

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL (SZ),

CHENNAI

ORIGINAL APPLICATION NO. 21 OF 2021

Dr. Anupkrishnan. V

... APPLICANT

v.

Ministry of Environment, Forest and Climate Change,
And 7 Others.

... RESPONDENTS

**OBJECTIONS FILED BY THE FOURTH & FIFTH RESPONDENTS TO THE
REPORT FILED BY THE SIXTH RESPONDENT ON 07/09/2021**

M/s. S. Arjun Suresh, B. Kishore,
Raghavendra Ross Divakar
Apoorva S. Vinjamur
Noyal James
Gautham Balaji
Of M/s. Dua Associates

COUNSEL FOR THE FOURTH & FIFTH RESPONDENTS

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL (SZ),

CHENNAI

ORIGINAL APPLICATION NO. 21 OF 2021

Dr. Anupkrishnan. V
Flat No. 7173, Tower 7, Prestige Bella Vista,
Ayyappanthagal Village, Mount Poonamallee Road,
Kanchipuram District, Chennai - 600 056

... Applicant

v.

Ministry of Environment, Forest and Climate Change,
Represented by its Director, MOEF & CC RO (SEZ),
HEPC Building, No.34, Cathedral Garden Road,
Nungambakkam, Chennai - 600 034
And 7 Others.

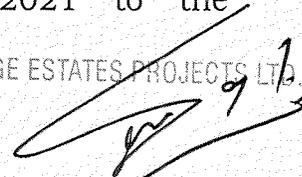
... Respondents

**OBJECTIONS FILED BY THE FOURTH & FIFTH RESPONDENTS TO THE
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**The 4th and 5th Respondents named above most respectfully submit as
under:**

1. The instant Application was filed by the Applicant inter-alia under Sections 14 and 15 of the National Green Tribunal Act, 2010, alleging that the Fourth and Fifth Respondents (**"the Answering Respondents"**) violated the conditions imposed in the Environmental Clearance and also regarding the other permissions granted for the Project, namely **"Prestige Bella Vista Project"** (**"The Project"**).
2. The Joint Committee had inspected the Project and submitted its Inspection Report on 10/08/2021. The Answering Respondents have filed a detailed Objections to the said Report on 22/09/2021. The Answering Respondents have also filed an independent response to the main application.
3. Meanwhile, the Sixth Respondent has filed a Report on 07/09/2021 (**"the Report under Reply"**). The Answering Respondents have perused the contents of the Report under Reply and deny each and every allegation and averment made by the Sixth Respondent therein, except to the extent specifically admitted hereinunder. The Answering Respondents further crave leave of this Hon'ble Tribunal to read the Answering Respondents' Objections dated 22/09/2021 to the

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Committee's Report as well as the Counter Statement dated 07/10/2021 to the Application, as a part and parcel to this Objections to the Report under Reply.

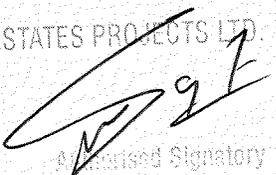
4. The Answering Respondents submit that, pursuant to the Joint Committee's Report dated 10/08/2021 was filed before this Hon'ble Tribunal, the Sixth Respondent has preferred to issue a Show-Cause Notice dated 16/08/2021 (signed on 17/08/2021 and dispatched on 18/08/2021) ("**Show-Cause Notice**") calling upon the Answering Respondents to show cause as to why the Environmental Compensation should not be levied against the Answering Respondents. The Show Cause Notice further directed the Answering Respondents to respond within a period of 15 days of receipt of the notice failing which action will be initiated on merits. It is pertinent to note that the said Show Cause Notice was received by the Answering Respondents on 19/08/2021.
5. In the Show Cause Notice, the Sixth Respondent, by drawing reference to the Order dated 03/08/2018 passed by the Hon'ble NGT (PB) in O. A. No. 593/2017, had raised six (6) allegations of non-compliance against the Answering Respondents. Upon receipt of the Show Cause Notice, the Answering Respondents, vide a Detailed Reply dated 01/09/2021 ("**the Reply to Show-Cause Notice**"), duly responded to the same, by categorically refuting each and every allegation contained therein and consequently informed the Sixth Respondent that they are not liable to pay any compensation for alleged violations/ non-compliances. The Answering Respondent further informed the Sixth Respondent that the matter is sub-judice before this Hon'ble Tribunal. The Reply to the Show-Cause Notice was hand-delivered by the Answering Respondents to the Sixth Respondent on the same day i.e., 01/09/2021. The Answering Respondents crave leave of this Hon'ble Tribunal to read the Reply to the Show-Cause Notice dated 01/09/2021 as part and parcel of this Report under Reply.
6. Notwithstanding the same, the Sixth Respondent has proceeded to file the instant Report under Reply before this Hon'ble Tribunal on 07/09/2021, by totally disregarding the Reply to the Show-Cause Notice sent by the Answering Respondents. A perusal of the Report under Reply makes it evident that the same is a mere reiteration of the contents of

the Show Cause Notice that had already been duly responded to by the Answering Respondents earlier. Be that as it may, by way of abundant caution, the Answering Respondents reiterate and reaffirm their stand that they have not committed any violations of environmental laws, whatsoever, and consequently, not liable to pay any compensation thereof.

Paragraph-wise reply:

7. The contents of paragraphs 1 to 3 are admitted as they are facts on record and hence require no specific traversal.
8. As regards the averments made in paragraph 4 are concerned, it is respectfully submitted that, as per the EC, the Project was to be constructed as a residential complex comprising of 20 blocks/ towers ("**Towers**"). As stipulated in the EC, there are only 20 Towers that have been constructed within the Project within the permissible built-up area. Each of these Towers, comprises of one or more blocks (to a maximum of 3 blocks), aggregating to a total of 33 blocks ("**Blocks**"). This is evident from a perusal of the planning permit issued by the Third Respondent and the master plan of the Project. It is further submitted that the Project is constructed with a total built-up area of 4,49,971 sq. m. (inclusive of FSI and non-FSI areas), and 4,43,738.16 sq. m. excluding the non-FSI area., which is well within the EC conditions and planning permit. It is true that the Answering Respondents had obtained Consent to Establish on 28/06/2013. Further, it is also clarified that the renewal for CTO was applied by the Answering Respondents by 27/07/2020 itself i.e., much prior to the expiry of the consent up to 30/09/2020. Consequently, all statements and averments made to the contrary in the paragraph under reply are denied as false and baseless.
9. The averments contained in paragraph 5 are merely factual narration of events from 22/09/2020 to 03/12/2020 and hence require no specific traversal. However, it is submitted that the observations recorded by the Sixth Respondent during the inspection on 22/09/2020 and the subsequent show-cause notice dated 23/09/2020 are inherently flawed and erroneous.

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10. In precise terms, the observation that the Answering Respondents have violated the consent order conditions is vehemently denied as erroneous and misleading. In fact, the construction of the Project is as per the EC conditions and planning permit. The building construction did not exceed the built-up area stipulated therein. Consequently, the averment that there is a discrepancy in the consent order, EC conditions and actual construction is totally denied as false and baseless. Further, there is no discrepancy in the name on which the consent was issued and the purported allegation in this regard appears bald, vague, and misconstrued.
11. In addition, the observation that permitted quantity of sewage is only 850 KLD is incorrect and based on a mere theoretical inference. The Sixth Respondent is put to strict proof of the same. Be that as it may, the current quantity of treated sewage does not exceed the aforementioned quantity of 850 KLD and the averments made to the contrary are denied in its entirety.
12. The Answering Respondents duly responded to the aforementioned show cause notice dated 23/09/2020 on 19/10/2020 as well as on 03/12/2020, stating that there are no violations/ discrepancies. Hence, all averments made to the contrary in this regard are strongly denied as false and untenable. The Answering Respondents put the Sixth Respondent to strict proof of the averments made to the contrary.
13. In response to the averments made in paragraph 6 of this Report, it is submitted that the observations of the Sixth Respondent during the inspection on 19/02/2020 are erroneous and highly misplaced. In specific terms, there is no deviation/ change in the number of Towers or built-up area for which EC was granted, as erroneously observed by the Sixth Respondent. It is reiterated that, as per the EC, the Project was to be constructed as a residential complex comprising of 20 blocks/ towers ("**Towers**"). As stipulated in the EC, there are only 20 Towers that have been constructed within the Project. Each of these Towers, comprises of one or more blocks (to a maximum of 3 blocks), aggregating to a total of 33 blocks ("**Blocks**"). This is evident from a perusal of the planning permit issued by the Third Respondent and the master plan of the Project. Accordingly, there arises no question of change in scope, as suggested by the Sixth Respondent. In fact, the Project was constructed

as per the planning permission issued by the Third Respondent and in due compliance of the EC conditions. As such, there is no violations by the Answering Respondents in this regard.

14. It is further submitted that the Answering Respondents obtained planning permit and building permit on 13/02/2013 and 23/04/2013 respectively. Hence, the averments made to the contrary are also denied as false and incorrect. Moreover, while it is true that the completion certificates for 25 Blocks have been obtained, the Third Respondent has withheld the completion certificates for the remaining 8 Blocks, citing pendency of an unrelated litigation before the Hon'ble Supreme of India. It is denied that the entire building is occupied, and the Sixth Respondent is put to strict proof of the same.
15. As regards the observation regarding the non-availability of Reverse Osmosis Treatment technology, it is respectfully submitted that the same is not required for the Project because the fresh water/drinking water is being obtained from the CMWSSB which is pre-treated. Moreover, the water is also treated by 3 water treatment plants installed within the Project. In fact, the Hon'ble Green Tribunal (PB) in OA No. 134 of 2015 has held that RO plans are not to be installed where the water TDS is <500, and wherein water is supplied by the water authorities. In this context, the Answering Respondents, for the sake of brevity, craves leave to not repeat and reiterate all that is stated in their Objections to the Committee's Report and Counter Statement to the main Application in respect of the RO technology.
16. It has also been erroneously observed that the excess treated sewage is not disposed to CMWSSB's decanting plant. The Answering Respondents adds that about 68% of the Project (majority) is dedicated to open spaces which includes hardscaping, garden areas, and plantations. Hence, there is sufficient area available for gardening within the premises. As such, the treated sewage is partly utilized within the Project for gardening and green-belt development, apart from being utilized for toilet flushing, while the excess is being transported to the CMWSSB's decanting plant. For the reasons stated above, the observation made to the contrary are denied as false and baseless.
17. The Answering Respondents states that the only waste generated by the project is waste oil from DG sets. The same is disposed of by one

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Thirumalai Agency which whom an agreement has been entered for disposal of the waste oil discharged from the DG sets. This agency has been duly authorized under the Hazardous and Waste Rules, 2016. The Answering Respondents have also duly applied for necessary authorization under the Hazardous and Other Waste (Management & Transboundary Movement) Rules, 2016, for disposal of hazardous waste generated.

18. However, the Sixth Respondent has rightly observed that the treated sewage are within permissible limits and that the units are provided Electro-Magnetic Flow Meters (EMFs) for STPs, as per the requirements. It has also been rightly observed that the Answering Respondents: (i) have provided for necessary rain water harvesting, (ii) have provided separate wet and dry bins for segregation of waste, (iii) have provided green belt development, (iv) have provided solar panels at roof top, (v) have installed organic waste converter for composting which is being utilized as manure for gardening and (vi) do not generate trade effluents from the residential complex, (vii) are operating the DG sets which meet all relevant parameters and (viii) have given provision of energy meters in STPs. All these observations clearly evidence that the allegations of the Applicant are entirely false, baseless and do not merit any consideration.
19. As regards the handing over of the Project to the welfare association, the Answering Respondents have repeatedly requested the elected association to come forward and take over the maintenance of common areas. However, the associations have not come forward to take over the same until date. In fact, the Answering Respondents are ready and willing to hand over the maintenance to the association.
20. In response to the averments made in paragraph 7 of this Report, the Respondent further submits that, pursuant to the inspection on 19/02/2021, the Sixth Respondent further issued Proceedings dated 08/04/2021, calling upon the Answering Respondents to comply with certain conditions. The said Proceedings dated 08/04/2021 was duly responded by the Answering Respondents on 16/04/2021. In precise terms, the Answering Respondents had, inter-alia, duly agreed to comply with the Sixth Respondent's direction to apply for CTO Expansion and the same was duly complied with by filing such application before the Sixth Respondent. The Answering Respondents

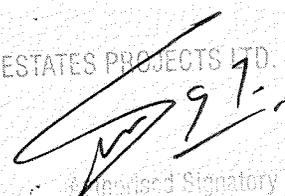
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further clarified that they have engaged one M/s. Thirumalai Agency (approved by TNPCB) for disposal of spent oil/waste discharged from the DG sets and also that it disposes excess treated sewage (when generated) to CMWSSB's decanting point for disposal. It was further agreed by the Answering Respondents had agreed to apply for Hazardous Waste Authorization, which was also subsequently duly complied with.

21. The averments in paragraph 8 of this Report are totally denied as false and incorrect. It is vehemently denied that the Answering Respondents had failed to take any effective steps to comply with the directions of the Board. It is further denied that the consent conditions stipulated in the CTO are violated by the Answering Respondents. Consequently, the Answering Respondents submit that they are not liable to pay any environmental compensation, much less the amount sought to be levied by the Sixth Respondent. In any event, it is respectfully submitted that the entire methodology adopted for computing the period for Environmental Compensation is erroneous for the following reasons:

- (i) The CTO was valid up to 31/03/2020. Thereafter, due to the ongoing COVID-19 pandemic, the validity of CTOs was automatically extended up to 30/09/2020. The Answering Respondents applied for renewal of CTO for 25 blocks by 27/07/2020 itself i.e., 2 months prior to the expiry of the extended period for renewal. Therefore, the computation of the starting date of violation from 23/09/2020 is arbitrary and untenable.
- (ii) On a without prejudice basis, it is submitted that on account of the fact that the validity of CTOs was automatically extended till 30/09/2020, the computation of duration from 23/09/2020 is untenable.
- (iii) Furthermore, considering the fact that the CTO was applied by the Answering Respondents by 27/07/2020 itself, the computation of the cessation date as 23/06/2021 for computing the compensation is also baseless and unsustainable. The 6th Respondent, during its inspection conducted on 22/09/2020, proceeded on a wholly erroneous premise that the CTO had expired (despite the automatic renewal) and failed to consider the

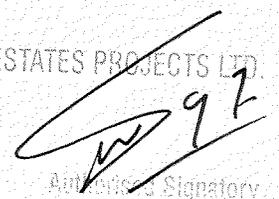
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renewal application on merits. The said delay therefore cannot be imputed to the answering respondent herein.

- (iv) In fact, there is absolutely no basis, reasons, or rationale to compute the period of alleged violation up to 23/06/2021 since the Answering Respondents had made an application for renewal of CTO in respect of 25 blocks even before the deemed expiry of CTO on 30/09/2020, i.e., on 27/07/2020 and the same has been pending with the Board for reasons best known to them. As such, the computation of duration of 273 days i. e. between 23/09/2020 and 23/06/2021 is highly arbitrary, irrational, and unsustainable.
- (v) Moreover, as stated above, CTO renewal application was made for 25 blocks as early as on 27/07/2020 itself. As on 23/06/2021, CTO was not applied only in respect of the remaining 8 out of 33 blocks, for the reasons that are not attributable to and wholly outside the control of the Answering Respondents. However, as stated above, this was because the completion certificate was a pre-requisite for issuance of CTO for these 8 blocks and the said completion certificate for the 8 blocks was erroneously withheld by the CMDA.
- (vi) The show-cause notice for CTO Expansion for the entire Project was issued only on 08/04/2021, which was duly complied with on 05/08/2021, and hence the computation of compensation is also untenable on this account since there admittedly arose no grievance on 23/09/2020, which is the start date for such computation.
- (vii) Without prejudice to the above, the Sixth Respondent had itself, on 19/02/2021, certified that all 33 blocks in the Project were ready to be occupied and its own observation has now been disregarded for computing compensation up to 23/06/2021.
- (viii) The fact that the Answering Respondents had applied for renewal of existing CTO for 25 Blocks even before the expiry of the extended period has not been considered; CTO expansion application for the entire Project comprising of 33 Blocks with the

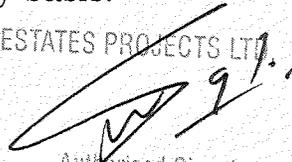
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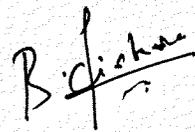
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applicable fees was paid to the Sixth Respondent, which has also not been considered.

- (ix) As such, the Answering Respondents have complied with the EC conditions; the Answering Respondents have paid the entire CTO expansion fees as demanded by the Sixth Respondent; the Answering Respondents have not violated any of the laws in Environmental Act, such as discharge to the environment polluting the land, water, and air.
22. Moreover, as submitted above, the Show-Cause Notice was already duly responded to by the Answering Respondents on 01/09/2021. As such, the Reply to the Show Cause Notice was available on the records of the Sixth Respondent at the time of filing this Report under Reply. Despite that, the Sixth Respondent has failed to fairly disclose the same before this Hon'ble Tribunal. The Answering Respondents submit that they have not committed violations of any Rules framed under the Environmental (Protection) Act, 1986, as amended.
23. Hence, for the reasons mentioned above, it is prayed that the findings and report of the Sixth Respondent, in so as attributing any non-compliance of the directions issued to the Answering Respondents and quantifying the period to levy Environmental Compensation, may be rejected as the same is erroneous and without any basis.

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FOURTH & FIFTH RESPONDENTS



COUNSEL FOR THE FOURTH & FIFTH RESPONDENTS

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 Raghavendra Ross Divakar
 Apoorva S. Vinjamur, Noyal James and
 Gautham Balaji
 Of M/s. Dua Associates
 Advocates and Solicitors
 Palani Centre, No. 32, Venkatanarayana Road
 T Nagar, Chennai - 600017

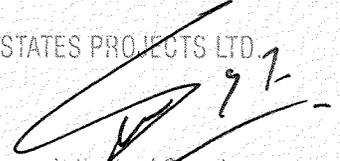
Place: Chennai

Dated: 07/10/2021

VERIFICATION

I, C. Nagaraj, S/o. Nagaraj C, son of Mr. C.R. Narasimhan, aged about 53 years, the Head – Business Operations (TN) of the Fourth and Fifth Respondents herein, having office at Prestige Polygon, Top Floor, 471, Anna Salai, Nandanam, Chennai 600, do hereby verify that the contents of paragraphs 1 to 23 above are true and correct to my personal knowledge and belief and that I have not suppressed any material fact.

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Authorised Signatory**FOURTH & FIFTH RESPONDENTS**

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