ecosystems of Great Nicobar Island."

In characterising these data, page C4-12 of the Final EIA Report states: *"As per the ZSI report, no coral exists in the bay portion of the Galathea Bay. However, some coral were found on the eastern flank near the peninsular part. These patches of coral are not in the port construction area. However, coral colonies, if affected, due to the construction of the project at the proposed transshipment areas and dredging channels, to be translocated in suitable place where the similar environment as well as topographic features prevails in the Great Nicobar Island."*

92.A claim that *"no corals exists in the bay portion of Galathea Bay"* or that *"corals are not in the port construction area"* seems refuted by the data in the ZSI Report, and the comparison below of where ZSI divers looked for corals, on the one hand, and the Master Plan for development of Galathea Bay, on the other hand. See below, Figure 21 of the ZSI Report (yellow areas are where corals were surveyed) aside the Master plan of Container Transshipment Terminal at Galathea Bay, presented on Page 111 of the ZSI Report.





Master plan of Container Transshipment Terminal at Galathea Bay

93. Moreover, the promise in the EIA that “coral colonies, if affected, due to the construction of the project at the proposed transshipment areas and dredging channels, to be translocated in suitable place” seems oblivious to the immense challenges of designing successful coral relocations. In any case, destruction of corals is prohibited under the IPZ Notification 2011 and the ICRZ 2019.

94. It is submitted that increased sedimentation can cause smothering and burial of coral polyps, shading, tissue necrosis and population explosions of bacteria in coral mucus. Furthermore, turbidity and sedimentation also reduce the recruitment, survival and settlement of coral larvae (**Erfteemeijer et al. 2012**). According to the recent IPCC reports, almost 90% of the corals could be lost by 2050 due to the rising sea surface temperatures, which is happening faster in the Indian Ocean than anywhere else across the globe. This is a serious concern and the port project will only accelerate this process in the case of Great Nicobar Island.

95. There are several examples from across the world where the impact of dredging and port construction on corals was systematically recorded. In Australia, following the capital dredging for port construction/expansion there was 80% loss of corals at one site within 1 km from dredging site, while there was no discernible change due to dredging at other sites (**Blakeway, 2005 and Stoddart and Stoddart, 2005**).
96. It is submitted that extensive destruction and smothering of endangered corals and water turbidity will result from reclamation. Pristine coral reefs in Great Nicobar Island are ecosystems with innumerable inter-dependent fishes and other organisms. Replanting cannot successfully replicate these ecosystems.
97. Globally, marine ecosystems, coral reefs, in particular, have been bearing the brunt of the combined effects of climate change and rising anthropogenic pressures. Recent estimates suggest that >50% of the world's corals may already be dead. It is submitted that the current project does not align with India's commitment to various international environment treaties such as CBD and may prove to be an ecological disaster if allowed.
98. It is submitted that the EIA report and ZSI report glosses over the impact on coral reefs and ecosystem. Transplanting corals can be a good option to restore coral reefs destroyed naturally – but is not a justification for destroying reefs and attempting to relocate them. Copies of research papers on corals are produced as **Annexure 41**.

The Nicobar Treeshrew – *T. nicobarica*

99. The Nicobar islands host a highly diverse flora and fauna, many of which, including the Nicobar Treeshrew, *T. nicobarica* are endemic. The Nicobar Treeshrew is a small Tupauid with a restricted range and is found only on two islands (Little and Great Nicobar islands with an area of 150 sq. km and 910 sq. km respectively). Due to the restricted distribution of the species, it has been classified 'Endangered' in the World Conservation Union – IUCN's Red List of Threatened Species.
100. Observations on this species point to its extreme arboreality in comparison to other Tupaia. The diurnal species also exhibited a high degree of insectivory. A combination of these two traits makes this species one among a handful of nonvolant foliage gleaning insectivorous small mammals that exist in the world today.
101. A study published in 2008 observed the presence of *T. nicobarica* on the island of Great Nicobar, in the South (from – Indira Point to Chingen village ; South Bay to Chingen village; South Bay to 36 km point (Littoral forests)), the West Coast (Kopen Heat-Shompen Hut road (Rainforest); Alexandria beach to Kopen Heat (Littoral Forest)) and Central parts (Shompen Hut road), with the largest number of individuals recorded in the rainforests in the central part of the island (**Oommen, Meera Anna, O. and Kartik, S., 2008**).

***T. nicobarica* In regards to the massive infrastructure and tourism project on the island of Great Nicobar**

102. There are two subspecies of the Nicobar tree shrew of which *T. nicobarica nicobarica* is found in Great Nicobar Island.

103. This implies that the habitat loss faced by the *T. nicobarica* on the island of Great Nicobar, will not only threaten the survival of the species, but also the subspecies which is not found elsewhere.
104. Given their high arboreality, large scale tree felling can have a disastrous impact on the population. Nicobar tree shrews spend more than 70% of their day on trees. *T. nicobarica* move solitarily or in pairs. Large scale deforestation would force the species into a more confined area, creating greater competition for territory among individuals.
105. *T. nicobarica* was observed to call frequently and to make different types of vocalisations – during foraging, to sound alarm calls, to protest while feeding with birds or other individuals and contact calls between individuals of a breeding pair. Therefore, the introduction of human settlements and activities would not only drastically reduce the number of trees that the shrews are dependent on for foraging, resting etc., but the resultant noise pollution also has great potential to interrupt their abilities to find food, mates and to ward off predators.
106. According to the **Conservation Assessment & Management Plan (C.A.M.P.) Workshop Report on the Status of South Asian Non-volant Small Mammals** published by **Molar, et al in 2005**, the threats to this species were already identified as “Habitat loss due to agriculture, change in land use pattern, human settlements, and introduced domestic mammals”. The recommendations on this report also state that more conservation efforts were needed in the form of identifying new Protected Areas.

107. Owing to the highly arboreal nature of the species, and due to recorded adverse effects on a similar arboreal species to selective logging, it is suggested that the canopy contiguity of the forests be maintained to ensure the survival of this species (**Yasuda, Masatoshi, et al. 2003, Dahaban, et al, 1996**).

108. Also, introduced carnivores, especially domestic cats are known to successfully predate on *T. nicobarica* and might decimate local populations if the number of human settlements increases. *T. nicobarica* may be regarded as a species of high conservation importance for India, as it is an endemic Tupaia and one of the three species of the narrowly distributed and primitive order Scandentia.

109. The current EIA report has failed to mention the Nicobar treeshrew – thereby completely ignoring the effects that the project could have on this species' population and overall survival. With absolutely no cognizance given to considering the implications of such large scale activities on this species, there is no way to mitigate the adverse effects that they are sure to suffer. Copies of studies with respect to the Treeshrew are produced as **Annexures 42a-42d** respectively.

Birds

110. It is submitted that the ToR also directed that a specific study needs to be undertaken to ascertain the impact of proposed development on the migratory birds covering both inward and return migration period. The studies needed to specially focus on migratory bird species composition, impact due to habitat destruction, impact due to oil spillage and risk of all the hazards that has potential to damage.

111.The EIA report contains none of these. It in fact states that there are no migratory birds in the island which is a blatant misrepresentation since there are two bird flyways, the Central Asia Flyway **(CMS/CAF/Inf.4.13, Country Report, India)** and the East Asia/Australasia flyway **(East Asia Australasia flyway, BirdLife International)** that pass through the archipelago and there are numerous reports of migratory birds from Great Nicobar as it supports good numbers of transcontinental migratory birds during the month of September to March **(Sivaperuman and Gokulakrishnan, 2017).**

112.Moreover, there is no discussion on the impact of transmission lines on migratory birds and large raptors that are resident to the island, as specified by the EAC.

113.The ZSI report states that there are 71 species of birds of which the Nicobar Megapode, Nicobar Sparrow hawk, Nicobar Serpent Eagle, Blyth's Parakeet and Nicobar Bulbul are endemic to Nicobar group of islands. The richness of flora and fauna of this region reflects the diversity of habitats associated with a wide range. The Great Nicobar Island has been identified as one of the 27 major Endemic Bird Areas (EBA) in Asia by the Royal Society for Protection of Birds and is recognized as an Important Bird Area (IN451, Category A1 & A2) based on the criteria set by BirdLife International **(BirdLife International (2022) Important Bird Areas factsheet: Great Nicobar, Little Nicobar).**

114.It is submitted that a list of migratory birds (40 species) in the Nicobar island is also produced herewith. It is submitted that the contention by

the respondent project proponent that the island is not a habitat for migratory birds is false and the statement in the EIA report is false.

115.As per the EIA report, the 34 species of waders or shorebirds reported from coastal areas, especially the mangrove regions. The report further states that these birds are neither endemic nor are they rare or endangered or threatened and they were never found in large groups, presumably during the short survey conducted by the EIA consultant. The report also says that there are no fresh water wetlands in Great Nicobar which is not true. As per the National Wetland Atlas: Andaman & Nicobar Islands, **(SAC, ISRO, 2009)**, there are approximately 2.20ha of inland wetlands in the island. These wetlands form important habitat of many birds as well as other fauna and the EIA report not only has not assessed the impact on them, it has failed to acknowledge their presence at all.

116.Forest fragmentation is linked to lower reproductive rates in migratory birds due to increased predation and parasitism, amongst other factors **(Robinson et al., 1995; Donovan et al., 1995)**.

117.In fact, as a remedial measure to avoid bird strikes in the airport, it has been suggested that no fruiting tree which attract birds will be planted in the vicinity of the Airport site (C4B-103). Additionally, when a bird strike hazard is identified at an aerodrome, it is proposed that the number of birds will be decreased by adopting measures like cracker blasting and generation of the ultrasonic waves to scare the birds (C4-B 63). But there is no discussion about the impact of the airport on the resident bird populations such as the impact of the noise, light and sound pollution generated at the airport or an estimation of collisions that may

occur in the air given that two bird flyways used by migratory birds pass through the archipelago.

118. It is submitted that the various references cited above with respect to Birds are produced as **Annexures A-43a to A-43h** respectively.

Marine mammals

119. To ascertain marine mammal diversity, ideally one year of systematic surveys in the waters of GNI needed to be conducted to provide an estimate of species diversity and space use patterns of marine mammals from the region. This is because marine mammals may occupy certain areas seasonally based on regional food availability and life-cycle requirements.

120. The EIA mentions the presence of three marine mammal species from the whole of Great Nicobar Island, viz., the Dugong, False killer whale and the Common dolphin, but, there are anecdotal stranding and sighting records from Great Nicobar Island of at least five species of marine mammals, viz. the Indo-pacific bottlenose dolphin (*Tursiops aduncus*), Spinner dolphin (*Stenella longirostris*), Pan-tropical Spotted dolphin (*Stenella attenuata*), Rissos dolphin (*Grampus gresius*), False killer whale (*Pseudorca crassidens*) and the Killer whale (*Orcinus orca*). Two additional whale species that have also been reported from the waters of Nicobar Islands. They are the Sperm whale (*Physeter macrocephalus*) and an unidentified baleen whale (*Balenoptera sp.*). This suggests that the EIA report is incomplete as it has not accounted for the existing information on marine mammals in the Great Nicobar waters.

121. Because most marine mammals are free ranging in their habit their ranges can span over thousands of kms. Any species found within the Nicobar archipelago should be considered in the Great Nicobar Island assemblage of species as well; at least till the time more intensive systematic surveys are conducted to assess marine mammal diversity. Therefore, instead of three, the total number of species of marine mammals from GNI comes up to nine, including the Dugong.

122. Bottlenose dolphins (*Tursiops aduncus*) have been recorded from the coastal waters of Great Nicobar Island (anecdotal data with multimedia documentation available). They are a coastal species which tend to show high site fidelity and are vulnerable to disturbances in their coastal habitats. Since a large part of the project influences coastal waters of south and south east Great Nicobar Island, it is imperative that more thorough examinations of this species population be carried out in the proposed area. If gone unchecked, the port construction and the planned dredging activities will potentially permanently displace populations of these dolphins from the area.

123. The EIA mentions that port construction activities will be timed outside sensitive seasons of marine mammal migrations but no effort has been undertaken so far to study migrations in the region. Therefore, this statement is without substance. The Nicobar archipelago is one of the last reserves of undisturbed marine mammal populations in the world and that is largely because pressures such as vessel traffic is limited in the area. Once the port is constructed the area will be bombarded with vessels of all shapes and sizes. The EIA ignores to consider how the marine mammals of the area will be impacted by the vessel traffic induced by the transshipment port. This worldwide is one of the most

considered aspects of biological assessments for sea-based infrastructure development.

124. The EIA is silent about the impact of shipping traffic on marine mammals. Cetaceans are severely impacted by shipping traffic and noise and the proposed project will convert the waters off the shores of the island to a busy shipping route. This report completely disregards the well-being of marine mammals from the region. If at all these largely undisturbed populations of dolphins and whales are to be safeguarded, a more critical study needs to be undertaken including the risks and mitigation of oil spills focusing on marine mammals. Going ahead with the project on the basis of the present knowledge collected by this EIA will lead to an irreversible loss of diversity before we even fully understand it.

125. The most important issue to be considered while locating projects on biodiversity rich areas like this island is to ensure that the impact on wildlife and biodiversity is avoided. However, the EIA reports produced in the instant case do not aid in this endeavour and are replete with false, incomplete information and the 1st respondent ought to have rejected these reports. Screenshot of marine mammal sighting from Marine Mammal Research and Conservation Network is produced as **Annexure 44**.

The EIA Fails to Address Irrefutable, Permanent Harm to Marine Species from Dredging and Reclamation

126. The EIA states on page C4-7 (Chapter 4A, on anticipated impacts) that: *“Capital dredging of approximately 17.7 million cum in Final phase & 6.4 million cum in initial Phase will be required. It is estimated that only part*

of the dredged material will be suitable for reclamation (only 50 %). Land reclamation with capital dredged material is likely to impact the reclamation area/site with the turbid water. Predominantly the port land proposed to be reclaimed is an intertidal zone and seaward which is saline in nature and also low lying area having slope towards sea. In phase I, the dredged material will be used for port reclamation and unusable material, if any, will be disposed off in the designated marine disposal location."

127. The time frame offered for the dredging period is 10 months and the reclamation period is 24 months, without a pause (see EIA Figure 2.21). Although the project proponents say no harm will be done to corals, turtles, fishes, and other species, it is difficult to understand how that fact could be accurate given the duration of the disturbance and its proximity to coral reef areas and turtle nesting sites.

128. As an example of the short sightedness of the developers, they offer this mitigation measure (EIA p. C4-12):

"Similarly, civil constructions near the sandy area where there is possibility of basking of saltwater crocodiles and nesting of turtles should be avoided as much as possible during breeding/nesting season especially November to February."

129. However, the two months when dredging is not scheduled are July and August.

130. The proponents also suggest that deflectors can be installed on the drag head of the dredger to push any sea turtles away from the dredger itself

(EIA C4-11 and C4-12). There is little evidence to suggest that this will reduce the impact on nesting.

131. With respect to corals, the EIA states (p. C4-11):

"Dredging activities in the nearshore waters of the developmental projects during the construction phase will apparently destroy the corals and coral beds, but transplantation is a worldwide solution which could be easily executed in Great Nicobar island 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. Towards this, the developers should support with suitable funding."

132. Unfortunately, the EIA authors did not cite a source for their singular, optimistic > 90 % survival data point.

133. In any case, under the ICRZ Notification, destruction of corals is prohibited and the area is protected as an ICRZ IA area.

134. Finally, the EIA ignores any concerns about sedentary benthic species (p. C4-28):

"Smothering Effect Due to Settling of Sediment: Settlement of the suspended sediments can result in the smothering or blanketing of sub-tidal communities and / or adjacent inter-tidal communities. Presently, the marine biota in Indian Coast is already subjected to considerable changes in turbidity due to large-scale littoral movement, which is a recurring regular natural phenomenon. Therefore, it would be able to withstand localized turbidity induced during the dredging."

Without evidence, detailed analysis, or a characterization of the site, the EIA dismisses out of hand the potentially lethal impacts of smothering from dredging to benthic species.

Fails to Contain a Required Assessment of the Project's Impact on the Earth's Climate

135. It is submitted that in *Pandey v. India*, Original Application No. 187/2017, this court has held,

"We are of the view that the authorities acting under the Environment (Protection) Act, 1986, have to perform their obligation of impact assessment as per statutory scheme which is not under challenge. The issue of climate change is certainly a matter covered in the process of impact assessment."

136. However, the subject project's impact on climate change has not been considered in the EIA reports.

137. Page C9-17 of the Final EIA Report for the Holistic Development of Great Nicobar Island states:

"The proposed forest area (including deemed forest area) to be diverted is mostly consisting of Very Dense of Eco Class I i.e., Tropical Wet Evergreen Forests."

138. The same page for the Final EIA Report further states that 13,075 hectares of such very dense forests would be cleared. Clearing 13,075 hectares of very dense forests cover the matter of climate change in the process of the impact assessment. The Final EIA Report also is silent on the matter of the project's impact on the Earth's climate, including the impact on the Earth's climate of clearing 13,075 hectares of very dense

forests. The failure to assess this serious issue is a material lapse in the EIA reports.

Failure to assess the impact of Sea level rise

139. It is submitted that according to latest IPCC reports, due to sea level rise, many islands and coastal areas across the world will become uninhabitable or be seriously impacted. The Nicobar islands are also likely to be impacted. It is submitted that the entire EIA report is silent on this aspect. In fact, in response to a query raised, the EIA report states that the impact of sea level rise was not a specific ToR and hence they did not assess it.

140. The coastal areas slated for development on Nicobar are already subject to frequent flooding and they suffered substantially during the 2004 Tsunami, an event that could reoccur in some fashion, given the proximity of fault lines in the region. Porwal, Padalia and Roy in their paper published in 2012 on the impact of tsunami on the forest and biodiversity richness in Nicobar Islands have stated. a total of 34% of mixed evergreen forest in Great Nicobar Island submerged due to its occurrence on flat areas nearer to the coast. Great Nicobar Island located near to the epicenter suffered highest from the impacts (58.28%), out of total area changed due to tsunami in all the groups of the Islands (Car Nicobar, Central Nicobar and Great Nicobar) and it also accounted for the majority (80%) of the total submerged area. An excerpt from the research article compares the pre-tsunami and post-tsunami vegetation type maps of the Great Nicobar Island is submitted as **Annexure-45** Flooding, storms, and tsunamis carry their own risks, but sea level rise also contributes to saltwater intrusion, a serious

concern for many islands dependent on a shallow freshwater aquifer to supply drinking water to island inhabitants.

141. Sea level rise and climate change are not mentioned in Chapter 2C on the project description or in Chapter 4C on impacts and mitigation measures. This failure to include a discussion of climate change renders the EIA inadequate.

Environmental Impact of Power Plant not assessed

142. It is submitted that the EIA report at Chapter 2D provides a description of the proposed power plant and under 4D purports to deal with the anticipated impact of the power plant and mitigation measures. It is submitted that at page C2-164 of the EIA report, it has been stated that power generation sources for the proposed project is 75 percent – 337 MVA through LNG based power generation, 15 percent through diesel generator sets- (68 MVA) and 10 percent through solar power (45 MVA). The proposed thermal power plants are located over an extent of 39 hectares, close to the western flank of Galathea Bay near the Galathea river mouth. The diesel generators are designed to consume 569 litres per hour at 100 percent generation which amounts to $569 \times 24 \times 365 = 4984.44$ KL of diesel a year. The air emissions from combustion of diesel have not been considered in the EIA report. The exhaust consists of Carbon monoxide, carbon dioxide, oxides of Nitrogen, unburnt hydrocarbons, sulphur oxides and particulate matter. The EIA is silent about the quantity of gas required for generation of 337 MVA electricity.

143. In Chapter 4D, at page C4- 147 onwards there is no assessment of the pollution caused by the combustion of diesel and gas and its impact on

air quality. It is seen from 4.3.3. C4-158 of the EIA report that only emission levels of NOX while firing on LNG has been considered as emission and prediction of impact on air environment has been carried out. Table 4.4 provides stack emission details from proposed power height.

144. It is to be noted that the existing air quality in Nicobar is pristine even according to Chapter 3 of the EIA report and the contribution of pollutants like NOX, SOX, CO, PM by the power plant need to be viewed seriously. The EIA restricts itself to stating the predicted cumulative GLC to the winter season (study period). The entire exercise in the EIA report to predict impact during the operation phase is vitiated because of non-consideration of all pollutants in the exhaust, modelling to assess GLC during all seasons and the failure to consider the impact of these pollutants on the environment.

145. The EIA report is silent on the requirement of water for cooling purposes. Though at chapter 2D a passing reference has been made to an air cooled system, no details of how this system is expected to work for a 450 MW thermal power plant have been provided. In the event the power plant requires water for cooling purposes, the drawal of water from the biodiversity rich coastal waters have to be considered- the entrainment and entrapment impacts due to drawal would be significant. The discharge of hot water into these sensitive coastal waters would have a serious impact on marine biodiversity. The present clearance does not empower the 2nd respondent to use water for cooling purposes since the same has not been assessed in the EIA report.

Therefore, the EIA report has not comprehensively assessed the impacts of the proposed thermal power station especially in light of its sensitive environmental

setting. The 1st Respondent ought not to have accepted the statements of the 2nd respondent as gospel truth and granted the impugned clearance.

No cumulative Impact Assessment

146. The EAC required the 2nd respondent to address in the EIA, the cumulative impact of the project. The TORs issued specifically mandated this – ToR A(xiii), B(ii), C (iii), D (xxxviii) and finally vide special condition (1), a clear unambiguous direction was issued that the “Cumulative Impact Assessment of all above proposed four sectors (ICTT, Greenfield International Airport, Township and Area Development and 450 MVA Gas and Solar based power plant) to be undertaken keeping in focus ecological and environmental impacts on Great Nicobar Island.”

147. However, the EIA report does not address this ToR at all and the cumulative impact of these various components on the carrying capacity of the island, its ecology has not been assessed at all. The cumulative environmental impacts and impacts on ecology remain unassessed. The impugned EC has been issued without consideration of this aspect. The EC is liable to be quashed on this ground as well.

Risk assessment and disaster management plan is inadequate and flawed

148. It is submitted that the separate “Disaster Management Plan” DMP plan submitted by the 2nd respondent purportedly covers all the sectors of the proposed project – i.e port, airport, township, power plant. The risk assessment for the port (ICTT) is limited to HSD handling (page 2-12) and oil spill (page 12-17). A careful reading of the portion titled “Oil spill contingency plant (sic)” is generic and not based on any modelling of the conditions in the proposed project site and expected traffic. The biodiversity and ecological significance of the area has also not been

taken into account. It is shocking that this report has been accepted by the MoEF & CC.

149. Pages 18-45 pertain to the airport which does not form part of the impugned clearance and hence are irrelevant for the present purposes. Pages 46 – 70 pertain to risk assessment of the proposed thermal power plant – which is limited to fire hazards associated with LNG usage at the plant.

150. The disaster management plan from page 70 – 86 is bereft of particulars. It does not even deal with all the kinds of disasters mentioned in the DMP at page 70 of the report. It is submitted that the EAC has utterly failed in its duty in not even discussing the merits of the risk assessment and disaster management plan submitted by the 2nd respondent.

151. Further, this report does not form part of the EIA report and was not available at the time of public hearing. This is a serious violation and defeats the very purpose of the public hearing. The people were denied of an opportunity to read and comment on the most important chapter of the EIA that pertains to their safety.

152. A copy of this report as filed by the 2nd respondent is annexed as **Annexure A-46**. None of the figures, maps and diagrams in the report are legible. Uploading such documents makes a mockery of the process. The EAC would not have been able to read and understand the report in its present form. However, the impugned EC has been granted based on this report. Risk assessment and disaster management plan is

inadequate and flawed and ought to have been rejected by the 1st respondent.

Failure to assess impact on the Shompens and Nicobarese communities

153. It is submitted that the impact of the project on the tribal communities in the project area has not been adequately addressed.

154. The Great Nicobar Island is home to the Shompen and Nicobarese Scheduled Tribes. The Shompen are classified as a Particularly Vulnerable Tribal Group by the Ministry of Tribal Affairs. According to the 2011 census of the Government of India, their population is just about 300 individuals. They are hunter-gatherers and have a nomadic existence. This puts them in a very vulnerable position against external influence. The Nicobarese have been classified as Scheduled Tribes. During the Tsunami that hit the Indian Ocean in 2004, this community was greatly affected and was shifted into newer settlements, closer to the administrative hub of the Great Nicobar Island.

155. Prior to the enactment of the Forest Rights Act, owing to the unique position of the Shompen and the Nicobarese and other tribal communities, the islands have been protected as a special territory under Article 240 of the Indian Constitution, regulated by The Andaman and Nicobar Islands (Protection Of Aboriginal Tribes) Regulation 1956, Amended in 2012 which states that any industrial or tourist activity on certain parts of the islands are to be strictly regulated by the administration to safeguard the interests of the indigenous communities that belong to the islands.

156. It is submitted that the impact of this project on the tribal population and their lands has been grossly mis-represented and their involvement in the public consultations have been compromised. The said project threatens the very existence of these communities and is against the special policy on the Shompen tribes dated 22.05.2015 titled "**Policy on Shompen Tribe of Great Nicobar Island**" of the Directorate of Tribal Welfare of the Andaman and Nicobar Administration.

157. The terms of Reference particularly provides for Special Conditions:

"It should be ensured that tribes such as Shompen and Nicobarese and anthropological organizations well versed in communication with and involved in welfare of Shompen and Nicobarese are adequately represented in the Public Hearing. Details of the same to be provided in EIA-EMP of all above four sectors."

It is submitted that no anthropological organization besides the AAJVS which is a welfare organization was involved in the public hearing process. It was pointless to bring the four Shompen people from New Chingenh when it is well understood that they do not follow Hindi, and have no idea what the proposed project is. In fact, just in order to tick boxes, the project proponent has done a disservice to the Shompen people by insisting them to be in a room full of people during the 3rd wave of covid.

158. The impugned clearance in Condition 1 states:

"The project activities shall not disturb Shompen tribe and their habitations. Clear demarcation of the land shall be done for specific purpose of land use in the vicinity of project area such that habitations of the tribal shall not be intervene. Budgetary provisions for the same shall be made in the EMP report and expenditure in

this regard shall be maintained on records. For the protection and safety purpose of community, security & surveillance mechanism shall be in place with geofencing cum surveillance towers nearby Tribal settlements. All the considerations will be undertaken by Department of Tribal Welfare(DTW) as per the Andaman and Nicobar Islands (Protection of aboriginal Tribes) Regulation, 1956. (Commonly known as PAT Regulation), Policy on Shompen Tribes. Accordingly, the Committee suggested that a detailed proposal for 50 years along with budgetary provisions shall be developed by Department of Tribal Welfare (DTW) and submitted to the PP. The Committee direct PP for the release the first 10 years budget payment to DTW within three months from the grant of EC and CRZ clearance to undertake immediate work and to undertake the detailed baseline documentation and further monitoring of the same during entire implementation phase of the holistic development plan. Accordingly, the Committee informed PP to revise the EMP provisions”.

159.It is thus evident that NO comprehensive study of the impact of the project on these communities has been done and even a 50 year proposal is invited from the Department of Tribal Welfare only post the issuance of the impugned clearance. This negates the very basis of PRIOR impact assessment.

160.It is submitted that several researchers and experts have sent representations critiquing the manner in which the issues relating to the impact of the project on the tribal communities has been carelessly addressed in the impact assessment reports. Some of these concerns from these representations are extracted below:

- i. The report says that there will not be any disturbance to Shompen Tribes as the Shompens stay upstream of the Galathea river (C4A-7). Firstly, the Shompens are a nomadic tribe, they do not stay at one place. They are also known to frequently fish in the Galathea river. The impact of the port will be reflected on the river ecology and might lead to introduction of invasive fish, hazardous wastes, oil and other pollutants making Galathea, an important source of food and water for the Shompens, dangerous for them. Any diseases arising due to consumption of contaminated fish and water will not be detected in the Shompens so easily and immediately, and without a proper impact assessment, giving clearance to the proposed port is violative of their rights.
- ii. The power project site is the nearest site to the Shompen habitat compared to any other project (C4D-110). The Shompen often use the site on the Galathea river for drinking water and even fishing. The construction phase with large number of labourers and limited project management, it will be difficult to keep a check on the workers coming in contact with the Shompens. This will make the Shompens prone to disease transmission, exposure to addictive substances, mockery and exploitation.
- iii. At no point under mitigation measures is there a mention of a programme or a workshop to sensitize these workers before they are brought into the island, something which the currently floating population of GNI also needs.
- iv. The report states that the Nicobarese have assimilated themselves (C4D-111) and based on this very flawed view there is no assessment or mitigation of any project activity on the Nicobarese. The Nicobarese are a heterogenous community with different dialects used even on the same island. There are parts of Great

Nicobar where the Nicobarese still practice their traditional way of life and are wary of any outsiders mingling with them. The tsunami of 2004, exposed the Nicobarese to living close to mainland settlers where they were subject to ridicule and judgement.

- v. It is submitted that there have been detailed representations on this issue from various groups that were submitted to the EAC even prior to the public hearing. However, the same has not been effectively addressed.
- vi. Permanent exclusion of Nicobarese/Shompen families from pre-tsunami Chingen village against their consultation and desire to relocate to this village.
- vii. Degradation of natural resources used by Kokeon sub-group of Shompens which could result in health deterioration and lack of optimal nourishment over time
- viii. Heightened exposure of Shompens of Kokeon, Re-pakouo and Buij-yae sub-groups to non-tribals and thus, to alien diseases and culture.
- ix. Erosion of 'place identity', 'place attachment' and loss of tribal identity among Shompen of southern sub group.
- x. Serious loss of pharmacological, ethnobiological and religious heritage among Shompen/Nicobarese
 - i. Loss of confidence in government and administrative policies.

Copies of these representations are filed as **Annexure A47**.

161. It is submitted that representation from a group of eminent Anthropologists including representatives from the Indian Anthropological Association states as follows:

"Since natural resources used by both tribes are heterogeneously distributed, procurement of land/forest and alteration of any portion of

ancestral land is equivalent to permanently denying access to specific resources harbored by the land. Moreover, resource bases maintained by the tribes will be permanently lost if portions of their range are altered and made inaccessible. Even if portions of their ancestral land are not under current usage, these areas should be available for revival of local ecology and resource base for future usage by the two tribes. However, large-scale construction projects within 1-2 km of the known temporary settlements to their ancestral and foraging land will interfere with their traditional lifestyle and degrade their natural resources. These construction activities include large-scale 'deforestation (of forests that are 65-145 million years old, Cretaceous era), blasting, earth movement and excavation' and understandably, 'noise, air and dust emissions during construction' and 'fugitive emissions of Liquefied Natural Gas (LNG), stack emissions of NOx from LNG, generation of effluents and sludge from treatments plants, clarifier sludge, regeneration waste, tube settler sludge, etc.' during operation'. Such catastrophic transmutation of the existing landscape will render the natural resources of the entire island unusable and tip them beyond recovery. These factors will further exacerbate existing issues of limited population growth, malnutrition, malnourishment (which is already noted among Shompen women), high infant mortality, low birth rate (as a result of low fertility rate), low genetic diversity (due to high inbreeding) and other associated irreversible and detrimental cultural changes and subsequently, perceptions towards non-tribals. If no intervention is made, the Shompens will be gradually pushed towards the same fate as that of the Andamanese and the Onges in Andaman.

The environmental impact assessment (EIA) report (Figure 2) is self-contradictory with regard to the baseline information it provides about the tribal communities in GNI, does not refer to any published anthropological literature and is bereft of specialized anthropological knowledge indispensable for offering mitigation measures. For example, the EIA document mentions that the 'Kokeon Shompens use the Galathea river for drinking water and fishing' and 'such activities are restricted to upstream of the river' and later, denies that the Shompen ever use Galathea river for fishing.

The entire EIA document mentions the Shompen Policy (2015) and the Andaman and Nicobar Protection of Aboriginal Tribes Regulation (ANPATR, 1956) just twice and fails to analyze and integrate it in its assessments and suggestions in the spirit of preservation of the tribe that it is supposed to.

Unfortunately, in Appendix X a letter from the Directorate of Tribal Welfare (Figure 2), Andaman and Nicobar Administration simultaneously assures that 'the right of the tribal shall be well protected and taken care by the department' based on existing laws and undertakes that 'whenever any exemption from the existing regulations/policies/law of the land are required to be provided for the execution of the project (Holistic development of Great Nicobar Islands), this Directorate will seek required exemptions(s) from the competent authority to that effect'. Nowhere, consultation and socio-scientific studies is emphasized in the Directorate's note for the project."

Copy of the representation from the representatives of the Indian Anthropological association is produced as **Annexure A-48**, relevant

extracts from the EIA report are produced as **Annexure A-49**, copy of the letter at Appendix X is produced as **Annexure A-50**.

162. It is therefore submitted that the impugned EC is liable to be quashed for its complete lack of application of mind on this very important aspect concerning the indigenous people of the islands.

Violations under the Forest Rights Act, 2006 have not been considered

163. It is submitted that the Central Government recognised and vested forest rights in the forest dwellers with the notification of Forest Rights Act, 2006" notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act' [Sec.4(1) of FRA].

164. Amongst the forest rights provided in the law in Sec.3, of specific import is Sec.3(1)(j) under which all the rights which are recognised under the Andaman and Nicobar Islands (Protection of Aboriginal Tribes Regulation), 1956 stands recognised and vested on the eligible forest dwelling Scheduled Tribes; in this case the Shompens of Great Nicobar Islands covering an area of 853.19 sq km.

165. This is so as any forest rights recognised by any law of the State or UT is a right to be recognised under FRA. In addition, this designated Tribal Reserve of the Shompens, having been notified also as PVTG, have an additional claim to the Reserve which is their customary habitat [Sec.2(h)] over which they have habitat rights [Sec.3(1)(e)].

166.This also constitutes their customary common forest land within the traditional or customary boundaries which is their 'Community Forest Resource' [as defined under Sec.2], a right under Sec.3(1)(i). This Tribal Reserve squarely constitutes 3 very specific rights under FRA. The Shompens are the legally empowered authority to protect, preserve, regulate and manage this Tribal Reserve of 853.19 sq km.

167.It is also a violation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), 1989 as amended in 2016 which recognises interference with rights including rights over forest (as defined under Forest Rights Act), land and water, [Sec.3(1)(g)] as an atrocity in addition to wrongful occupation and dispossession of land, [Sec.3(1)(g)] and obstruction of rights to common property resources [Sec.3(1)(za)(A)].

168.In the affidavit filed by the A & N Islands UT administration on 13 April 2018 in WP(C) 50 of 2008 Wildlife First and Others v Union of India and Others before the Hon'ble Supreme Court of India, it is categorically stated and assured to the Supreme Court that-

"The Andaman and Nicobar administration has notified the Policy for Shompens of Great Nicobar Island on 22.05.2015...prepared in consultation with the subject experts and the Expert Committee of Ministry of the Tribal Affairs, Government of India." That "an area of 853.19 sq km of Great Nicobar Island has been declared as Tribal Reserve under The Andaman and Nicobar Islands (Protection of Aboriginal Tribes Regulation), 1956" (Para 2 iv, p. 8).

"Where the tribal communities enjoy unfettered right of meeting their day-to-day requirement for their sustenance and transfer,

acquisition etc of land in Tribal Reserved areas are strictly prohibited. The amendment brought out in the said Regulation in the year 2012 and 2013 further provides for declaration of Buffer Zone where any commercial/tourism activity is strictly prohibited and the Regulation provides for imposition of penalty for any...unauthorised entry into the tribal reserve areas." (Para 3, p.9).

"Thus, the interest of the Scheduled Tribes in the Union Territory of Andaman and Nicobar Islands has been fully protected by said Regulation of 1956." (Para 4, p. 10).

169. With regard to the implementation of FRA, the said affidavit confirms that

"...Since their interests are fully protected under the said Regulation by exclusively preserving the area for them in which they enjoy unfettered rights to use forest products for their bonafide use, so no claim as such is there for settlement under the Scheduled Tribes and Other Traditional Forest Dwellers (Recongnition of Forest Rights) Act 2006" (Tabular Statement at p. 10-11, serial number (i)).

170. It is submitted that the location of the present project is in direct contravention to the stand of the A&N administration and in violation of the Forest Rights Act, 2006. A copy of this affidavit is produced as **Annexure A-51.**

EIA- Consultant – lack of accreditation and competence

171.It is submitted that the entire EC process has been vitiated due to illegalities in the appointment of the consultant, their lack of accreditation on the relevant dates and subject matter competence.

Appointment of consultant

172.It is submitted that it is the responsibility of the Project Proponent to appoint a qualified and accredited consultant to carry out the requisite studies and conduct the impact assessment reports that required to be made available prior to the public hearing.

173.In the present case, the consultant has not been appointed by the proponent, but instead by NITI Aayog. The same constitutes an important violation since the law requires the proponent to give an undertaking that they are responsible for the authenticity of the EIA report, the data presented in the same etc. With respect to the subject project, the consultant VIMTA Labs have been appointed by AECOM, who in turn has been appointed by NITI Aayog. Hence it is unclear as to which entity ought to be held responsible for the final EIA report and contents thereof. ZSI has also been appointed by AECOM.

174.It is therefore submitted that all the studies and reports prepared by these consultants are liable to be rejected on this ground and the same ought not to have been the basis for any kind of decision making.

Accreditation of Consultant

175.It is submitted that only accredited consultants can prepare EIA reports (please see clause 13 of EIA Notification). Such accreditation must be available at the time of preparation of the EIA report. Chapter 12 of the

EIA report regarding disclosure of consultant is produced as **Annexure A-52.**

176. In the instant case the accreditation of the EIA Consultant was valid only upto November 2021. It is clear that the draft EIA report was submitted for the public hearing in December, 2021 at which point the consultant did not have the requisite accreditation.

177. It is submitted that the EAC ought to have noticed this essential fact and returned the EIA report directing the same to be prepared by accredited consultants; however they have failed to do so in the present case rendering the process illegal.

178. The issue regarding the requirement of the EIA report to be prepared by an accredited consultant was considered by this Hon'ble Tribunal in **Sreeranganathan K.P vs. Union of India vide judgement dated 28.05.2014** where the issue regarding the validity of an EIA report prepared by an unaccredited consultant was considered and the Hon'ble Tribunal held at para 152 that the consultant who did not hold a valid accreditation of the category of projects sought to be evaluated could not have prepared the EIA report and appeared before the EAC in respect of the said project.

179. This Hon'ble Tribunal in **K. Saravanan Vs. Tamil Nadu Polymer Park & anr (Appeal 11 of 2020, order dated 31.05.2022)** held that an unaccredited consultant is not entitled to carry out EIA study (See para 59 @ page 49 of the judgment).

Competence of agencies involved in the preparation EIA report/studies

Wildlife Institute of India

180. The WII has not conducted any studies on the Leatherback Turtle and is not an expert on the same and competent to opine on the impact of the project on the turtles. The WII report annexed as part of the final EIA report concludes by acknowledging that the 'WII has very limited expertise to conduct EIA study covering all aspects of the ToR provided by EAC or MoEFCC'.

181. On the other hand, there are several other references indicating to threatened status of the turtle habitats in the islands including the MoEFCC's own Marine Turtle Action Plan which lists many places here as important including Galathea bay where the port is coming up. Chapter published by **Mathur and Padalia** (2010) shows the inadequacy of protected area in ANI and how several endangered and vulnerable biodiversity is outside the protected area network in ANI. Additionally, his analyses show the large extent of high-density wet evergreen forest that features in the proposed project area. WII is also not an accredited EIA consultant. WII ought not to have suggested any site. They ought to have provided a report on the ecological sensitivity of various sites – they have no competence to certify whether location of the subject port at Galathea bay is justified. A copy of the study is filed as **Annexure A-53**.

Zoological Survey of India

182. AECOM on 14.12.2020 engaged the Zoological survey of India to undertake 'Rapid Environmental Impact Assessment studies on Marine

Ecology for the Master Plan of Development of Great Nicobar Island' to fulfill the requirement of Environmental and CRZ clearance. ZSI is not an accredited consultant and they have no competence to prepare EIA reports. ZSI's stated expertise is only in providing inputs on floral and faunal diversity. The impact assessment report prepared by them ought to be rejected.

183.The ZSI has been entrusted with the task of planning the coral transplantation which comes under the ambit of ecosystem restoration which is far removed from ZSI's mandate Coral transplantation is being suggested to be executed by ZSI, whose sole publication (Short Communication) on the subject is not in a specialized journal and is based only on a single article, with just 2 relevant citations, one of which is an opinion piece.

Public Consultation vitiated

184.It is submitted that the public hearing for the project was not conducted in accordance with the mandate and procedure laid down under the EIA Notification, 2006 and Appendix IV of the same. The public hearing was conducted during the third wave of the COVID-19 pandemic and was held in complete violation of several rules laid down by the administration including those relating to large gatherings, home isolation for 7 days and social distancing norms.The public hearing process suffers from the following illegalities which go to the root of the process.

Notice of public hearing:

185.The notice of public hearing was published on 26.12.2021 in the Daily Telegram. The same is produced along with a copy of the COVID guidelines as **Annexure A-54**.

It is submitted that the EIA Notification in Appendix IV, envisages that there may be remote places that are part of the project affected areas where newspapers may not reach. In such cases information to be given through beating of drums or announcement on radio/television. In the present case, no information is available as to the manner and the language in which the public hearing was advertised in the 9 villages.

Crucial documents necessary for decision making were unavailable in the public domain at the time of the public hearing:

186. According to 2.1 & 2.2 of Appendix IV, the hard copy and soft copy of draft EIA report and executive summary in English as well as vernacular should be submitted by the Proponent. It is submitted that there can be effective participation in the public hearing by affected individuals and others only if all the relevant documents and studies relied on by the EAC are made available. In the present case, several important documents including studies and reports were not available in the public domain, thereby affecting proper participation. The following were not available in the public domain (illustrative list)

- (i) Legible copy of draft EIA was uploaded only a few days before the public hearing (link shared only on 22.01.2022).
- (ii) Several Maps, diagrams, figures in the draft EIA were not legible or clear – they were unintelligible.
- (iii) Plan prepared by WII for 'Conservation & Management Plan of Salt Water Crocodile (*Crocodylus porosus*) in Great Nicobar Island', other plans prepared for Corals, mangroves and the Megapode were also not available.
- (iv) The 'masterplan' was not available.

- (v) The report of mathematical modelling prepared by Indomer Hydraulics used for various predictions in the report was not a part of the draft EIA
- (vi) The executive summary was only available in Hindi and English. Hindi is not the only vernacular language of the island and many mainland settlers and Nicobarese people do not read and follow either Hindi or English. The executive summary did not contain information pertaining to the impact of the project and is incapable of informing the people of the proposed project's impacts.

Venue of public hearing:

187. According to 1.0 of Appendix IV, the public hearing shall be arranged in a transparent manner ensuring widest possible public participation **at the project site or in its close proximity**. In case of the present project, where the extent of area involved is over 166.10 square kilometers and the same affects over 09 villages, conduct of public hearing at a single venue renders the same ineffective.

Village	Distance from Campbell Bay community hall
Rajiv Nagar	2 km
Govind Nagar	5.5 km
New Chingenh	7.5 km
Gandhi Nagar	30.5 km
Joginder Nagar	13.5 km
Vijay Nagar	19.5 km
Laxmi Nagar	24.5 km
Shastri Nagar	35.5 km

188. The hearing was conducted in Campbell Bay town so the residents from farther villages like Jogindernagar, New Chingeh, Vijaynagar, Laxminagar and Shastrinagar (the last two being the ones to be relocated for the airport), were in a rush to leave to be able to catch the bus in time to return to their villages. In fact, no special provision for any kind of transport to the venue was made available. It is to be noted that the entire island has only two buses. It appears that the entire public hearing concluded in less than 2 hours. A lot of people had to leave the venue since the public transport available was at 13:15 hours and if the same was missed, no further transport would be available for over 2-3 hours. Many participants started to leave once the two presentations were over. No separate arrangements were made for these residents so they could reach their villages in case they wanted to stay back and ask questions and missed their bus in the process.

189. Many NGOs and organizations who are involved in work in Great Nicobar are based in Port Blair and mainland. No special ship arrangements were made to ensure effective participation of these persons. In fact, the ship frequency around the time of the public hearing was lower than usual due to the 3rd wave of the COVID pandemic.

Virtual access to the hearing denied:

190. It can also be seen from the minutes of the public hearing that there were requests made for a video conferencing link for participation in the public hearing. However, the same could not be provided citing connectivity issues. Hence the participation of several individuals was affected. Minutes of the public hearing is produced as **Annexure A-55**.

No special efforts were made to consult the Shompens and Nicobarese:

191. The Terms of Reference prescribes the following as a Special Condition No. 3:

"It should be ensured that tribes such as Shompen and Nicobarese and anthropological organisations well versed in communication with and involved in welfare of Shompen and Nicobarese are adequately represented in the Public Hearing. Details of the same to be provided in EIA-EMP of all above four sectors."

192. However, no special efforts were made to consult the members of this community. A letter dated 28.12.2021 has been addressed by the Andaman and Nicobar Pollution Control Committee to the Deputy Commissioner, Nicobar and the President of the Tribal Council Office wherein reference is made to the terms of reference regarding involvement of Shompens. Hence necessary action has been sought to ensure effective participation and communication with members of the Shompen and Nicobarese tribes during the public hearing. However, a mere perusal of the minutes would demonstrate that no such effort was made. A copy of the letter is **Annexure A-56**.

193. Further, the draft EIA and the executive summary were only available in Hindi and English. There are many older settlers from Kerala, Tamil Nadu, Andhra Pradesh who cannot read Hindi/English. In addition to that, many Nicobarese have recently learnt to read Hindi and English and cannot effectively make sense of a technical document like a draft EIA. No efforts were made to translate the summary in Nicobarese language or have someone explain it to them.

The conduct of the public hearing

194. The appellant reliably learns that there was no anthropologist or any other person to represent the Shompens. It is submitted that no anthropological organization besides the AAJVS which is a welfare organization was involved in the public hearing process. It was pointless to bring the four Shompen people from New Chingenh when it is well understood that they do not follow Hindi, and have no idea what the proposed project is.

195. The minutes of the hearing were not read at the end of the meeting, and it is submitted that the minutes that were finally signed were not the "agreed minutes" after reading out the entire proceeding in vernacular. In fact the minutes of the public hearing is not available in vernacular till date and it appears to have been recorded only in English, a language completely alien to most of the affected persons. The public hearing video does not indicate that due process was followed.

Misrepresentations and false statements during the Public Hearing

196. It is submitted that a complete review of the video recorded during the public hearing revealed that several false and mis-leading statements were made during the public hearing.

197. Some of them are illustrated below:

- i. "We have included all environmental issues in the report. All rules have been followed in doing this." (VTS-01-1, 08:04)*

It is contended by the appellant however that many studies were yet to be conducted and several sections of the report needed more work and several crucial environmental issues like impact on

shore-line, sea level rise, risks from earthquakes and cyclones, carrying capacity of the island, etc. were not discussed in the report.

- ii. No parts of the project fall within the National Parks or their Eco-sensitive zones (VTS-01-1, 20:48 - 21:10)*

It is contended by the appellant that this information is false. Some part falls on the ESZ of the Galathea NP and the township falls within the ESZ of the Campbell bay NP. Only draft Notifications of the proposed ESZ have been issued till date and filed along with the EIA report. As on date, the ESZ is 10 KM as mandated by the orders of the Hon'ble Supreme Court. In fact, it is seen that the proposed project areas fall within the 1 km mandatory ESZ as per the Hon'ble Supreme Court's order dated 03.06.2022 in W.P. 202 of 1995. The admitted distance of the ICTT from the Galathea NP is 0.5 km North, the power plant is 0.3 km north and the township is 0.3 km west.

- iii. We have identified the areas within the project site where there are corals, we will keep development away from those areas. (VTS-01-1, 20:48 - 21:10)*

It is contended by the appellant the ZSI report said there are no corals reported from the site and yet in the 297th Minutes of the EAC meeting it was mentioned that 10 hectares of coral reef comprising of 20668 Coral colonies will be impacted out of which approximately 16150 colonies will be translocated. The map in the ZSI report on corals surveyed include the proposed port area.

- iv. We will keep all development away from the areas where there are Megapodes (VTS-01-1, 23:40 - 23:47)*

It should be noted that the site of the port as per the ZSI report attached in the EIA report made a mention of 14 active mounds of the Megapode and the 306th Minutes of the EAC meeting mentions that as per the report submitted by SACON there are 51 nests located on the site of the project of which 30 will be permanently damaged.

- v. Endangered Leatherback turtle visit to the west of Galathea bay – so we haven't included that area under development and have declared it a no-construction zone. (VTS-01-1, 23:48 - 24: 11)*

There are reports of nesting on the eastern flank of Galathea Bay. Besides, due the reduction in the approach route of the bay area, turtles will not be able to reach the beaches on either of the flanks on the eastern and western sides of Galathea Bay.

- vi. Forest areas will not be developed. (VTS-01-3, 00:05)*

It is evident that 130.75sqkm of forest is going to be diverted for non-forestry purposes.

- vii. We are only de-notifying those areas where tribals don't live. (VTS-01-3, 15:45 - 17:08)*

It should be noted that a group of Shompens live in the areas proposed for the port, port logistics and institutional area. The Nicobarese of erstwhile Chingenh village have their coconut

plantations there too which they visit sometimes. In addition to that, they have clearly stated that they wish to relocate to their pre-tsunami settlements which is the location where the port logistics, the power plant, institutional and coastal tourism areas has been planned.

Thus, the entire public hearing process has been vitiated and it has been nothing but an empty formality.

198. It is submitted that the people's right to participate in environmental decision making is a fundamental part of environmental good governance. Principle 10 of the Rio declaration in 1992 recognised and crystallises this facet unequivocally.

"Principle 10 - Environmental issues are best handled with the participation of all concerned citizens at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided".

199. It is submitted that the Hon'ble Supreme Court in **Hanuman Laxman Aroskar Vs Union of India** (2019 SCC Online SC 441) has recognised the importance of public hearing in the EC process and has held

"The importance of public consultation is underscored by the 2006 notification. Public consultation, as it states, is "the process by

which the concerns of local affected persons and others who have a plausible stake in the environmental impacts of the project or activity are ascertained with a view to take into account all the material concerns in the project or activity design as appropriate". This postulates two elements. They have both, an intrinsic and an instrumental character. The intrinsic character of public consultation is that there is a value in seeking the views of those in the local area as well as beyond, who have a plausible stake in the project or activity. Public consultation is a process which is designed to hear the voices of those communities which would be affected by the activity. They may be affected in terms of the air which they breathe, the water which they drink or use to irrigate their lands, the disruption of local habitats, and the denudation of environmental eco-systems which define their existence and sustain their livelihoods.

Underlying public consultation is the important constitutional value that decisions which affect the lives of individuals must, in a system of democratic governance, factor in their concerns which have been expressed after obtaining full knowledge of a project and its potential environmental effects.

Apart from the intrinsic value of public consultation, it serves an instrumental function as well. The purpose of ascertaining the views of stakeholders, is to account for all the material concerns in the design of the proposed project or activity."

EC vitiated because Studies/ reports and information absent in DRAFT EIA was presented in the Final EIA and along with ADS to the EAC and comments were not considered

200. It is a matter of record that various reputed associations and individuals submitted comments on the draft EIA at the time of public hearing. The 2nd respondent's consultant, while responding to these submissions/ comments, has not responded to the issues raised but has provided replies that are factually incorrect, misleading and defeated the very purpose of this exercise. The EAC has also failed to notice both the objections / comments received and the PP's responses. The failure to consider and appraise the comments received and the EIA in light of the comments received vitiates the process. A table containing certain comments/ objections sent, the 2nd respondent's reply and comments of the appellant is filed as **Annexure A-57**.

201. It is submitted that the EIA Notification requires that a complete EIA be prepared based on ToR issued and be placed for public hearing. This EIA report is referred to as the draft EIA. Once public hearing is completed, this draft EIA is revised to address concerns raised in the public hearing and submit the final EIA report.

Clause 7 (III) (vii) of the EIA Notification, 2006 reads thus,

"vii. After completion of the public consultation, the applicant shall address all the material environmental concerns expressed during this process, and make appropriate changes in the draft EIA and EMP. The final EIA report, so prepared, shall be submitted by the applicant to the concerned regulatory authority for appraisal. The applicant may alternatively submit a supplementary report to draft EIA and EMP addressing all the concerns expressed during the public consultation."

202.It is therefore clear that no other change, except portions to address concerns raised during public hearing can be made to the Draft EIA Report. The importance placed on public hearing in the process has been recognised by courts time and again (please see para 116,117,119 of **Hanuman Laxman Aroskar Vs Union of India** (2019 SCC Online SC 441), para 33 of S. **Nandakumar vs The Secretary To Government Of Tamil Nadu** (Madras High court, Order dated 22 April, 2010), **Samarth Trust vs. Union of India** (Delhi High Court, W.P. 9317 of 2009, Order dated 28.05.2010).

203.However, in the instant case, new information was submitted in the final EIA report along with numerous new tables, figures, diagrams and maps. Several new studies / reports were also submitted to the EAC directly along with the ADS submitted on 09.05.2022 and 19.08.2022. It is submitted that this process is illegal.

204.The course adopted in this instant case would render the public hearing otiose. If a new EIA report or studies are furnished, then the MoEF & CC ought to have returned the same to be placed for public hearing and thereafter considered the proposal. If this modus operandi is approved, then project proponents would frame EIAs suppressing vital facts during public hearing and then submit a different report for appraisal - disclosing information that otherwise would have had to be disclosed during public hearing. Details of information missing in the draft EIA but available in the final EIA is filed as **Annexure A-58**.

205.It is submitted that this Hon'ble Tribunal in its judgment in Appeal 32 & 34 of 2020 dated 30.09.2022 has held that fresh public hearing based on the revised reports should be conducted.

Project appraisal contrary to the EIA Notification and OM dated 24.12.2010

206. It is submitted that the subject project from the stage of consideration for Terms of Reference (ToR) has been considered by the Expert Appraisal Committee (Infra -I). This is contrary to the EIA Notification, 2006 which mandates that projects be considered by the sectoral EAC constituted for that sector.

207. Paragraph 5 of the EIA Notification provides for the creation of Expert appraisal committees for the purpose of appraisal of projects covered by the Notification and appendix VI contains provisions regarding the composition of sectoral EACs.

208. The 1st respondent MoEF&CC has constituted a total of 9 Sector specific Expert appraisal committees and projects falling under specific entry of the schedule to the Notification are allocated to each EAC. For example, the Industry projects 1 EAC deals with projects covered under 2(b), 3 (a), 3 (b), 4 (b), 4 (c), 4 (f), 5 (i), 5 (k) of the schedule to the Notification while the Thermal EAC deals with projects under entry 1 (d) of the schedule to the Notification and so on.

209. The subject project comprises of the following projects

- a. International Container Transshipment Terminal (ICTT) – a port covered under entry 7 (e) of schedule to the EIA Notification
- b. Township & Area development - covered under entry 8 (b) of schedule to the EIA Notification
- c. 450 MVA Gas and Solar based power plant - covered under entry 1 (d) of schedule to the EIA Notification

d. Airport – covered under entry 7 (a) of schedule to the EIA Notification

210. It is submitted that according to information available on the 1st respondent's website, the Infra – I EAC has been constituted to deal with projects falling under entry 7 (b) – shipbreaking yards, 7 (c) – industrial estates, 7 (e) – Ports and harbours and 7 (f) – Highways. A copy of order dated 13.07.2020 reconstituting EAC Infra I is annexed as **Annexure A-59**. Composition of EACs dealing with projects covered in the impugned clearance is annexed as **Annexure A-60**.

211. As can be seen from the above order, except the ICTT, none of the other components of subject project fall under the remit of EAC infra – I. The appraisal of the concerned component of the project ought to have been by the concerned sectoral EAC and not by EAC infra I.

212. It is not as though the 1st respondent is ignorant of this mandatory requirement. In the EAC meetings where the subject project was discussed, the Infra – I EAC has invited the member secretaries of the concerned sectoral EACs (who are officers of the MoEF & CC) and in three of the meetings, a member of the EAC dealing with Infra – II and thermal plants was invited. However, this procedure itself is contrary to the EIA Notification, 2006. Inviting a specific member for one meeting or the member secretary of the concerned EAC does not equate consideration of the project and its appraisal by the concerned sectoral EAC.

213. It is also noted that the 1st respondent never envisaged a situation where such "interlinked" projects with multiple sectoral components would come up for consideration. The MoEF&CC specifically issued OM

dated 24.12.2010 prescribing the procedure for dealing with such projects. According to this OM,

- a. Such projects shall prepare a common EIA report covering the impact of each component in a comprehensive manner after obtaining ToR from each respective sector EAC.
- b. For the purpose of obtaining ToR, a separate application is to be submitted to each sector simultaneously giving full details.
- c. Each sector EAC will consider the project and issue ToR covering not only that sector but encompass the project as a whole.
- d. A common EIA report will have to be prepared and public hearing should be conducted.
- e. After Public hearing, the proposals for clearance for all sectors shall be submitted simultaneously.
- f. Respective EAC will consider the sector specific proposal and also consider the overall impact of the project.
- g. Once each respective sector EAC has considered and given their recommendation is made, it will be sent for the approval of the MoEF &CC.

214.As is evident from the procedure followed in the present case, the mandate of this OM has been ignored and violated. As a result of this, different components of the project have not been subjected to appraisal of the sector specific EAC having expertise in that sector and constituted specifically for that purpose. A copy of the OM dated 24.12.2010 is annexed as **Annexure A-61**.

215.It is submitted that this violation goes to the root of the matter and crucial aspects of the project's impact – such as lack of proper cumulative impact assessment or emission aspects from the proposed thermal plant

or siting issues have not even been discussed by the EAC that has recommended the project for clearance. Sector specific issues have not been considered. The impugned clearance is liable to set aside on this ground alone and the project has to be appraised strictly in accordance with the EIA Notification, 2006.

Lack of Application of mind and Appraisal by the EAC

216. It is submitted that the Terms of Reference for the project was considered by the EAC in its

- i. 258th meeting held on 17-18 March, 2021
- ii. 260th meeting held on 5-6th April, 2021.

217. It is relevant to note that the EAC in its 258th meeting deferred the project for want of information. In fact, the minutes of the meeting notes that the "***The required documents of the proposed project were not submitted by the proponent on time for its appraisal by the committee***".

218. It is submitted that the 260th meeting was conducted in less than 3 weeks from the 258th meeting. A perusal of the minutes of the meeting would indicate that the EAC noted as follows:

"The Committee notes that the site selection for the port component has been done keeping primarily the technical and financial viability in place. The environmental aspects were not given much weightage while selecting the site."

While the minutes indicate that the committee undertook detailed deliberations, no details of the same are provided.

219. It is submitted that after the public hearing on 27.01.2022, the project has been considered by the EAC in the following meetings.

- i. 293rd meeting of the EAC held on 24-25 March, 2022
- ii. 297th meeting of the EAC held on 24-25 May, 2022
- iii. 306th meeting of the EAC held on 23-24 August, 2022

220. In the 293rd meeting held on 24-25 March, 2022, the EAC merely deferred the proposal since once again, the Project Proponent had not submitted the necessary information and studies on time. The EAC noted ***“that the document submitted by the PP were received only 2 days before the EAC meeting and therefore members have sought some time to study the entire set of documents due to multiple components involved in the project. In view of this, the EAC deferred the proposal and informed to submit all relevant studies undertaken for preparation Page 2 of 29 of EIA-EMP.”***

221. In its 297th meeting held on 24-25 May, 2022, several additional information was sought by the EAC. Hence no proper deliberation of the impact was possible even at this stage. It is submitted that there is no record of the EAC even viewing the public hearing video. It is to be noted that the presentation in this meeting was done by both VIMTA Labs and AECOM. It is submitted that only VIMTA Labs is the appointed EIA consultant for the project. The EAC had specifically directed that the EIA consultant be independent of the master plan consultant.

222. In its 306th meeting held on 23-24th August, 2022, it is seen that the EAC's queries regarding an ecological evaluation of the port sites, impact on marine biodiversity etc remained unanswered. However, they proceed to recommend the project for grant of clearance with several

vague conditions and future plans. It is seen that the additional details sought by the EAC in its previous meeting was received only on 19th August, 2022, four days before the meeting. The EAC appears to have been carried away by the so-called studies done by premier institutes like WII, ZSI and SACON without deliberating properly on the contents of these documents. There is absolutely no discussion on these reports. The EAC had previously noticed that these reports had serious shortcomings – but these concerns appear to have been abandoned without reason.

223. It is ironic to note that the EAC finally concludes

"EAC also noted that there are several other endemic flora and fauna and impact of the project on these species is mostly unknown. The EAC noted the scale of impacts the proposed project may have both on flora and fauna of GNI and native populations, however, considering the strategic nature of the integrated project..."

224. There are no reasons available in the EAC minutes or the EC for the acceptance of the proposal based on the reports. The EAC has also failed to examine whether the issues raised at the Public Hearing have been addressed satisfactorily. Copies of the minutes of the EAC meetings listed above is **Annexure A-62-** and **Annexure A-66** respectively.

225. The complete lack of stated reasons in the minutes of the EAC and the impugned EC for the decision to accept the proposal and grant the impugned clearance, vitiates the entire proposal. Reasons are the crucial link between the decision and decision maker. The absence of reasoning and clear statements on why the EAC accepted certain reports or

explanations goes to the root of the matter and vitiates the entire proceeding. The EAC is an expert body entrusted with the solemn duty to scrutinise projects and they should speak in the manner of an expert. In the instant case, they have evidently failed to perform their duties under law.

226. A perusal of the impugned EC would make it abundantly clear that there are several studies that were required by the EAC to understand the full impact of the project on biodiversity that are yet to be completed and the EC has been granted in a hurry. The fact that studies on biodiversity impact assessment have been mandated after the issuance of clearance and after the commencement of construction proves that the EAC has abdicated its responsibility. No purpose is served in conducting studies after the commencement of construction. It is contrary to the fundamental principle of prior impact assessment and defeats the precautionary principle.

227. There are in fact six conditions requiring completion within 15 days of the grant of the clearance. It is unclear whether these conditions have been fulfilled and on the MoEF&CC website, there is no document to indicate that these have been complied with.

a) Leatherback Sea Turtle:

- WII need to revise proposal for 30 years along with budgetary provisions and implementation timeline and submitted to PP within 15 days of the grant of EC.
- WII is advised to revise the proposal and implementation plan within 15 days and send the same to EAC and MoEFCC for

record and to PP for release of first 10 years instalment within three months.

b) Nicobar Megapods:

SACON and WII shall submit two full proposals to PP with a copy to MoEFCC and EAC within 15 days of grant of EC and CRZ clearance.

c) Saltwater Crocodile:

WII and A&N Forest Department should revise the proposal with budget allocation and timeline and submit it to the PP with a copy to MoEFCC and EAC within 15 days from the grant of EC and CRZ clearance. (Page No. 10)

d) Impact on inter-tidal flora and fauna

The Committee suggested that a detailed proposal 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 along with budgetary provisions shall be developed by Zoological Survey of India (ZSI) and submitted to the PP with a copy to MoEFCC and EAC within 15 days of grant of EC and CRZ clearance.

e) Nicobar Macaque, Robber Crab and other endemic bird species of Great Nicobar:

For conservation of Nicobar Macaque, Robber Crab and other endemic bird species of Great Nicobar the Committee suggested that a detailed proposal consistent with the holistic development plan for GNI i.e. till the completion of the final phase of the same in the year 2052 along with budgetary provisions shall be developed by SACON and submitted to the PP with a copy to MoEFCC and EAC within 15 days of grant of EC and CRZ clearance.

228. It is submitted that the EC conditions themselves are demonstrative of the lack of application of mind of the 1st Respondent and the conditions do little to protect the ecology and biodiversity of the island.

229. To illustrate, under Point 16, the EC states that the total water demand for the operational phase of the project will be 160MLD and that approx. 2.5 sq km of area is identified for creation of water reservoirs for the same. No plans, studies or modelling is available for the creation of these water reservoirs and the EC has been granted in spite of this situation. The EC recommends that watershed studies and mathematical modelling will be carried out at the design stage. This defeats the purpose of having an EIA in the first place and vitiates the EC that has been granted by the MoEFCC.

230. The EC mentions at Point 18 that "***In-principle Approval/Stage-1 clearance has been granted to the 2nd respondent by the MoEF&CC vide letter no. 8-22/2020-FC dated 27th October 2022.***" It is important to note that the said Forest Clearance mentions that the FC is granted on the condition that "***The UT administration shall submit a detailed Compensatory Afforestation (CA) scheme along with the site suitability certificates and kml files of the proposed CA sites on non-notified forest land in the state of Haryana.***" This is in variance with the information provided in the final EIA report, which says on page C9-19 that the compensatory afforestation will be carried out in the state of Madhya Pradesh. Information provided in the final EIA report regarding CA is incorrect and the EIA is liable to be dismissed on said grounds.

231.The EC states in Point 27 that no noticeable change was seen to the shoreline "over a period of 5 years from 2015-2020". This is a very short sighted approach to a project that will itself be under construction for 30 years till 2052 and continue to operate for many decades beyond that. It is submitted that this region had experienced one of the biggest earthquakes and tsunamis in human history less than two decades ago in 2004. The southern portion of Great Nicobar Island where the port project is to be located experienced a permanent submergence of nearly 3-4 m on account of the earthquake. Evidence of this can be seen from the fact that the Light House at Indira Point, which earlier was well above the high tide line now stands permanently in the sea. Images of the same have been annexed in the Final EIA report itself on Page C1-15 and yet the implications of this have not been considered in the EIA report or in the EC.

232.In a submission dated 18 January 2021 made to the Andaman and Nicobar Pollution Control Committee for the Public Hearing Dr Janki Andharia and colleagues from the Tata Institute of Social Sciences, Mumbai make the following very important and pertinent remarks:

"The scientific evidence suggests that a proposed container terminal at a site which experiences about 44 earthquakes every year (444 earthquakes in the last 10 years) needs to be reconsidered. Should another major quake take place, the entire investment on infrastructure would be at risk and the resultant oil and chemical spill would create a major environmental disaster in an area that is renowned globally for its rich biodiversity, unrivalled on our planet.

It is also well known that the lighthouse at Indira Point, the southernmost tip of the Great Nicobar Island, which was on high

ground before the undersea earthquake of 2004, is now under water, indicating a land subsidence of about 3-4 m. ...

We hope due attention will be paid to this aspect of possible damage and destruction of national property that could be caused by future earthquakes, volcanic eruptions and tsunamis, especially when India has taken the lead in establishing a global Coalition of Disaster Resilient Infrastructure (CDRI)."

233. Great Nicobar, as is well known, regularly experiences earthquakes and this can again result in massive change in the configuration of the shoreline. To rely on an observation that shoreline has not changed for 5 years is deeply short-sighted and unscientific and raises serious questions on the reliability and scientific rigour of the final EIA report and the EC. It is evident from the final EIA report and the EC itself that these concerns have not been accounted for and makes the EIA and EC liable for dismissal.

234. The EC States in Point 35 that "***Parts of the proposed master plan for Ports which are falling within CRZ 1A and 1B areas... the same shall be excluded from the revised layout of the master plan***".

It is contended that this has not been done and the EC is vitiated on that account. The Western flank and the Eastern flank of the Galathea Bay are both marine turtle nesting sites and this has been documented in scientific reports over the years. The Western and Eastern flank of the beach are both marine turtle nesting sites and are CRZ 1A sites where port construction is not allowed.

235. From a scientific point of view, the nesting beach of a marine turtle is only part of its nesting habitat. The near shore waters that the turtles swim through to approach the beach are as important as the beach itself. Further adult turtles spend a lot of time in the near shore waters before coming ashore to lay eggs. Young hatchlings also spend a lot of time in near shore waters before they disperse into deeper waters. The port project seeks to enclose a majority of the near shore waters restricting access and creating large risks of pollution of the waters. The EIA report and the EC do not account for this aspect of the biology of the marine turtles.

236. The EC mentions in Point 39 that the project will employ 6939 persons directly and 10,408 persons indirectly by 2025 and 51,423 persons directly and 77,135 persons indirectly by 2052. It also states that "Generally, locals are employed by the contractor". This is a blatantly wrong and mis-leading statement in the EC. The total population of Great Nicobar Island today is about 8000 people and the island does not have enough people to provide combined direct and indirect employment to nearly 17000 people by 2025.

237. The project entails bringing in of thousands of outsiders to this island with serious consequences for the rich biodiversity, forests and the local settler and tribal communities.

Specific Conditions

238. With respect to all **Specific Conditions 1A to 1H (pgs 8-12 of the EC)**, it is stated that these are proposals and suggestions for scientific research on the said species and ecosystems of Great Nicobar Island.

239. It is submitted at best this amounts to a post-facto assessment and is of no value in the context of an Environmental Clearance that is supposed to ensure rare and threatened biodiversity is not damaged by the project. These research proposals will achieve nothing in protecting the biodiversity that will certainly be negatively impacted on account of the project related activities.

Question on the competence of the Project proponent for implementing this project:

240. Related to the above is the issue of the appropriateness of the respondent 2, the Andaman and Nicobar Islands Integrated Development Corporation (ANIIDCO) as the project proponent. Based on information available from the website of ANIIDCO (<https://aniidco.and.nic.in/about-anidco.php>) the following points need to be considered in the matter:

a. ANIIDCO (Andaman and Nicobar Islands Integrated Development Corporation Limited) was incorporated on 28th June 1988 under the Companies Act 1956

b. Activities of ANIIDCO include

- Trading of iron and steel, petroleum products, IMFL and milk.
- Megapode Resort, Megapode Camping Resort, and air-ticketing agency
- Financial assistance to industrial concerns.
- Infrastructure Development: Tourism and fisheries.

c. Share Capital

The authorized share capital of the company is Rs. 50 crores and paid up share capital is Rs. 10.97. The share capital of the company has been contributed by Industries, Fisheries and Animal Husbandry Department.

d. Financial Performance

The financial result for the company for last four years is as under:

Year	Turnover (Rs. in crores)	Profit (before tax) (Rs. in crores)
2018 – 19	379.15	43.17
2019 – 20	403.05	46.10
2020 – 21	303.60	26.41

241. It is evident from all the above that ANIIDCO has neither the financial, technical or managerial experience or capacity to implement or manage the said project that involves construction of a port, an airport, a power plant and a massive township with a proposed investment of Rs. 72,000 crores. This raises concerns on the financial viability of the project and concerns on safety. ANIIDCO as project proponent is not justifiable on any grounds and it is not understood how the EAC-Infra 1 and the 1st respondent have ignored this critical aspect in granting of the EC. It is contended that the ANIIDCO, the project proponent and Respondent 2 does not have a corporate environment policy till date.

Special Conditions XV AND XVI (Pg 15 Of The EC)

242. Special Condition XV states that no trees will be cut at one go. These will be done in phased manner and depending on the progress of the work on an annual basis. ... All trees which are exceptionally tall and old in age shall be safeguarded, as far as possible. A&NFD will mark all such trees and submit the species wise list to the Ministry and EAC and the regional office of MoEFCC before the infrastructure activities take place.

243. Special Condition XVI states that trees with nesting holes of endemic owls to be identified and geo-tagged with the help from SACON. Such

trees shall be safeguarded, as far as possible. It is evident that these conditions are meaningless and un-implementable. The text is worded in such a way that the project proponent can get away easily without implementing these conditions.

244. It is submitted that a comparison of the members present during the EAC meetings also indicates that there has been no consistency and continuity in the members of the EAC who have been evaluating and appraising this project and several members were co-opted for the final meeting of the EAC in August, 2022 when the said project has been approved. It is submitted that coopting a few members from the other sectoral EACs do not cure the fatal defect in the appraisal process. A comparison of members who have participated in each of the meetings will demonstrate that the entire process was reduced to a formality. It is also necessary to state that the member secretary of an EAC is an employee in the MOEF&CC and their presence does not mean that sectoral EAC experts were present.

245. The Hon'ble Supreme Court of India, more recently in the case of **Hanuman Laxman Aroskar Vs. Union of India (2019 Scc Online SC 441)** has held that

- the process of appraisal is defined to mean "a detailed scrutiny" by the EAC of the application and all other documents including the EIA report (para 126).
- The EAC is an expert body and "the reasons which are furnished by the EAC constitute a live-link between the processes and the outcome of its adjudicatory function. In the absence of cogent reasons, the process by its very nature, together with the outcome stands vitiated" (para 136).

- “the recommendations of the EAC furnish a guide to the MoEF&CC. Indeed the 2006 notification stipulates that the recommendations of the EAC would normally be accepted. Consequently, a failure of due process before the EAC as in the present case must lead to the invalidation of the EC” (para 138).

246. Thus, it is abundantly clear that the expert bodies in the present case did not apply their mind to the project, the anticipated environmental impacts etc. and the entire process suffers from non-application of mind.

Project has not obtained clearance under IPZ Notification 2011 – Ports are prohibited in CRZ IA – ecologically sensitive areas

247. It is submitted that the impugned EC and the EIA make reference to the ICRZ Notification, 2019. It is submitted that the respondents have failed to see that the ICRZ Notification, 2019 does not come into force until CZMPs under the Notification are prepared and Notified. Until then , the provisions of the IPZ, 2011 shall continue to operate.

248. Clause 5 (i) of the ICRZ Notification, 2019 reads thus,

“The Andaman and Nicobar administration shall revise or update their respective island coastal regulation zone plan (ICRZP) framed under IPZ Notification, 2011, as per provisions of this Notification and submit to the Ministry of Environment, Forest and Climate Change for approval at the earliest. All the project activities attracting the provisions of this Notification shall be required to be appraised as per the updated ICRZ Plans to this Notification. Until and unless the plans are so revised or updated, provisions of this Notification shall not come in force and the plans as per provisions of IPZ

Notification, 2011 shall continue to be followed for appraisal and CRZ clearance to such projects;

249. Only the draft CZMPs under the ICRZ Notification, 2019 have been published. The final maps have not been notified. Therefore, the applicable law for the appraisal of the proposal is the IPZ Notification, 2019. However, the clearance impugned refers to the ICRZ Notification, 2019, as does the appraisal process. This is a serious lapse and the only conclusion is that the project has not obtained clearance under the relevant law governing activities on the coast.

250. In any case, the entire clearance process is silent on the documents to be submitted for coastal regulation zone clearance or its consideration. The EAC meetings do not refer to it or appraise the project in light of the provisions and stipulations of the IPZ, 2011 or the ICRZ, 2019.

251. It is crucial to note that had the respondent properly applied its mind to the proposal in light of the applicable law, the subject port proposal is not permissible in the present location since it falls under I-A ecologically sensitive areas due to the admitted presence of coral reefs, turtle nesting grounds and nesting grounds of birds.

Destruction of corals prohibited

252. Clause 5 (i) of the IPZ, 2011 prohibits the destruction of corals; Clause 3 (i) of the ICRZ 2019 also prohibits the destruction of corals; Clause 5 (vi) also prohibits red category of industries (as prohibited under the Environment (Protection) Act, 1986 (29 of 1986) or the Air (Prevention

and Control of Pollution) Act, 1981 or the Water (Prevention and Control of Pollution) Act, 1974, as the case may be) within ten kilometres from ecologically sensitive areas.

CRZ - IA

253. Clause 3 (B) (1) (a) of IPZ 2011 specifies the areas that are ecologically sensitive and the geomorphological features which play a role in the maintaining the integrity of the coast.

254. Clause 3 (B) (1) (a) (ii) specifies coral reefs; (vii) turtle nesting grounds; (xi) nesting grounds of birds.

255. Similarly, even if one was to take the ICRZ 2019 Notification into account, identical stipulation is found in Clause 2 (ii) (a) (ii) Corals and coral reefs, (vii) Turtle nesting grounds; (xi) Nesting grounds of birds.

256. The presence of corals in the area where the port is proposed is an admitted fact. The ZSI report clearly establishes this fact and the impugned EC also discusses the removal of 10 hectares of corals. The nesting grounds of Megapode have also been marked and studies indicate location of nests on the coast. The fact that the area is an iconic nesting ground of the leatherback turtle and other turtle species is also not in dispute.

257. In fact, the report titled conservation and management plan of Saltwater crocodile in Great Nicobar Island dated 25.07.2022 by WII

contains a map of habitats of Saltwater crocodile as Figure.1 at page 8 of the report. It is seen from the map that the proposed port site as well as areas marked for the proposed project are recognised habitats of saltwater crocodiles.

258. Therefore, the area where the port is proposed is covered under CRZ IA – ecologically sensitive area. The 2nd respondent has played a fraud on the process by not disclosing these facts and the entire process of excluding CRZ IA areas from the layout, was limited to a few limited areas on the shore. The areas mentioned above have not been excluded.

Ports not permitted in CRZ IA areas

259. It is submitted that Clause D (1) (i) (a) of the IPZ 2011 reads thus,

1. (i) ICRZ-I,-

(a) no new construction shall be permitted in ICRZ-I except,-

(i) projects relating to Department of Atomic Energy;

(ii) pipelines, conveying systems including transmission lines;

(iii) facilities that are essential for activities permissible under ICRZ-I;

(iv) installation of weather radar for monitoring of cyclones movement and prediction by Indian Meteorological Department;

(v) construction of trans island sea link and without affecting the tidal flow of water, between LTL and HTL.

260. Corresponding provision in the ICRZ 2019 reads thus,

4. (I) (II)

Regulation of permissible activities in the ICRZ-I

ICRZ–IA.- These areas are ecologically most sensitive and generally no activities shall be permitted to be carried out in the ICRZ-I A areas, with following exceptions:

(a) Eco-tourism activities such as mangrove walks, tree huts, nature trails, etc., in identified stretches areas subject to such eco-tourism plan featuring in the approved ICRZ Plans as per this Notification, framed with due consultative process/ public hearing etc. and further subject to environmental safeguards and precautions related to the Ecologically Sensitive Areas, as enlisted in the ICRZ Plans.

(b) In the mangrove buffer, only such activities shall be permitted like laying of pipelines, transmission lines, conveyance systems/mechanisms and construction of road on stilts etc. that are required for public utilities.

(c) Construction of roads and roads on stilts, by way of reclamation in ICRZ-IA areas, shall be permitted only in exceptional cases for defence , strategic purposes and public utilities, subject to a detailed marine or terrestrial environment impact assessment or both, to be recommended by the Coastal Zone Management Authority (CZMA) and approved by the Ministry of Environment, Forest and Climate Change; and in case construction of such roads passes through mangrove areas or is likely to damage the mangroves, a minimum three times the mangrove area affected or destroyed or cut during the construction process shall be taken up for compensatory plantation of mangroves.

261. It is submitted that CRZ IA areas are kept free from most activities and only the few specified activities in the Notification are permitted as an exception. Ports and harbours are not one of the activities permitted in CRZ I A areas. The 1st respondent has failed to see this aspect and has granted the impugned clearance. Had the project properly been appraised under the CRZ laws, this issue might have been noticed.

Location of port is in violation of OM dated 3.11.2009

262. Further, the OM dated 3rd November, 2009 issued by the MoEF & CC on port siting unequivocally stipulates that "locations identified within 10 km on either side of the eco-sensitive areas categorized as Coastal Regulation Zone-I(i) and water bodies with high bio-diversity, shall not be considered for locating ports and harbours."

263. The fact that the waters off the coast of the Great Nicobar island are biodiversity rich is evidenced by the respondent's own reports. The fact that the project site itself is ICRZ IA further disqualifies the proposed site for the establishment of the port.

264. It is therefore submitted that the 1st respondent erred in granting clearance for the port at the subject location and the impugned clearance ought to be set aside.

No impact assessment under the Biological Diversity Act, 2002

265. It is further submitted that the project also requires an impact assessment under the Biological Diversity Act, 2002.

266.It is submitted that Section 36 (4) states, "***The Central Government shall undertake measures,- (i) wherever necessary, for assessment of environmental impact of that project which is likely to have adverse effect on biological diversity, with a view to avoid or minimize such effects and where appropriate provide for public participation in such assessment;***"

267.However, in the instant case, no measures have been taken for the assessment of impact on the biodiversity of one of the richest biodiversity hotspots in the world.

Project requires Wildlife Clearance:

268.It is submitted that some parts of the project falls on the Eco- Sensitive Zone of the Galathea NP and the township falls within the ESZ of the Campbell bay NP. Only draft notifications of the proposed ESZ have been issued till date and filed along with the EIA report. As on date, the ESZ is 10 KM as mandated by the orders of the Hon'ble Supreme Court.

269.The admitted distance of the ICTT from the Galathea NP is 0.5 km North, the power plant is 0.3 km north and the township is 0.3 km west.

270.In fact, it is seen that the proposed project areas fall within the 1 km mandatory ESZ as per the Hon'ble Supreme Court's order dated 03.06.2022 in W.P. 202 of 1995. The admitted distance of the ICTT from the Galathea NP is 0.5 km North, the power plant is 0.3 km north and the township is 0.3 km west. The Hon'ble Supreme Court also prohibits any construction in the ESZ.

271. All projects attracting the EIA Notification, 2006 requires mandatory prior clearance from the National Board for Wildlife. The 1st respondent has issued OMs from time to time on this aspect and the latest OM dated 16.07.2020 also states that projects located in the ESZ of protected areas require prior clearance from the NBWL. Copy of OMs are annexed as **Annexure A-67**, copy of the guidelines of February, 2011 is **annexure A-68** and the CPCB directions of March 2016 is **Annexure A-69**.

272. Hence it is submitted that the project cannot proceed without the mandatory clearance from NBWL.

Forest land cannot be diverted for township and power plant

273. It is submitted that the Port is the main project and the township, airport and power plant are interlinked with it. It has already been demonstrated that the port cannot be established at the proposed location since it is an ecologically sensitive area.

274. Once the location of the port is called into question, then the entire layout proposed by the 2nd respondent ought to be reconsidered. There is no justification for locating the township project over several thousand hectares of virgin forest land and the justification is proximity with the port and other developments.

275. It is submitted that para 1.15 of the Handbook of FC Act and Guidelines, 2019 states as follows,

Para 1.15: Diversion of forest land for non-site-specific projects:

“Utilization of forest area for establishing industries, construction of residential colonies, institutes, disposal of fly ash, rehabilitation of displaced persons, etc. are non-site-specific activities and cannot be considered on forest land as a rule. For that matter, no non-site-specific proposal can be entertained for considering approval under the FCA 1980. In’ exceptional circumstances, residential projects upto one ha, can be considered for approval under FCA 1980 by the MoEF&CC, subject to appropriate justification and recommendation by the concerned State Government and the Regional Officer of the IRO of MoEFCC.”

276. It is submitted that diversion of forest lands for residential projects such as the township is not legally permissible and the 1st respondent has acted in violation of its own regulations. The power plant is also not a site specific project and hence the diversion of forests land for the same is not permissible. The 1st respondent has failed to appreciate these aspects.

277.It is submitted that the impugned clearance does not include the proposed airport. It is relevant to note that reclamation of ICRZ areas, especially ICRZ IA areas is not permissible for the construction of an airport in the Great Nicobar island under the applicable ICRZ laws.

Violation of International Agreements

278. There are various agreements in place to protect, recognise and respect the role of indigenous peoples and local communities towards

biodiversity conservation in global, regional and national forums, which India is a party to, and which are being violated by this project.

279. The present project is a clear violation of the international commitments under the Convention of Biological Diversity (CBD) and the Convention on Migratory Species of which India was a signatory since its inception in 1992.

280. Great Nicobar was originally inhabited by indigenous communities, Nicobarese and Shompen until 1960s when the settlers were brought in from Mainland India. Around 853 square km of the Great Nicobar is designated as a tribal reserve under the Andaman and Nicobar Protection of Aboriginal Tribes Regulation, 1956 that gives them exclusive rights to the communities over the land and any activity or access in that area requires prior permission. Of these, 84 square km is going to be de-notified as per the EIA submitted to the Ministry. The Shompen are considered as Particularly Vulnerable Tribal Group (PVTGs) under Government records which categorises communities as such, threatened by factors like stagnant population, low level of literacy and pre-agriculture level of technology. While provisions like Aboriginal Tribes Regulation was enacted for their protection, yet their land and territories are currently being de-notified without due processes followed.

281. With the new project, the population is going to witness an increase from a mere 8000 to a 3.5 lakhs in 3 decades rising by almost 4000%. This will not only change the ecology of the island but also threaten the already vulnerable communities that have been living in those islands.

282. Invoking 8(j) of the CBD "*Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;*"

283. As part of the Programme of Work (PoW) and institutional arrangements on Article 8(j) and other provisions of the CBD related to indigenous peoples and local communities, the **Akwé: Kon Voluntary Guidelines** provides an outline to carry out the Conduct of Cultural, Environmental and Social Impact Assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by Indigenous Peoples and Local Communities. It also calls for public consultations of proposed development with especially with those who are going to be impacted by the said development and allow sufficient time for a response from the proponent. The principles of Free Prior Informed consent (FPIC), full and effective participation of indigenous peoples and local communities are a core part of the CBD, and explicitly required under the **Akwe:Kon Guidelines**. These have not been ensured in the proposed project, and on the contrary, it seems that Adivasi rights and interests are being sidelined.

284. Article 8(k) of the CBD states, "*Develop or maintain necessary legislation and/or other regulatory provisions for the protection of threatened species and populations;*". The Great Nicobar Island is a crucial nesting

ground for the Great leatherback turtles and is home to the rare endemic species, Nicobar Megapode, apart from several other species, which would be adversely affected because of the project, thus violating this Article.

285. This project is also responsible for pushing back the results of work done under **Aichi Target 10** which states that *"By 2015, the multiple anthropogenic pressures on coral reefs, and other vulnerable ecosystems impacted by climate change or ocean acidification are minimized, so as to maintain their integrity and functioning"* and Aichi Target 11 which states that *"By 2020, at least 17 per cent of terrestrial and inland water, and 10 per cent of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well connected systems of protected areas and other effective area-based conservation measures, and integrated into the wider landscapes and seascapes."*

286. These Aichi targets have been adopted as the National Biodiversity Target 6 for India which states that *"Ecologically representative areas on land and in inland waters, as well as coastal and marine zones, especially those of particular importance for species, biodiversity and ecosystem services, are conserved effectively and equitably, on the basis of PA designation and management and other area-based conservation measures and are integrated into the wider landscapes and seascapes, covering over 20% of the geographic area of the country, by 2020."* The denotification of protected areas in Great Nicobar and its diversion for projects is in violation of this commitment.

The project threatens the Right to Exist of the Giant Leatherback Turtles and Island Ecosystems

287. It is submitted that India has an obligation to abide by the UN General Assembly declaration passed in 2009, where Member States acknowledged that the Earth and its ecosystems are our common home, and expressed their conviction that it is necessary to promote Harmony with Nature in order to achieve a just balance among the economic, social and environmental needs of present and future generations. The same year, the General Assembly adopted its first resolution on Harmony with Nature.

“Rights of Nature is grounded in the recognition that humankind and Nature share a fundamental, non-anthropocentric relationship given our shared existence on this planet, and it creates guidance for actions that respect this relationship. Legal provisions recognizing the Rights of Nature, sometimes referred to as Earth Jurisprudence, include constitutions, national statutes, and local laws. In addition, new policies, guidelines and resolutions are increasingly pointing to the need for a legal approach that recognizes the rights of the Earth to well-being. Furthermore, educational activities on the rights of Nature are on the increase in the professional and public spheres to advance Earth Jurisprudence worldwide”- UN Harmony with Nature

288. India, as part of the UN General Assembly acknowledged that the loss of biodiversity, desertification, climate change and the disruption of a number of natural cycles are among the costs of our disregard for Nature and the integrity of its ecosystems and life-supporting processes.

289. On 28 July 2022, the General Assembly adopted its historic resolution 76/300, in which it recognized the right to a clean, healthy and sustainable environment as a human right. It also recognized that the impact of climate change, the unsustainable management and use of natural resources, the pollution of air, land and water, the unsound management of chemicals and waste, the resulting loss of biodiversity and the decline in services provided by ecosystems interfere with the enjoyment of a clean, healthy and sustainable environment and that environmental damage has negative implications, both direct and indirect, for the effective enjoyment of all human rights. The resolution, based on Human Rights Council resolution 48/13, calls upon States, international organizations, business enterprises and other stakeholders to ensure a clean, healthy and sustainable environment for all. Details regarding the General assembly resolution are produced as **Annexure A-70**.

290. It is submitted that the Courts in India have also in recent times recognised this right. The Hon'ble Supreme Court, in the case of **Animal Welfare Board of India v. A Nagaraja & Ors** (*Civil Appeal No. 5347 of 2014*) has held that all living creatures have an inherent dignity and right to live peacefully. This right of the all living creatures falls under the ambit of protection provided by Article 21 of the Constitution of India. Lastly, it is seen that the Hon'ble Supreme Court also made a reference to the concept of "speciesism" (i.e., any form of discrimination against other species) and equated it with inequalities such as Casteism, Sexism etc. that are tackled and forbidden vide the Constitution of India vide Article 14 to Article 17, Article 19 etc.

291. Furthermore, The Hon'ble Uttarakhand High Court in the case of **Narayan Dutt Bhatt vs. Union of India & others**, *Writ Petition (PIL) No. 43 of 2014, (2018)* declares "*entire animal kingdom including avian and aquatic*" as legal entities, with a distinct persona and corresponding rights, duties and liabilities of a living person.

292. The Hon'ble Madras High Court in the case of **A. Periyakaruppan vs. State of Madras**, page 21, W.P.(MD)Nos.18636 of 2013 and 3070 of 2020 and W.M.P.(MD)No.2614 of (2020) invokes its "parens patriae jurisdiction", (parent of the nation jurisdiction) to declare "Mother Nature" as a "Living Being", "*having legal entity/legal person/juristic person/juridical person/moral person/artificial person having the status of a legal person, with all corresponding rights, duties and liabilities of a living person, in order to preserve and conserve them*". Furthermore, Mother Nature was also accorded fundamental/constitutional rights for its "*survival, safety, sustenance and resurgence*". Lastly, the Hon'ble Madras High Court also placed an obligation upon the Central Government and various State Governments to ensure that Mother Nature, as a legal entity, is protected.

293. In this context, it becomes evident all of the above-mentioned judgements establish that flora, fauna and Mother Nature itself, have a juristic/legal personality with constitutional/fundamental rights. Therefore, it is submitted that the Central Government (an entity with a duty to protect and preserve these juristic entities) cannot violate the above-mentioned rights of these juristic entities.

294. It is submitted that copies of representation sent by the organization the Appellant is associated with is **Annexure A-71**, the link to the drive containing stakeholder consultation regarding the project is **Annexure A-72**, copies of maps is produced as **Annexure A-73**.

295. The impugned clearance is liable to be set aside inter alia on the following among other

GROUND

- a. The impugned clearance has been issued without consideration of the irreversible damage to the environment and ecology of the Great Nicobar Island.
- b. The impugned clearance has been issued without regard to the legal prohibitions on diversions of ecologically sensitive areas for such projects.
- c. The impugned clearance has been granted based on inchoate, inadequate impact assessment studies by unaccredited consultants.

- d. The absence of a comprehensive EIA study vitiates the entire process.
- e. The project has not been appraised in accordance with the EIA Notification, 2006.
- f. The EAC and MoEF&CC has failed to see that the EIA report prepared does not conform to the terms of reference issued.
- g. The 1st respondent failed to see that the EIA report ought to have been rejected.
- h. The 1st respondent failed to see that the mitigation measures suggested were impractical and not a solution for the large scale destruction that will be caused by the proposed project.
- i. The EIA report fails to consider crucial issues inter alia such as impact on Shompen and Nicobarese , anticipated impact of proposed developments and simply states that impacts will be negligible.

- j. The EAC and the 1st respondent have failed to see that the public hearing conducted is vitiated and in violation of the EIA Notification, 2006.
- k. The EAC and the 1st respondent failed to see that the objections raised during public consultation have not been addressed by the 2nd respondent.
- l. The EAC and the 1st respondent have failed to apply their mind and scrutinise the project in accordance with the law.
- m. The impugned clearance has been granted without considering the impact of the project on the tribal population in the Great Nicobar island.
- n. The impugned clearance has been granted without cumulative impact assessment.
- o. The impugned clearance has been granted without an assessment of the carrying capacity of the island to support the ultimate population and activities proposed.

- p. The EIA report based on which the impugned clearance has been issued is in violation of the Sector Specific Manuals issued by the 1st Respondent.
- q. The impugned clearance has been granted without considering the grave impact on turtles, megapods, cetaceans and other endemic, endangered species on the island and its waters.
- r. The impugned clearance is in violation of the EIA Notification, 2006, the IPZ Notification, 2011, ICRZ Notification, 2019 , the precautionary principle, the principle of sustainable development, eco-centric principles, the Environment (Protection) Act, 1986 and Articles 21, 48 A and 51 A of the Constitution of India.
- s. The impugned clearance has been issued without considering the fact that ports are not permitted to be established in ecologically sensitive areas.
- t. The impugned clearance has been issued without considering the fact that forest land cannot be diverted for township and thermal power plants.

- u. The respondent has accepted the statements of the 2nd respondents as gospel truth and has failed in its duty to assess the project in accordance with the law.
- v. The 1st respondent has failed to see that the proposed project has not been assessed or cleared under the applicable IPZ 2011 Notification or for that matter even the ICRZ 2019 Notification.
- w. The 1st respondent failed to see that the 2nd respondent's executive officer is also the head of the department of environment of the Union territory and the entire process of recommendation by the CZMA or recommendation for FC clearance is vitiated by conflict of interest.
- x. The 1st respondent has failed to see that wildlife clearance has not been obtained.
- y. The 1st respondent has failed to see that the proposed projects are not permitted in the ESZ of a protected area i.e. The Galathea National park.

- z. The 1st respondent has failed to see that the clearance granted is in violation of the precautionary principle and no purpose is served in conducting impact assessment studies after the project commences construction or operation.
- aa. The 1st respondent has failed to see that the conditions imposed in the impugned EC do not in any manner protect the Great Nicobar Island's unique biodiversity and ecology.
- bb. The clearance is in violation of India's commitments under several international conventions including the Convention on Biological Diversity, 1992.

LIMITATION

The appellant declares that the impugned clearance is dated 11.11.2022 and present appeal has been filed within the period of 30 days from the date of the impugned clearance. Hence the present appeal is within limitation.

INTERIM RELIEF:

Pending disposal of the present appeal, the appellant prays that this Hon'ble Tribunal be pleased:

- A. issue an order of stay of the impugned clearance issued by the 1st respondent dated 11/11/2022 bearing EC Identification No. EC22A033AN125767 in File No. - 10/17/2021-IA-III
- B. issue such other orders as it deems fit in the interest of the case and render justice.

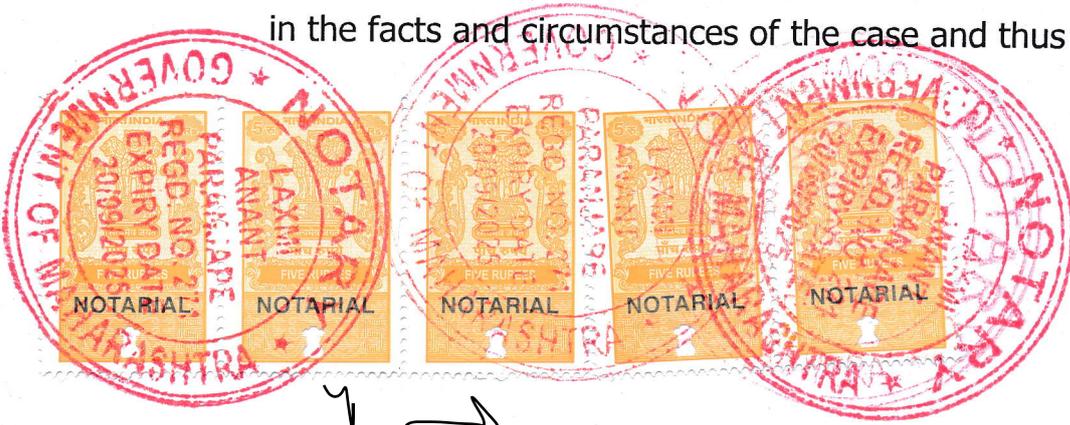


PRAYER:

It is therefore prayed that this Hon'ble Tribunal be pleased

A. Set aside the Environmental clearance dated 11.11.2022 in file No. 10/17/2021-IA-III bearing EC Identification No. - EC22A033AN125767 issued under the EIA Notification, 2006 by the 1st respondent to the 2nd respondent.

B. Pass such further order or orders as may be fit, proper and necessary in the facts and circumstances of the case and thus render justice.



Ashish Kothari
X

APPELLANT

→
COUNSEL FOR APPELLANT

VERIFICATION

I, Ashish Kothari S/o Rajni Kothari, aged about 61 years, residing at G1 Chaitraban Residency, Aundh, Pune 411007, do hereby verify and state that the contents of the above appeal are true and correct to the best of my knowledge, belief and information.



BEFORE ME

WAP 6-12-22

L. A. PARANJAPE
NOTARY, STATE OF MAHARASHTRA
PUNE DISTRICT

Ashish Kothari
X

APPELLANT

**Noted and Registered
at Serial Number**

30/22

Item Nos.01 -04

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, FINANCE CENTRE
KOLKATA**

(By Hybrid Mode)

Appeal Nos. 29 to 31/2022/EZ

Conservation Action Trust & Anr.

Appellants

Versus

The Ministry of Environment Forest
& Climate Change & Ors.

Respondent(s)

WITH

Appeal No. 32/2022/EZ

Ashis Kothari

Appellant

Versus

The Ministry of Environment Forest
& Climate Change & Ors.

Respondent(s)

Date of hearing: 03.04.2023

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE B. AMIT STHALEKAR, 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**

Appellant(s): Mr. Kaustav Dhar, Advocate a/w Ms. Ajeeya Choudhury, Advocate for the Appellant (in Appeal Nos. 29 to 31/2022/EZ)

Mr. A. Yogeshwaran, Advocate a/w Ms. Poongkhulali B., Advocate, Mr. Santanu Chakraborty, Advocate for the Appellant (in Appeal No. 32/2022/EZ)

Respondent(s): Ms. Aishwarya Bhati, ASG a/w Ms. Suhasini Sen, Advocate, Mr. Aman Jha, Advocate (in Virtual Mode), Mr. Apurba Ghosh, Advocate and Ms. Manisha Chava, Advocate for R-1

Mr. Vikramjit Banerjee, ASG a/w Mr. Shatadru Chakraborty, Advocate, Mr. Ramendu Agarwal, Advocate (in Virtual Mode), Mr. Dibesh Dwivedi, Advocate for R-2 & 3

Ms. Dhriti Banerjee, Director, ZSI (in Virtual Mode)

ORDER**Preliminary – subject matter of appeals**

1. This order will deal with Appeal Nos. 29 to 32/2022/EZ as all the four Appeals pertain to Forest/Environmental Clearance (FC/EC) in respect of integrated **project (the project) by Andaman and Nicobar Islands Integrated Development Corporation (ANIDCO) in Great Nicobar Island**, the project proponent (PP), involving the following:-

- a. International Container Transshipment Terminal (ICTT)-14.2 Million TEU
- b. Greenfield International Airport (4000 Peak Hour Passengers-PHP)
- c. Township & Area development
- d. 450 MVA Gas and Solar based power plant over an extent of 16610 hectares (Ha) in the Great Nicobar Islands.

2. (a) is the main project of which (b) to (d) are integral parts.

3. Appeal No. 29/2022 is against Stage-I Clearance dated 27.10.2022 under the Forest (Conservation) Act, 1980 by MoEF&CC for diversion of 130.75 Sq. Km of forest land in the Great Nicobar Island. Appeal Nos. 30 to 32/2022, are against EC dated 04.11.2022 for the project by the MoEF&CC. **Appeal No. 29 to 31/2022 have been filed by Conservation Action Trust trust located at Bombay while Appeal No. 32/2022/EZ has been filed by one Mr. Ashis Kothari of Pune.** All the appeals came up for hearing on 11.01.2023 when notice was issued to the respondents including the MoEF&CC and the PP.

4. Challenge to the FC is inter-alia on the ground that impact of diversion of 130.75 Sq Km of pristine tropical rainforests on biodiversity, wildlife habitats and Tribals has not been considered. Crucial information

was withheld from Form-A. Forest land cannot be diverted for township and non-site specific projects. Mandatory process under the Forest Rights Rules has not been followed. PP being part of Andaman Administration could not have been associated with the impugned clearance. Forest dwelling community - Shompen (PVTG) and Coastal dwelling community Nicobarese (ST) have settlements in the area to be diverted and de-notified.

5. Challenge to the EC is inter-alia on the ground that appraisal conducted by the EAC is not in accordance with the EAC Notification dated 14.09.2006, EIA report has not been prepared as per ToRs, public hearing is vitiated, impact of the project on tribal population has not been considered, cumulative impact assessment has not been conducted. and ICRZ Notifications, 2019 have been violated. The project will result in destruction of forests, turtle nesting grounds, habitat of endangered endemic species, violation of the rights of indigenous communities in the Great Nicobar Island.

Details of the project and conditions for the Impugned EC

6. Perusal of impugned EC dated 04.11.2022 shows that the proposal for the project was considered in the 293rd meeting of EAC held on 24th – 25th March, 2022 and again in the 297th meeting of EAC held on 24th – 25th May, 2022. Based on the reply submitted to the queries raised by the EAC, the proposal is again placed in the 306th meeting of EAC held on 22nd – 23rd August, 2022. Some details of the project are mentioned as follows:

“6. The proposed project fall under 7(e) Ports, harbours; 1 (d) Power Plant; and 8 (b) Township & Area Development project, Category A, Scheduled to the EIA Notification, 2006.

7. The total area required for the proposed project is 16610 ha. The proposed Project site is in not connected through any road. Currently, the access is through sea and air route only. Approach roads shall be developed within the Islands.

8. No development is proposed on the western side of Galathea Bay in Phase I development apart from Defence area development, power plant and basic infrastructure to sustain defence and power plant site. Suggestion/opinion from MoD will be sought to finalise the buffer zones around Defence parcels. Buffer area of 500 mts from high tide line around Pemayya to be declared as Coastal Protection Area with stringent controls on any development within the area. Further, Alexandria Bay and Casuarina Bay are located far away and fall outside the project area on the western coast. All these areas including Pemayya Bay have been made part of the leatherback conservation plan. Adequate measures have been proposed for protection of nesting beaches and turtles.

9. A separate land use category “Special Use” has been included in the land use plan. The subcategories under “Special Use” are:

- a. National Memorial (Western tip of Galathea Bay),
- b. Defence Purpose (Western tip of Galathea Bay),
- c. Pemayya Buffer Area (Buffer area of 500m from HTL for safe nesting of Leatherback turtles).

10. xxx.....xxx.....xxx

11. The North South road of 55m ROW is the main arterial road connecting different pockets of development across the master plan area. It also serves as the key connector between the development on the eastern and western side of the master plan area and serves the overall function of distributing traffic and enabling access. The 55m RoW has been envisaged as an urban arterial road and the proposed design for this road is in compliance with guidelines for Urban Roads. The 55 m arterial road serves multiple functions enabling movements through different modes of transport including non-motorised transport i.e. cycles as well as pedestrians. Development within CRZ area will be in compliance with ICRZ Notification 2019.

12. The arterial road will be developed in a phased matter. In the first phase, 30 m ROW will be utilized and developed and the balance 25 m ROW will be reserved for future expansion for Bus Rapid Transit (BRT) or Light Rail Transit (LRT). Need for development of remaining 25 m RoW will be reviewed by the project monitoring committee on biodiversity before its construction and after full capacity utilization of 30m RoW and evaluation by CSIR-Central Road Research Institute (CRRI).

13 to 22...xxx.....xxx.....xxx

23. WII has prepared the plan for conservation and long term monitoring of sea turtles of the Nicobar Islands along with the leatherback sea turtles for a period of 10 years primarily. The conservation plan will be implemented in two phases. Phase1 involves monitoring and nesting the population tracking the movements, identification of high use areas in the breeding sites and non-breeding regions, determining foraging areas

using stable isotopes, population genetic structure of leatherback turtles, assessing vulnerability of turtle nesting beaches and adoption of appropriate management strategies and multi stakeholders' involvement in the long-term conservation of sea turtles. Phase 2 of the conservation plan will develop effective site-specific actions for conservation of sea turtles.

24. WII has been identified as a scientific agency to prepare and implement conservation plans for leatherback turtles and saltwater crocodiles. In the case of Nicobar Megapod, coordinated and collaborative research will have better outcome and in the larger interest of the endemic species of Nicobar megapode.

25. **For facilitating movement of wildlife between forest and the sea shore and for crossing the arboreal animals as well as for passage of snakes, crabs, crocodiles etc, safe wildlife corridors at 8 locations along the eastern side of the island connecting forest and seashore through via-ducts in the north south arterial road have been proposed and incorporated in the master plan. The locations of the proposed wildlife corridors i.e. via ducts have been selected based on the ground situation and inputs provided by ZSI and Department of Environment & Forest. The width of the corridor ranges from 250 meters to 1100 meters and the eastern side of the corridors via ducts towards the seashore would be maintained as green area and no development is proposed in the said areas.**

26. The port may place series of Ecological Marker Buoys for every 200 m along the proposed extended breakwater line. Also, Marker Booms may be connected in between the buoys. **Such arrangement will clearly mark the 'AREA TO BE AVOIDED TO AID TURTLES', warn restriction of the navigational route, thereby neither ships nor boats can enter the 'TURTLE NESTING AREA'. It would protect the turtles from the port operation.**

27. Shoreline change: The observed trend of the shoreline at the proposed project location reveals that the shoreline remains with not noticeable change over a period of 5 years from 2015 to 2020. The shoreline analysis shows that the project site at port is surrounded with elevated hill promontories and rocky shores.

28. Dredging and Reclamation: The total quantity of capital dredging for the development of port is about 17.7 million cu.m. MIKE 21-PA (Particle Analysis) module was used to identify a suitable location for dumping the dredge spoil and to understand the dispersion pattern of disposed material after dumping. The maximum increase in seabed level over the disposal area is about 0.03 m at the proposed dumping location. Due to availability of deeper water depth of 600m the change in bed level at the proposed disposal location due to dumping is

insignificant. The plume of suspended sediment after dumping tends to spread towards northeast to an extent of 1 km with an increase in seabed level of <0.008 m. Therefore, the proposed disposal location is found to be more ideal and it will not cause any adverse impact on the proposed port development facilities and the marine environment.

29. xxx.....xxx.....xxx

30. Cargo handling with dust control measures: Since the proposed port is International Container Transshipment Terminal (ICTT), there will be no dusty cargo, dry bulk cargo such as coal, iron ore or hazardous cargo, etc. will be handled at port. All the vehicles engaged for construction should have valid pollution check certificate as per the motor vehicle act. Further, any regulations related to vehicle emission issued by local government should also be adhered to. Generators and machineries are to be serviced and maintained regularly to avoid generation of dust and other air pollutants. Oil Spill Contingent Management Plan includes Boom containment, Spray of dispersant and Skimmers. No hazardous industries are envisaged at GNI however the containers may contain hazardous cargo, **Hazardous cargo shall be handled in accordance with ‘The Manufacture, Storage and Import of Hazardous Chemicals Rules, ACT 1989’.** Containers carrying hazardous cargo are labelled as Hazardous Cargos and stored at separate locations in the yard designated for the storage of hazardous cargo and a dedicated Nodal Officer will be appointed who will be responsible to check the compliance of the regulations from time to time. Hazardous waste like used oil, insecticide/ herbicides, paints, solvents, lubricants etc. would be generated from the project, the same hazardous substances will be securely stored at site before transportation, Double chamber Incinerator has been proposed to treat the possible hazardous waste generated from Port, Power plant and the Township.

31 to 32 xxx.....xxx.....xxx

33. Land acquisition and R&R issues: Total land acquisition required for project is approximately 421.57 ha. Total families affected is 379 and total affected population is 1761.

34. Revised ICRZ recommendations have been received via letter ‘No.PCCF/EPA/1/Vol-XVI/154, Andaman & Nicobar administration, Department of Environment and Forests, PCCF (CRZ&FC) / nodal officer, FCA&MS, A&NCZMA/ Van Sadan, Haddo, Port Blair, Dated 8th July, 2022.

35 xxx.....xxx.....xxx

36. Mangroves: **The Mangrove Conservation and Management Plan for Great Nicobar Island has been prepared by the Department of Environment and Forests, A&N Administration.**

The mangrove conservation plan is aimed at restoration and restocking of the tsunami impacted mangrove areas besides enhancement/enrichment through plantations. The plan also aims at improving the diversity of mangroves, its richness and stand density through proper assessment of distribution and status of mangrove species found in Great Nicobar Island along with the locations. The conservation plan addresses the strategies to restore and revive the mangrove areas through ecological restoration and enrichment planting.

37. The Coral Conservation Plan prepared by ZSI addresses both, the conservation strategies for coral colonies around GNI as well as translocation strategies for ten (10) hectares of impacted corals. A total of 245 species of scleractinian corals under 53 genera and 15 families are recorded from seven sites including the Great Nicobar Island. No major coral reef exists within the work area of the project. However, scattered coral reefs are available at the peninsular part of the Galathea Bay. As part of the assessment for conservation and management of Coral reefs, the Coral cover required to be translocated from the proposed site is around 10 ha which includes around 20668 Coral colonies out of which approximately 16150 colonies will be translocated. The plan addresses the probable sites for translocation, the methodology, the coral colonies for transplantation, conservation and management of coral reefs both at the translocated sites, donor sites and other sites in Great Nicobar Islands.

38. xxx.....xxx.....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.*

40. *Public Hearing: Public Hearing was conducted on 27.01.2022 at Community Hall, Gram Panchayat, Campbell Bay, Great Nicobar.*

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.

42. WII suggested that the project can be undertaken however more intensive assessment/research is required on Leatherback Sea turtle and its movements to craft site-specific mitigation strategy and suggested 10-year road map to systematically implement mitigation measures. SACON and WII has provided 10-year plan to mitigate impacts on Nicobar Megapod.

43. EAC also noted that there are several other endemic flora and fauna and impact of the project on these species is mostly unknown. The EAC noted the scale of impacts the proposed project may have both on flora and fauna of GNI and native populations, however, considering the strategic nature of the integrated project as presented by the PP and taking into account the submission made by the project proponent had a detailed deliberation in its 306th meeting during 22nd – 23rd August, 2022 and recommended the proposal for grant of Environmental and CRZ clearance with the specific conditions, as mentioned below, in addition to all standard conditions applicable for such projects:

44. The Ministry of Environment, Forest and Climate Change has considered the proposal based on the recommendations of the Expert Appraisal Committee (Infrastructure, CRZ and other Miscellaneous projects and other co-opted members of Infra-2 EAC, members of Thermal EAC and NDS Committee) and hereby decided to grant Environmental Clearance and CRZ Clearance for the “Integrated development of International Container Transshipment Terminal (ICTT)-14.2 Million TEU, Township & Area development and 450 MVA Gas and Solar based power plant in 16610 ha. Great Nicobar Islands, Nicobar District by M/s Andaman and Nicobar Islands Integrated Development Corporation Ltd” under the EIA Notification, 2006 and ICRZ Notification, 2019 as amended, subject to strict compliance of the following specific conditions, in addition to all standard conditions applicable for such projects.

SPECIFIC CONDITIONS

- I. All the recommendations mentioned in the wildlife conservation plans and Tribal welfare plans below shall be implemented in time bound manner. The compliance to the recommendations as per schedule shall be submitted along with 6 monthly compliance reports to the regional office of MoEF&CC.**
- A. Leatherback Sea Turtle:** Proposal submitted by Wildlife Institute of India (WII) was considered by the EAC and following recommendations are provided to ensure conservation of Leatherback along with other species of sea turtles such as Hawksbill, Green, Loggerhead and Olive Ridley in Andaman and Nicobar Islands with focus of Nicobar group of Islands. EAC has following specific recommendations-
- a. The budget estimated by WII needs to be revised as the project life-cycle is for 30 years till year 2052, however, the proposal of WII is only for 10 years. Therefore, WII need to revise proposal for 30 years along with budgetary provisions and implementation timeline and submitted to PP within 15 days of the grant of EC. Based on the revised proposal sent by WII corresponding amount for first 10 years will be released by PP within 3 months of submission of proposal which would enable WII to undertake uninterrupted research and conservation interventions on Leatherback and other species of sea turtles such as Hawksbill, Green, Loggerhead and Olive Ridley. Accordingly, the Committee informed PP to revise the EMP provisions. The provision for WII would be over and above the cost required by forest department. The costing should include costs of additional resources such as human resource, vehicles, mechanized boats, 200 additional satellite tags and monitoring costs over entire lifecycle of the proposed project etc as stated below. Project tenure of WII 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 limited to 10 years. The financial allocation in the proposal of WII should be such that the satellite tagging studies can be started immediately and have adequate and uninterrupted financial resources to continue the conservation work on Leatherback Sea Turtles. If any additional funds are required at a later stage or for post project development monitoring work, those will be made available by PP to WII. Project monitoring committee as stated in 3.10.3(VI) will review the project progress through biannual meetings and additional financial requirements in due course.
 - b. 20% of nesting population of Leatherback Sea Turtle or minimum 150 satellite tags (Argos-linked FastGPS Platform Terminal Transmitter with DIVE sensors), whichever is higher, to be deployed to Leatherback Sea Turtle in GNI and Nicobar Islands and Little Andaman in the first 5 years phase by WII. Of these 150 tags, minimum 50 tags to be deployed in the first year so that the sea turtle movement data will be available for the PP to monitor construction activity. For rest of the nesting individuals, flipper tags to be deployed.

- c. 20 satellite tags each for Green Sea Turtle, Hawksbill Sea Turtle and Olive Ridley Sea Turtle to be deployed in the first 5 years phase.
- d. Provision for 10 satellite tags for Loggerhead Sea Turtle should be made in case if nesting females are noticed in A&N
- e. Considering the vast research area, additional manpower especially research associate and field assistants needs to be incorporated in the proposal of WII including dedicated units for Great Nicobar, Little Nicobar and Little Andaman
- f. One additional mechanized engine Dingy for the inter-island movement including boatman, boat running and maintenance cost be included in the WII proposal. All three mechanized dingy (2 for forest dept and one for WII) to be exclusively dedicated to sea turtle research and monitoring
- g. Holistic development will include data and recommendation from WII, ZSI, SACON and BSI studies in the deliberations and directions of the monitoring committee as stated in 3.10.3(VI) and plans maybe modified accordingly if found necessary in the interest of all species of sea turtles with focus of Leatherback Sea Turtle and other flora and fauna of GNI. Additional measures may be considered by the Committee if found essential.
- h. Zero nest predation approach must be ensured by the state forest department to achieve highest possible survival of Leatherback, Hawksbill, Olive Ridley and Green Sea Turtle. Community based nest monitoring and protection programme should be initiated from year 2022 nesting season. The budget for the same will be submitted by state forest department to PP. This will be over and above the budget for WII proposal.
- i. Domestic dog population control through sterilization to be explored with priority.
- j. Accordingly, WII is advised to revise the proposal and implementation plan within 15 days and send the same to EAC and MoEFCC for record and to PP for release of first 10 years installment within three months.
- k. A&NFD will ensure implementation of conservation measures as recommended by WII.

B. Nicobar Megapod: The endemic Nicobar Megapod is a keystone species of Nicobar group of islands. From the enclosure no 17 provided by PP it is clear that about 51 active nests of Nicobar Megapod are present within the proposed project areas of which appx 30 will be permanently destroyed. In this context, the PP has submitted two proposals towards understanding of habitat utilization and microhabitat and conservation of remaining population of this endemic species in the Nicobar region. The approach and methodology for both is similar in nature. However, WII alongside the population monitoring also suggested disease prevalence study. After careful consideration, EAC suggested SACON and WII in close collaboration will undertake comprehensive studies and conservation measures for endemic Nicobar Megapod. 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 limited to 10 years. Accordingly, SACON and WII shall submit two full proposals to PP with a copy to MoEFCC and EAC within 15 days of grant of EC and CRZ clearance. The SACON will undertake

studies for population ecology, meta populations, disease surveillance and translocation of endemic Nicobar Megapod and WII will study population genetics and Satellite tagging studies. SACON and WII is advised to develop full proposals with sufficient budgetary provisions and timeline. Based on the revised proposal sent by SACON and WII corresponding amount for first 5 years will be released by PP within 3 months of submission of proposal which would enable SACON and WII to undertake uninterrupted research and conservation interventions on endemic Nicobar Megapod. A&NFD will ensure implementation of conservation measures as recommended by SACON and WII. This cost is over and above the cost required by A&NFD. If any additional funds are required at a later stage or for post project development monitoring work, those will be made available by PP to SACON. Accordingly, the Committee informed PP to revise the EMP provisions.

- C. **Saltwater Crocodile:** PP submitted the proposal by WII and A&N State Forest Department towards addressing issue of saltwater water crocodile conservation and conflict mitigation. 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. Accordingly, WII and A&N Forest Department should revise the proposal with budget allocation and timeline and submit it to the PP with a copy to MoEFCC and EAC within 15 days from the grant of EC and CRZ clearance. The Committee direct PP for the release the first five years budget payment to WII and A&N Forest Department for the study and conservation measures for Saltwater Crocodiles within 3 months from the grant of EC & CRZ Clearance. If any additional funds are required at a later stage or for post project development monitoring work, those will be made available by PP to WII. Accordingly, the Committee informed PP to revise the EMP provisions
- D. **Impact of invasive species on native flora:** To understand the impact and to develop prevention of invasives in to the wild, a specific action plan is required. Accordingly, the Committee suggested that a detailed proposal 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 along with budgetary provisions shall be developed by Botanical Survey of India (BSI) and submitted to the PP with a copy to MoEFCC and EAC within three months of grant of EC and CRZ clearance. The Committee direct PP for the release the first five years budget payment to BSI within three months from the grant of EC and CRZ clearance to undertake immediate work on this very important subject, develop robust guidelines in the first year and monitor the impact of invasives on native endemic and endangered flora as the project development progress. If any additional funds are required at a later stage or for post project development monitoring work, those will be made available by PP to BSI. Accordingly, the Committee informed PP to revise the EMP provisions. A&NFD will ensure implementation of conservation measures as recommended by BSI.
- E. **Impact on inter-tidal flora and fauna:** The ZSI report emphasize rich biodiversity of the inter-tidal region of GNI.

Several parts of this region will be either directly reclaimed or used for other infrastructure such as road on stilts, and other permissible activities within CRZ. Accordingly, the Committee suggested that a detailed proposal 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 along with budgetary provisions shall be developed by Zoological Survey of India (ZSI) and submitted to the PP with a copy to MoEFCC and EAC within 15 days of grant of EC and CRZ clearance. 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 immediate work to undertake the detailed baseline documentation and further monitoring of the same during entire implementation phase of the holistic development plan. ZSI should also document shift in the inter-tidal community with each phase of the project is being implemented so as to understand the impact and develop mitigation strategies. Accordingly, the Committee informed PP to revise the EMP provisions. A&NFD will ensure implementation of conservation measures as recommended by ZSI.

F. Nicobar Macaque, Robber Crab and other endemic bird species of Great Nicobar: For conservation of Nicobar Macaque, Robber Crab and other endemic bird species of Great Nicobar the Committee suggested that a detailed proposal consistent with the holistic development plan for GNI i.e. till the completion of the final phase of the same in the year 2052 along with budgetary provisions shall be developed by SACON and submitted to the PP with a copy to MoEFCC and EAC within 15 days of grant of EC and CRZ clearance. The Committee direct PP for the release the first five years budget payment to SACON within three months from the grant of EC and CRZ clearance to undertake detailed baseline documentation, conservation intervention and further monitoring of the same during entire implementation phase of the holistic development plan. Accordingly, the Committee informed PP to revise the EMP provisions. A&NFD will ensure implementation of conservation measures as recommended by SACON.

G. Mangrove Restoration: PP provided the Committee a proposal submitted by A&N forest department for the conservation and restoration of mangroves. EAC agreed to the proposal and directed PP to release the amount mentioned in the proposal to A&N state forest department within 3 months of grant of EC and CRZ.

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.

I. Welfare of local tribal population of Shompen and Nicobaris:

The project activities shall not disturb Shompen tribe and their habitations. Clear demarcation of the land shall be done for specific purpose of land use in the vicinity of project area such that habitations of the tribal shall not be intervene. Budgetary provisions for the same shall be made in the EMP report and expenditure in this regard shall be maintained on records. For the protection and safety purpose of community, security & surveillance mechanism shall be in place with geo-fencing cum surveillance towers nearby Tribal settlements.

All the considerations will be undertaken by Department of Tribal Welfare (DTW) as per the Andaman and Nicobar Islands (Protection of aboriginal Tribes) Regulation, 1956. (Commonly known as PAT Regulation), Policy on Shompen Tribes. Accordingly, the Committee suggested that a detailed proposal for 50 years along with budgetary provisions shall be developed by Department of Tribal Welfare (DTW) and submitted to the PP. The Committee direct PP for the release the first 10 years budget payment to DTW within three months from the grant of EC and CRZ clearance to undertake immediate work and to undertake the detailed baseline documentation and further monitoring of the same during entire implementation phase of the holistic development plan. Accordingly, the Committee informed PP to revise the EMP provisions.

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.
- 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.

Monitoring Committee

- VI. PP will establish three independent Monitoring Committees to oversee the implementation of Environmental Management Plan. Each committee must meet twice a year and undertake one site visit each year. The committees will take review of progress of work of respective areas and implementation of mitigation measures and advise further on its implementation. Minutes of the meetings, site visit reports by these committees and recommendation of the same will be included in the implementation plans of each institute and PP. Proceedings of each Committee will be uploaded on the A&N state forest department website under a specific link provide to the project at GNI. One committee will be to oversee the pollution related matters and measures and its implementation. Second committee is to oversee the implementation of biodiversity related conditions. Third committee will oversee welfare and issues related to Shompen and Nicobarese. Following specific composition of the committees are stipulated. The tenure of the committee will be till the completion of final phase of Holistic Development Plan. However, tenure of every individual expert in each of the Committee shall not exceed three years, and accordingly committees should be reconstituted every three years. The budget allocation of 10 Crore is provided to meet the expanses of the committee meetings. For the first three years following:

- i. **Committee to oversee pollution related matters** – The Committee will be chaired by Member Secretary of State Pollution Control Board. The other members of the committee should include representative from CPCB, one national reputed expert each in the field of air, noise, water, solid waste and soil pollution. The committee will also include representative of Chief Wildlife Warden not below the rank of CF, representative of PP, representative of Niti Aayog, representative of collector, representative of disaster management unit, representative from Central/State-UT Ground Water Authority and one member of EAC-CRZ and Infra 1 Committee.
 - ii. **Committee to oversee biodiversity related matters** – The Committee will be chaired by PCCF (WL) A & N Forest Department. The other members of the committee must include directors of WII, SACON, ZSI, and Botanical Survey of India, representative of PP, representative of Niti Aayog, representative of collector, Director, CSIR-National Botanical Research Institute, two independent and nationally recognized scientists in the field of terrestrial and marine biodiversity, Director-Deep Sea Mission of GoI and one member of EAC-CRZ and Infra 1 Committee with biodiversity expertise.
 - iii. **Committee to oversee welfare and issues related to Shompen and Nicobarese**- The Committee will be chaired by the Collector. The other members of the committee should include Director - A & N Tribal Welfare Department, PCCF and HoFF-A&N, Director of department of health, two independent and nationally reputed individual experts on Shompen and Nicobarese, representative of PP, representative of Niti Aayog, representative of A&N Administration and one member of EAC-CRZ and Infra 1 Committee.
- VII. **Western Flank of the Galathea Bay:** Along the western flank of Galathea Bay no development will be allowed in Phase 1 and 2 of the projects except defence related infrastructure (pocket 10 in the master plan) or any activity that is strategic and national defence point of view important in nature. A buffer of 500 meters from HTL on both the sides of the flank shall be maintained in any case. Infrastructure related to Gas-based power plant as shown in the development plan (pocket 9) will be allowed. Institutional areas marked in pocket 9 and 10 will not be allowed at this location. It needs to be shifted within pocket 1 to 7. Tourism will not be permitted along the western flank of Galathea Bay in any phases. Pemayya Bay and all other Leatherback nesting sites on the western parts of GNI must remain no development zones as these sites are likely to be used by Leatherback Sea Turtles as alternate sites due to impact of ICTT at Galathea Bay. All major nesting beaches in Great Nicobar Islands including Alexandria Bay, Casuarina Bay, Pemayya Bay, Dogmar will be protected by establishing protection camp, sea turtle hatcheries and kept under 24X7 surveillance and monitoring from nesting till hatching season each year. No development and tourism will be allowed on these shores. Besides, in GNI nesting of Leatherback turtles also have been reported in East of Indira point, West of Indira Point, Koshindon, Laxmi Nagar, North of Alexandria, South of Alexandria, North of Dogmar, South of Dogmar, Pulo Bed, PuloKunji, re Pinsuot, Renhong, Safed Balu, Patatiyo and South of Galathea. These sites will be kept disturbance free with no tourism activity or infrastructure

development. WII studies will provide further insight in to it and can be further incorporated in the management plan of Leatherback and other sea turtles at GNI.

- VIII. *No withdrawal of water from Galathea River is permitted. Galathea River must remain free of any recreational activity. No ground withdrawal of freshwater will be permitted. Drinking water will be exclusively augmented through two reservoirs proposed along with capacity augmentation of existing freshwater storage facilities at GNI.*
- 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.*
- X. *All the recommendations and conditions specified by the Andaman Nicobar Coastal Zone Management Authority (ANCZMA) vide letter dated 8th July, 2022 shall be complied with.*
- XI. *Consent to Establish/Operate for the project shall be obtained from the State Pollution Control Board as required under the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974. The project proponent shall comply with the air pollution mitigation measures as submitted.*
- XII. *The Project proponent shall ensure that no creeks or rivers are blocked due to any activities at the project site and free flow of water is maintained.*
- XIII. *Necessary approvals to be taken during implementation and commissioning from statutory bodies concerned.*
- XIV. *Shoreline should not be disturbed due to dumping. Periodical study on shore line changes and coastal geomorphology shall be conducted and mitigation measures like living shoreline carried out in line with conservation plan. The details shall be submitted along with the six monthly monitoring report to the regional office of MoEFCC.*
- XV. *No trees will be cut at one go. These will be done in phased manner and depending on the progress of the work on an annual basis. Plan for cutting of trees should be developed by PP and got approved from state forest department. All trees which are exceptionally tall and old in age shall be safeguarded, as far as possible. A&NFD will mark all such trees and submit the species wise list to the Ministry and EAC and the regional office of MoEFCC before the infrastructure activities take place.*
- XVI. *Trees with nesting holes of endemic owls to be identified and geo-tagged with the help from SACON. Such trees shall be safeguarded, as far as possible.*
- XVII. *Some of the township clusters seems to have several defence installations abutted by commercial and tourism infrastructure thus PP shall obtain the recommendations from the Ministry of Defence and as suggested by them buffer zone will be maintained in between the defence installation and township cluster, commercial and tourism infrastructure.*

- XVIII. *The arterial road shall be developed in a phased matter. In the first phase, 30 m ROW shall be utilized and developed and the balance 25 m ROW shall be reserved for future expansion for Bus Rapid Transit (BRT) or Light Rail Transit (LRT). Need for development of remaining 25 m RoW will be reviewed by the project monitoring committee on biodiversity before its construction and after full capacity utilization of 30m RoW and evaluation by CSIR-Central Road Research Institute (CRRI). During that period the 25 m RoW shall be maintained in “as it is” condition.*
- XIX. *In the western coast of Galathea Bay excluding the defence installation and power plant, a buffer area of 500 mts from high tide line around Pemayya may be declared as Coastal Protection Area with no development within the area.*
- XX. *Safe wildlife corridors at eight (8) locations along the eastern side of the island connecting forest and seashore through via-ducts (elevated crossings) on the north south arterial road shall be provided. In addition to wildlife corridors, culverts and canopy crossings will be provided at appropriate locations for movement of wildlife. The chainage wise locations of the wildlife corridors has been identified by ZSI and Department of Environment & Forest. The width of the corridor ranges from 250 m to 1100 m and the eastern side of the corridors towards the seashore would be maintained as green area. SACON and WII may further suggest additional corridors and canopy crossings based on the data available with them and proposed studies. Representative of A&FFD will physically monitor that the same are implemented as stipulated in the EIA-EMP.*
- XXI. *The Mangrove Conservation and Management Plan for Great Nicobar Island has been prepared by the Department of Environment and Forests, A&N Administration with the budget of Rs.7.5 crores for mangrove conservation and management as part of EMP. PP shall strictly implement the same. The conservation plan shall adhere the strategies to restore and revive the mangrove areas through ecological restoration and redensification.*
- XXII. *No dredging activity should be taken in Rocky areas to avoid any type of Disaster. Dredge management plan with automatic monitoring sensors in port area, reclamation area to contain the impact of dredge spoil on marine ecosystem to be developed and to be overseen by nationally reputed institution such as NIOT or NIO.*
- XXIII. *All illumination for ICTT, Gas-based power plant and other infrastructure adjacent to sea turtle nesting areas must be in conformity with international standards and sea turtle friendly. No other type of illumination would be permitted. WII will develop illumination policy for the entire infrastructure and PP will ensure its implementation.*
- XXIV. *Dredging, sea reclamation activity for ICTT should take into account nesting and hatching time of sea turtles. Also it should be strictly following Dredging protocol and operational protocol as prepared by IUCN experts and Species Survival Commission’s Marine Turtle Specialist Group and revision, scrutiny, and follow-up of the processing time to time as per the expert opinion.*

- XXV. Movement of the ships within Galathea Bay once the ICTT is operational should take into account the movement of Leatherback Turtles. WII satellite data will aid ICTT operators to monitor movement and accordingly plan operations to avoid sea turtle collision risks. One scientist from WII and representative of A&NFD will be on boarded by ICTT operators for the environment monitoring cell as a part of their standard operating procedures. Adequate financial provisions be made by ICTT to meet the costs of both environmental cell and requirements of WII scientists including long term satellite tagging of Leatherback Sea Turtles.
- XXVI. Installation of deflectors to be done to clear turtles from the path of the suctioning equipment. Underwater silt/sediment dispersal preventing curtains to be deployed to avoid deposition of silt on sandy shores.
- XXVII. PP must explore and use non-conventional sources of energy in the form of solar, wind or tidal energy to bridge the deficit, if needed.
- XXVIII. A & N administration should establish within six month a Special Medical Unit along with state of art infrastructure, medicines and qualified medical staff at GNI to monitor human induced diseases due to expected influx of large population both domestic and international. All mechanism must be in place to ensure that Shompen and Nicobarese are not exposed to the risks related to introduced diseases. SOP and Guidelines will be developed by the Special Medical Unit for the same within 6 months from the grant of EC&CRZ. A provision of 100 Crore is recommended and PP is advised to accordingly revise EMP and submit the same to the Ministry and EAC within 30 days from the grant of EC and CRZ. PP is also directed to make these funds available for A&N Administration within 3 months from grant of EC and CRZ. Any additional funds required will be provided through special provisions by A&N Administration.
- XXIX. Forest department will establish hatcheries to ensure minimum 90% survival of hatchlings with onset of coming nesting season for Leatherback and other sea turtles, as presented during the EAC. Systematic data will be maintained for the same and reported to the regional office of the Ministry on annual basis.
- XXX. The existing island human population should be protected and if needed, ensure to provide the compensation instead of their agricultural/ residential Lands. The census of local as well as population from mainland should be documented.
- XXXI. Optimum number (minimum 2) of road side monitors (CAAQMS) at appropriate distance from the kerb of the road shall be fixed following the CPCB criteria to monitor biogenic VOCs, NO_x and PM_{2.5}.
- XXXII. Disposal of hazardous waste material would not be allowed in GNI including batteries, pesticides, organochlorines etc.
- XXXIII. The waste generated during construction and operation period of the project shall be managed as per the prevailing regulations on management of solid waste, plastic waste, e-waste, bio-medical waste, C&D waste and hazardous wastes issued in 2016 by the Ministry. The waste shall be segregated and should be

recycled/reused as per the regulatory provisions. No Municipal Landfills will be allowed in GNI. All rejects after the recycle/reuse of waste must be transported to mainland for its safe disposal. A separate application for TSDF shall be made to the Ministry in case of establishment of TSDF at GNI.

XXXIV. For the first 5 years (Phase-I) of the project, power demand shall be met through Diesel Generators (DG). Phase I of project shall include construction and commissioning of 50MVA gas based power plant and floating solar power plant in water reservoirs. The combined installed capacity to 90 MVA through diesel and gas based power will further augmented by 20 MVA through first phase of solar power from 6th year. During 10-15 years (Phase-II), the power generation shall be augmented to 220 MVA by increasing the installed capacity of Gas based power plant to 150 MVA and increasing the Solar power generation by additional 50 MVA taking total Solar power generation to 70 MVA. During 15 – 30 years (Phase III) the Gas based power plant capacity shall be increased to 300 MVA and Solar power plant shall be augmented to 100 MVA.

XXXV. Additional storage facility for 7000 kl fuel, 4 ha of additional land at GNI has been provided considering the existing fuel storage capacity is inadequate to cater to increased fuel demand during construction. The area for the storage and hazard mitigation measures as stated in the revised EIA-EMP be followed strictly.

XXXVI. All the facilities such as port, powerplant and township etc., to be designed to withstand seismic and Tsunami hazard and detailed plan should be submitted to monitoring committee.

XXXVII. As stated by PP, a total number of 102 active mounds of Nicobar Megapode and their locations in GNI have been mapped by ZSI. Out of the 102 mounds, only 19 mounds are falling in the project area. Further, it is seen that several mounds are falling in the green area of the development and the same will be protected. SACON will thoroughly map exact locations of all such mounds falling in the green areas of development and A&N forest department will ensure that these are not disturbed during project development and accordingly advised to define safe buffer areas as advised by SACON for each mound and to be designated as NDZs.

XXXVIII. A&N Administration should develop tourism policy for GNI considering ecological sensitivities of the island. The tourism development will be guided by the GNI Tourism Policy. PP has to ensure that tourism development is consistent to this policy.

XXXIX. PP will establish a modern nature and science information center at GNI in consultation with National Council of Science Museum, Kolkatta (NCSM) an autonomous society under the Ministry of Culture, Government of India. PP is advised to write to NCSM seeking further assistance and develop a full proposal within 3 months from grant of EC&CRZ. All costs necessary for developing the center will be made available by PP. The center can also act as capacity building for operators of various infrastructure components of GNI holistic development. Accordingly, the Committee informed PP to revise the EMP provisions.

- XL. *Use of vehicles or any recreational means on Sea Turtle nesting beaches will be strictly prohibited. Such beaches will be clearly marked as no-use zones by A&NFD. These will also be included in the Tourism Policy of GNI.*
- XLI. ***Three new sanctuaries are notified by A&N administration as follows towards mitigation measures. It will be ensured that these remains as sanctuaries with no further scope of denotification for any purposes.***
- a. ***Leatherback turtle sanctuary of 13.75 sq.km at Little Nicobar Island***
 - b. ***The entire Menchal Island of 1.29 sq.km as a Megapode Sanctuary.***
 - c. ***The entire Meroe Island of 2.73 sq.km as a Coral Sanctuary.***
- XLII. ***The recommendation from Standing Committee of NBWL under the Wildlife (Protection) Act, 1972 should be obtained, if applicable.***

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.*
- (ii) *All other statutory clearances such as the approvals for storage of diesel from Chief Controller of Explosives, Fire Department, Coast Guard, Civil Aviation Department shall be obtained, as applicable by project proponents from the respective competent authorities.*

II. Air quality monitoring and preservation:

- (i) *The project proponent shall install system to carryout Ambient Air Quality monitoring for common/criterion parameters relevant to the main pollutants released (e.g. PM10 and PM2.5 in reference to PM emission, and SO2 and NOx in reference to SO2 and NOx emissions) within and outside the project area at least at four locations, covering upwind and downwind directions.*
- (ii) *Appropriate Air Pollution Control (APC) system shall be provided for all the dust generating points including fugitive dust from all vulnerable sources, so as to comply prescribed emission standards.*

- (iii) *Shrouding shall be carried out in the work site enclosing the dock/proposed facility area. This will act as dust curtain as well achieving zero dust discharge from the site. These curtain or shroud will be immensely effective in restricting disturbance from wind in affecting the dry dock operations, preventing waste dispersion, improving working conditions through provision of shade for the workers.*
- (iv) *Dust collectors shall be deployed in all areas where blasting (surface cleaning) and painting operations are to be carried out, supplemented by stacks for effective dispersion.*
- (v) *The Vessels shall comply the emission norms prescribed from time to time.*
- (vi) *Diesel power generating sets proposed as source of backup power should be of enclosed type and conform to rules made under the Environment (Protection) Act, 1986. The height of stack of DG sets should be equal to the height needed for the combined capacity of all proposed DG sets. Use of low sulphur diesel. The location of the DG sets may be decided with in consultation with State Pollution Control Board.*

III. Water quality monitoring and preservation:

- (i) *The Project proponent shall ensure that no creeks or rivers are blocked due to any activities at the project site and free flow of water is maintained.*
- (ii) *Appropriate measures must be taken while undertaking digging activities to avoid any likely degradation of water quality. Silt curtains shall be used to contain the spreading of suspended sediment during dredging within the dredging area.*
- (iii) *No ships docking at the proposed project site will discharge its on-board waste water untreated in to the estuary/ channel. All such wastewater load will be diverted to the proposed Effluent Treatment Plant of the project site.*
- (iv) *Measures should be taken to contain, control and recover the accidental spills of fuel and cargo handle.*
- (v) *Total fresh water use shall not exceed the proposed requirement as provided in the project details. Prior permission from competent authority shall be obtained for use of fresh water.*
- (vi) *A certificate from the competent authority for discharging treated effluent/ untreated effluents into the Public sewer/ disposal/ drainage systems along with the final disposal point should be obtained.*
- (vii) *No diversion of the natural course of the river shall be made without prior permission from the Ministry of Water resources.*
- (viii) *All the erosion control measures shall be taken at water front facilities. Earth protection work shall be carried out*

to avoid erosion of soil from the shoreline/boundary line from the land area into the marine water body.

IV. Noise monitoring and prevention:

- (i) Noise level survey shall be carried as per the prescribed guidelines and report in this regard shall be submitted to Regional Officer of the Ministry as a part of six-monthly compliance report.*
- (ii) Noise from vehicles, power machinery and equipment on-site should not exceed the prescribed limit. Equipment should be regularly serviced. Attention should also be given to muffler maintenance and enclosure of noisy equipments.*
- (iii) Acoustic enclosures for DG sets, noise barriers for ground-run bays, ear plugs for operating personnel shall be implemented as mitigation measures for noise impact due to ground sources.*
- (iv) The ambient noise levels should conform to the standards prescribed under E(P)A Rules, 1986 viz. 75 dB(A) during day time and 70 dB(A) during night time.*

V. Energy Conservation measures:

- (i) Provide solar power generation on roof tops of buildings, for solar light system for all common areas, street lights, parking around project area and maintain the same regularly;*
- (ii) Provide LED lights in offices and project areas.*

VI. Waste management:

- (i) Shoreline should not be disturbed due to dumping. Periodical study on shore line changes shall be conducted and mitigation carried out, if necessary. The details shall be submitted along with the six monthly monitoring reports.*
- (ii) Necessary arrangements for the treatment of the effluents and solid wastes must be made and it must be ensured that they conform to the standards laid down by the competent authorities including the Central or State Pollution Control Board and under the Environment (Protection) Act, 1986.*
- (iii) The solid wastes shall be managed and disposed as per the norms of the Solid Waste Management Rules, 2016.*
- (iv) Any wastes from construction and demolition activities related thereto shall be managed so as to strictly conform to the Construction and Demolition Waste Management Rules, 2016.*
- (v) A certificate from the competent authority handling municipal solid wastes should be obtained, indicating the*

existing civic capacities of handling and their adequacy to cater to the M.S.W. generated from project.

- (vi) Used CFLs and TFLs should be properly collected and disposed off/sent for recycling as per the prevailing guidelines/ rules of the regulatory authority to avoid mercury contamination.*
- (vii) Oil spill contingency plan shall be prepared and part of DMP to tackle emergencies. The equipment and recovery of oil from a spill would be assessed. Guidelines given in MARPOL and Shipping Acts for oil spill management would be followed. Mechanism for integration of terminals oil contingency plan with the overall area contingency plan under the co-ordination of Coast should be covered.*

VII. Green Belt:

- (i) Green belt shall be developed in area as provided in project details with a native tree species in accordance with CPCB guidelines.*
- (ii) Top soil shall be separately stored and used in the development of green belt.*

VIII. Marine Ecology:

- (i) Dredging shall not be carried out during the fish breeding and spawning seasons.*
- (ii) Dredging, etc shall be carried out in the confined manner to reduce the impacts on marine environment.*
- (iii) The dredging schedule shall be so planned that the turbidity developed is dispersed soon enough to prevent any stress on the fish population.*
- (iv) A detailed marine biodiversity management plan shall be prepared through the NIO or any other institute of repute on marine, brackish water and fresh water ecology and biodiversity and submitted to and implemented to the satisfaction of the State Biodiversity Board and the CRZ authority. The report shall be based on a study of the impact of the project activities on the intertidal biotopes, corals and coral communities, molluscs, sea grasses, sea weeds, sub-tidal habitats, fishes, other marine and aquatic micro, macro and mega flora and fauna including benthos, plankton, turtles, birds etc. as also the productivity. The data collection and impact assessment shall be as per standards survey methods and include underwater photography.*
- (v) Marine ecology shall be monitored regularly also in terms of sea weeds, sea grasses, mudflats, sand dunes, fisheries, echinoderms, shrimps, turtles, corals, coastal vegetation, mangroves and other marine biodiversity components including all micro, macro and mega floral and faunal components of marine biodiversity.*

- (vi) *The project proponent shall ensure that water traffic does not impact the aquatic wildlife sanctuaries that fall along the stretch of the river.*

B. Township & Area development

I. Statutory compliance:

- (i) *The project proponent shall obtain all necessary clearance/ permission from all relevant agencies including town planning authority before commencement of work. All the construction shall be done in accordance with the local building byelaws.*
- (ii) *The approval of the Competent Authority shall be obtained for structural safety of buildings due to earthquakes, adequacy of firefighting equipment etc. as per National Building Code including protection measures from lightening etc.*
- (iii) *The project proponent shall obtain forest clearance under the provisions of Forest (Conservation) Act, 1980, in case of the diversion of forest land for non-forest purpose involved in the project.*
- (iv) *The project proponent shall obtain Consent to Establish/ Operate under the provisions of Air (Prevention & Control of Pollution) Act, 1981 and the Water (Prevention & Control of Pollution) Act, 1974 from the concerned State Pollution Control Board/ Committee.*
- (v) *The project proponent shall obtain the necessary permission for drawl of ground water/ surface water required for the project from the competent authority.*
- (vi) *All other statutory clearances such as the approvals for storage of diesel from Chief Controller of Explosives, Fire Department, Civil Aviation Department shall be obtained, as applicable, by project proponents from the respective competent authorities.*
- (vii) *The provisions of the Solid Waste Management Rules, 2016, e-Waste (Management) Rules, 2016, and the Plastics Waste Management Rules, 2016, shall be followed.*
- (viii) *The project proponent shall follow the ECBC/ECBC-R prescribed by Bureau of Energy Efficiency, Ministry of Power strictly.*

II. Air quality monitoring and preservation:

- (i) *Notification GSR 94(E) dated 25.01.2018 of MoEF&CC regarding Mandatory Implementation of Dust Mitigation Measures for Construction and Demolition Activities for projects requiring Environmental Clearance shall be complied with.*
- (ii) *A management plan shall be drawn up and implemented to contain the current exceedance in ambient air quality at the site.*
- (iii) *The project proponent shall install system to carryout Ambient Air Quality monitoring for common/criterion parameters relevant to the main pollutants released (e.g.*

- PM10 and PM2.5) covering upwind and downwind directions during the construction period.*
- (iv) Diesel power generating sets proposed as source of backup power should be of enclosed type and conform to rules made under the Environment (Protection) Act, 1986. The height of stack of DG sets should be equal to the height needed for the combined capacity of all proposed DG sets. Use of low sulphur diesel. The location of the DG sets may be decided with in consultation with State Pollution Control Board.*
 - (v) Construction site shall be adequately barricaded before the construction begins. Dust, smoke & other air pollution prevention measures shall be provided for the building as well as the site. These measures shall include screens for the building under construction, continuous dust/ wind breaking walls all around the site (at least 3-meter height). Plastic/tarpaulin sheet covers shall be provided for vehicles bringing in sand, cement, murrum and other construction materials prone to causing dust pollution at the site as well as taking out debris from the site.*
 - (vi) Sand, murrum, loose soil, cement, stored on site shall be covered adequately so as to prevent dust pollution.*
 - (vii) Wet jet shall be provided for grinding and stone cutting.*
 - (viii) Unpaved surfaces and loose soil shall be adequately sprinkled with water to suppress dust.*
 - (ix) All construction and demolition debris shall be stored at the site (and not dumped on the roads or open spaces outside) before they are properly disposed. All demolition and construction waste shall be managed as per the provisions of the Construction and Demolition Waste Management Rules 2016.*
 - (x) The diesel generator sets to be used during construction phase shall be low sulphur diesel type and shall conform to Environmental (Protection) prescribed for air and noise emission standards.*
 - (xi) The gaseous emissions from DG set shall be dispersed through adequate stack height as per CPCB standards. Acoustic enclosure shall be provided to the DG sets to mitigate the noise pollution. Low sulphur diesel shall be used. The location of the DG set and exhaust pipe height shall be as per the provisions of the Central Pollution Control Board (CPCB) norms.*
 - (xii) For indoor air quality the ventilation provisions as per National Building Code of India.*

III. Water quality monitoring and preservation:

- (i) The natural drain system should be maintained for ensuring unrestricted flow of water. No construction shall be allowed to obstruct the natural drainage through the site, on wetland and water bodies. Check dams, bio-swales, landscape, and other sustainable urban drainage systems (SUDS) are allowed for maintaining the drainage pattern and to harvest rain water.*
- (ii) Buildings shall be designed to follow the natural topography as much as possible. Minimum cutting and filling should be done.*

- (iii) Total fresh water use shall not exceed the proposed requirement as provided in the project details.
- (iv) The quantity of fresh water usage, water recycling and rainwater harvesting shall be measured and recorded to monitor the water balance as projected by the project proponent. The record shall be submitted to the Regional Office, MoEF&CC along with six monthly Monitoring reports.
- (v) A certificate shall be obtained from the local body supplying water, specifying the total annual water availability with the local authority, the quantity of water already committed, the quantity of water allotted to the project under consideration and the balance water available. This should be specified separately for ground water and surface water sources, ensuring that there is no impact on other users.
- (vi) At least 20% of the open spaces as required by the local building bye-laws shall be pervious. Use of Grass pavers, paver blocks with at least 50% opening, landscape etc. would be considered as pervious surface.
- (vii) Installation of dual pipe plumbing for supplying fresh water for drinking, cooking and bathing etc and other for supply of recycled water for flushing, landscape irrigation, car washing, thermal cooling, conditioning etc. shall be done.
- (viii) Use of water saving devices/fixtures (viz. low flow flushing systems; use of low flow faucets tap aerators etc) for water conservation shall be incorporated in the building plan.
- (ix) Separation of grey and black water should be done by the use of dual plumbing system. In case of single stack system separate recirculation lines for flushing by giving dual plumbing system be done.
- (x) Water demand during construction should be reduced by use of pre-mixed concrete, curing agents and other best practices referred.
- (xi) The local bye-law provisions on rain water harvesting should be followed. If local bye-law provision is not available, adequate provision for storage and recharge should be followed as per the Ministry of Urban Development Model Building Byelaws, 2016. Rain water harvesting recharge pits/storage tanks shall be provided for ground water recharging as per the CGWB norms.
- (xii) A rain water harvesting plan needs to be designed where the recharge bores of minimum one recharge bore per 5,000 square meters of built up area and storage capacity of minimum one day of total fresh water requirement shall be provided. In areas where ground water recharge is not feasible, the rain water should be harvested and stored for reuse. The ground water shall not be withdrawn without approval from the Competent Authority.
- (xiii) All recharge should be limited to shallow aquifer.
- (xiv) No ground water shall be used during construction phase of the project.
- (xv) Any ground water dewatering should be properly managed and shall conform to the approvals and the guidelines of the CGWA in the matter. Formal approval shall be taken from the CGWA for any ground water abstraction or dewatering.
- (xvi) The quantity of fresh water usage, water recycling and rainwater harvesting shall be measured and recorded to monitor the water balance as projected by the project

- proponent. The record shall be submitted to the Regional Office, MoEF&CC along with six monthly Monitoring reports.
- (xvii) Sewage shall be treated in the STP with tertiary treatment. The treated effluent from STP shall be recycled/re-used for flushing, AC make up water and gardening. As proposed, no treated water shall be disposed in to municipal drain.
 - (xviii) No sewage or untreated effluent water would be discharged through storm water drains.
 - (xix) Onsite sewage treatment of capacity of treating 100% waste water to be installed. The installation of the Sewage Treatment Plant (STP) shall be certified by an independent expert and a report in this regard shall be submitted to the Ministry before the project is commissioned for operation. Treated waste water shall be reused on site for landscape, flushing, cooling tower, and other end-uses. Excess treated water shall be discharged as per statutory norms notified by Ministry of Environment, Forest and Climate Change. Natural treatment systems shall be promoted.
 - (xx) Periodical monitoring of water quality of treated sewage shall be conducted. Necessary measures should be made to mitigate the odour problem from STP.
 - (xxi) Sludge from the onsite sewage treatment, including septic tanks, shall be collected, conveyed and disposed as per the Ministry of Urban Development, Central Public Health and Environmental Engineering Organization (CPHEEO) Manual on Sewerage and Sewage Treatment Systems, 2013.

IV. Noise monitoring and prevention:

- i. Ambient noise levels shall conform to residential area/commercial area/industrial area/silence zone both during day and night as per Noise Pollution (Control and Regulation) Rules, 2000. Incremental pollution loads on the ambient air and noise quality shall be closely monitored during construction phase. Adequate measures shall be made to reduce ambient air and noise level during construction phase, so as to conform to the stipulated standards by CPCB / SPCB.
- ii. Noise level survey shall be carried as per the prescribed guidelines and report in this regard shall be submitted to Regional Officer of the Ministry as a part of six-monthly compliance report.
- iii. Acoustic enclosures for DG sets, noise barriers for ground-run bays, ear plugs for operating personnel shall be implemented as mitigation measures for noise impact due to ground sources.

V. Energy Conservation measures:

- i. Compliance with the Energy Conservation Building Code (ECBC) of Bureau of Energy Efficiency shall be ensured. Buildings in the States which have notified their own ECBC, shall comply with the State ECBC.
- ii. Outdoor and common area lighting shall be LED.
- iii. Concept of passive solar design that minimize energy consumption in buildings by using design elements, such as building orientation, landscaping, efficient building envelope, appropriate fenestration, increased day lighting design and thermal mass etc. shall be incorporated in the building design. Wall, window, and roof u-values shall be as per ECBC specifications.

- iv. *Energy conservation measures like installation of CFLs/LED for the lighting the area outside the building should be integral part of the project design and should be in place before project commissioning.*
- v. *Solar, wind or other Renewable Energy shall be installed to meet electricity generation equivalent to 1% of the demand load or as per the state level/ local building bye-laws requirement, whichever is higher.*
- vi. *Solar power shall be used for lighting in the apartment to reduce the power load on grid. Separate electric meter shall be installed for solar power. Solar water heating shall be provided to meet 20% of the hot water demand of the commercial and institutional building or as per the requirement of the local building bye-laws, whichever is higher. Residential buildings are also recommended to meet its hot water demand from solar water heaters, as far as possible.*

VI. Waste Management:

- i. *A certificate from the competent authority handling municipal solid wastes, indicating the existing civic capacities of handling and their adequacy to cater to the M.S.W. generated from project shall be obtained.*
- ii. *Disposal of muck during construction phase shall not create any adverse effect on the neighbouring communities and be disposed taking the necessary precautions for general safety and health aspects of people, only in approved sites with the approval of competent authority.*
- iii. *Separate wet and dry bins must be provided in each unit and at the ground level for facilitating segregation of waste. Solid waste shall be segregated into wet garbage and inert materials.*
- iv. *Organic waste compost/Vermiculture pit/Organic Waste Converter within the premises with a minimum capacity of 0.3 kg /person/day must be installed.*
- v. *All non-biodegradable waste shall be handed over to authorized recyclers for which a written tie up must be done with the authorized recyclers.*
- vi. *Any hazardous waste generated during construction phase, shall be disposed off as per applicable rules and norms with necessary approvals of the State Pollution Control Board.*
- vii. *Use of environment friendly materials in bricks, blocks and other construction materials, shall be required for at least 20% of the construction material quantity. These include Fly Ash bricks, hollow bricks, AACs, Fly Ash Lime Gypsum blocks, Compressed earth blocks, and other environment friendly materials.*
- viii. *Fly ash should be used as building material in the construction as per the provision of Fly Ash Notification of September, 1999 and amended as on 27th August, 2003 and 25th January, 2016. Ready mixed concrete must be used in building construction.*
- ix. *Any wastes from construction and demolition activities related thereto shall be managed so as to strictly conform to the Construction and Demolition Waste Management Rules, 2016.*

- x. *Used CFLs and TFLs should be properly collected and disposed off/sent for recycling as per the prevailing guidelines/ rules of the regulatory authority to avoid mercury contamination.*

VII. Green Cover:

- i. *A minimum of 1 tree for every 80 sqm of land should be planted and maintained. The existing trees will be counted for this purpose. The landscape planning should include plantation of native species. The species with heavy foliage, broad leaves and wide canopy cover are desirable. Water intensive and/or invasive species should not be used for landscaping.*
- ii. *Topsoil should be stripped to a depth of 20 cm from the areas proposed for buildings, roads, paved areas, and external services. It should be stockpiled appropriately in designated areas and reapplied during plantation of the proposed vegetation on site.*

VIII. Transport

- i. *A comprehensive mobility plan, as per MoUD best practices guidelines (URDPFI), shall be prepared to include motorized, non-motorized, public, and private networks. Road should be designed with due consideration for environment, and safety of users. The road system can be designed with these basic criteria.*
 - a. *Hierarchy of roads with proper segregation of vehicular and pedestrian traffic.*
 - b. *Traffic calming measures.*
 - c. *Proper design of entry and exit points.*
 - d. *Parking norms as per local regulation.*
- ii. *Vehicles hired for bringing construction material to the site should be in good condition and should have a pollution check certificate and should conform to applicable air and noise emission standards be operated only during non-peak hours.*
- iii. *A detailed traffic management and traffic decongestion plan shall be drawn up to ensure that the current level of service of the roads within a 05 kms radius of the project is maintained and improved upon after the implementation of the project. This plan should be based on cumulative impact of all development and increased habitation being carried out or proposed to be carried out by the project or other agencies in this 05 Kms radius of the site in different scenarios of space and time and the traffic management plan shall be duly validated and certified by the State Urban Development department and the P.W.D./competent authority for road augmentation and shall also have their consent to the implementation of components of the plan which involve the participation of these departments.*

C. 450 MVA Gas and Solar based power plant.

I. Statutory Compliance

- i. Part C of Schedule II of Municipal Solid Wastes Rules, 2016 dated 08.04.2016 as amended from time to time shall be complied for power plants based on Municipal Solid Waste.
- ii. The recommendation from Standing Committee of NBWL under the Wildlife (Protection) Act, 1972 should be obtained, if applicable.
- iii. No Objection Certificate from Ministry of Civil Aviation be obtained for installation of requisite chimney height and its siting criteria for height clearance.
- iv. Groundwater shall not be drawn during construction of the project. In case, groundwater is drawn during construction, necessary permission be obtained from CGWA.

II. Air quality monitoring and Management:

- i. Stacks of prescribed height shall be provided with continuous online monitoring instruments for SOX, NOx and Particulate Matter as per extant rules.
- ii. Exit velocity of flue gases shall not be less than 20-25 m/s. Mercury emissions from stack shall also be monitored periodically.
- iii. Continuous Ambient Air Quality monitoring system shall be set up to monitor common/criteria pollutants from the flue gases such as PM10, PM2.5, SO2, NOX within the plant area at least at one location. The monitoring of other locations (at least three locations outside the plant area covering upwind and downwind directions at an angle of 120° each) shall be carried out manually.
- iv. Appropriate Air Pollution Control measures (DEs/DSs) be provided at all the dust generating sources including sufficient water sprinkling arrangements at various locations viz., roads, excavation sites, crusher plants, transfer points, loading and unloading areas, etc.

III. Noise pollution and its control measures:

- i. The Ambient Noise levels shall meet the standards prescribed as per the Noise Pollution (Regulation and Control) Rules, 2000.
- ii. Persons exposed to high noise generating equipment shall use Personal Protective Equipment (PPE) like earplugs/ear muffs, etc.
- iii. Periodical medical examination on hearing loss shall be carried out for all the workers and maintain audiometric record and for treatment of any hearing loss including rotating to non-noisy/less noisy areas.

IV Human Health Environment:

- i. Bi-annual Health check-up of all the workers is to be conducted. The study shall take into account of chronic exposure to noise which may lead to adverse effects like increase in heart rate and blood pressure, hypertension and peripheral vasoconstriction and thus increased peripheral vascular resistance. Similarly, the

study shall also assess the health impacts due to air polluting agents.

- ii. Baseline health status within study area shall be assessed and report be prepared. Mitigation measures should be taken to address the endemic diseases.
- iii. Impact of operation of power plant on agricultural crops, large water bodies (as applicable) once in two years by engaging an institute of repute. The study shall also include impact due to heavy metals associated with emission from power plant.
- iv. Sewage Treatment Plant shall be provided for domestic wastewater.

V. Risk Mitigation and Disaster Management:

- i. Storage facilities for auxiliary liquid fuel such as LDO and HFO/LSHS shall be made as per the extant rules in the plant area in accordance with the directives of Petroleum & Explosives Safety Organisation (PESO). Sulphur Content in the liquid fuel should not exceed 0.5%.
- ii. Ergonomic working conditions with First Aid and sanitation arrangements shall be made for the drivers and other contract workers during construction phase.
- iii. Safety management plan based on Risk Assessment shall be prepared to limit the risk exposure to the workers within the plant boundary.
- iv. Regular mock drills for on-site emergency management plan and Integrated Emergency Response System shall be developed for all kind of possible disaster situations.

D Public hearing and human health issues:

- (i) The work space shall be maintained as per international standards for occupational health and safety with provision of fresh air respirators, blowers, and fans to prevent any accumulation and inhalation of undesirable levels of pollutants including VOCs.
- (ii) Workers shall be strictly enforced to wear personal protective equipments like dust mask, ear muffs or ear plugs, whenever and wherever necessary/ required. Special visco-elastic gloves will be used by labour exposed to hazards from vibration.
- (iii) In case of repair of any old vessels, excessive care shall be taken while handling Asbestos & Freon gas. Besides, fully enclosed covering should be provided for the temporary storage of asbestos materials at site before disposal to CTSDF.
- (iv) Safety training shall be given to all workers specific to their work area and every worker and employee will be engaged in fire hazard awareness training and mock drills which will be conducted regularly. All standard safety and occupational hazard measures shall be implemented and monitored by the concerned officials to prevent the
- (v) occurrence of untoward incidents/ accidents.
- (vi) Emergency preparedness plan based on the Hazard identification and Risk Assessment (HIRA) and Disaster Management Plan shall be implemented.

- (vii) Provision shall be made for the housing of construction labour within the site with all necessary infrastructure and facilities such as fuel for cooking, mobile toilets, mobile STP, safe drinking water, medical health care, crèche etc. The housing may be in the form of temporary structures to be removed after the completion of the project.
- (viii) Occupational health surveillance of the workers shall be done on a regular basis.

E. Environment Responsibility:

- (i) The company shall have a well laid down environmental policy duly approved by the Board of Directors. The environmental policy should prescribe for standard operating procedures to have proper checks and balances and to bring into focus any infringements/deviation/violation of the environmental / forest / wildlife norms/ conditions. The company shall have defined system of reporting infringements / deviation / violation of the environmental / forest / wildlife norms / conditions and / or shareholders / stake holders. The copy of the board resolution in this regard shall be submitted to the MoEF&CC as a part of six-monthly report.
- (ii) Action plan for implementing EMP and environmental conditions along with responsibility matrix of the company shall be prepared and shall be duly approved by competent authority. The year wise funds earmarked for environmental protection measures shall be kept in separate account and not to be diverted for any other purpose. Year wise progress of implementation of action plan shall be reported to the Ministry/Regional Office along with the Six Monthly Compliance Report.
- (iii) Self-environmental audit shall be conducted annually. Every three years third party environmental audit shall be carried out.

F. Miscellaneous:

- (i) The project proponent shall make public the environmental clearance granted for their project along with the environmental conditions and safeguards at their cost by prominently advertising it at least in two local newspapers of the District or State, of which one shall be in the vernacular language within seven days and in addition this shall also be displayed in the project proponent's website permanently.
- (ii) The copies of the environmental clearance shall be submitted by the project proponents to the Heads of local bodies, Panchayats and Municipal Bodies in addition to the relevant offices of the Government who in turn has to display the same for 30 days from the date of receipt.
- (iii) The project proponent shall upload the status of compliance of the stipulated environment clearance conditions, including results of monitored data on their website and update the same on half-yearly basis.
- (iv) The project proponent shall submit six-monthly reports on the status of the compliance of the stipulated environmental conditions on the website of the ministry of Environment, Forest and Climate Change at environment clearance portal.

- (v) *The project proponent shall submit the environmental statement for each financial year in Form-V to the concerned State Pollution Control Board as prescribed under the Environment (Protection) Rules, 1986, as amended subsequently and put on the website of the company.*
- (vi) *The criteria pollutant levels namely; PM2.5, PM10, SO2, NOx (ambient levels) or critical sectoral parameters, indicated for the project shall be monitored and displayed at a convenient location near the main gate of the company in the public domain.*
- (vii) *The project proponent shall inform the Regional Office as well as the Ministry, the date of financial closure and final approval of the project by the concerned authorities, commencing the land development work and start of production operation by the project.*
- (viii) *The project authorities must strictly adhere to the stipulations made by the State Pollution Control Board and the State Government.*
- (ix) *The project proponent shall abide by all the commitments and recommendations made in the EIA/EMP report, commitment made during Public Hearing and also that during their presentation to the Expert Appraisal Committee.*
- (x) *No further expansion or modifications in the project shall be carried out without prior approval of the Ministry of Environment, Forests and Climate Change (MoEF&CC).*
- (xi) *Concealing factual data or submission of false/fabricated data may result in revocation of this environmental clearance and attract action under the provisions of Environment (Protection) Act, 1986.*
- (xii) *The Ministry may revoke or suspend the clearance, if implementation of any of the above conditions is not satisfactory under the provisions of the Environmental (Protection) Act, 1986, to ensure effective implementation of the suggested safeguard measures in a time bound and satisfactory manner.*
- (xiii) *The Ministry reserves the right to stipulate additional conditions if found necessary. The Company in a time bound manner shall implement these conditions.*
- (xiv) *The Regional Office of this Ministry shall monitor compliance of the stipulated conditions. The project authorities should extend full cooperation to the officer (s) of the Regional Office by furnishing the requisite data / information/ monitoring reports.*
- (xv) *The above conditions shall be enforced, inter-alia under the provisions of the Water (Prevention & Control of Pollution) Act, 1974, the Air (Prevention & Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986, Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 and the Public Liability Insurance Act, 1991 along with their amendments and Rules and any other orders passed by the Hon'ble Supreme Court of India / High Courts and any other Court of Law relating to the subject matter.”*

Appellants' contentions

7. Main contentions in the appeal are that the project will have adverse impact on rich bio-diversity of the area and damage the habitats of the

endangered species. Galathea bay is nesting ground for birds and the area is also part of CRZ-IA & IB. Location of port is expressly prohibited in CRZ-IA area, having presence of huge number of coral colonies. It will also lead to erosion of the coast. **Only one season data has been taken as against requirement of taking data for three seasons for comprehensive impact assessment**, studies have not been conducted as per ToR, turtle nesting sites will be disturbed, harm will be caused to dolphins and other species by dredging, consideration of sea level rise has also not been kept in mind. In power plant, apart from generation of power by solar and gas sources, 15% generation of power will be by diesel. Impact of combustion of diesel has not been considered. The area is a part of seismic zone-V having potential for disasters which aspect has not been considered. As per government policy, Shompen tribes and Nicobari communities have to be kept isolated which aspect has not been considered, ignoring Forest Rights Act, 2006 and Andaman and Nicobar Islands (Protection of Aboriginal Tribes) Regulation, 1956. EIA is not by accredited consultancy. There are two national parks - Campbell Bay National Park (in the North) and Galathea National Park (in the South) which will be adversely impacted.

Stand of the respondents

8. Stand of the MoEF&CC is that the proper appraisal has been conducted by the EAC in its meetings. EAC comprised not only members of Infra-I sector but also Member Secretaries of the Infra- II sector, Thermal sector and Nuclear, Defence and Strategic (NDS) sector, Coastal Regulation Zone (CRZ) sector for comprehensive appraisal of the various components of the Project both before grant of the ToR and thereafter at the time of appraisal for grant of the EC/CRZ Clearance. The project proponent was awarded detailed Terms of Reference with

18 specific ToRs for the ICTT, 23 specific ToRs for the Airport, 12 specific ToRs for the Township and Area Development Project and 52 specific ToRs for the Gas and Solar Based Power Plant, in addition to Special Conditions and all standard ToR conditions as applicable to such projects. A public hearing was held involving 138 participants on 27.01.2022. EIA Report was received on 7.03.2022. Thereafter, the project was again deliberated upon at the 293rd, 297th and 306th meetings of the EAC, before the Environmental Clearance was finally accorded on 4.11.2022. The Environmental Clearance accorded contains as many as 42 specific conditions dealing with each component of the project, in addition to all standard conditions applicable to each component dealing with statutory compliances, air quality monitoring and preservation, water quality monitoring and preservation, noise monitoring and preservation, energy conservation measures, waste management, green belt, marine ecology, transport, human health environment and mitigation and disaster management. Out of these specific conditions, the first condition itself comprises of 9 further sub-conditions dealing with (i) Leatherback Turtles (ii) Nicobar Megapode (iii) Saltwater Crocodile (iv) Impact of invasive species on native flora (v) Impact on inter-tidal flora and fauna (vi) Nicobar Macaque, Robber Crab and other endemic bird species of Greater Nicobar (vii) Mangrove Restoration (viii) Coral translocation and (ix) Welfare of local tribal population of Shompen and Nicobarese. PP has been asked to undertake studies as follows:-

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- (i) *Independent evaluation of impact of proposed port site at Galathea Bay by engaging a nationally recognized institute such as Zoological Survey of India ("ZSI") or Salim Ali Centre for Ornithology and Natural History ("SACON") or the Wildlife Institute of India ("WIT") or a consortium of these institutes.*

- (ii) *Independent study for the assessment of biodiversity and Wildlife value of all alternative port sites by engaging nationally reputed institutes like WII, ZSI, SACON or the Indian Institute for Science ("IISc").*
- (iii) *Comprehensive study of the impact of dredging and reclamation and port operations by ZSI, SACON or WII or a consortium of these institutes*
- (iv) *A specific study on the impact of the proposed development on migratory birds by ZSI, SACON or WII covering both inward and return migration period.*
- (v) *Involvement of an independent organization with specialized skill such as IIT, NIOT, NCCR, NIO, etc. for technical aspects of site selection of the port as well reputed research institutes such as WII, ZSI, SACON for ecological assessment.*
- (vi) *In addition to the above, the Project Proponent also undertook multiple studies through reputed agencies during the preparation of an environmentally sound Environmental Management Plan ("EMP") such as: Marine Ecological Conservation of Island Fauna Diversity and Marine Ecological Studies, Comprehensive conservation plan for Nicobar Megapode, an assessment of the Environmental sensitiveness of sea turtle nesting beaches of the Great Nicobar island, Environmental Baseline Data Monitoring, Socio-Economic Survey, Environmental Impact Assessment Study, Topographic survey through helicopter mounted LIDAR and OLS Survey, Mathematical Modelling Study, Oceanographic Study, Hydrographic Survey and Bathymetric & Geophysical Survey, Soil Investigation Study, Traffic & Market Analysis for Port."*

9. It is further stated that there are stringent conservation and mitigation measures keeping in mind the need to balance the defence and strategic requirements of the Nation along with the seminal importance that is owed to the biodiversity and natural habitat of the region. Some of such measures are:-

- (i) *WII would establish a long-term field research unit in the Andaman & Nicobar specifically for undertaking uninterrupted turtle research and carrying out necessary conservation interventions if required*
- (ii) *WII and SACON would undertake comprehensive conservation measures for the endemic Nicobar Megapod, and two fail proposal for the same are to be submitted to the Project Proponent with a copy to the Answering Respondent.*

- (iii) *The Project Proponent would release funds within three months to the WII and A&N Forest Department for conservation measures for saltwater crocodiles*
- (iv) *SACON would develop a detailed proposal for the conservation of the Nicobar Macaque, Robber Crab and other endemic bird species of Great Nicobar, which would then be implemented by the Project Proponent.*
- (v) *Over and above all other conservation proposals, the Project Proponent is to separately provide funds to the A&N Forest Department for the 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 endemeic flora and fauna conservation.*
- (vi) *Three independent monitoring committees are to be established by the Project Proponent for implementation of the Environment Management Plan, i.e. - one committee would oversee all pollution related matters, one committee would oversee the implementation of biodiversity related conditions and the third committee would oversee welfare and issues related to the Shompen and Nicobarese tribal populations.*
- (vii) *Safe wildlife corridors at 8 locations along the eastern side of the island would be created.*
- (viii) *The Mangrove Conservation and Management Plan for Greater Nicobar Island prepared by the A&N Administration would be adhered to.*
- (ix) *The Coral Conservation Plan prepared by Zoological Survey of India (ZSI) addresses both the conservation strategies for coral colonies around Great Nicobar Island (GNI) as well as translocation strategies for ten hectares of impacted corals.*
- (x) *Various restrictions on dredging, construction activity, waste management, disease control etc. have all be provided for within the Environmental Clearance.”*

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.

13. **Stand of the PP** is that the **project is for holistic development of Great Nicobar Island in view of its strategic, security and socio economic benefits.** It will transform the Island into a hub of port led development. NITI Aayog has studied and planned the holistic development of identified Islands. A&N Administration vide order dated 28.07.2020 appointed Andaman Nicobar Island Integrated Development Corporation Ltd. (ANIIDCO) as Project Proponent for development of various projects in question. On 18.12.2020, the NITI Aayog appointed a qualified Technical Consultant for preparation of Master Plan for Holistic of Great Nicobar Island who carried out land suitability assessment, eco sensitivity analysis, and carrying capacity assessment to delineate all environmentally sensitive areas and to provide a development suitability map of the Island. Accordingly, **EIA study has been undertaken to identify and analyse impact of the project on the environment and suggest various mitigation measures to ensure that the development takes place with minimal environmental and social impact.** Further, in compliance of the

Terms of Reference (ToR) issued by MoEF&CC vide letter dated 25.05.2021, assistance of technical organizations/institutions with expertise in ecological and biodiversity studies such as ZSI, WII, SACON etc. was taken for ecological assessment and their studies/ reports are part of the EIA report. As per the terms & conditions of grant of EC & CRZ Clearance vide letter dated 4.11.2022, wildlife conservation plans have been prepared for leatherback sea turtle, nicobar megapode, salt water crocodile, inter tidal flora 86 fauna, mangroves, nicobar macaque, robber crab, other endemic bird species and corals in consultation with Wildlife Institute of India (WII), Zoological Survey of India (ZSI), Salim Ali Centre for Ornithology and Natural History (SACON), Botanical Survey of India (BSI) and Institute of Forest Management (IIFM). Fund for the wildlife conservation plans shall be released to the institutes by the Respondent No. 2. Further, as per the terms & conditions of grant of EC & CRZ Clearance, three independent committees have been set upto oversee pollution related matters, biodiversity and welfare & issues related to Shopmen and Nicobarese tribes. The Government of India (GOI) has adopted a proactive policy aimed at transforming the Andaman and Nicobar Islands (A&N Islands), as an economic hub. Strategically located, the A&N Islands, larger than several island countries in themselves, are an asset in India's cultural, economic and strategic calculus. **The project will strengthen India's presence in the Andaman Sea and in Southeast Asia; and will create an economic hub with a major cargo transshipment terminal and a global tourism destination. The location of the project, besides being of strategic importance, presents immense opportunities to further strengthen India's trading position in the world by developing an International Transshipment terminal. A new transshipment port at GNI can be competitive because of the cost savings that shippers can realize using feeder ships to service ports around the rim of the Bay of Bengal.**

A new port at GNI highlights its locational advantages over competing ports in the region for accessing ports in Bay of Bengal region. The importance of the said project would further be evident from the following facts:

- a) The Andaman and Nicobar Islands constitute just 0.2 per cent of India's landmass but account for 30 per cent of the country's 200-nautical-mile Exclusive Economic Zone (EEZ).
- b) Great Nicobar Island is the largest of the Nicobar group of Islands which represents a huge, strategically located land mass in the Bay of Bengal, whose economic potential and strategic importance is enormous.

14. It is further stated that the project plan ensures that both development and environment go hand in hand. It is stated that the appeals are focusing only on environment without considering development. Both are to be considered. Reference has been made to judgement in Citizens For Green Doon and Others Versus Union of India and Others (2021 SCC OnLine SC 1243) pertaining to the Char Dham project. It is further stated that only 166.1 sq. km of area is proposed for development which is approximately 2% of the total area of A & N Islands. Further, 130.75 sq. km of forest area is proposed to be diverted for the project which is only approximately 1.82% of the total forest area of A & N Islands. A&N Administration is allowed to accept and process the Forest Clearance applications through offline mode as per Ministry's letter dated 12.06.2015. The PP filed online Terms of Reference (ToR) application to MoEF&CC on 03.03.2021 which was considered in the meeting of the Expert Appraisal Committee (EAC) and ToR was issued on 25.05.2021. The draft Environmental Impact Assessment (EIA) report was uploaded on the MoEF&CC portal on 24.12.2021. The public hearing on the draft EIA report

was held on 27.01.2022. Final EIA report, after incorporating the written suggestions/ objections and public hearing, was uploaded on the MoEF&CC portal on 07.03.2022. The EAC in its meeting held on 24.03.2022, considered the proposal and MoEF&CC on 4.11.2022 granted EC & CRZ clearance. A comprehensive EIA study was undertaken by QCI-NABET accredited consultants to evaluate environmental impact and identifying mitigation measures for the project. The following studies were undertaken as part of the EIA study by various technical organizations:

- Marine Ecological Conservation of Island Fauna Diversity and Marine Ecological Studies.
- An assessment of the Environmental sensitiveness of sea turtle nesting beaches of the Great Nicobar Island.
- Environmental Baseline Data Monitoring, Socio-Economic Survey, Environmental Impact Assessment Study.
- Topographic survey through helicopter mounted LIDAR and OLS Survey.
- Mathematical Modelling Study.
- Oceanographic Study, Hydrographic Survey and Bathymetric & Geophysical Survey.
- Soil Investigation Study.
- Traffic & Market Analysis for Port.

As part of the EIA study, alternate site analysis for Port, Airport and Power Plant were undertaken and requirement for power, water and solid waste management were worked out. Thereafter, baseline environmental studies for air, water, noise & ecological attributes were undertaken. **Mathematical modelling was undertaken for the Port project for shoreline changes, transportation study was undertaken for working out details of road network, impact assessment**

&mitigation measures for land environment, reclamation, change in coastline/shoreline, air emissions, noise pollution, waste water, solid waste, social ecology, coral reef, etc. were worked out; risk assessment study was undertaken for Port, Airport, Power Plant considering earthquake, tsunami, cyclone for preparation of management plan. Information and data obtained during the course of these studies were part of the comprehensive EIA report submitted to MoEF&CC. The Pollution Control Committee (PCC) uploaded the draft EIA report on the website of A&N Administration and after due publicity in local and mainland newspapers, broadcasting the information regarding public hearing in All India Radio (AIR) and Doordarshan, conducted public hearing on the draft EIA report on 27.01.2022 at 11.00 am in the community hall, Gram Panchayat, Campbell Bay, Nicobar District under the chairmanship of Deputy Commissioner (Nicobar). 138 participants including tribals, settlers, representatives of Tribal Council and Andaman Adim Janjati Vikas Samiti attended the public hearing alongwith the officials of A & N Administration. Written comments were received from 12 organizations/persons and 14 persons gave their comments during public hearing. All the written comments and verbal comments received during the public hearing were responded and the reply is part of the EIA report. The final EIA report after incorporating the written suggestions/objections and public hearing was uploaded on the MoEF&CC portal on 07.03.2022. Detailed site alternative analysis has been undertaken as part of EIA to identify the best location for Port, Airport and Power Plant. **Alternate site analysis has been carried out as part of EIA wherein multi criteria analysis of alternate site have been undertaken considering factors like land development, cost risk, dredging requirement, environmental issues, tribal, breakwater, etc. which is mentioned under Analysis of Alternatives under**

Chapter 5 of the EIA report. As per the alternate site analysis, Galathea Bay appears to be the most feasible in terms of technical, environmental and financial parameters, and was thus selected for further detailed evaluation.

15. The proposed development is integrated in nature and includes port, airport, power plant and all supporting infrastructure within the township. The township development provides all social and infrastructure amenities required to support the proposed development. The trunk infrastructure thus proposed spreads from North of Campbell Bay to Galathea Bay including seven revenue villages within project boundary. **As the availability of non-forest land is very limited in Great Nicobar Island and to have the integrated and strategic development of the island, forest land is required for which the diversion of forest land was proposed.** Residential township is required to cater to the requirement of personnel engaged in defence and Port development and therefore cannot be considered as standalone development. For the integrated development of GNI, only 130.75 sq. km of forest land is proposed for diversion which is around 1.82% of the existing forest area of A & N Islands. **Effectively only 7.11 sq. km Tribal Reserve area will be required for de-notification for the project which is only 0.21% of the total tribal reserve area of A & N Islands and thus 743.96 sq. km of the Great Nicobar Island will remain protected as Tribal Reserve.** Section 3 of A&N (Protection of Aboriginal Tribes) Regulation, 1956 empowers A&N Administration to declare reserve Tribal area specifying the limits of such area. Accordingly, the Empowered Committee of UT Administration has recommended de-notification of Tribal Reserve and Ministry of Tribal Affairs vide letter dated 18.11.2020 has given no objection for the proposal for de-notification of tribal reserve area in Great Nicobar Island subject to compliance under

Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. The Andaman & Nicobar Coastal Zone Management Authority (ANCZMA) meeting convened for recommending CRZ Clearance for various projects in A&N Islands held on 17.03.2022, the Principal Secretary (Environment & Forests) has attended the meeting and on 27.06.2022, the Commissioner-cum-Secretary (E&F) has attended member of the ANCZMA. Both the officers were not holding the charge of Managing Director of ANIIDCO (2nd Respondent). With regard to Forest Clearance, it is submitted that the A & N Administration had vide Order No. 639 dated 28.07.2020 designated the 2nd Respondent as the project proponent of various projects in GNI. As part of the recommendation of the State Govt. for diversion of forest land, the then Commissioner-cum-Secretary (E&F) had recommended the Holistic Development proposal of GNI on 07.10.2020. During that period **the then Commissioner-cum-Secretary (E & F) was not holding any charge in the office of the 2nd Respondent. Thus, there is no conflict of interest contrary to what has been alleged by the applicant in the present appeals.**

16. The MoEF&CC vide letter dated 01.06.2021 has conveyed its approval of the ICRZ Plans for the Great Nicobar Island as per ICRZ 2019. Para 5 (III)(A) of the ICRZ 2019 mandated that the draft ICRZ plans shall be prepared in 1:25000 scale and accordingly NCSCM has prepared the draft ICRZ maps in 1:25000 scale. After receipt of ICRZ map, the same was published in print and electronic media for wide publicity and for obtaining claims/suggestion/views from general public and other stakeholders. Public hearing on the draft Island Coastal Regulation Zone (ICRZ) Plan was also conducted. The ICRZ Plan of the Great Nicobar Island as per the ICRZ Notification 2019 was finalized after following the due process and after consulting the stakeholders in a fair and f transparent manner.

17. **As per the guidelines of Forest (Conservation) Act, 1980 formulated by the MoEF&CC dated 22.05.2019, the states/UTs having forest land of more than 75% of their respective total geographical area, shall not be insisted upon for providing non-forest land for raising compensatory afforestation and the same may be taken up in any other state/UT having deficient forest land/cover and having land bank for CA.** Since, the UT of Andaman 86 Nicobar Islands is having recorded forest cover of more than 75% of the geographical area, the compensatory afforestation is proposed to be raised in other States in conformity with the aforesaid guideline formulated by the MoEF&CC and in view of the fact that sufficient non-forest land for the purpose is not available in this UT. The project area does not fall within the boundary of any National Park or Wildlife Sanctuary or their Eco-Sensitive Zones. 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 appeals.

Rejoinder

18. The appellants have filed rejoinders reiterating their stand in the main appeal.

Consideration by the Tribunal

19. We have heard learned counsel for the appellants – M/s Kaustav Dhar and A. Yogeshwaran and learned ASGs for the respondents - Ms. Aishwarya Bhati for MoEF&CC and Mr. Vikramjit Banerjee for ANIIDCO Ltd. and perused the record. We have given due consideration to the rival submissions already set out above.

20. Issue for consideration is whether the impugned FC/EC are liable to be interfered with either on account of failure of the authorities in following laid down procedure or on account of adverse impact on environment rendering the project unviable on anvil of sustainable development principle.

21. As already mentioned, main contentions on behalf of the appellants are that the area is rich in bio-diversity. It is covered by CRZ IA as per ICRZ Notification, 2019 where port is expressly prohibited. It has Mangroves, Corals and Coral reefs, Turtle nesting grounds, nesting ground of birds. It has high eroding stretches of critical habitats for turtle nesting, comprehensive EIA based on three seasons data has not been prepared, EIA report by Vimta, ZSI etc is not even a Rapid EIA, incorrect information in Form – I vitiates the EC, EIA report does not conform to TOR, no assessment of impact on biodiversity has been done in the EIA report, Public hearing is vitiating, impact of the project on Tribals has not been assessed, Wildlife clearance has not been taken, Port and Power plant are Red category activities prohibited in ESZ and Forest land cannot be diverted for township.

22. As against above, the stand of MoEF&CC and the PP is that the project is of great defence, national security and strategic significance for holistic development of Great Nicobar Island. It will strengthen India's presence in the Andaman Sea and in Southeast Asia and create an economic hub with a major cargo transshipment terminal and a global tourism destination. It presents immense opportunities to further strengthen India's trading position in the world by developing an International Transshipment terminal. A new transshipment port at GNI can be competitive because of the cost saving that shippers can realize using feeder ships to service ports around the rim of the Bay of Bengal. A

new port at GNI highlights its locational advantages over competing ports in the region for accessing ports in Bay of Bengal region. The airport will be developed as a joint military-civil dual use airport under the operational control of Indian Navy. There has been comprehensive evaluation by the EAC of Infra-I Sector with the association of Infra-II Sector, Thermal Sector, Nuclear Defence and Strategic (NDS) Sector, Coastal Regulation Zone (CRZ) Sector. Detailed ToRs were issued and public hearing was held with participation of 138 persons. EC has specific and general conditions ensuring protection of environment in every possible manner. Further studies will be conducted by relevant Institutions apart from taking conservation and mitigation measures with no disturbance to the tribal or eco-sensitive areas like National Park, Wildlife Sanctuaries with no damage to corals or mangroves. Since more than 75% area is on the forest, requirement of compensatory afforestation in the same area does not apply under the declared policy of the State.

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 though 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.”

24. ANZMA recommendations dated 8.7.2022 have also been filed which inter-alia are as follows:

“The effective ICRZ areas involved in various activities of the project are given as under.

S. No	Name of the Activity	Total area in Sq.km	ICRZ I		ICRZ III		ICRZ IV	
			IA	IB	NDZ	50-100M	IVB	IVA
1	Port	7.39	0.67	0.38	0.00	0.00	0.18	0.62
2	Airport	8.49	0.58	0.82	0.38	0.10	0.14	0.56
3	Power Plant	0.39	0.00	0.00	0.00	0.00	0.00	0.00
4	Township Defence	12.60	0.81	1.43	0.02	0.00	0.07	0.20

5	Township Other Landuse	137.27	4.93	5.92	1.69	0.45	2.50	3.55
6	Port reclamation area	2.27	0.06	0.11	0.00	0.00	0.00	2.10
7	Airport Reclamation on area	0.71	0.02	0.08	0.04	0.00	0.32	0.02
	Total	169.08	7.07	8.74	2.13	0.55	3.21	7.05

The project proponent submitted the revised area falling under various categories of ICRZ and the details are as follows.

Sr. No	Activity	Area in Sq.km	ICRZ I		ICRZ III		ICRZ IV	
			CRZ IA	CRZ IB	NDZ	5'-100m	IVB	IVA
1	Port (ICIT)	7.39	0.57	0.25	0	0	0.18	0.62
2	Airport	8.45	0.60	0.82	0.38	0.1	0.14	0.56
3	Power Plant	0.39	0.00	0.00	0	0	0	0
4	Township (Defence)	12.6	0.81	1.43	0.02	0	0.07	0.2
5	Township (other landuses)	137.27	5.03	6.05	1.69	0.45	2.5	3.55
Total		166.1	7.01	8.55	2.09	0.55	2.89	4.93
A	Port (reclamation area)	2.27	0.06	0.11	0	0	0	2.1
B	Airport (reclamation area)	0.71	0.00	0.33	0.04	0	0.32	0.02
Total (including reclaimed area)		169.08	7.07	8.74	2.13	0.55	3.21	7.05

It is mentioned that the revised effective area ICRZ involved in the project includes the same area of 7.07 sq.km in ICRZ IA and 8.74 Sq.km in ICRZ IB, 2.13 Sq.km in ICRZ III NDZ, 0.55 Sq.km in ICRZ III, 3.21 sq.km in ICRZ VI B and 7.05 Sq.km in ICRZ IVA. The only difference in the revised effective area mentioned by the project proponent is 0.57 sq.km and 0.25 sq.km instead of 0.67 sq.km and 0.38 sq.km in ICRZ IA and IB respectively in case of Port and 5.03 sq.km and 6.05 sq.km instead of 4.93 sq.km and 5.92 sq.km in ICRZ IA and IB respectively in the case of township (other land uses). In case of Airport reclamation, there is no CRZ IA involved and the area involved in ICRZ IB is 0.33

sq.km, 0.04 sq.km in NDZ of ICRZ III, 0.32 sq.km in ICRZ IV B and 0.02 Sq.km in ICRZ IV B. The proposed activities are permissible in ICRZ areas as per ICRZ notification 2019 as the Greenfield Airport Project is part of holistic Development of GNI project is now for Defence, Strategic, National Security, and Public Purpose.

Recommendation:

Taking into consideration of the above facts namely the revised ICRZ area involved in the holistic development of Great Nicobar Island and the green field airport project is for defence, strategic, National Security and public purpose, ANZMA further recommends the project with revised ICRZ area involved in the project as above. The conditions stipulated in the earlier meeting dated 17.03.2022 and communicated vide letter No. PCCF/ EPA/ 1 / Vol-XVI/ 653 dated 22.03.2022 continue to remain valid and the project proponent has to follow those conditions while executing/implementing the project.”

25. Copy of report of July 2021 prepared by ZSI has also been placed on record with following executive summary:

“Executive Summary

1. The Andaman and Nicobar Islands comprise an accurate chain of 836 islands, islets and rocky outcrops (including 649 islands and 187 rocks and rocky islands), spreading in a linear distance of around 900 km in the Bay of Bengal and the Andaman Sea between latitudes 06° and 14°N and longitudes 92° and 94° E.
2. The archipelago has a total land area of 8249 sq km and a coastline of 1962 km. The Andaman Islands and Nicobar Islands are distinctly separated by the wide Ten Degree Channel which is about 150 km wide and 400 fathoms deep. The Andaman group consists of more than 324 major islands with an area of 6408 sq km and the Nicobar group comprises 24 major islands with the landmass of 1841 sq km.
3. The Andaman and Nicobar Islands have a Continental Shelf of 35,000 sq km with an EEZ of 0.6 million sq. km, includes the ecologically enriched faunal and floral diversities.
4. The Great Nicobar Island is the southernmost landmass in Andaman and Nicobar Archipelago. The total area of this island is 1044 km². It is a tropical and sub-tropical moist broadleaf forest biome and located in the Indo-Malayan biogeographic zone. The Great Nicobar Biosphere Reserve (GNBR) of this island is one of the 11 Biosphere Reserves declared under the Man and Biosphere Programme of Ministry of Environment, and Forests, Government of India and UNESCO.
5. Great Nicobar Biosphere Reserve (GNBR) was declared on 6th January 1989 by the Government of India Order No. J-22010/14/89-CSC. The GNBR is comprised of Campbell Bay National Park in the north and Galathea National Park in the south. GNBR spread 885 km² in two zones. A total area of

705 km² has been designated as Core Zone, and 180 km² is Buffer Zone.

6. *The President of India is acting through the NITI Aayog, Government of India for holistic development of Great Nicobar Island.*
7. *As per the Vision Document prepared by NITI Aayog, a contiguous stretch of land is required in the south-eastern and south-western part of the island, which has a narrow strip ranging from 1.83 km to 3.8 km in the eastern side and 1.3 km to 5.4 km in the western side from the Galathea National Park which also happens to be the Protected Forest and Tribal Reserve.*
8. *In the eastern side, the NITI Aayog has proposed to construct an Airport, requiring 21.64 sq. km of land at the south eastern part and construction of Rapid Mass Transit System originating from Campbell Bay and terminating somewhere in the western part and running parallel to the coastline. In the southern part, besides the development of a major Transshipment Port, the area is also earmarked for future strategic Defence use in view of the developing geo-political scenario in the area. The south-western and western part of Great Nicobar Island outside the Galathea National Park are narrow and proposed to be used as Free Trade Zone as ancillary to the trans-shipment port leaving little area for declaration of ESZ and thereby the Committee recommended finalization of the ESZ notification of Galathea National Park. The proposed holistic development includes 1) Tourism and Hospitality; 2) Jetty and Marina; 3) Mixed use area; 4) Airport; 5) Port & 6) A Marina for Eco-Tourism.*
9. *AECOM is currently undertaking environmental monitoring for the Great Nicobar Island which is one of the largest islands in Andaman and Nicobar archipelago. In consultation with the concerned UT Administration and the concerned central ministries, it has been decided to undertake the holistic development of the Great Nicobar Island.*
10. *In view of this, AECOM, 9th Floor, Infinity Tower-‘C’, DLF Cyber City, DLF Phase-2, Gurgaon-122 002 has approached the Zoological Survey of India, Headquarters, Kolkata by electronic communication through an e-mail with the subject ‘Andaman Project’ dated 14th December 2020 to undertake ‘Rapid Environmental Impact Assessment studies on Marine Ecology for the Master Plan of Development of Great Nicobar Island’ to fulfill the requirement of Environmental and CRZ clearance from the Ministry of Environment, Forest and Climate Change, Government of India. Hence the present study has been executed.*
11. *Along the intertidal stations of the coastal waters of Great Nicobar Island, Station GB 1 (Galathea beach) witnessed the highest concentration of silicate (3.567 µg/ml) while station RB 1 (Rajiv Nagar Beach) had the least silicate concentration (2.131µg/ml).*
12. *The average phytoplankton abundance in the marine waters of sampling stations of Great Nicobar Island is about 24400 no./L (no. of organisms per litre). The phytoplankton abundance ranges from a maximum of 34200 no./L in the*

- station GB3 M to a minimum of 15200 no./L at station LB2 IT.
13. The two major groups of phytoplankton observed are diatoms and mixotrophic (photosynthetic) dinoflagellates. The abundance of diatoms is much higher than the dinoflagellates across all stations, both in the intertidal and marine coastal study sites. This data is supported by the overall high silicate concentrations in the study area.
 14. In terms of phytoplankton diversity, station LB M is the most diverse. Mixotrophic dinoflagellate diversity is high in Lakshman Beach stations, while diatom diversity is high in Galathea Bay stations.
 15. The average microzooplankton abundance in the marine waters of sampling stations of Great Nicobar Island is about 19033 no./L (no. of organisms per litre). The microzooplankton abundance ranges from a maximum of 20800 no./L in the station GB3 M to a minimum of 16900 no./L at station LB3 IT.
 16. The major microzooplankton groups recorded from the study area are Ciliophora, heterotrophic Dinoflagellata, Foraminifera, Radiolaria and larval forms of Copepoda, Decapoda, Bivalva to name a few. In the intertidal stations the larval forms, especially copepod nauplii and bivalve larvae dominate the numbers, followed by foraminiferans (except in Galathea beach stations, where ciliates are the dominant group).
 17. A total of 17 groups of organisms or taxa were obtained in zooplankton collection namely, Copepoda, Ostracoda, Amphipoda, Decapoda, Siphonophora, Decapoda larvae, Polychaete, Polychaete larvae, Mollusca, Mollusca larvae, Appendularia, Thaliacea, Cumacea, Cladocera, Chaetognatha, fish/invertebrate eggs and fish larvae. Copepods comprised the major portion of the mesozooplankton biomass.
 18. A total of 92 species of mesozooplanktons were recorded from the study among which Copepoda showed the maximum species diversity. Copepoda comprised of 34 species, Ostracoda comprised of 9 species, Euphausiacea comprised of 12 species, Decapoda constituted of 5 species, Chaetognatha constituted of 9 species, Anthoathecata constituted of 2 species, Siphonophorae constituted of 4 species, Amphipoda and Pteropoda comprised of 2 species each, Appendicularia comprised of 4 species and Thaliacea comprised of 9 species.
 19. A total of 309 species of scleractinian corals under 66 genera, 19 families (including two genera under Scleractinia Incertae Sedis) are recorded from Great Nicobar Island. The present database of scleractinian species is prepared based on the available literature and studies made by the present author during period of last 12 years.
 20. Among the recorded 309 species, 66 species are under threatened category (2 species are under Endangered and 64 species are under Vulnerable categories) as per the category and criteria of IUCN (2021), while 90 species are recorded under Near Threatened, 135 species are under Least Concern and 9 species are under Data Deficient categories, whereas 9 species are under not evaluated category.

21. *A total of 245 species of scleractinian corals under 53 genera, 15 families (including 2 genera under Scleractinia Incertae Sedis) are recorded from seven sites including the proposed project site of Great Nicobar Island during the present study. A maximum of 117 species have been documented from Galathea Bay followed by 111 species from Sastri Nagar, 107 species from Campbell Bay, 102 species from Laxman Beach, 76 species from Gandhi Nagar, 25 species from Anderson Bay, and only 15 species Laxmi Nagar.*
22. *Thorough studies were carried out at the seven study locations of Great Nicobar Island to estimate the benthic cover. Maximum 39.27% of live coral cover was recorded from Campbell Bay region followed by 30.81% from Gandhi Nagar, 25.59% from Sastri Nagar, 24.10% from Laxman Beach, 19.92% from Anderson Bar, 17.46 from Galathea Bay, and the minimum of 13.45% from Laxmi Nager. Among the other algae, a maximum of 51.75% was recorded from Galathea Bay while the minimum of 5.52% from Anderson Bay.*
23. *The present study indicates a total of 491.7975 hect. reef areas across the seven study areas including 116.4173 hect. of reef areas at the Galathea Bay which is distributed up to the maximum extent of 1200m (perpendicular) from the coastline while most of the reefs are scattered in distribution within the limit of a mean distance of 500m, whereas the reef areas of Sastri Nagar are recorded with a total distributional cover of around 103.8703 hect. along with the mean distributional range from the coast is 250m (perpendicular) along with the maximum of 500m, while Laxman Beach represents the minimum of 34.4921 hect. Of reef areas within the mean proximity of 150m from the coast while the maximum distributional ranges are within 350m.*
24. *Great Nicobar Island is the land of two indigenous tribal population viz. Shompen and Nicobarese.*
25. *Shompens live in small groups in dense interior forests of the island and are entirely dependent on forest resources and sea products for their sustenance. They probably migrated into this area, several hundred years ago from nearby Malaysian regions. The Mongoloid Shompen Tribe, about 219 in number, is living within the Biosphere Reserve. They are shy in nature and avoid contact with outsiders. They live around and along the perennial freshwater rivers and constructs huts using palm and pandanus leaves. The Shompens are hunters and food gatherers leading a semi-nomadic life with stone-age civilization. They cultivate yams, pandanus, coconuts, arecanuts, bananas etc. They maintain small herds of pigs and also hunt wild pigs with spears and fish with harpoons.*
26. *The Nicobarese are horticulturists, are the second indigenous tribe, situated in mostly coastal areas of Great Nicobar Biosphere Reserve. Coconut, pandanus, banana, papaya, yam and other starchy roots and tubers are their principal items of crop. They also depend for food on hunting and fishing. Pig rearing is an important traditional practice of Nicobarese.*
27. *The Nicobarese live in villages located along the coast. The huts are made of wooden logs, stems of areca palm, coconut palm etc. while the roof is thatched with grass, canes,*

- bamboo and coconut leaves. At present, their traditional beliefs and customs are changing and modern education and Government jobs are readily accepted if they are in their own place.*
28. *According to the data of Botanical Survey of India, approximately 600 species of flora reported from Great Nicobar Island. Among them, 86 species of plants found endemic to Great Nicobar Island. Of which 28 species are exclusively reported from Great Nicobar Island, while 18 species identified from entire Nicobar group of Islands and 40 species recorded from Andaman and Nicobar Islands. Considerable number of plant species reported from Great Nicobar Island has ethno-botanical significance*
 29. *A total of 695 species of fauna with the endemism of 158 species, which is equivalent to 22.73% have been reported from Great Nicobar Island.*
 30. *A total of 48 vertebrates, recorded as endemic to Andaman and Nicobar Islands, were found in Great Nicobar Island during the study period. Among them 3 species are mammals, 36 species are birds, 7 species are reptiles and 2 species are amphibians.*
 31. *This reserve is home for several endemic and endangered species including Nicobar Megapode *Megapodius nicobariensis*, Edible-nest Swiftlet *Aerodramus fuciphagus*, Nicobar Tree Shrew *Tupaia nicobarica*, Long-tailed Macaque *Macaca fascicularis*, Saltwater Crocodile *Crocodylus porosus*, Giant Leatherback Sea Turtle *Dermochelys coriacea*, Reticulated python *Pythonreticulatus* and Coconut Crab *Birgus latro*.*
 32. *The Saltwater Crocodile is a common species throughout the Andaman and Nicobar Islands. Population estimates of saltwater crocodiles in Great Nicobar Island are about 6 adults and 3 sub-adults-based on questionnaire. It was sighted at Indira Point, Mahar Nallah, Gandhi Nagar, Shastri Nagar, and Galathea Bay.*
 33. *Out of the five species of turtles recorded from mainland coast of India, the leatherback turtle *Dermochelys coriacea* (Vandelli, 1764) is well known for its nesting in the Andaman and Nicobar Islands. Leatherback turtles nesting have been recorded mainly on the long and wide beaches at the mouth of the Dagmar and Alexandira rivers on the west coast and at the mouth of the Galathea River along its south eastern coast.*
 34. *Globally, leatherback turtle status according to IUCN is listed as Vulnerable. The Northeast Indian leatherback subpopulation nests primarily in the Andaman and Nicobar Islands of India, in some parts of Sri Lanka and to a lesser extent in Thailand. The first documentation of leatherback turtle nesting in the Great Nicobar Island was by Dr. Satish Bhaskar in 1978-79 and subsequently by other researchers including A&NB Forest Department and NGOs and institutions in the Andaman & Nicobar Islands. The leatherback nesting population in the Nicobar is one of the four colonies that exceeds 1000 individuals in the Indo-Pacific, and hence of global significance.*
 35. *The southern bay of Great Nicobar is Southeast Asia's largest leatherback turtle nesting site. In Galathea bay nesting, egg*

- laying and hatchling are more for Leatherback turtle compared to the other regions of Great Nicobar Island. In current year, estimation of the number of hatchlings is not completed; hence the number is not mentioned.
36. The number of nestings, eggs laid and number of hatchlings has been increasing over past four years. The number of hatchlings increases at a rate of 21 % from 2018 to 2019 while it increases at a rate of 147 % from 2019 to 2020. The nesting leatherback populations of this species have also shown an increase in the trend in Galathea Bay. It is estimated that the succession rate of hatchlings of leatherback turtle are 59% in 2018; 60% in 2019 and 63.5% in 2020. The hatchling process has not completed for this year and hence not enumerated and presented.
 37. The Nicobar Megapode *Megapodius nicobariensis abbotti* (Oberholser, 1919) is an endemic bird species in the Nicobar group of Islands. According to the IUCN, this species was listed as Vulnerable (Birdlife International, 2000) and as per Govt. of India, Schedule-I of the Wildlife Protection Act (1972). As per the survey by ZSI, there are ~ 100 active mounds were recorded and ~ 202 megapodes were detected during the point-transect and playback surveys *Megapodius nicobariensis abbotti* occurs in all of the southern group of islands, it was estimated that 7 active mounds and 14 breeding pairs in Galathea.
 38. The Long-Tailed Macaque *Macaca fascicularis umbrosus* (Miller, 1902) is the only non-human primates found on Nicobar group of Islands. In 2000, a total of 88 groups, having a mean size of 36 monkeys, were recorded in Great Nicobar, Little Nicobar and Katchal Islands. However, in 2006 a total of 40 groups, including 814 monkeys were recorded in Great Nicobar, Little Nicobar and Katchal Islands while assessing the impact of the Tsunami on the Long-Tailed Macaque of Nicobar Islands. This is the only primate in the Nicobar Islands, and is listed in Schedule I of the Indian Wildlife (Protection) Act, 1972.
 39. The coconut crab or Robber crab or Palm thief (*Birgus latro* (Linnaeus, 1767)) is the largest terrestrial arthropod in the World (which is related to hermit crabs and lobsters). The crab is named because it is associated with coconut tree. It is listed as Schedule – I, Part - I under Wildlife Protection Act, 1972. The coconut crab populations are threatened with extinction in the Nicobar group of Islands, except for Menchal Island due to human predatory practices.
 40. Prediction of Environmental Impacts, Environmental Management Plan and Recommendations are given in detail in the report for the proposed 14.2 Million TEU (Twenty Feet Equivalent Unit) ICTT Port, (main project), Airport (4,000 Peak hour passenger, Category 4F), Township and Area Development for 14,960 Ha and Power Plant (405 MVA Gas + Diesel) (Additional 45 MVA from solar power will be included in total power generation.”

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.**

27. In view of above, what remains to be seen is whether the project is compliant with the mandatory environmental norms.

Forest Clearance

28. As regards forest clearance, it is seen that forest cover in the area is more than 75%. While forest is of great significance in tackling air pollution and climate change, development cannot be totally ignored. There is hardly

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>

any development in the area. There is need not only for economic development but also national security. These factors are not shown to be irrelevant. There is no conflict of interest as such. There is policy permitting afforestation outside the State if forest cover is more than 75%. Thus, no case is made out to interfere with the FC, considering the countervailing public interest in allowing diversion of forest land for the project which is subject to all relevant conditions. In *Lafarge Umiam Mining (P) Ltd. v. Union of India*, (2011) 7 SCC 338, it was observed :

“ .. Time has come for us to apply the constitutional “doctrine of proportionality” to the matters concerning environment as a part of the process of judicial review in contradistinction to merit review. It cannot be gainsaid that utilisation of the environment and its natural resources has to be in a way that is consistent with principles of sustainable development and intergenerational equity, but balancing of these equities may entail policy choices. In the circumstances, barring exceptions, decisions relating to utilisation of natural resources have to be tested on the anvil of the well-recognised principles of judicial review. Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is the decision strictly in accordance with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that has the decision-maker taken into account the said principle and, on the basis of relevant considerations, arrived at a balanced decision? Thus, the Court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint. Once this is ensured, then the doctrine of “margin of appreciation” in favour of the decision-maker would come into play.”

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

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.

31. The legal position has been discussed inter-alia in *G. Sundarrajan vs. Union of India & Ors.*⁴ as follows:

“238.1. In Intellectuals Forum, Tirupathi v. State of A.P. and others⁵, it has been held that merely asserting an intention for development will not be enough to sanction the destruction of local ecological resources. What is required to be prescribed is the principle of sustainable development and find a balance between the developmental needs and the environmental degradation.

238.2. In Bombay Dying & Mfg. Co. Ltd. (3) v. Bombay Environmental Action Group and others⁶, while dealing with the concept of sustainable development and planned development vis-à-vis Article 21 of the Constitution, a two-Judge Bench has opined thus:- (SCC p. 521)

“25l. It is often felt that in the process of encouraging development the environment gets sidelined. However, with major threats to the environment, such as climate change, depletion of natural resources, the eutrophication^{7} of water systems and biodiversity and global warming, the need to protect the environment has*

⁴ (2013) 6 SCC 620

⁵ (2006) 3 SCC 549

⁶ (2006) 3 SCC 434

⁷ * **Ed.:** Eutrophication of a water body is phenomenon that can impel a great deal of algae and other plankton or other plant life to reproduce quickly and lead to extermination of other aquatic life such as fish. Eutrophication occurs when excessive nutritional substances such as nitrogen and phosphorus are discharged into lakes, reservoirs and gulfs, etc.

become a priority. At the same time, it is also necessary to promote development. The harmonisation of the two needs has led to the concept of sustainable development, so much so that it has become the most significant and focal point of environmental legislation and judicial decisions relating to the same. Sustainable development, simply put, is a process in which development can be sustained over generations. Brundtland Report defines “sustainable development” as development that meets the needs of the present generations without compromising the ability of the future generations to meet their own needs. Making the concept of sustainable development operational for public policies raises important challenges that involve complex synergies and trade offs.”

238.3. *In M.C. Mehta v. Union of India and others*⁸, while stating about sustainable development and the needs of the present without compromising the ability of the future generation to meet their own needs, this Court has expressed thus:- (SCC pp. 166-67, para 46)

“46. ... The definition of “sustainable development” which Brundtland gave more than 3 decades back still holds good. The phrase covers the development that meets the needs of the present without compromising the ability of the future generation to meet their own needs. In Narmada Bachao Andolan v. Union of India⁹ this Court observed that sustainable development means the type or extent of development that can take place and which can be sustained by nature/ecology with or without mitigation. In these matters, the required standard now is that the risk of harm to the environment or to human health is to be decided in public interest, according to a “reasonable person’s” test. [See Chairman Barton: The Status of the Precautionary Principle in Australia (Vol. 22, 1998, Harv. Envtl. Law Review, p. 509 at p. 549-A) as referred to in para 28 in A.P. Pollution Control Board v. Prof. M.V. Nayudu¹⁰.]”

238.4. *In Tirupur Dyeing Factory Owners Association v. Noyyal River Ayacutdars Protection Association and others*¹¹, while dealing with the concept of sustainable development, the Court has observed as under:- (SCC p. 747, para 26)

“26. The concept of “sustainable development” has been explained that it covers the development that meets the needs of the person without compromising the ability of the future generation to meet their own needs. It means the development, that can take place and which can be sustained by nature/ecology with or without mitigation. Therefore, in such matters, the

⁸ (2004) 12 SCC 118

⁹ (2000) 10 SCC 664

¹⁰ (1999) 2 SCC 718

¹¹ (2009) 9 SCC 737

required standard is that the risk of harm to the environment or to human health is to be decided in public interest, according to a “reasonable person’s” test. The development of the industries, irrigation resources and power projects are necessary to improve employment opportunities and generation of revenue, therefore, cannot be ignored. In such eventuality, a balance has to be struck for the reason that if the activity is allowed to go on, there may be irreparable damage to the environment and there may be irreparable damage to the economic interest. A similar view has been reiterated by this Court in T.N. Godavarman Thirumulpad (104) v. Union of India¹² and M.C. Mehta v. Union of India¹³.”

238.5. In *T.N. Godavarman Thirumulpad (through K.M. Chinnappa) v. Union of India and others*¹⁴, this Court observed that: (SCC p. 628, para 35)

“35. It cannot be disputed that no development is possible without some adverse effect on the ecology and environment, and the projects of public utility cannot be abandoned and it is necessary to adjust the interest of the people as well as the necessity to maintain the environment. A balance has to be struck between the two interests. Where the commercial venture or enterprise would bring in results which are far more useful for the people, difficulty of a small number of people has to be bypassed. The comparative hardships have to be balanced and the convenience and benefit to a larger section of the people has to get primacy over comparatively lesser hardship.”

238.6. In *Narmada Bachao Andolan v. Union of India and others*⁴³, a three-Judge Bench, while dealing with the public projects and policies, has opined that the court does not become the approving authority of such policies. Thereafter, the Bench observed thus:- (SCC p. 763, para 234)

“234. ... Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small section of the society, has to be the concern of a responsible Government.”

239. *I have referred to the aforesaid pronouncements only to highlight that this Court has emphasized on striking a balance between the ecology and environment on onehand and the projects of public utility on the other. The trend of authorities is that a delicate balance has to be struck between the ecological impact and development.*

240. *The other principle that has been ingrained is that if a project is beneficial for the larger public, inconvenience to smaller number of*

¹² (2008) 2 SCC 222

¹³ (2009) 6 SCC 142

¹⁴ (2002) 10 SCC 606

people is to be accepted. It has to be respectfully accepted as a proposition of law that individual interest or, for that matter, smaller public interest must yield to the larger public interest. Inconvenience of some should be bypassed for a larger interest or cause of the society. But, a pregnant one, the present case really does not fall within the four corners of that principle. It is not a case of the land oustees. It is not a case of “some inconvenience”. It is not comparable to the loss caused to property.

241. *I have already emphasized upon the concept of living with the borrowed time of the future generation which essentially means not to ignore the intergenerational interests. Needless to emphasize, the dire need of the present society has to be treated with urgency, but, the said urgency cannot be conferred with absolute supremacy over life. Ouster from land or deprivation of some benefit of different nature relatively would come within the compartment of smaller public interest or certain inconveniences. But when it touches the very atom of life, which is the dearest and noblest possession of every person, it becomes the obligation of the constitutional courts to see how the delicate balance has been struck and can remain in a continuum in a sustained position. To elaborate, unless adequate care, caution and monitoring at every stage is taken and there is constant vigil, life of “some” can be in danger. That will be totally shattering of the constitutional guarantee enshrined under Article 21 of the Constitution. It would be guillotining the human right, for when the candle of life gets extinguished, all rights of that person perish with it. Safety, security and life would constitute a pyramid within the sanctity of Article 21 and no jettisoning is permissible. Therefore, I am obliged to think that the delicate balance in other spheres may have some allowance but in the case of establishment of a nuclear plant, the safety measures would not tolerate any lapse. The grammar has to be totally different.*

242. *I may hasten to clarify that I have not discussed anything about the ecology and environment which has been propounded before us, but I may particularly put that the proportionality of risk may not be “zero” regard being had to the nature’s unpredictability. All efforts are to be made to avoid any man-made disaster. Though the concept of delicate balance and the doctrine of proportionality of risk factor gets attracted, yet the same commands the highest degree of constant alertness, for it is disaster affecting the living. The life of some cannot be sacrificed for the purpose of the eventual larger good.”*

Conclusion

32. We are of the opinion that there can be no two views about need for adequate studies of adverse impact on coral reefs, mangroves, turtle nesting sites, bird nesting sites, other wildlife, of erosion, disaster management and other conservation and mitigation measures. ICRZ 2019 has to be duly complied with about the location of the Port. Tribal rights and their rehabilitation has to be ensured. Compensatory

Afforestation/mangrove plantations have to be as per forest policy. Stand of the respondents shows that such studies have already been undertaken and further studies are proposed. The respondents are committed to comply with the ICRZ 2019 and tribal rights. They have also planned compensatory afforestation and mangrove plantations. Thus, by and large the project is compliant and EC does not call for interference.

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.

The appeals will stand disposed of accordingly.

A copy of this order be forwarded to Secretary, MoEF&CC, GoI, Chief Secretary, Andaman & Nicobar, Zoological Survey of India, Botanical Survey of India, CPCB, Vice Chairman of Niti Aayog, Secretary, Ministry of Shipping and Director, Wildlife Institute of India by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

B. Amit Sthalekar, JM

Arun Kumar Tyagi, JM

Dr. A. Senthil Vel, EM

Dr. Afroz Ahmad, EM

April 03, 2023
Appeal Nos. 29 to 32/2022/EZ
SN+DV+AB



केन्द्रीय प्रदूषण नियंत्रण बोर्ड
CENTRAL POLLUTION CONTROL BOARD
 (पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय, भारत सरकार)
 (Ministry of Environment, Forest & Climate Change, Govt. of India)
क्षेत्रीय निदेशालय, कोलकाता
Regional Directorate, Kolkata



PI-11/1/2022-TECH-RD-KOLKATA-RD (Kolkata)/251

Date: 16/06/2023

To
 Mr Kareem Ansari
 Yugantar (5QSSNS 4C),
 3-4-142/6, Barkatpura, Hyderabad- 500027.

Email: 5qssns4c@yourti.in

Sub: Transfer of RTI Application under section 6(3) of the RTI Act, 2005, seeking information regarding "EC revisit for 'Holistic development of Great Nicobar' -Members of the High-Powered Committee".

Sir,

This has reference to the RTI application no. CPCB/R/P/23/00074 dated 14/06/23 (online application) received on 14/06/23 by this office. Please find enclosed herewith the copy of information which is available with this Office.

Encl- as above

Yours faithfully,

(M.K. Biswas)

Regional Director

Copy to:

- | | | |
|--|---|---|
| 1. The Executive Director
Andaman & Nicobar Island Integrated
Development Corporation Ltd
Vikas Bhawan, PB No. 180, Port Blair,
Andaman Nicobar. | : | The application is hereby transferred
under section 6(3) of RTI Act 2005
with request to furnish the
information directly to the applicant
with a copy to this Office |
| 2. Smt Garima Sharma, Sc D & AS
CPCB, Delhi -110032 | : | For information pl. |

(M.K. Biswas)

मुख्यालय/Head Office:

परिवेश भवन/Parivesh Bhawan,
 पूर्वी अर्जुन नगर/East Arjun Nagar
 दिल्ली/Delhi-110 032
 दूरभाष/Tel: 011-431 02030, 22305792
 वेबसाइट/Website: www.cpcb.nic.in

क्षेत्रीय निदेशालय/Regional Directorate:

502, साउथएंड कॉन्क्लेव/502, Southend Conclave
 1582, राजडांगा मेन रोड/1582, Rajdanga Main Road
 कोलकाता/Kolkata- 700107
 दूरभाष/Tel: 033-2441 4677
 ई-मेल/e-mail: rdkolkata.cpcb@gov.in



केन्द्रीय प्रदूषण नियंत्रण बोर्ड
CENTRAL POLLUTION CONTROL BOARD

पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय भारत सरकार
MINISTRY OF ENVIRONMENT, FOREST & CLIMATE CHANGE GOVT. OF INDIA

Speed Post

CPCB/PCP/Gen.Co./2022-23/

February 17th, 2023

To,

The Executive Director
Andaman and Nicobar Island Integrated Development Corporation Limited
Vikas Bhawan, PB No. 180, Port Blair,
Andaman and Nicobar

Sub: Nomination of a representative from CPCB for the Monitoring Committee to oversee the implementation of Environmental Management Plan for the Green Field Airport - reg.

Sir,

This has reference to the order no. 794 dated 09th February, 2023 regarding constitution of Monitoring Committee to oversee the implementation of Environmental Management Plan for the Green Field Airport at Andaman and Nicobar Island wherein representative from CPCB is one of the member.

In view of above, this is to inform that Shri M. K. Biswas, Scientist- E & Regional Director, Kolkata, CPCB (email-id: mkbiswas.cpcb@nic.in and Mobile No. 9911001631) has been nominated as Expert Member for the above mentioned Committee.

This issues with the approval of Competent Authority, CPCB.

Yours Sincerely,

(G. Thirumurthy)
Scientist-E & DH-PCP
e-mail id: pcp.cpcb@gov.in

Copy to:

1. Shri M. K. Biswas, Scientist- E & Regional Director, CPCB
2. PA to CCB (for kind information of CCB)
3. AO to MS (for kind information of MS)

Pursuant to the Right to Information Act, 2005

from the Central Pollution Control Board

22

101630/2023/PCP-HO

F. No. IA3-3/9/2023-IA.III(Pt.)
Government of India
Ministry of Environment, Forest and Climate Change
Impact assessment (Infrastructure- 1) Division

Indira Paryavaran Bhawan
Jor Bagh road, New Delhi-110003
Dated- 13th April, 2023

OFFICE MEMORANDUM

Sub: Constitution of the High Powered Committee (HPC) for revisiting the Environment Clearance dated 11.11.2022 granted by the MoEF&CC in compliance of the directions of the Hon'ble National Green Tribunal (EZ) in Appeals No. 29-32 of 2022-regarding

The above cited subject matter pertains to the appeal before NGT against the stage- I Forest Clearance granted on 27.10.2022 and Environment Clearance granted on 11.11.2022 in respect of integrated project by the Andaman and Nicobar Islands Integrated Development Corporation (ANIIDCO) in Great Nicobar Island involving the following: -

- i. International Container Trans-shipment Terminal (ICTT)-14.2 Million TEU
 - ii. Greenfield International Airport (4000 Peak Hour Passengers-PHP)
 - iii. Township & Area development Project
 - iv. 450 MVA Gas and Solar based Power Plant over an extent of 16610 hectares (Ha) in the Great Nicobar Islands
2. The aforesaid appeals were disposed of by the Tribunal vide judgment dated 03.04.2023 which observed that the integrated Project has great significance not only for economic development of the island and surrounding areas of strategic location but also from the point of view of defence and national security and therefore, Stage- I Forest Clearance and the Environment Clearance did not call for any interference.
 3. The Tribunal, however, has directed that a High Powered Committee (HPC) be constituted to address the unanswered deficiencies pointed out by the appellants in the instant appeals and has also made broad suggestions regarding its members.
 4. Accordingly, in compliance of the directions issued by the Tribunal vide judgment dated 03.04.2023, the following Committee is being hereby constituted comprising the following members: -
 - 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.

101630/2023/PCP-HO

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.
6. The Committee may meet within two weeks from the date of the judgment and finalize its proceedings within two months.
7. It will be open to the Committee to associate any other institution/expert.
8. In the light of report of the Committee, the EC or its conditions may be re-looked into by the competent authority.

This issues with the approval of the Competent Authority.


Amardeep Raju
 Scientist 'E'
 IA (Infra-1)

To:

- i. The Secretary, MoEF&CC, Government of India
- ii. Chief Secretary, Andaman & Nicobar, Andaman & Nicobar Administration, Port Blair
- iii. Zoological Survey of India, Zoological Survey of India, Prani Vigyan Bhawan. M-Block, New Alipore Kolkata-700053
- iv. Botanical Survey of India, Botanical Survey of India, CGO Complex, 3rd MSO Building, Block F (5th and 6th Floor), DF Block, Sector I, Salt Lake City, Kolkata - 700 064
- v. Central Pollution Control Board, The Chairman, Central Pollution Control Board Parivesh Bhavan, CBD-cum-Office Complex, East Arjun Nagar. New Delhi - 110 032.
- vi. Nominee of Vice Chairman of Niti Aayog, Sansad Marg, Sansad Marg Area, New Delhi, Delhi 110001.
- vii. Nominee of Secretary, Ministry of Shipping, Transport Bhawan, Ministry of Shipping, New Delhi, Delhi 110001.
- viii. Director, Wildlife Institute of India, Post Box #18, Chandrabani Dehradun - 248001, Uttarakhand.

Subject: Subject: Judgment of the Hon'ble NGT dated 03.04.2023 in Appeal No. 32 of 2022 etc
From: Ashish Kothari <chikikothari@gmail.com>
Date: 09/07/23, 3:25 pm
To: secy-moef@nic.in, cs-andaman@nic.in, tanmay.kumar-rj@gov.in, sricha@ias.nic.in, dhriti.banerjee@ZSI.gov.in, hq@bsi.gov.in, mkbiswas.cpcb@nic.in, rajnath-pc@nic.in, secyship@nic.in, dwii@wii.gov.in, vrt@wii.gov.in, ad.raju@nic.in
CC: Ashish Kothari <chikikothari@gmail.com>

To,

The Members of the High Powered Committee

1. Leena Nandan, Secretary, MoEF & CC
2. Keshav Chandra, Chief Secretary, A&N Islands
3. Additional Secretary, MoEF & CC
4. Dhriti Banerjee, Director, Zoological Survey of India
5. A.A. Mao, Director, Botanical Survey of India
6. M.K. Biswas, Regional Director, Kolkata, CPCB
7. Rajnath Ram, Adviser (Power & Energy), NITI Aayog
8. Sudansh Pant Nominee of the Secretary of Ministry of Shipping
9. V.R. Tiwari , Director, Wildlife Institute of India
10. Amardeep Raju, Scientist-E, EAC, Infra – I

Madam / Sir,

1. I am the appellant in Appeal No. 32 of 2022 before the Hon'ble NGT in which the environmental clearance dated 11/11/2022, bearing EC Identification No. - EC22A033AN125767 in File No. - 10/17/2021-IA-III to Andaman and Nicobar Islands Integrated Development Corporation Limited (ANIIDCO Ltd), was challenged.
2. The Hon'ble Tribunal at para 33 recorded the finding that there were unanswered deficiencies in the project clearance process and by way of instance listed three such deficiencies, relevant paragraph extracted below

"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.”

3. Thereafter, this Hon'ble Tribunal constituted a "High-Powered Committee (HPC)" for "revisiting the EC" to examine the "unanswered deficiencies". The Hon'ble Tribunal directed that the committee would 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.”
4. The Hon'ble Tribunal directed that this committee would revisit the EC and based on its report, the EC "may be re-looked into by the competent authority.”
5. However, till date no information on the constitution of the committee, its meetings or proceedings have been sent to me, the appellant in the Appeal. No information on the same is also available in public domain. I am given to understand that even request for information filed under the RTI Act, 2005 in May, 2023 to the MoEF & CC has been refused citing Section 8.1 (a) of the RTI Act, 2005.
6. On 19.06.2023 a news report appeared in the Business Standard newspaper, in which officers of the MoEF & CC were quoted as stating that the committee has cleared the project. We were shocked to see this news report but no further information in this regard was available.
7. Finally, a reply under the RTI Act dated 16.06.2023 from the CPCB enclosed an office memorandum dated 13.04.2023 issued by the MoEF & CC for constitution of the subject committee. This office memorandum also at para 5 specifies the terms of reference of the committee and are extracted below.

“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.”

8. It is unfortunate that the MoEF & CC has issued the subject office memorandum with the above extracted ToR. It is in clear violation of the Hon'ble Tribunal's order. While it is a clear case of conflict of interest that the same authorities who had granted the clearance and/or served as consultants to the project proponent and the entity which conceived the project (NITI Ayog) are members of the High Powered Committee, the Hon'ble Tribunal has reposed trust in these officers to review their decisions in light of the contentions raised in the appeal/s.
9. However, a bare reading of the ToR makes it abundantly clear that this exercise has been reduced to a mere formality. The Hon'ble Tribunal's judgment at para 33 very clearly states that the three deficiencies listed are only by way of "instance". The Hon'ble Tribunal has directed the committee to consider the deficiencies / illegalities pointed out by the appellants, which very clearly has not been the mandate of the committee as per the OM.
10. It is also shocking to note that the ToR (i) talks about review of the proposal for translocation of corals without reference to the fact that the ICRZ 2019 prohibits such destruction, ToR (ii) talks about data collection qua the EIA Notification, 2006, while it is the ICRZ 2019 which requires the preparation of a comprehensive EIA report (3 seasons baseline data) and ToR (iii) talks of review of the port boundaries in light of ICRZ, 2019.
11. It is necessary to point out that the revised layout of the project as recommended by the Andaman and Nicobar Coastal Zone Management Authority dated 08.07.2022, extracted at para 24 of the judgment clearly states that the following extent of areas classified as CRZ IA are earmarked for each component
 - a. Port – 0.57 Sq Km (57 Ha), reclamation area – 0.06 Sq Km (6 Ha)
 - b. Airport – 0.60 Sq Km (60 Ha)
 - c. Township (Defence) – 0.81 Sq Km (81 Ha)
 - d. Township (other land use) – 5.03 Sq Km (503 Ha)

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12. The ICRZ, 2019 categorically prohibits any of the above projects in ecologically sensitive CRZ IA areas. This aspect goes to the root of the matter and has to be examined by the committee. However, the OM limits the same to the Port layout.
13. Further, apart from ecologically sensitive CRZ IA areas, IB (inter tidal zone) areas of 82 hectares of the airport, 143 hectares for the township (defence) and 605 hectares for township (other land use) are to be converted. The ICRZ, 2019 also prohibits the establishment of these projects in CRZ IB (inter tidal areas). This aspect has been completely ignored by the OM. It is reiterated that illegality in siting goes to the root of the matter – the law prohibits the destruction of ecologically sensitive areas for such projects. The HPC ought not to lose sight of this fact. The project can be established at any location where it is legally permitted and where it does not result in the destruction of a sensitive biodiverse ecosystem.
14. The appeal before the Hon'ble Tribunal raises important questions inter alia on the legality of the project, the inadequacy of the impact assessment reports, the failure to consider impacts. These deficiencies pointed out were recognised by the Hon'ble Tribunal and were referred to the HPC for consideration.
15. I am attaching (in the zip file below) a copy of the appeal and documents filed in support of the appeal (which are already available with the MoEF & CC and the project proponent) for your perusal and consideration.
16. It is necessary that in the interest of the principles of natural justice, I am given a hearing so that the HPC has access to our submissions and evidence presented, which will aid in proper consideration of the present issue of seminal importance. The significance of the area in question cannot be overstated. While I reserve my right to object to the conflict of interest in the constitution of the committee and delegation of essential judicial function, the fact that this exercise has been set in motion by the MoEF & CC by virtue of the OM dated 13.04.2023 (which was received only on along with RTI reply dated 16.06.2023 by the addressee) and has come to my knowledge only now, I am sending the present representation so that correct facts are taken note of and the judgment of the Hon'ble Tribunal is not frustrated by the narrow and incorrect terms of reference mentioned in the OM by the MoEF & CC.

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17. I request you to take note of the fact that the proceedings of this nature ought not to be construed as adversarial. The protection of this unique ecosystem is in all of our interest, as is ensuring that the law is not violated.

Sincerely,

Ashish Kothari
S/o Rajni Kothari,
G1 Chaitraban Residency, Aundh,
Pune 411004

Encl :

1. File A – L, memo and note on submissions filed in Appeal 32 of 2022
2. Judgment of the Hon'ble Tribunal dated 03.04.2023 in Appeal No. 32 of 2022 etc
[Appeal 32 of 2022.zip](#)

Subject: Re: Subject: Judgment of the Hon'ble NGT dated 03.04.2023 in Appeal No. 32 of 2022 etc

From: Ashish Kothari <chikikothari@gmail.com>

Date: 05/09/23, 6:45 pm

To: secy-moef@nic.in, cs-andaman@nic.in, tanmay.kumar-rj@gov.in, sricha@ias.nic.in, dhriti.banerjee@ZSI.gov.in, hq@bsi.gov.in, mkbiswas.cpcb@nic.in, rajnath-pc@nic.in, secyship@nic.in, dwii@wii.gov.in, vrt@wii.gov.in, ad.raju@nic.in

CC: Ashish Kothari <chikikothari@gmail.com>

From,
Ashish Kothari
S/o Rajni Kothari,
G1 Chaitraban Residency, Aundh,
Pune 411007

To,

The Members of the High Powered Committee

1. Leena Nandan, Secretary, MoEF & CC
2. Keshav Chandra, Chief Secretary, A&N Islands
3. Additional Secretary, MoEF & CC
4. Dhriti Banerjee, Director, Zoological Survey of India
5. A.A. Mao, Director, Botanical Survey of India
6. M.K. Biswas, Regional Director, Kolkata, CPCB
7. Rajnath Ram, Adviser (Power & Energy), NITI Aayog
8. Sudansh Pant, Nominee of the Secretary of Ministry of Shipping
9. V.R. Tiwari, Director, Wildlife Institute of India
10. Amardeep Raju, Scientist-E, EAC, Infra - I

Sub: Judgment of the Hon'ble NGT dated 03.04.2023 in Appeal No. 32 of 2022 etc

Ref: 1. My representation dated 09.07.2023 sent to 1 to 10 of you by email.

2. Office memorandum dated 13.04.2023 issued by MoEF & CC constituting a committee

Madam / Sir,

1. I am the appellant in Appeal No. 32 of 2022 before the Hon'ble NGT in which the environmental clearance dated 11/11/2022, bearing EC Identification No. - EC22A033AN125767 in File No. - 10/17/2021-IA-III to Andaman and Nicobar Islands Integrated Development Corporation Limited (ANIIDCO Ltd), was challenged and the Hon'ble Tribunal constituted a committee comprising of 1 to 10 of you to review the environmental clearance.

2. The Hon'ble Tribunal by way of instance recorded three illegalities such as project being located in a prohibited area (CRZ IA), the lack of a comprehensive EIA report, damage to corals and directed the reconsideration of the clearance. However, the OM

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mentioned in the 2nd reference was issued, wherein the ToR for the committee was restricted to 3 issues, in a direct violation of the order of the Hon'ble Tribunal.

3. I had submitted a detailed representation to 1 to 10 of you in this regard but I have not received any reply till date. I had sought for a hearing before the committee and annexed a copy of the appeal filed by me, so that all issues as directed by the Hon'ble Tribunal are properly considered.

4. I was not even informed of the constitution of the committee or its meetings. I am not aware whether the committee has held meetings to deliberate this issue. The proceedings of the committee are not in the public domain. The entire transaction appears to be shrouded in secrecy.

5. I request you, the members of the committee, especially the 1st of you, the Secretary of the MoEF&CC, to forthwith provide complete details of the proceedings of the committee including

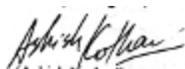
- a. Schedule of meetings of the committee
- b. The agenda of each meeting
- c. Minutes of each meeting of the committee
- d. Recommendations of the committee
- e. Orders passed by the MoEF & CC based on the recommendations of the committee

so that I can effectively participate in the process.

6. I submit that the present issue concerns the protection and preservation of the Great Nicobar Island and ensuring that the laws of our country are complied. There is no necessity to view the issue as adversarial.

7. In case you fail to provide the information sought within a period of 1 week, I will be constrained to approach Courts for redressal, holding you all responsible for costs and consequences thereof.

Sincerely,



Ashish Kothari

Attached: My representation dated 09.07.2023

—Attachments:—

Letter to Committee members, on Judgment of the Hon'ble NGT dated

89.9 kB

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03.04.2023 in Appeal No. 32 of 2022 etc, 9.7.2023.pdf

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Over 10 EoIs received, in talks with more interested bidders for Great Nicobar port : Sarbananda Sonowal

Updated - July 09, 2023 at 03:50 PM. | New Delhi

Port officials aware of the developments said some of the names who have placed EoIs include Adani Ports and SEZ, JSW Infra, RVNL (Rail Vikas Nigam Ltd), Container Corporation, among others

BY ABHISHEK LAW

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Sarbananda Sonowal, Minister of Ports, Shipping and Waterways | Photo Credit: Kamal Narang

India's Ministry of Shipping has received "at least" 10 EoIs (Expression of Interest) for the



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proposed ₹48,000 crore
shipment port project at Galathea Bay in Great Nicobar Island off the Bay of Bengal. And a “few more”, including international players, have reached out separately to the Ministry expressing their interest to participate in the bidding process when it opens, Sarbananda Sonowal, the Union Minister of Ports, Shipping and Waterways (MoPSW), told *businessline*.

“We have received over 10 EoIs for the Gibraltar Bay port, and a few more players and leading shipping liners, including international ones have reached out to us saying that they are interested in bidding for the project. So let’s see how this works out. As of now, the initial trends or interest levels are encouraging,” Sonowal said, during an exclusive interaction.

The EOI was released earlier this year in January.



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Port officials aware of the developments said some of the names who have placed EoIs include Adani Ports and SEZ, JSW Infra, RVNL (Rail Vikas Nigam Ltd), Container Corporation, among others. On the international side, Dutch dredging major Royal Boskalis Westminster is said to be amongst those interested.

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An EOI is not a formal order tender. It will determine the terms of engagement and orders are awarded later. Other documents that needs to be looked into are Request for Qualification, Request for Proposal and Draft Concession Agreement.

Reportedly the government would look at a PPP mode via the landlord model; or an hybrid annuity model could also be considered because of the high nature of investments.

The concessionaire could also be awarded a long term PPP concession and can make his own investments in infrastructure subject to minimum guaranteed traffic.

Strategic location

The Great Nicobar port is to be developed in four phases with a total capacity of 16 million tonnes of container cargo handling, per year.

In the first – to be commissioned under an initially announced timeline of 2028 – around 4 million tonne of cargo handling capacity is expected to come up at a proposed investment of ₹18,000 – 20,000 crore. Construction will include berths, storage areas, port colonies, among others.

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The proposed container shipment hub, is supposed to be located strategically between Singapore and Colombo – two major trans-shipment ports on the international sea trade/shipping route.

The Great Nicobar port will act as a feeder port to these two; apart from itself being a trans-shipment port to shipments from Bangladesh and Myanmar.

Majority of India's transshipped cargo is handled in ports outside of the country with Colombo port handling the majority of international transshipped cargo.

"Clearances are being worked on for the port," Sonowal said.



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Great Nicobar port RFP will be issued as soon as it receives clearances: Sarbananda Sonowal

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Updated - October 12, 2023 at 11:12 AM. | New Delhi

The port will have a capacity to handle 16 million containers per year

BY ABHISHEK LAW

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File photo of Union Minister of Ports, Shipping and Waterways Sarbananda Sonowal | Photo Credit: VELANKANNI RAJ B

The Ministry of Ports, Shipping and Waterways (MoPSW) is awaiting “necessary clearances” for the proposed ₹41,000-crore port at Great Nicobar Island and

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the request for port RFP will be issued once necessary clearances are obtained, Minister Sarbananda Sonowal said.

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India is planning to develop the proposed port at Galathea Bay in Great Nicobar Island of **Andaman and Nicobar Islands** as an international container terminal or transshipment port. The port will have a capacity to handle 16 million containers per year, while in the first phase it will handle 4 million containers.



Once ready, the Great Nicobar port is expected to surpass the country's only international trans-shipment terminal at Kochi. Galathea Bay, with a draft of 20 metres, will allow access to two prominent international routes competing with trans-shipment hubs like Singapore and Colombo.



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Amongst the due clearances, environment clearance for the project is still being looked into.

“An EOI was floated in January 2023 for developing and operating the trans-shipment port. It received interest from around 10 parties. The RFP for the same will be issued as soon as we receive all the clearances,” Sonowal told *businessline*.

Also read: [Vizag port @90: All set to sail on a new biz voyage](#)

Incidentally, an EOI is not a formal tender. While it is used to determine the terms of engagement, actual orders are awarded at a later stage. Formal orders follow post an RF, bidding process and so on.

Notable names who have submitted EoIs for the project include Adani Ports and Special Economic Zone (APSEZ), JSW Infra, Rail Vikas Nigam Ltd (RVNL), and Container Corporation. Globally, Dutch dredging major Royal Boskalis Westminster has expressed its intent to be included in the bidding process.

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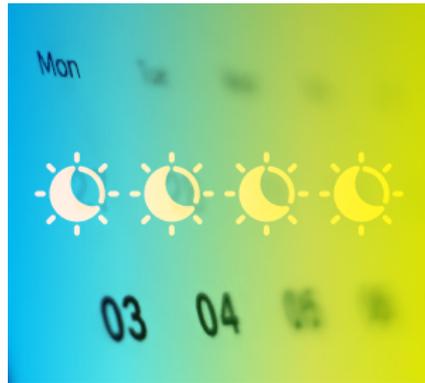
Landlord model

The Ministry has plans to develop the port on the landlord model where the publicly governed port authority acts as a regulatory body and as a landlord, while private companies carry out port

221

operations — mainly cargo-handling activities.

While the authorities will maintain ownership of the port, the infrastructure will be leased to private firms who maintain their own superstructures and install their own equipment to handle cargo. In return, the 'landlord' gets a share of the revenue from the private entity.



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Ministry of Ports, Shipping and Waterways



Shri Sarbananda Sonowal visits Galathea Bay in Great Nicobar Island and reviews progress of proposed International Container Transshipment Port (ICTP)

ICTP will be a shining example of new India as envisaged by Prime Minister Shri Narendra Modi in Maritime Amritkal Vision 2047

DPR of the project is under finalization and the tenders for construction of the project will be invited at the beginning of the next year.



With an estimated cost of about ₹44,000 Crores ICTP will play a crucial for the economic and infrastructural development of the Region

Posted On: 23 NOV 2023 5:49PM by PIB Delhi

Union Minister for Ports, Shipping and Waterways (MoPSW) and Ayush, Shri Sarbananda Sonowal visited the site of the proposed International Container Transshipment Port (ICTP), at Galathea Bay, Great Nicobar Island today and reviewed its progress with the senior officials. As envisaged in the Maritime India vision 2030 as well as one of the key projects in the Amrit kaal Vision 2047, the proposed International Container Transshipment Port (ICTP) project has reached significant milestones, solidifying its position as a transformative initiative with a total estimated cost of about ₹44,000 Crores. The project is strategically important for the country and crucial for the economic and infrastructural development of the entire region, has garnered key approvals and support from government bodies.



The Ministry of Environment and Forests & Climate Change (MoEF&CC) granted environmental clearance on November 11, 2022. Additionally, stage 1 forest clearance has been obtained. Also, the Department of Expenditure, Ministry of Finance, has granted "In-Principle" approval for the holistic development of the Great Nicobar Island and the DPR of the ICTP project is under finalization. It is planned to invited the tenders for the construction of the first phase of the project in early next year, after due approvals and concurrences.





The development of this Mega Container Terminal is a part of the holistic development of Great Nicobar Island. The project focuses on three key drivers, which can result in making it a leading container transshipment port, i.e. strategic location in terms of proximity (40 nautical miles) with the International shipping trade route, availability of natural water depth of over 20m and carrying capacity of transshipment cargo from all the Ports in the proximity including Indian Ports.



After his aerial visit of the site, **Shri Sonowal** also interacted with the local residents and representatives of all the stakeholders at the island and had a detailed review meeting of the proposed methodology of the implementation of the project and its timelines.

After reviewing the project, the Minister said, “This project will be a major landmark in developing India to become a self-assured and self-reliant Nation and will support the economic development of the country. The Ministry of Ports, Shipping and Waterways is continuously striving to fulfill the grand vision of making a New India as envisaged by our visionary Prime Minister Shri Narendra Modi ji.”





The flagship program Sagarmala under MoPSW aims to modernize, mechanize, and enhance capacity of existing ports, making them more efficient and environment friendly. Upgrading & unlocking capacity at major & non-major ports is critical for supporting economic activities in the hinterland since ports serve as a vital link between sea and land transit. In the last 9 years under Port modernization, 94 Projects worth Rs. 31,129 Cr. have been completed, resulting in capacity addition of more than 230 MTPA. In terms of engaging the private sector, 21 projects worth more than Rs. 23,000 Cr. have been successfully operationalized under PPP, since 2014, indicating the considerable progress made in leveraging public-private partnerships.

India has a significant potential to set-up mega ports and compete with global ports. There are four key intervention areas highlighted under Maritime India Vision 2030, which include capacity augmentation; developing world-class Mega Ports; development of transshipment hubs in Southern India; and infrastructure modernization. Currently, India has 5 Major Ports and 2 Non-Major Ports with greater than 100 MTPA capacities. With this, there is a significant opportunity for India to set up Mega Ports and compete with global ports. Based on detailed evaluation across key criteria for Mega Ports and emerging growth potential of clusters, 3 Mega Ports - Vadhavan-JNPT Cluster, Paradip Port, and Deendayal Port have been identified to be developed into Mega Ports with >300 M TPA capacity.

The infrastructure initiatives marked in Amrit Kaal Vision 2047 focus upon development of four port clusters with capacity of >300 MTPA and 2 port clusters with capacity >500 MTPA. In addition to creating port clusters around the existing major ports, 2 new major ports – Vadhavan and Galathea Bay port are envisaged to be developed.

Vadhavan has a natural draft of about 20 meter and is therefore well suited for accommodating larger ships. Development of this port will enable cargo container vessels of 16,000-25,000 TEUs capacity. Similarly, proposed Galathea Bay Port, due to its strategic location in proximity to the East-West world-shipping corridor, is suitable to attract both gateway and transshipped cargo.

Ports in the country would also need to have higher draft available to accommodate larger vessels. Out of five ports from eight namely DPA, Vadhavan, VoCPA, Galathea Bay and PPA to have draft in the range of 18 meters to 23 meters by 2030. Further 3 ports NMPA, GCPA and



JNPA would be drafted in the range of 20 meters to 23 meters by 2047 in order to align with global standards.

Currently, nearly 75% of India's transshipped cargo is handled at ports outside India. Colombo, Singapore and Klang handle more than 85% of this cargo with 45% of this cargo handled at Colombo Port. The strategic location of Galathea Bay is a huge advantage to EXIM trade as it lies on International shipping route. With the development of ICTP at Galathea Bay, Indian ports will be able to attract more transshipment cargo. Also, developing Galathea Bay Transshipment Port will accrue significant benefits such as forex savings, foreign direct investment, increased economic activity at other Indian Ports, enhanced logistics infrastructure and thus, efficiencies, employment generation, and increased revenue share.

The proposed facility is envisaged to be developed in four phases with Phase 1 is proposed to be commissioned in the year 2028 with handling capacity of ~ 4 Million TEUs, increasing to 16 Million TEUs in the ultimate stage of development by 2058. The estimated cost for Phase 1 of the proposed transshipment port is around INR 19,000+ crores, which includes the construction of breakwaters, dredging, reclamation, berths, storage areas, building and utilities, procurement and installation of equipment, and development of port colony with core infrastructure is going to be developed with the government support.



Shri Sonowal also visited the Indira Point, the southernmost point of India's territory at Great Nicobar Island of Andaman and Nicobar Islands to explore its tourism potential. After the visit, he has directed the concerned officials to explore the possibility of developing the Indira Point area as a tourism destination and develop required tourism amenities and facilities for the same.

During this visit, Shri Sonowal also reviewed the Campbell Bay Port project progress. This project is being constructed with a cost of about Rs.17 crores. It is to be noted that the existing jetty at Campbell bay is inadequate for berthing of larger size vessels. Considering this extension of the jetty for 50m was taken up to facilitate safe berthing of bigger vessels. On completion of the project, vessels of 150mtr long will be able to berth which will provide more passenger and cargo movement between Great Nicobar and other islands. This extension also will facilitate double



berthing, which will add for double berthing which will add the port capacity. Considering the future development of Great Nicobar Island, and expected increase in tourists and traders, this jetty will be useful to capture the traffic growth of the island.

NSK

(Release ID: 1979157) Visitor Counter : 1529

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 16431/2023

ASHISH KOTHARI

..... Petitioner

Through: Mr. Yogeshwaran A., Ms. Poongkhulali, Ms. Sugandha Batra and Mr. Naveen Hegde, Advocates.

versus

UNION OF INDIA

..... Respondent

Through: Mr. Apoorv Kurup, CGSC with Mr. Akhil Hasija, Advocate.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

20.12.2023

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1. Since the instant writ petition is for implementing the Order dated 03.04.2023 passed by the National Green Tribunal and the grievance of the Petitioner is that the order of the Tribunal is not being implemented in letter and spirit, learned Counsel for the Petitioner seeks permission to withdraw the instant writ petition with liberty to approach the Tribunal.
2. Permission and liberty, as prayed for, is granted.
3. The petition is disposed of along with pending application(s), if any.
4. It is made clear that this Court has not made any observation on the merits of the case.

SUBRAMONIUM PRASAD, J

DECEMBER 20, 2023

hsk