

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE AT CHENNAI
APPEAL NO. 18 OF 2017

IN THE MATTER OF:

SRIDEVI DATLA

...APPELLANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

**WRITTEN SUBMISSIONS FILED BY MR. SYED
NURULLAH SHERIFF, SENIOR STANDING COUNSEL,
ON BEHALF OF RESPONDENT NO.1**

A. PRELIMINARY SUBMISSIONS

1. Appellant in the present appeal has challenged Environmental Clearance dated 14.08.2017 and has challenged not only decision making by the Expert Appraisal Committee, but also, among other environmental issues:
 - a. veracity and accuracy of data collected through the environment impact assessment ("**EIA**") consultant, Greencindia Consulting Private Limited ("**Greencindia**");
 - b. Appellant has challenged that noise collection data points, N2 and N6 are actually not in the funnel path and that different points should have been used for capturing data;
 - c. credentials granted by Quality Council of India - National Accreditation Board For Education and Training ("**QCI**" and "**NABET**", respectively) to the EIA coordinator, Rahul Singh and EIA Consultant;

- d. viability of the Bhogapuram Airport Project on account of newspaper reports according to which Airbus A-380 is to be discontinued.
2. Appellant has further alleged, in Rejoinder by way of Written Submissions, that:
 - a. There are discrepancies in the 'Project Area', the maps and land use patterns;
 - b. Impact analysis has not been carried out for commercial area of 530 acres;
 - c. Casual approach of RITES in preparation of layout map;
 - d. EC allows Project Proponent to use water far in excess of EIA Report;
 - e. The Cumulative Impact Assessment of the Airport Project should have considered 'airport building' and 'Aerotropolis' Project as part of different sectors.

It is important to note that none of the additional contentions raised by way of the Rejoinder set out above have been raised in the Appeal filed or in the subsequent pleadings nor was it orally argued.

3. The present Appeal, is therefore a gross abuse of the process of law for the following reasons:
 - a. The contentions raised in paragraph 2 above are not only beyond what has been argued in the Appeal and various other submissions made by Appellant, but the same are also by way of Written Submissions rather than by way of an Application for amendment accompanied with an affidavit.

- b. The Appellant has raised these grounds at the stage of Rejoinder rather than at the stage of completion of pleadings which is not permissible and liable to be rejected.
- c. Appellant has raised grounds on qualification of EIA Coordinator on the ground that his 'LinkedIn' profile is inaccurate and it does not reflect merit of nationally recognized institution of QCI-NABET credentials and its function.
- d. Appellant has made allegations against EIA Consultant and EIA Coordinator even though neither are the parties to the present proceedings and the Hon'ble NGT does not have powers to take action against EIA Consultant (***R4 Additional Affidavit, paras 81 – 83, pp. 35-36***).
- e. Further, Appellant has raised these additional grounds, with the assistance of an individual who was claimed to be an expert, without advance notice to the Respondents. No details of the expert was shared with Respondents nor with the Hon'ble Tribunal. Even these Written Submissions in Rejoinder were not served in advance on the Respondents.

The Appellant has thus, argued extraneous issues, raised allegations in violation of Principles of Natural Justice against persons who are not parties to the Appeal and has raised contentions belatedly and without stating them on oath, by way of Written Submissions.

- 4. Even though this Hon'ble Tribunal ought to summarily reject these contentions for gross abuse of process of law, answering Respondent has addressed the allegations that concern the EAC and decision-making process.

B. EIA NOTIFICATION AND AIRPORT MANUAL

5. Ministry of Environment and Forests & Climate Change (“**MoEF&CC**”) issued the Environmental Impact Notification S.O.1533 (E), dt.14th September 2006 issued under Environment (Protection) Act 1986 (“**EIA Notification**”). The EIA Notification has included “Airport” under Schedule 1 at Sl. No. 7(a) as Category ‘A’ project (***Schedule to EIA Notification at p. 191, Airports at p. 197, Respondent No.4 Counter Affidavit***).

6. Airports, as a category of ‘Project or Activities’ are to be distinguished from other activities such as:

- a. Mining, extraction of natural resources and power generation (for a specified production capacity):
- b. Primary Processing:
- c. Materials Production
- d. Materials Processing
- e. Manufacturing / Fabrication
- f. Service Sectors
- g. Building /Construction projects/Area Development projects and Townships

Recognizing the difference between aircraft and airport operations and those of other industries set out above, MoEF&CC categorized airports as ‘Physical Infrastructure including Environmental Services’.

7. The application of environment impact assessment and analysis must be proportionate to the nature of activities undertaken by airports. This is recognized in *Rajiv Suri v. Delhi Development*

Authority & Ors. (2021 SC OnLine SC 7) where Hon'ble Supreme Court held:

"460. *The aforesaid legal position makes it clear that both basis as well as level of scrutiny of a proposal strictly depends upon the categorization of project. The 2006 Notification draws a clear balance and does not prescribe equal level of scrutiny for all projects."*

8. The procedure contemplated in the EIA Notification serves as a balance between development and protection of the environment - there is no trade-off between the two. In laying down a detailed procedure for the grant of an Environmental Clearance, the EIA Notification attempts to balance protection of the environment and development. Balancing public interest and public purposes needs to be kept in mind as being the way forward for accomplishing the goal of sustainable development.

9. It is important to note in this regard that there is more than one EAC and there are different EACs for different sectors. These EACs have different members. Infrastructure II EAC committee and its members are one out these nine EACs. They deal only with projects related to, airport, ports and harbours, ship breaking yard, building/construction project, townships and area development projects and common hazardous waste treatment, storage and disposal facilities, aerial ropeways, CEPTs, common municipal solid waste management facility and not other sectors or project/activities. The EAC sits once a month (***EIA Notification para 5 at p. 185, R4 Counter Affidavit***) and as

explained below, material is placed sufficiently in advance before the EAC.

10. The EIA Notification is common for all the sectors requiring prior environmental clearance. Therefore, the EIA Notification must be read along with the EIA Manual for Airports, February 2010, ("**Airport Manual**") issued by MoEF&CC, specifically for "Airport Sector" project/activities for the purpose of preparation of the EIA Report (***Airport Manual pp. 224 – 342, R4 Counter Affidavit***). The applicability of the Airport Manual for environment impact analysis, specifically, the impact analysis therein, has been upheld in *Hanuman Aroskar v. Union of India*, relied by Respondent No.4 in Additional Affidavit at para 49, quoting paras 44.4, 47 and 54 of the said judgment.
11. The Airport Manual sets out the parameters in respect of environment impact analysis (***Chapter 4 of Airport Manual, Description of Environment, p.256 and Chapter 5, Anticipated Environment Impacts, p. 262***). The description of the Study Area and the impact analysis, as mandated in the Airport Manual, are captured in the EIA Report (Chapter 4). These studies are with reference to the parameters identified in the Airport Manual.
12. It is also important to note that the EIA Notification was amended vide GO 996/2015 dated 10.04.2015 issued by MoEF&CC (***Respondent No.4 Counter Affidavit at pp. 222-223***). The said GO amended para 7 of EIA Notification to provide that on submission of application for grant of environment clearance,

there would be deemed approval of Standard Terms of Reference ("**TOR**").

13. Once the Form 1 along with Pre-Feasibility Report ("**PFR**") is submitted to the MoEF&CC online portal, MoEF&CC through Member Secretary calls for the TOR meeting with Expert Appraisal Committee ("**EAC**") members, Project Proponent and EIA Consultants. PFR is submitted as per para 6 of the EIA Notification (***EIA Notification p. 185, Respondent No.4 Counter Affidavit***). After the TOR meeting, the EAC outlines the additional TORs conditions along with Standard TORs.
14. The EIA Report and EC itself, makes it abundantly clear that EAC was made aware of the pending litigation. Therefore, the principle applied by the Hon'ble Supreme Court in *Hanuman Aroskar v. Union of India* (2019) 15 SCC 401 is not applicable in the present case. On the contrary, the observations in *Hanuman Aroskar (I)*, make it abundantly clear that 'deliberate' or 'false information' must affect appraisal and admittedly the same is not the situation in the present case and hence not applicable in the present case (***Hanuman Aroskar v. Union of India (2019) 15 SCC 401, para 126***).

C. ROLE OF EAC IN PRESENT CASE

15. The EAC comprises subject matter experts of environmental, scientific areas such as, pollution control, forest, resource conservation & green building, earth sciences, regulatory, architecture and planning etc. The appraisal of a project is a technical process, and not legal process and hence, applying yardstick of judicial review to scientific analysis based on the

detailed information made available by the Project Proponent is not appropriate. The respective subject experts in the EAC deliberate on the specific matters and a collective decision, as approved by the Chairman of the EAC, is thereafter the EC is recommended to the Ministry.

16. Appellant, however, has relied on news reports and other unsubstantiated accounts to describe the project as something more than it actually is. Form 1, the EIA Report and the EC have abundantly made it clear that the project is only an international airport, being Bhogapuram International Airport to be developed in an extent of 2,004.52 acres with 119 acres as approach road (**Form 1 at p. 69, Appeal Paperbook and EIA Report at p. 0-2**).
17. Appellant's contentions on concealment with respect to 'interlinked' project is erroneous and unfounded (**Rajiv Suri v. Delhi Development Authority & Ors. (2021) SC OnLine SC 7, paras 473 - 478**). There is no multi-sector element involved as explained in the said Judgment. Form 1 has clearly stated that the EC is in respect of 'Green Field International Airport at Bhogapuram' (**Form 1, p. 69 of Appeal Paperbook, 'Basic Information Sl. No.1'**).
18. Project Proponent submitted Form 1 on 27.02.2016 (**pp. 79 - 87, Appeal Paperbook**). Standard TOR is deemed to be approved as per SO 996/2015 (**R4 Counter Affidavit, pp. 222-223**). On 28.03.2016, EAC considered the details of the Bhogapuram International Airport Project in its meeting for prescribing TOR. EAC recommended additional TOR which are

particular and specific to airport sector and the Minutes of the Meeting (MOM) was uploaded in the ministry website after the meeting (**Appeal Paperbook pp. 79 – 82**). This was confirmed by MOEF&CC vide its letter dated 04.05.2016 (**Appeal Paperbook pp. 83 – 87**). Therefore, the Appellant's repeated contention of decision in haste / non-application of mind are to be summarily rejected.

19. The agenda for the TOR meeting clearly notes that documents were to be submitted *at least* 10 days prior to the meeting to *each* EAC Member. Thus, the EAC members had more than adequate time to go through the documents before the TOR Meeting. Annex III to the Agenda provides for checklist for TOR (Annex II is Checklist for EC). The checklist provides the various details that is submitted for the EAC meeting.
20. Respondent No.4 has already submitted the presentation which was made to the EAC for the purpose of TOR (**R4 Counter Affidavit, pp. 343 – 377 on 28.03.2016**). Further, only 15 other proposals were considered on the date when the TOR for the Bhogapuram International Airport was taken up for consideration. Therefore, contrary to the unfounded and unsubstantiated allegations of Appellant that, EAC was dealing several cases that it had no time to apply mind for determination of TOR for the Bhogapuram International Airport, the EAC has indeed discussed thoroughly by application of mind and issued the EC by incorporating several stringent conditions in the EC.
21. The EIA Report captures Project Proponent's compliance to the Standard TOR and additional TOR, which have been issued by

MoEF&CC (**Annex 1.1 to EIA Report, pp. 1 – 6 and Standard TOR(04.05.2016) Compliance at pp. 7 - 17**). This was before the EAC when the Project came up for appraisal on 13.04.2017. The recommendation of TOR is therefore not an empty exercise and there are checks and balances to ensure that the TOR is complied with by the Project Proponent.

22. The EIA Report captures impact analysis in detail in Chapter 4 with respect to land, air, water, soil, noise and biological environment as relevant parameters (**EIA Report, Impact Identification Rating at Table 4-2 at p. 4-2**). This enables the EAC to take a decision to recommend the grant of EC with stipulated conditions or reject the proposal. The EIA Report also captures in details issues that were raised during public hearing and responses of the Project Proponent to address the same (Chapter 7).
23. After the final EIA report is uploaded in the ministry website by the Project Proponent (in this case 20.02.2017), the project is in consideration for the appraisal meeting by the Member Secretary of the EAC. The EAC members access the EIA Report uploaded by the Project Proponent well in advance before the meeting. After the project is considered for the appraisal meeting, the agenda is prepared and uploaded in the ministry website.
24. The procedure prescribed for appraisal is set out in Appendix V to the EIA Notification (**R4 Counter Affidavit, pp. 217 – 219**). The Agenda for the Meeting on 12.04.2017 to 14.04.2017 clearly mandates that documents are to be shared to each EAC Member 7 days prior to the date of the meeting along with various

documents set out in the Annexure. The Agenda for Appraisal Meeting was uploaded on 31.03.2017 itself. Thereafter, on 04.04.2017, by an email, the Project Proponent submitted details required in terms of the Agenda for the EAC Appraisal Meeting. Therefore, all information was submitted and made available to the EAC more than 7 days prior to the EAC Appraisal Meeting (**Letter dated 04.04.2017 from Project Proponent was filed on 01.09.2021 with the Hon'ble Tribunal**).

25. The EC dated 14.08.2017 captures that the proposal had been shared as early as 20.02.2017 (**EC at pp. 35 – 41, Appeal Paperbook**). Prior to the EAC meeting, documents are shared as EAC Agenda.
26. The EIA Report enables EAC to take note of environmental impact analysis. Issues relating to public hearing relating to employment and resettlement are adequately and exhaustively addressed in Chapter 7 of the EIA Report. As the same are already satisfactorily addressed, EAC only has to consider environment impact analysis.
27. The EAC in its meeting on 13.04.2017 was aware of the principles set out in the Airport Manual. Apart from EIA Report, Project Proponent also made a presentation before the EAC Members. Thus, in terms of *Rajiv Suri* and *Hanuman Laxman Aroskar*, adequate material was placed before the EAC to form an opinion on environment impact analysis to recommend the grant of EC for the project.

28. Thus, adequate material was placed before the EAC and adequate time was provided for EAC to review the material and deliberate. 18 projects were heard on 13.04.2017 when the present Project came up for appraisal before the EAC. As experts, they are technically equipped to review and analyse the material before them, including its adequacy. Therefore, it is patently wrong to allege that the EAC did not have material or that its decision was rushed (***Hanuman Laxman Aroskar v. Union of India (2020) 12 SCC 1, para 54, 55 and Rajeev Suri v Delhi Development Authority & Ors 2021 SCC OnLine SC 7 para 489, 491, 492, 494, 495***).
29. The EIA Report and the presentation of the Project Proponent facilitates to understand how the environmental impact of airport operations in the Study Area (10 km and 15 km radius) is addressed. The Bhogapuram Airport is not situated in the forest area and there are no ecologically sensitive zones or area, Wildlife Reserves, National Parks in the Study Area (10 and 15 km radius) (***EIA Report para 1.3.1 at p. 1-2, Table 1-2 at p. 1-4; photos of Project Site at Fig. 2.1 at p. 2-1 and p. 363 of Respondent No.4 Counter Affidavit (TOR Presentation)***).
30. As stated above, parameters for impact analysis of an aircraft have been captured in Chapter 4 and 5 of the Airport Manual. The aircraft gains a height of 1,000ft below which noise and air pollution are generated maximum during its' take off stage. Based on the Airport Manual, Hon'ble Supreme Court has taken note that maximum impact of aircraft operation is felt in 3 km / 6 km funnel path (***R4 Additional Affidavit, para 49.p. 25,***

relying on Hanuman Aroskar, para 44.4 and 47). The runway of the Bhogapuram International Airport itself is 3,800 meters and therefore, substantially, the impact is limited to the airport boundary itself (***R4 Additional Affidavit, Noise Monitoring points at p. 99***).

31. The additional conditions imposed by EAC and incorporated in the EC are designed to achieve maximum mitigation measures to minimize any impact of airport operations with respect to land, water, air, noise, solid and hazardous waste etc.
32. It has been clearly clarified that the Bhogapuram Airport Project would require only 153 KLD during operation. Vizianagaram has been classified as 'safe' by the Central Ground Water Authority (***Respondent No.4 Additional Affidavit, paras 55 – 61, pp. 28 – 29***). The impact analysis of this has been captured in the EIA Report (Chapter 4) along with other environmental features. Further, various mitigation and conservation measures have been imposed by the EC and EAC in relation to water.
33. Therefore, the concerns regarding water are unfounded. It is also to be remembered that the impact analysis must be considered proportionate to the nature of activity undertaken.
34. Court must bear in mind the need to balance the development of infrastructure and the environment. EAC is thus conscious that while the need for an airport is factored into the decision-making calculus, equal emphasis should be placed on the environment (***Rajiv Suri v. Delhi Development Authority & Ors. (2021) SC OnLine SC 7, paras 562 - 566***).

35. In conclusion, the Appellant's allegations are based on news report items and unsubstantiated material relating to extraneous factors. The allegations do not pertain to environmental impact analysis, or the reasonableness of the conclusions drawn by EAC. Appellant has also not raised any allegations against the EAC's credentials in the Appeal or various Written Submissions filed subsequently.

D. GROUNDS NOT RELATED TO EIA NOTIFICATION, AIRPORT MANUAL OR EC RAISED BY APPELLANT

I. LinkedIn profile of EIA Coordinator

36. Appellant's gross abuse of process of law by raising extraneous grounds against EIA Coordinator is clear from Appellant's allegation in the Written Submission dated 09.08.2021 at p. 9 which states that:

"11.....It is clear that the EIA Corordinator does not have the required qualification, expertise and exposure and that could be the reason for the poor quality of EIA which is replete with wrong statement, factual inaccuracies and misleading statements. There is nothing on record to show that any 'Specialist' in the aviation sector or those with special knowledge in this aspect were involved in the Preparation of the EIA.

12. The Profiled of Rahul Singh as available online His LinkedIn Profile states as follows so far as the qualification of Rahul Singh is concerned....."

37. Appellant is thus seeking disqualification of the EIA Consultant, when he is not a party to the proceeding and based on the LinkedIn profile of the EIA Consultant and not the accreditation

certificate which is part of EIA Report (***EIA Report Annexure 11.1, 11.2 and 11.3 and re-certification at p. 373, Annexure 11.3***). It is submitted that LinkedIn is only social media platform for interaction and networking. A statement on the LinkedIn platform cannot be basis for negating accreditation granted by nationally recognized institute of QCI – NABET.

II. Discontinuance of Airbus A-380

38. Appellant, by way of an amendment, also sought to contend that since Airbus A-380 would be out of production, the basis for the airport is not required. Appellant has sought to argue through Ground M:

"It is stated that production of Aircraft A 380 has been stopped. Therefore, the very purpose of designing this airport as per the requirements of A 380 aircraft is no more required."

39. However, in the Written Submissions of 09.08.2021, Appellant has challenged noise impact analysis for Airbus A-380:

"Therefore, the predicted value cannot be less than the measured value as well as the specified values given for Airbus A380."

(emphasis in original)

Thus, Appellant has taken contrary stands based on what suits the Appellant.

40. Appellant has again, only relied on newspaper reports to substantiate this allegation. The EIA Report specifically observes:

*'Airbus A-380 or equivalent' at – para 1.3.1 at p. 1-2.
'To serve the passengers with a suitable pier service level of about 95% of annual passengers it is anticipated that 8 Aero Bridges would be placed in positions, out of which four positions are for code C aircrafts (A-320/B-737 etc) and four*

*positions for Code D, E, F aircrafts (A-340/B-777/A-380 etc.)
- para 2.4.1.4.1 at p. 2-6.*

The EC and EAC Minutes note - Airbus A-380 type of aircraft – Appeal Paperbook – EC at p. 35, EAC Minutes at p. 81 and MoEF&CC TOR Letter dated 04.05.2016 at p. 83.

41. The EAC has taken note of Airbus A-380 or its equivalent or type of aircraft as specified by the Project Proponent for the compliance of internal airport norms Code 4F.
42. It is submitted that the continued commercial production or discontinuance of the Airbus A-380 has no bearing on the EC.

III. Greenfields Airport Policy

43. Appellant has also argued that the Bhogapuram International Airport would be in violation of Ministry of Civil Aviation's Greenfield Policy on the ground that the new Bhogapuram International Airport will be less than 150 kms of the existing airport at Vishakapatnam.
44. Further, even the policy relied upon by Appellant does not prohibit a new airport and makes it discretionary. The site was duly approved by Ministry of Civil Aviation (***Counter Affidavit of Respondent No.2, Annexure R6 at pp. 53 – 55***).
45. Respondent No.2 and Respondent No.4 have already clarified that the Vishakapatnam Airport is not a civilian airport and hence the restriction of 150 kms will not apply in relation to it. The restriction of 150 kms is in the policy for Greenfield Airports. Although this has been clarified by Government of Andhra

Pradesh (***EIA Report para 1.5 at p. 1-8, Counter Affidavit of Respondent No.2, paras 29 – 32, pp. 33 – 37;***), it bears repetition that, a matter of policy cannot be sought to be reviewed or judicially enforced (***Project Implementation Unit v. P.V. Krishnamoorthy, (2021) 3 SCC 572, paras 70 to 73***).

“70. In the present case, it is seen that the basis for taking such informed decision by the Committee is ascribable to tangible aspects referred to in the minutes of the meeting held on 19-1-2018 (as is manifest from the factual aspects recorded therein). The decision of this Court in Dwarkadas Marfatia & Sons [Dwarkadas Marfatia & Sons v. Port of Bombay, (1989) 3 SCC 293] will be of no avail, because we find that the decision of the Committee was well-informed and backed by reasons guided by public interest. We must remind ourselves of the word of caution noted by this Court in A.S. Sangwan [A.S. Sangwan v. Union of India, 1980 Supp SCC 559 : 1981 SCC (L&S) 378 : AIR 1981 SC 1545] that the courts should be loath in dealing with policy and administrative reasons. The Court observed thus : (A.S. Sangwan case [A.S. Sangwan v. Union of India, 1980 Supp SCC 559 : 1981 SCC (L&S) 378 : AIR 1981 SC 1545] , SCC p. 561, para 4)

*“4. ... A policy once formulated is not good for ever; it is perfectly within the competence of the Union of India to change it, rechange it, adjust it and readjust it according to the compulsions of circumstances and the imperatives of national considerations. We cannot, as court, give directives as to how the Defence Ministry should function except to state that the obligation not to act arbitrarily and to treat employees equally is binding on the Union of India because it functions **under** the Constitution and not **over** it. ... So, whatever policy is made should be done fairly and made known to those concerned. So, we make it clear that while the Central Government is beyond the forbiddance of the court from making or changing its policy in regard to the Directorate of Military Farms or in the choice or promotion of Brigadiers, it has to act fairly as every administrative act must be done.” (emphasis in original)*

.....

73. *The High Court has completely glossed over these crucial aspects and entered into the domain of sufficiency and adequacy of material including the appropriateness of the route approved by the competent authority. Such enquiry, in exercise of judicial review is forbidden. Furthermore, the High Court, despite noting that judicial interference in acquisition matters is limited, went on to interfere in the guise of extraordinary circumstances obtaining in this case. On a thorough perusal, the impugned judgment does not reveal any just circumstance for invoking the judicial review jurisdiction. In light of the above discussion, we hold that challenge to the decision of the Committee and ex consequenti of the Central Government, regarding change of section C-M (EC) to C-K-S (NC) at the micro level for the implementation of the original Project as approved, ought not to have been doubted by the High Court. Notably, in the final conclusion and declaration issued by the High Court, it has justly not struck down the notifications under Section 2(2) of the 1956 Act. In other words, so long as Section 2(2) of the 1956 Act was to remain in force and the decision regarding change of stretch/section to C-K-S (NC) being the foundation for issue of notification under Section 3-A, would continue to bind all concerned and in particular, the officials of NHAI being the executing agency."*

46. The location of the second airport within 150 km in relation to Greenfields Aviation Policy has no bearing on the EC or EAC's decision making process.

E. NEW AND ADDITIONAL GROUNDS IN REJOINDER RAISED BY APPELLANT

47. At the outset, it is reiterated that these contentions are not accompanied by an affidavit nor was leave of the Hon'ble Tribunal sought to raise such additional grounds at the stage of rejoinder. Without prejudice to answering Respondent's submissions that these new and additional grounds ought to be rejected, Respondent No.1 makes following brief submissions.

I. Cumulative Impact Assessment of other buildings

48. Appellant had initially raised a ground that cumulative impact assessment has not been done in respect of Aviation Academy and MRO. However, after Respondent No.4 has abundantly and emphatically clarified that these do not form part of Phase 1 and are only optional, Appellant has raised a new ground on cumulative impact assessment (***Respondent No.4 Additional Affidavit, paras 25 – 35, pp. 16 – 21***).

49. However, Appellant has raised a new, vague and ambiguous allegation in the Rejoinder Written Submissions that:

"5.1In the present case, the various components are 'multi sectoral' and not of the same component. Therefore they satisfy the meaning of 'interlinked and integrated project' as defined by the MoEF in OM dated 24-12-2010....."

5.2 That the development of new airport cannot be seen in isolation of the other activities. It is now an accepted fact that the financial viability of an airport depends on various linked components. Though they are not to be considered as functional part of the airport; they are nevertheless important to ensure that the airport is financially viable. The reason is simple: An airport is a commercial airport and not a 'non-profit' enterprise. It is operated by a private entity and as aimed at generating profits for operator. Therefore the non- aviation components are an integrated and interlinked component of the project since they generate 'non -aeronautical' revenues."

50. Appellant is now seeking to argue that area for Commercial Area Development is now different sector and hence, multi-sector is

applicable (paras 1.4 and 5.1). Respondent No.2 and Respondent No.4 have abundantly made it clear that the project is limited to Bhogapuram International Airport and that MRO and Aviation Academy, though belonging to airport sector, are not part of Phase 1. MRO and Aviation Academy are optional and if the Concessionaire decides to construct the same, it would after obtaining a fresh EC (**Respondent No.2 Counter Affidavit para 16 at p. 25, and Additional Affidavit of Respondent No.4 paras 28 and 29, pp. 16-17**). The EIA Report is also very clear about the same (para 2.4.2.6 at p. 2-12).

51. Respondent No.4 has emphatically stated on affidavit that land area of 1,567 acres has been dropped (**Additional Affidavit of Respondent No.4 paras 21-23, pp. 15**) and further, it was clarified during the hearing that 530 acres in the EIA Report shown in the layout map belongs to Government of Andhra Pradesh and does not form part of the Bhogapuram Airport Project.
52. Appellant's contention that there is multi-sector involved is vague and ambiguous. The concerned Respondents have emphatically denied that there is non-aviation activities, Appellant's continued insistence of a non-aviation commercial activities is without any basis. Appellant has relied on news reports and made bald, vague and ambiguous allegations without any particulars.
53. Appellant has loosely used the expression 'various components' without elaborating what the alleged components are. The Appellant is making an absurd allegation that EIA is required for runway, aprons, terminal buildings and other buildings. Such an

interpretation is completely to contrary to the interpretation given by the Hon'ble Supreme Court in *Rajeev Suri Versus Union of India* (**2021 SCC OnLine SC 7**) which has already been filed before the Hon'ble Tribunal (**paras 473 to 478**).

II. Allegations on land use and maps

54. Appellant has raised a new allegation in the Rejoinder Written Submissions that:
- a. There is a discrepancy on area and that 259 hectares has not been considered for impact analysis
 - b. There is a difference between RITES Map and EIA Report map
 - c. Layout map does not show all features
 - d. Change in land use
 - e. Shape of map differs significantly
55. It has been emphatically stated by Respondents No.2 to 4 that the project is only 2004.52 acres and 119 acres approach road. The Appellant is only seeking to mislead the Hon'ble Tribunal with inaccurate representation of the EIA Report details.
56. The Appellant has failed to note that the RITES Map is part of EIA Report. The same is at page 2-3 of EIA Report gives the information about key components of the Bhogapuram International Airport.
57. The green belt area (141.64 hector) is shown in the Table 2-3 (at Page 2-14 of EIA Report) and the presentation made by the Project Proponent during appraisal. The details of Green belt has

also been captured in Respondent No.4's Additional Affidavit at paras 102 – 104, p. 43.

58. The EAC has analyzed the EIA Report based on the impact analysis of the different features such as, land, water, air and noise, biological environment etc. for the study area of 10 km radius, not only to project area, based on parameters in the EIA Notification and Airport Manual. The Project Area has been emphatically stated and shown to be only 2,004.52 acres.
59. The allegations on change in land use are also baseless. The same is nothing but an attempt by the Appellant to micro-manage the execution of the project.

III. Allegations on noise impact

60. Appellant's original allegation was that N2 and N6 were not in the funnel path. This was not based on objective and credible information. Appellant's original argument was that it was on the runway. Appellant has now contended in the Rejoinder Written Submissions as a new argument, that points should not have been at N2 and N6 and instead, should be elsewhere. It is not the role of Appellant to determine such technical matters – Appellant is seeking to usurp the role of EAC. There is nothing arbitrary or unreasonable from capturing noise data at N2 and N6, both within the funnel area of the runway.
61. Appellant is also acknowledging that N6 was on the extreme end of the boundary of project on western side. The extreme end is

within the funnel path. This is nothing but an attempt to micro-manage decision making by technical experts.

62. The EIA Report captures the noise impact study conducted by the Project Proponent and the same is in accordance with Airport Manual (***Respondent No.4 Counter Affidavit, paras 65 – 67, pp. 29 – 31***).

63. Therefore, it is prayed this Hon'ble Tribunal uphold the EC and dismiss the Appeal.

RESPONDENT NO.1

THROUGH

ADVOCATES

CHENNAI

09.09.2021