

BEFORE THE NATIONAL GREEN TRIBUNAL (SZ), CHENNAI**Original Application No. 251 of 2020 and 252 of 2020****O.A. No. 251 of 2020**

Singaravellar Ocean Side Residents Welfare

Association & Ors.

... Applicant(s)

Vs

State of Tamil Nadu & Ors.

... Respondent(s)

AND

O.A. No. 252 of 2020

Sri Kapaleeswarar Nagar Residents Welfare

Association & Ors.

... Applicant(s)

Vs

State of Tamil Nadu & Ors.

... Respondent(s)

**COMMON RESPONSE OF KfW / RESPONDENT NO.6 TO THE FINAL
REPORT FILED BY THE JOINT COMMITTEE DATED 02.04.2021**

I, Christoph Wilhelm Kessler, S/o Herbert Alfons Kessler, aged about 64 years, resident of B5, Westend Colony, New Delhi 110021, do hereby solemnly affirm on oath and state as under:

1. I am the Authorized Representative of KfW / Respondent No. 6 in O.A No. 251 of 2020 and O.A. No. 252 of 2020 and I am well conversant with the facts and circumstances of the present case. As such, I am competent to swear this affidavit on behalf of KfW / Respondent No. 6 in O.A. No. 251 of 2020 and O.A. No. 252 of 2020. The contents of this affidavit are based on my personal knowledge as well as legal advice that I have received.
2. The purpose of this Affidavit is to make certain submissions in response to the Final Report of the Joint Committee constituted by the Hon'ble Tribunal in the O.A. No. 233 of 2020, O.A. No. 243 of 2020, O.A. No. 251 of 2020 and O.A. No. 252 of 2020. The Joint Committee



constituted by the Hon'ble Tribunal with specified Term of Reference in the Original Application No. 233 of 2020 (SZ), O.A No. 243 of 2020 (SZ), O.A No. 251 of 2020 (SZ) & O.A No. 252 of 2020 (SZ) has submitted its Final Report on 2nd April 2021. The said Final Report was uploaded on the website of the Hon'ble Tribunal on 15th April, 2021.

3. I would like to state that KfW / Respondent No. 6 was not asked to appear before the Joint Committee or present its views on the Integrated Storm Water Management System in the Kovalam Basin watershed of Chennai ("**Project**"). However, I note that there are several observations in the Final Report of the Joint Committee that pertain to KfW / Respondent No. 6, some of which appear to have been recorded as a result of statements made by the Greater Chennai Corporation ("**GCC**"). My concern is that some of these observations are misleading as regards the role of KfW / Respondent No. 6 in the Project. The purpose of this submission is to explain the role of KfW / Respondent No. 6 as a financial institution committed to addressing the concerns of storm-water drainage in Chennai in a sustainable manner.
4. At the outset, KfW / Respondent No.6 would like to highlight that it is a financing institution and not a project implementing agency. As a responsible development financing institution, any funds it disburses is contingent on compliance with all applicable local laws and regulations, including all environmental laws and regulations in the country where the project is being implemented. This is a fundamental condition built into our financing documentation. Additionally, the Project Executing Agency (in this case GCC), was required to also prepare the Environmental and Social Impact Assessment ("**ESIA**"), the Environmental and Social Management Plans ("**ESMP**") and Stakeholder Engagement Plans ("**SEP**") in accordance with World Bank standards. These are essentially, socio-economic assessments. The underlying objective of any activity we finance is that it has to be in strict and meticulous compliance with applicable laws, including applicable environmental laws.
5. It is also pertinent to reiterate, as explained in our applications before this Hon'ble Tribunal, that the agreements that KfW / Respondent No. 6 has entered into relating to financing of the Project, are with the Government of India. It is the Government of India which is the



“borrower” from KfW, and channels the loans to the Government of Tamil Nadu and through Government of Tamil Nadu to the GCC (Respondent No. 2-5 in O.A. 251/2020 and O.A. No. 252/2020), which is identified as the Project-Executing Agency.

6. As the Project-Executing Agency, GCC is required to ensure compliance with all applicable laws and regulations. Any disbursement of funds is subject to such compliance only. As already explained in our Applications (*ref. Para 6(b), 7, 15 and 21(b) of I.A. No. 8 and 9 of 2021*), KfW has not disbursed any funds for the Project which is the subject matter of the dispute before this Hon’ble Tribunal. As also explained (*ref. Para 14 and 17 and 21(b) of I.A. No. 8 and 9 of 2021*), no funds will be disbursed till such time that all necessary environmental clearances are obtained, in accordance with the directions of this Hon’ble Tribunal.
7. It is also a matter of fact that pursuant to the interim report of the Joint Committee being issued, KfW/ Respondent No. 6 recommended the initiation of an independent assessment relating to environmental compliances by IIT-Madras, pursuant to which the GCC, has engaged IIT-Madras for the same.
8. I also note that there are certain observations in the Final Report that pertain to the role of KfW/ Respondent No. 6 in appointing Kocks Consult GmbH (“**Kocks Consultants**”). It is important to note that in 2012, Tetra Tech India Limited was the consultant engaged by the GCC to prepare a Detailed Project Report (“**DPR**”) relating to the Project. KfW / Respondent No. 6 started considering financing of the Project in 2014. Kocks Consultant was selected for the further review and improvement of the existing DPR, preparation of design and tender documents for the watershed M3 in 2017. The appointment of Kocks Consultants was undertaken by the Department of Economic Affairs (“**DEA**”), Ministry of Finance, Government of India.
9. As is common in projects of this scale, it was always clear that any real assessment of project implementation needs to be calibrated against the ground realities which needs to be undertaken by the contractors appointed for the purpose, as part of the construction design. Therefore, in the Project documentation, the legal obligation for supervision of the



construction aspects of the Project was that of the Programme Management Consultant (“**PMC**”) who was to be engaged by GCC for undertaking the project implementation.

10. It should be further noted that “legal due diligence” was not part of Kocks Consultants’ mandate since they are not qualified for this task. In fact, it is a standard principle that only lawyers qualified in a specific jurisdiction can opine on the need for specific clearances in that jurisdiction. It is for this reason that as a responsible financial institution, KfW/ Respondent No. 6 ensures that the obligation to ensure compliance with all applicable obligations under Indian law, is built into its financing activities as an obligation that the Project Executing Agency i.e. GCC needs to comply with.
11. The Applicant-RWAs have asserted, as recorded in the Final Report that designs of Kocks Consultants are not in line with the parameters set out in “Manual on Storm Water Drainage Systems” issued by the Central Public Health and Environment Engineering, Organisation (CPHEEO), Ministry of Housing & Urban Affairs, Government of India. It is hereby clarified that the manual referenced was issued by the Government of India in August 2019, after Kocks Consultants completed its assignment in 2017.
12. With a view to setting the record straight with reference to the specific role of KfW, I have, in the table below, explained the stand of KfW with regard to certain specific observations in the Final Report. My humble submission is that the observations in the Final Report in relation to KfW need to be read and understood in the context of the factual context that I have explained in the right-side column below:

S. No.	Extract from the Final Report of the Joint Committee	Submission on behalf of KfW / Respondent No. 6
1.	<p><u>Background of the project</u> (at Para 4, Pg. 4) <i>“Reportedly in the year, 2014, in the INDO – GERMAN bilateral meeting, the commitment was given by KfW, the German Development Bank to fund the construction of Integrated Storm Water Drain</i></p>	<p>The Indo-German bilateral meeting was between the Government of India and the Government of Germany. The outcome of these negotiations only entrusted KfW / Respondent No. 6 with the project appraisal for a possible funding. It is therefore incorrect to state that KfW</p>



S. No.	Extract from the Final Report of the Joint Committee	Submission on behalf of KfW / Respondent No. 6
	<p><i>Project in Kovalam Basin... The entire project is funded by the German Development Bank (KfW)."</i></p> <p><u>Submission of Greater Chennai Corporation</u> (Para 5(i), Pg. 5) makes a similar observation.</p>	<p>gave a "commitment" to fund the Project.</p> <p>The statement that the "entire" Project is funded by KfW / Respondent No. 6 is also incorrect. It is hereby clarified that KfW is funding the Project partially by providing a loan amount which constitutes around 70% of the total Project cost. At least 30% of the total Project cost will be financed by the GCC.</p> <p>It is important to underscore that the loan and financing agreements are predicated on compliance with all applicable legal requirements and statutory permissions. In view of the above, KfW has not disbursed any funds for the Project and commits to continue to not do so until and unless all requisite approvals and clearances as required under Indian laws are obtained by the Project-Executing Agency i.e. GCC.</p>
2.	<p><u>Background of the project</u> (at Para 4, Pg. 4)</p> <p><u>Submission of the Greater Chennai Corporation</u> (Para 5(i), Pg. 5)</p> <p><i>"M/s Kocks Consultants have been selected by KfW to revisit the DPR for M3 Component already prepared by Tetrattech consultant."</i></p>	<p>As explained, appointment of Kocks Consultants was undertaken by the Department of Economic Affairs ("DEA"), Ministry of Finance, Government of India, in 2017.</p>
3.	<p><u>Submissions of Applicants raised in connection with the design aspects</u> (Para 5(ii)(j), Pg. 7)</p> <p><i>"Designs of M/s Kocks Consultants are not in line with the parameters set out in "Manual on Storm Water Drainage Systems" issued by the Central Public Health and Environment Engineering,</i></p>	<p>As explained above, it should also be noted that the manual referenced in para 5(ii) of the Final Report was issued by the Government of India in August 2019, after Kocks Consultants completed its assignment in 2017.</p>



S. No.	Extract from the Final Report of the Joint Committee	Submission on behalf of KfW / Respondent No. 6
	<p><i>Organisation (CPHEEO), Ministry of Housing & Urban Affairs, Government of India.”</i></p>	
4.	<p><u>Site inspection of the project under construction and views of stakeholders:</u> <i>(Para 7, Page 11)</i></p> <p><i>“Project authority has expressed that there is no any suggestion in the DPR for getting CRZ clearance. Further, they expressed that it is not mandated for getting CRZ clearance, since the said project activity is funded by the international agency and also part of the road infrastructure in accordance with IRC guidelines IRC: SP: 42/2014.”</i></p> <p><u>Observation of the Joint Committee on the TOR to the Committee:</u> <i>(Para 8(i), page 13)</i></p> <p><i>“Though the project authority admitted the fact that the part of the project area falls in the CRZ-II and CRZ-III, so far they have not even applied for CRZ clearance for the above said project activity and claimed that the said project is not attracted under the provisions of the CRZ Notification, since the project is fully funded by International agency governing with international agreement. The Committee is completely disagreeing with the above averment made by the project</i></p>	<p>KfW/ Respondent No. 6 respectfully submits that the statement that “<i>it is not mandated for getting CRZ clearance, since the said project activity is funded by the international agency</i>”, is grossly misleading and inaccurate.</p> <p>Just because we are an international agency has no bearing whatsoever on legal compliances of a project to be financed. On the contrary, our financing is predicated on compliance by the Project Executing Agency i.e. GCC of all legal requirements and permissions. I reiterate that any disbursement of funds will be done only once the Project is in full compliance with all applicable laws of India.</p>



S. No.	Extract from the Final Report of the Joint Committee	Submission on behalf of KfW / Respondent No. 6
	<p><i>authority and confirmed that the alleged project activity falls in the CRZ classified area of CRZ-IA, CRZ-II and CRZ-III. Further, any kind of international funding or agreement cannot override the laws / rules enacted /notified within the ambit of Constitution of India.”</i></p>	

13. In the light of the aforesaid submissions, it is prayed that this Hon'ble Tribunal may kindly be pleased to take into consideration the Response of KfW / Respondent No. 6 while considering the Final Report of the Joint Committee dated 02.04.2021 and pass any such other /further order(s), which it may deem fit and proper in the interest of justice.



Counsel for Respondent No. 6



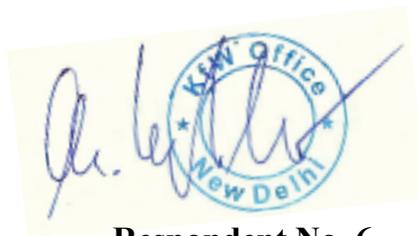
Respondent No. 6

VERIFICATION

I, Christoph Wilhelm Kessler, S/o Herbert Alfons Kessler, aged about 64 years, resident of B5, Westend Colony, New Delhi 110021, presently at Eppsteiner Str. 21, 61462, Königstein, Germany, do affirm that I am the Authorised Signatory of the Respondent No. 6 and hereby verify that the contents of paras 1 to 13 are true to the best of my knowledge, information and belief and are based on legal advice which is believed to be true and correct. I state that I have not suppressed any material fact.

Date: 19.07.2021

Place: Königstein, Germany



Respondent No. 6

